

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

LINDA SUCHANEK, RICHARD	)	
MCMANUS, CAROL CARR, PAULA	)	
GLADSTONE, EDNA AVAKIAN,	)	
CHARLES CARDILLO, BEN CAPPS,	)	
DEBORAH DIBENEDETTO and CAROL J.	)	
RITCHIE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
STURM FOODS, INC. and	)	
TREEHOUSE FOODS, INC.,	)	
	)	
Defendants.	)	

Case No. 3:11-cv-00565-NJR

Consolidated Cases:

3:11-00889

3:11-01035

3:11-01068

3:12-00224

Jury Trial Demanded

**DEFENDANT STURM FOODS, INC.’S ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFFS’ SECOND AMENDED CLASS ACTION COMPLAINT**

Defendant Sturm Foods, Inc. (“Defendant” or “Sturm”), by and through its undersigned attorneys, hereby submits its Answer and Affirmative Defenses (“Answer”) to the Second Amended Complaint (“Complaint”) of Plaintiffs Richard McManus (“McManus”), Enda Avakian (“Avakian”), Charles Cardillo (“Cardillo”), Ben Capps (“Capps”), Deborah DiBenedetto (“DiBenedetto”), and Carol J. Ritchie (“Ritchie”) (collectively, “Plaintiffs”) as follows:

**THE PARTIES**

1. Plaintiff, Richard McManus (“McManus”), is a citizen of the State of Alabama. Plaintiff McManus represents a class of consumers from the state of Alabama.

**ANSWER:** Sturm lacks knowledge or information to form a belief about the truth of the allegation that McManus is a citizen of the State of Alabama and therefore denies such allegations on that basis. Sturm admits that McManus purports to seek to represent

a class of consumers from the state of Alabama, but denies that this action can be maintained as a class action.

2. Plaintiff, Edna Avakian (“Avakian”), is a citizen of the State of California. Plaintiff Avakian represents a class of consumers from the state of California.

**ANSWER:** Sturm admits that Avakian is a citizen of the State of California. Sturm further admits that Avakian purports to seek to represent a class of consumers from the State of California, but denies that this action can be maintained as a class action.

3. Plaintiff, Charles Cardillo (“Cardillo”), is a citizen of the state of New York. Plaintiff Cardillo represents a class of consumers from the state of New York.

**ANSWER:** Sturm lacks knowledge or information to form a belief about the truth of the allegation that Cardillo is a citizen of the State of New York and therefore denies such allegations on that basis. Sturm admits that Cardillo purports to seek to represent a class of consumers from the state of New York, but denies that this action can be maintained as a class action.

4. Plaintiff, Ben Capps (“Capps”), is a citizen of the State of South Carolina. Plaintiff Capps represents a class of consumers from the state of South Carolina.

**ANSWER:** Sturm lacks knowledge or information to form a belief about the truth of the allegation that Capps is a citizen of the State of South Carolina and therefore denies such allegations on that basis. Sturm admits that Capps purports to seek to represent a class of consumers from the state of South Carolina, but denies that this action can be maintained as a class action.

5. Plaintiff, Deborah DiBenedetto (“DiBenedetto”), is a citizen of the State of New Jersey. Plaintiff DiBenedetto represents a class of consumers from the state of New Jersey.

**ANSWER:** Sturm lacks knowledge or information to form a belief about the truth of the allegation that DiBenedetto is a citizen of the State of New Jersey and therefore denies such allegations on that basis. Sturm admits that DiBenedetto purports to seek to represent a class of consumers from the state of New Jersey, but denies that this action can be maintained as a class action.

6. Plaintiff, Carol J. Ritchie (“Ritchie”), is a citizen of the State of North Carolina. Plaintiff Ritchie represents a class of consumers from the state of North Carolina.

**ANSWER:** Sturm lacks knowledge or information to form a belief about the truth of the allegation that Ritchie is a citizen of the State of North Carolina and therefore denies such allegations on that basis. Sturm admits that Ritchie purports to seek to represent a class of consumers from the state of North Carolina, but denies that this action can be maintained as a class action.

