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Attorneys for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Kyla Tapia, individually and on behalf of all
others similarly situated,

Plaintiff,

- against -

The Coca-Cola Company,

Defendant

Case No. 4:22-cv-01362-HSG

First Amended
Class Action Complaint

Jury Trial Demanded

Plaintiff Kyla Tapia (“Plaintiff”), by attorneys, alleges upon information and belief, except for allegations pertaining to Plaintiff, which are based on personal knowledge:

1. The Coca-Cola Company (“Defendant”) manufactures, distributes, markets, labels, and sells berry flavored carbonated beverages purporting to have “100% Natural Flavors” under the Fanta brand (the “Product”).



FACTUAL ALLEGATIONS

I. CONSUMER DEMAND FOR NATURAL FLAVORS

2. Consumers are increasingly concerned about the ingredients added to what they eat and drink.

3. Surveys have shown that consumers are less likely to buy beverages, even sodas, which have artificial ingredients.

4. Within the spectrum of artificial ingredients, consumers are especially focused on, and seek to avoid, artificial flavors, and seek products with only natural flavors.

5. The representation that the Product has “100% Natural Flavors” appeals to the more than seven out of ten consumers who avoid artificial flavors, as these synthetic ingredients are believed to be associated with detrimental health and environmental effects.

6. Natural flavor is defined as “essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the flavoring constituents” from fruits or vegetables, “whose significant function in food is flavoring rather than nutritional.” 21 C.F.R § 101.22(a)(3).

7. Artificial flavor is defined as “any substance, the function of which is to impart flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy products, or fermentation products thereof.” 21 C.F.R § 101.22(a)(1).

8. According to the Wall Street Journal, “As consumer concern rises over artificial ingredients, more food companies are reconstructing recipes” to remove artificial flavors.¹

9. According to Paul Manning, chief executive officer and president of Sensient Technologies, “Consumer desire for naturally flavored products is an emerging trend.”²

10. Explanations for why consumers prefer foods containing natural, instead of artificial flavors, are varied.

11. A recent survey reported that over 82% of US respondents believe that foods with

¹ Lauren Manning, How Big Food Is Using Natural Flavors to Win Consumer Favor, Wall Street Journal.

² Keith Nunes, [Using natural ingredients to create authentic, fresh flavors](#), Food Business News, Sept. 20, 2018.

1 artificial flavors are less healthy than those promoted as containing natural flavors and/or not
2 containing artificial flavors.

3 12. Consumers seek to avoid artificial flavors because they are weary of ingredients
4 which are highly processed with chemical additives and synthetic solvents in laboratories.

5 13. According to Nielsen, the absence of artificial flavors is very important for over 40%
6 of respondents to their Global Health & Wellness Survey.

7 14. One scholar theorized “the preference for natural products appeals to a moral
8 ideology and offers a moral satisfaction.”³

9 15. The trade journal, *Perfumer & Flavorist*, described “The Future of Artificial Flavors
10 & Ingredients” as bleak, given consumer opposition to these synthetic ingredients.⁴

11 16. Mintel announced that consumer avoidance of artificial flavors is just as strong as
12 their desire for natural flavors, in its Report, “Artificial: Public Enemy No. 1.”⁵

13 17. About half of Americans say they seek out natural flavors at least some of the time.

14 18. In contrast, artificial flavors were sought out by only about one in 10 consumers,
15 with approximately half saying they avoid each of them at least some of the time.

16 19. Nielsen reported that 62% of consumers try to avoid artificial flavors.

17 20. New Hope Network concluded that 71% of consumers avoid artificial flavors.

18 21. Label Insight determined that 76% of consumers avoid artificial flavors.

19 22. A recent survey shows more than three in four people worldwide are convinced that
20 artificial flavors have no place on their ingredient lists.⁶

21 23. According to Forbes, 88% of consumers consider foods without artificial flavors to
22 be more natural and healthier than foods with artificial flavors and would pay more for such foods.

23
24
25 ³ Rozin, P., Spranca, M., Krieger, Z., Neuhaus, R., Surillo, D., Swerdlin, A., & Wood, K. (2004). Preference for natural:
Instrumental and ideational/moral motivations, and the contrast between foods and medicines. *Appetite*, 43(2), 147–
154. doi:10.1016/j.appet.2004.03.005.

26 ⁴ Jim Kavanaugh, [The Future of Artificial Flavors & Ingredients](#), *Perfumer & Flavorist*, June 12, 2017.

27 ⁵ Alex Smolokoff, [Natural color and flavor trends in food and beverage](#), Natural Products Insider, Oct. 11, 2019; Thea
Bourianne, [Exploring today's top ingredient trends and how they fit into our health-conscious world](#), March 26-28,
2018; Nancy Gagliardi, [Consumers Want Healthy Foods – And Will Pay More For Them](#), *Forbes*, Feb 18, 2015.

28 ⁶ What ‘Natural’ Really Means to Consumers GNT Group’s Guide to Global Consumer Demands attests importance of
natural colors for future-proof products, July 13, 2017.

II. FLAVORING REPRESENTED AS ONLY COMING FROM NATURAL FLAVORS

24. Defendant markets the Product with the prominent statement, “100% Natural Flavors” above the word “Berry,”

25. The front label contains a picture of five blueberries, a raspberry with its stem and leaves and two red droplets purporting to be from raspberry.



26. These representations reinforce to consumers that the Product will get its taste from only natural flavoring ingredients.

27. Though the ingredients include “Natural Flavors,” they also include “Malic Acid.”



CARBONATED WATER, HIGH FRUCTOSE CORN SYRUP, NATURAL FLAVORS, CITRIC ACID, SODIUM CITRATE, MALIC ACID, POTASSIUM SORBATE AND SODIUM BENZOATE (TO PROTECT TASTE), BLUE 1.

28. The Product contains almost as much malic acid than natural flavors, as the former is the third listed ingredient while the latter is sixth, reflecting their order of predominance.

29. Federal and identical state regulations require ingredients to be designated by their specific name instead of their generic name. 21 C.F.R. § 101.4(b).

30. The label only lists “Malic Acid,” the generic name for this ingredient, even though its specific name is “DL-Malic Acid.”

31. The ingredient list does not disclose that this malic acid is an artificial flavoring ingredient which provides flavoring to the Product.

III. MALIC ACID

32. A flavor is a substance the function of which is to impart taste. *See* 21 C.F.R. § 101.22(a)(1) and (3).

33. Taste is the combination of sensations arising from specialized receptor cells located in the mouth.⁷

34. Taste can be defined as sensations of sweet, sour, salty, bitter, and umami.

35. However, limiting taste to five categories suggests that taste is simple, which is not true.

36. For example, the taste of sour includes the sourness of vinegar (acetic acid), sour

⁷ Gary Reineccius, *Flavor Chemistry and Technology* § 1.2 (2d ed. 2005).

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