6a. Plaintiff, Linda Suchanek (“Suchanek”), is a citizen of the state of Illinois. Plaintiff Suchanek represents a class of consumers from the state of Illinois.

**ANSWER:** Sturm lacks knowledge or information to form a belief about the truth of the allegation that Suchanek is a citizen of the State of Illinois and therefore denies such allegations on that basis. Sturm admits that Suchanek purports to seek to represent a class of consumers from the state of Illinois, but denies that this action can be maintained as a class action.

6b. Plaintiff, Carol Carr (“Carr”) is a citizen of the state of Tennessee. Plaintiff Carr represents a class of consumers from the state of Tennessee.

**ANSWER:** Sturm lacks knowledge or information to form a belief about the truth of the allegation that Carr is a citizen of the State of Tennessee and therefore denies such allegations on that basis. Sturm admits that Carr purports to seek to represent a class of

consumers from the state of Tennessee, but denies that this action can be maintained as a class action.

6c. Plaintiff, Paula Gladstone (“Gladstone”) is a citizen of the state of New York. Plaintiff Gladstone, like Plaintiff Cardillo, represents a class of consumers from New York.

**ANSWER:** Sturm lacks knowledge or information to form a belief about the truth of the allegation that Gladstone is a citizen of the State of New York and therefore denies such allegations on that basis. Sturm admits that Gladstone purports to seek to represent a class of consumers from the state of New York, but denies that this action can be maintained as a class action.

7. Defendant Sturm Foods, Inc. (“Sturm”) is a Wisconsin corporation with a principal place of business at 1215 Center Street, Manawa, Wisconsin. Accordingly, Sturm is a Wisconsin citizen for purposes of diversity jurisdiction. Sturm is a privately held company that manufactures dry groceries under private label brands, such as Grove Square, and distributes them to the foodservice industry and grocery suppliers throughout the United States and Canada. On December 1, 2009, it was announced that Treehouse Foods, Inc (“Treehouse”), which is headquartered in Illinois, purchased Sturm.

**ANSWER:** Sturm denies that the acquisition occurred on December 1, 2009. Sturm admits the remaining allegations in this paragraph, but states that its address is 215 Center Street, Manawa, Wisconsin 54949.

8. Defendant Treehouse, is a Delaware corporation with its principal place of business in Illinois. As the sole owner of Sturm, Treehouse dominates and fully controls its subsidiary. Accordingly, Treehouse is a citizen of both Delaware and Illinois for purposes of diversity jurisdiction.

**ANSWER:** Sturm admits that TreeHouse is a Delaware corporation with its principal place of business in Illinois. Sturm denies the allegation that TreeHouse “dominates and fully controls” Sturm. Sturm admits that TreeHouse is the parent company of Bay Valley Foods, L.L.C. a limited liability company, which in turn owns Sturm. Sturm also admits

that TreeHouse is a citizen of Delaware and Illinois for the purposes of diversity jurisdiction.

### **JURISDICTION AND VENUE**

9. The Class Action Fairness Act 28 U.S.C. § 1332(d)(2) provides that district courts have “original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000” and is a class action in which “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2) and contains at least one hundred proposed members. 28 U.S.C. § 1332(d)(5)(B). This Court has jurisdiction over this matter pursuant to the 28 USCA § 1332(d), because there are at least one hundred putative class members, at least one Plaintiff is a citizen of a different state than at least one Defendant, and the aggregate amount in controversy exceeds \$5,000,000.

**ANSWER:** Sturm lacks knowledge or information sufficient to form a belief about the truth of the allegation that the Plaintiffs are citizens of the States of Alabama, California, New Jersey, New York, North Carolina, and South Carolina. Sturm denies that there are “tens of thousands if not hundreds of thousands of Class members.” Sturm denies that this court has subject matter jurisdiction as to the claim of Plaintiff Avakian. Sturm admits the remaining allegations in this paragraph.

10. Venue is proper in this Court as a substantial portion of the events giving rise to the claims occurred in this District. *See* 28 U.S.C. § 1391(b)(2). Defendants have defended themselves in this Court without contesting venue.

**ANSWER:** Sturm admits the allegations in this paragraph.

### **OVERVIEW OF THE CLAIM**

11. A consumer from California wrote to Sturm in January of 2011, and copied the CEO of Wal-Mart, regarding his experience with the Grove Square Coffee product. The e-mail provides a succinct overview of the claim Plaintiffs bring on their own behalf, and on behalf of the Class or applicable Subclasses, and explains the fraud, deceit, and mislabeling of the product in easy to understand terms. The consumer explained:

Dear Sirs,

I feel ripped off by your company and by Walmart.

I purchased two boxes of the "Grove Square Coffee" (one light roast and one medium roast) from Walmart designed for the Keurig coffee maker.

Being that these need to be individual packages for single serving, I understand that they are more expensive. I accept that.

However, I do expect to get ground coffee that is inside the cup OR I would expect that there is CLEAR marking on the package that says "INSTANT COFFEE".

The product that you put out is at best a deception.

I do not expect to find deception coming from a company that sells products through a US retailer.

I do expect that it would be clearly marked as such.

Using the words "SOLUBLE & MICROGROUND ARABICA COFFEE" is the deception. That misleads the consumer into believing that the product is actual coffee and not an instant product. It also says "natural flavor and other natural flavor" even the Great Value Walmart coffee (which is highly rated by consumers) clearly states that it is "100% Arabica Coffee" and NOT "other natural flavors".

Yes, while SOLUBLE means that it can be dissolved so that means you avoided an outright lie, you are deceiving people into expecting something that all other Keurig coffee providers are doing. That is ground coffee in the individual Keurig cups, not simply instant coffee.

Perhaps this is a private brand that you are packaging for Walmart. If this is the case, then the only thing I can say is that I hope you objected to not having the packaging CLEARLY state that this is instant coffee.

The price for this box of INSTANT coffee was \$7.98 here in California (Sacramento). Considering that is 18 Keurig cups that comes to \$.44 cents each for a cup of instant coffee. Since I already have a MyKCUP, I could have purchased a bottle Great Value instant coffee and put it in MyKCUP. With the total product being 1.21 oz and comparing that with the Great Value 8 oz jar, I could have purchased at least 2 jars of the instant coffee and received more than 10 times the amount of coffee! What a rip off! If this was priced lower and packed properly, it might be more acceptable.

Heck, if I wanted instant coffee, I probably would have purchased the Starbucks VIA coffee and use my hot water pot to make my coffee.

I will now proceed to find each one of the various web sites where I can write a review of the product and share my honest opinions. (Grove Square 0002159-2160)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but lacks knowledge sufficient to form a belief as to the truth of the assertions in the communications and therefore denies these allegations on that basis. Sturm denies all allegations that Sturm engaged in any acts or conduct that would give rise to any legal liability and denies the characterization Plaintiffs make about the communication in this paragraph.

### **STATEMENT OF FACTS**

#### **A. Keurig's Single Serve Coffee**

12. Keurig, Inc. is a corporation that manufactures a line of single-serve coffee machines under the "Keurig" brand name along with the corresponding coffee filled cartridges for use in those machines. These single-serve coffee brewing systems allow users to enjoy freshly brewed coffee one cup at a time while eliminating the inconvenience of grinding beans, measuring coffee and handling messy filters.

**ANSWER:** Sturm admits the first sentence of this paragraph. Sturm admits that the second sentence is a paraphrase of statements made by Keurig.

13. These systems generally rely on pre-packaged servings of coffee in individual serving sizes that integrate the ground coffee bean and filter into one unit. In Keurig's products, these cartridges, known as "K-Cups," consist of a sealed container with an internal filter and ground coffee.

**ANSWER:** Sturm denies the allegation that the "K-Cups" always contain ground coffee beans as the contents of "K-Cups" may include hot cocoa, tea, cider and a mocha coffee drink which does not include ground coffee beans. Sturm admits the other allegations in this paragraph.

14. In order to brew a fresh cup of coffee, consumers place a K-Cup in a receptacle at the top of a Keurig brewer and close the lid. As the lid is closed, needles puncture the top and the bottom of the cartridge. The user then selects the desired brewing parameters and within minutes hot water is forced into the cartridge from the top needle, through the coffee and filter, and exits the bottom needle into the user's cup.

**ANSWER:** Sturm denies that all models of the Keurig brewer permit the user to set brewing parameters, but admits the other allegations in this paragraph.

**B. Sturm Enters the Single Serve Market**

15. Since October of 2010, Defendant Sturm has manufactured and sold cartridges for use in Keurig's machines under the "Grove Square" brand name. Sturm sells the Grove Square product on-line through discountcoffee.com, through E-Bay, through Amazon.com, and other retailers. In all, Sturm sells its product to consumers nationwide and in Canada through more than eighty (80) retailers.

**ANSWER:** Sturm admits the allegations in this paragraph, except that Sturm launched the Grove Square product in August 2010. Sturm denies that it sells the products to consumers – rather Sturm sells its products to entities which, in turn, sell to consumers. Sturm further states that it no longer sells Grove Square Coffees consisting of soluble (or instant) and microground coffee.

16. Sturm began selling its Grove Square product in major retail stores including Big Lots, CVS and Wal-Mart. The product contains small text on the bottom left hand corner of the front of the package that reads "\*For use by owners of Keurig coffee makers."

**ANSWER:** Sturm admits that it began selling the Grove Square product to major retail stores, including Big Lots, CVS, and Wal-mart in September 2010, which in turn sell Grove Square product to consumers. Sturm further admits that the product contained the text "\*For use by owners of Keurig coffee makers," but denies any characterizations of that text. Sturm lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph and therefore denies them on that basis.

17. The original packaging contains images of two Grove Square cartridges grouped together, one lying on its side to better illustrate its top, and one vertically oriented, surrounded by coffee beans. In addition, the package contains a sliding bar graph indicating whether the coffee inside is light, medium or dark roast. The top (or side) of the packaging reads as follows:

Great Coffee. Plain and Simple.



For Generations, Americans have appreciated a great cup of coffee. Long before it became complicated and grandiose, we savored it in neighborhoods coffee shops and diners where the atmosphere was friendly, and the coffee was simply fresh, hot, and delicious. Grove Square coffee recaptures this rich, traditional cup, and brings it home with single-serve convenience. Our lives might be more complicated now, but our coffee doesn't have to be. Grove Square coffee. It's one cup of coffee you'll feel right at home with, and it's right here in your neighborhood.

**ANSWER:** Sturm admits that it has used the quoted language on the container packaging, but states that when Grove Square is used on the packaging, it is accompanied by the trademark symbol, which Plaintiffs have omitted in reproducing the text in this paragraph.

18. The back of the packaging has a "quality promise" that states "Grove Square coffee is made with some of the world's highest quality Arabica beans, roasted and ground to ensure peak flavor, then packaged to lock in optimum freshness." At some point, after receiving hundreds if not thousands of complaints regarding the nature and quality of its product, Sturm decided to change the content of its quality promise.

**ANSWER:** Sturm admits the allegations in the first sentence of this paragraph, but states that when Grove Square is used in Sturm's packaging, it is accompanied by the trademark symbol, which Plaintiffs have omitted in reproducing the text. Sturm admits that in 2011, it changed the wording of its quality promise, but Sturm denies Plaintiffs' characterizations in the second sentence of this paragraph related to the change.

19. When it first began selling its product, however, nowhere on the package did Defendants (Sturm?) [sic] state that the cartridges' contents were overwhelmingly instant coffee. In fact, on information and belief, the amount of instant coffee in the single serve cartridges is or was equal to 95 percent. Instant coffee is not freshly brewed coffee but rather dehydrated soluble powder that can be mixed with water to yield a coffee-like beverage. Through the statements, images and descriptions set forth on the packaging for its cartridges, Defendant(s) conveyed the false impression that its instant coffee is actually fresh-brewed.

**ANSWER:** Sturm admits that the amount of instant coffee in the single serve cartridges is approximately 95 per cent or slightly more. Sturm denies the remaining allegations in this paragraph and demands strict proof thereof.

20. Defendant's false representation of the quality and nature of its single-serve instant coffee products deceived or tended to deceive consumers for single-serve beverage cartridges into buying defendant's product under the impression that Grove Square is freshly brewed coffee.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

21. All of the Plaintiffs purchased the Grove Square product believing that the product was of the same kind and quality that he or she had purchased for their Keurig machines from Keurig or Keurig-licensed companies. Plaintiffs did not realize that Grove Square was not freshly brewed coffee but instead that it was essentially instant coffee in a single serve cup. If Plaintiffs had known that the cartridges contained overwhelmingly instant coffee, they would not have purchased the product.

**ANSWER:** Sturm lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiff's actions and therefore denies these allegations on that basis. Sturm also denies any characterizations of wrongdoing on its part.

**C. Experience of some of the Named Plaintiffs**

22. Plaintiff McManus purchased his Grove Square coffee at a Wal-Mart in 2011. The product was contained next to other licensed coffee for Keurig machines. The placement of the product enhanced the overall deception related to the purchase decision. Only after brewing a cup of the coffee and being dissatisfied with the taste, did McManus open up a cup of the single serve that had not been brewed and discover that the cartridge contained instant coffee.

**ANSWER:** Sturm lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiff's actions and therefore denies these allegations on that basis. Sturm also denies any characterizations of wrongdoing on its part.

23. Plaintiff Avakian purchased her product at a CVS in California in 2012. Plaintiff Avakian was deceived into thinking that the product contained coffee of similar quality and kind as she had previously purchased for her Keurig machine.

**ANSWER:** Sturm admits that Avakian claims to have purchased her product at a CVS in California in 2012, but denies the remaining allegations in this paragraph. Sturm also denies any characterizations of wrongdoing on its part.

24. Plaintiff Cardillo was deceived when he bought his product in New York. In fact, he wrote the Better Business Bureau to complain about the deception nature of the packaging. His complaint states:

Customer's Statement of the Problem:

I bought their product Grove Square Coffee Single Cups for the Keurig Coffee Makers. All it is is instant coffee in the small cup. You can take it out of the container that says do not open foil and put it [in] hot water and you have a cup of coffee. It is instant coffee like Folgers Coffee Crystals.

Desired Settlement:

The coffee is pulled off the shelves because it is not what the container says it is. False advertising.

Additional Comments From Consumer:

It is False advertisement. What is in the product is not what is portrayed on the box. All it is is instant coffee crystals in a cup that is supposed to be used for the Keurig coffee maker. All you need is hot water from the tap to make this coffee that they sell. (BBB000039)

**ANSWER:** Sturm denies the allegations in this paragraph, except Sturm admits that the Better Business Bureau produced this communication in discovery in this case, which is quoted in part. Sturm denies the allegations stated in the letter and denies the characterization Plaintiffs make about the communication in this paragraph. Sturm also denies any characterizations of wrongdoing on its part.

25. Although the BBB sent the complaint to Sturm it did not respond to the Plaintiff's complaint. Because Plaintiff Cardillo received no response he agreed to join this lawsuit in order to vindicate the rights of other class members.

**ANSWER:** Sturm lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiff's actions and whether BBB responded to Plaintiff and therefore denies these allegations on that basis. Sturm admits that Sturm did not respond to Cardillo. Sturm also denies any characterizations of wrongdoing on its part.

26. Plaintiff Capps was also deceived when he purchased his product in South Carolina. Plaintiff Capps was deceived into thinking that the product contained coffee of similar quality and kind as he had previously purchased for his Keurig machine. He purchased his boxes of Grove Square at a Big Lots store in Bluffton, SC. He was eager to try it as he had just purchased a Kurig [sic], and was looking to try new varieties of K-cups. He had purchased K-cups from Big Lots before, the Donut House variety, which is made by Green Mountain Coffee, and he assumed that the Grove Square k-cups were similar. Plaintiff Capps purchased 3 boxes, one of each variety they had, with the intention of trying each one, and going back later that afternoon to get more of the ones he liked. After trying each of the varieties, and wondering about the taste, Plaintiff Capps cut open a single serve container and discovered it was filled with crystalline freeze dried coffee. He examined the box, and after 30 minutes of looking all over the box, he found in ridiculously small letters, "soluble and micro ground". Plaintiff Capps then researched the language to discover that he had paid the same price for instant coffee as he had for ground coffee. He was furious, and threw the remaining boxes out in the trash. He then went online and went to the grove square website, and looked up their contact info. He called their number, and after numerous recordings got fed up and ended the call. He then went online and decided to write some reviews of the product wherever he could find it on sale online, as he did not want anyone else to be duped into buying instant coffee in a k-cup.

**ANSWER:** Sturm lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiff's actions and therefore denies these allegations on that basis. Sturm denies the remaining allegations of this paragraph and denies any characterizations of wrongdoing on its part.

27. Plaintiff DiBenedetto, who purchased her product in New Jersey, complained directly to Sturm in the form of an e-mail. Her e-mail, and Sturm's response, are set forth below:

**From:** Deborah DiBenedetto [redacted]  
**Sent:** Friday, January 14, 2011 5:52 PM  
**To:** info  
**Subject:** Grove Square Coffee  
I purchased a box of your Grove Square Coffee for my Keurig machine. I

never read the box closely enough to see your play on words . . . “soluble and microground arabica coffee.” Shame on you; call it what it is in a language everyone is familiar with . . . INSTANT COFFEE IN A K-CUP. And, what does “natural flavor with other natural flavor” mean? Properly and clearly label your product as *Instant Coffee*.  
Deborah DiBenedetto

**ANSWER:** Sturm admits that Sturm received this communication, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

28. Plaintiff DiBenedetto received this response:

Subject: Fwd: Grove Square Coffee  
Hi Deborah:  
Thank you for inquiring about Grove Square Single Serve Coffee Cups. This is a relatively new product and we are anxious to hear consumer feedback. **While the Grove Square Coffee Cups are different from other K-cups, it is not instant coffee.** It is a similar concept to instant because it does dissolve, but it is actually a high quality coffee bean pulverized into a powder so fine that will dissolve. The natural flavor is coffee extracts. I hope you find this information helpful, please let me know if I can be of further assistance. (bold and underline added)  
Jodi Rickert  
Sturm Foods  
Consumer Affairs  
215 Center St  
PO Box 287  
Manawa, WI 54949  
866-596-2736

**ANSWER:** Sturm admits that Plaintiffs have accurately quoted the response from Ms. Rickert.

29. Plaintiffs are at loss as to why Sturm would tell Plaintiff DiBenedetto that its product WAS NOT INSTANT COFFEE because it later changed its package to include the word INSTANT as part of the description.

**ANSWER:** Sturm lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiffs’ statement and therefore denies these

allegations on that basis. Sturm also denies any characterizations of wrongdoing on its part. Sturm admits that it changed its packaging in 2011 to contain the word “instant” as part of the packaging.

30. On information and belief, Sturm was still attempting to propagate the lie that its coffee was something that it wasn't. Because Plaintiff DiBenedetto received no satisfaction from Sturm she agreed to join this lawsuit in order to vindicate the rights of other class members.

**ANSWER:** Sturm denies the statement that it was “attempting to propagate the lie that its coffee was something that it wasn't” and demands strict proof thereof. Sturm lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiff DiBenedetto's actions and therefore denies these allegations on that basis. Sturm also denies any characterizations of wrongdoing on its part.

31. Plaintiff Carol Ritchie, from Raleigh North Carolina, also complained to the BBB and was assigned complaint # 8759519. Her complaint was as follows: “The produce is Grove Square Coffee K-cups stating the coffee is soluble & microground; this is an instant coffee but who knew because nowhere on the package does it state this is instant coffee and not ground. The word microground leads people to believe this is a ground coffee not instant. At 10.00 dollars a box this can be a very expensive mistake.” (BBB000043)

**ANSWER:** Sturm admits that the Better Business Bureau produced this communication in discovery in this case, which is quoted in part, but Sturm denies the allegations stated in the letter. Sturm also denies any characterizations of wrongdoing on its part.

32. Although the BBB sent the complaint to Sturm it did not respond favorably to Plaintiff Ritchie's complaint. Because Plaintiff Ritchie received no satisfaction from Sturm she agreed to join this lawsuit in order to vindicate the rights of other class members.

**ANSWER:** Sturm lacks knowledge or information sufficient to form a belief about the truth of the allegations concerning Plaintiff's actions and the actions or inaction of BBB

and therefore denies these allegations on that basis. Sturm admits that Sturm did not respond to Ritchie. Sturm also denies any characterizations of wrongdoing on its part.

**D. Experience of other Consumers**

33. As shown below, the named Plaintiffs all had a similar experience as did countless of other consumers that bought the product and complained to Sturm.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

34. For example, a complaint to Sturm is dated November 10, 2010, and states: “I recently purchased a box of Grove Square coffee single cups for use in my Keurig Coffee Maker. I was very surprised and extremely disappointed to discover this is just instant coffee. This is very deceiving to the public. Nowhere on the box did it say “instant” coffee. This is very misleading. At this point I am requesting a refund of \$7.98 which was the price I paid for the coffee.” (GROVE SQUARE 0001965)

**ANSWER:** Sturm admits that Sturm received this communication, except that it was dated November 12, 2010, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

35. Another complaint to Sturm is dated February 23, 2011, and states: “I purchased a Keurig Coffee maker for my wife for Christmas and have been pleased with most of the brands and samples of coffees for this coffee makes until I purchased your Grove Square Coffee packaged for the Keurig. First, your 18 servings 1.46 Oz package (\$10.98 at Wal-Mart) does not state clearly anywhere on it that it is instant or freeze dried coffee. All the other brands I have used for the Keurig have been actual ground coffee inside a filter. Secondly, your “Coffee Lover’s Bill of Rights- that is on your packaging and on the Grove Square Coffee website states “Every coffee lover in America is entitled to life , liberty, and the pursuit of a great cup of coffee at an affordable price...well, the smallest package of Folger’s brand instant coffee (4 oz at a price of \$2.00 also at Wal-Mart) makes 30- 8 oz cups of good tasting coffee compared at you 18 serving 1.46 oz that tastes weak and if you use the large cup setting on the coffee maker, you have to open up an additional serving cup to make it taste palatable. That makes your brand more over-priced than all the other brands as well...I feel that your product is misleading and does not live up to what your packaging or website says it does. If you check out the Internet, you will see that I am not alone in this complaint. I am forwarding a copy of this email to management at Wal-Mart, Macy’s, Kohls, Keurig, and any other retailer that carries your brand to make them aware of my complaint.” (GROVE SQUARE 0001960)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

36. Another complaint Sturm received is dated November 11, 2010, and states: “Your box of single cups was approximately \$2.00 cheaper than the other and you made yours sound so good; so I purchased yours. I rushed home and made a cup of coffee immediately and I was SO disappointed. It tasted as if it had the cheap coffee substitute-chickory mixed with the supposedly “world’s highest quality Arabica beans.” I can’t drink the coffee so I wasted approximately \$9.00 for nothing.” (GROVE SQUARE 0001961)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

37. Another complaint sent to Sturm is dated November 11, 2010, and states: “I noticed that the coffee had a “generic” taste with my very first cup. By the end of the second cup, I had completely figured out that it was instant coffee. That is why the cup is so light & even lighter after brewing. Imagine me finding no coffee grounds in the K-cup when I removed the foil top. I do not appreciate being charged for something that is well below the expectations. If I wanted instant coffee. I would have bought about 5 jars of what I paid for one box (18 servings) of your product.” (GROVE SQUARE 0001968) (underline added)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

38. Another complaint Sturm received is dated November 11, 2010. and states: “How greedy can a company get? You guys must be proud of yourself by screwing consumers every day. The fake coffee you guys sell is nothing more than garbage!!trying to pass off instant coffee as gourmet coffee for the keurig.you are a joke! Our united states is in the condition it is, because of companies like you. If I wanted instant coffee. I wouldn’t need a keurig. would i? Charging consumers \$9.98 for a quarter cup of no brand instant coffee is simply outrageous and irresponsible! Greed must be your first priority, you suck!!” (GROVE SQUARE 0001969) (underline added)



**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

39. Likewise, a complaint forwarded to Sturm dated October 24, 2010, states: “I have a Kuerig coffee maker and came across your Grove Square product the other day at Wal-Mart. As it was next to the Green Mountain brand I usually buy, and it was \$2 cheaper, I thought I would try it. Imagine my disbelief when I took the first cup out of the package. It felt different in weight and upon shaking it, sounded different. I am a coffee drinker. If I’d wanted instant. I would have bought a jar for considerably less money than I paid for 2 boxes of your crap.” (GROVE SQUARE 0001971 and GROVE SQUARE 0001972) (underline added)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

40. Similarly, a complaint sent to Sturm dated November 2, 2010, states: “Recently, I purchased your Grove Square Coffee, Single Cup 18 pack for Keurig brewers. I was very dissatisfied to see that the coffee in the cups in only instant. In normal Keurig K-cups, made by Green Mountain, real coffee grounds are used, not “soluble microground” coffee. That better product is also the same price. If I want [sic] instant coffee. I could have bought Folgers for half the price, and it would have made three times as many cups.” (GROVE SQUARE 0001973) (underline added)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

41. Another complaint states: “Shame on you! Why didn’t you just say “Instant Coffee” on the box? I bought my first (and last) box of the single cup coffee today. It was a dollar or so cheaper than the brand name and I thought I’d give it a try. But all-in-all it cost about twice as much as the other since I can use the K-cups twice and when you have instant coffee, of course you can only use it once.” (GROVE SQUARE 0001976) (underline added)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

42. Another consumer wrote: “I just purchased a box of your Grove Square Coffee Medium Roast for Keurig machines. Nowhere [sic] did I read it was instant coffee in the k-cup. I did read after making a test cup in very small print it is soluble which I had to wiki to see what that even means. The fact that I paid over \$8.00 for 18 packets of INSTANT coffee that tastes as bad as it does is just terrible. I will be promptly returning this product to the store and writing a review online to warn other Keurig owners. Shame on you, say it’s instant and put it in a jar.” (GROVE SQUARE 0001979) (underline added)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

43. Another complaint forwarded to Sturm states: “This morning my husband served me a cup of coffee made in our Keurig brewer. I thought he must be trying to play a joke on me, because from the taste of it I could tell that it was instant coffee! Imagine our surprise when we discovered Grove Square single cups are not coffee at all, but freeze-dried coffee chips. We are very unhappy.” (GROVE SQUARE 0001984) (underline added)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

44. Another complaint forwarded to Sturm is dated November 2, 2010, and states: “I usually purchase my Kcups by Green Mountain Coffee(Dark Magic, Sumatran Reserve, Espresso Blend), Emeril (Big Easy Bold) or Tully’s (French Roast). As you may know. this isn’t always the most economical way to drink coffee...What I didn’t notice, however, was the box says in small writing “Soluable and Microground coffee.” I now assume that this is fancy terminology for “instant coffee.” If I had wanted instant coffee (which I NEVER EVER do because I absolutely hate it!). I would have purchased instant coffee...The purpose of a KCup machine is to have “real” coffee quickly. I think your company is guilty of false advertising by marketing the Grove Square coffee similar to Green Mountain Coffee. Tully’s. etc.” (GROVE SQUARE 0001987) (underline added)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

45. Another complaint forwarded to Sturm is dated January 8, 2011, and states: “I recently purchased a box of your Grove Square Coffee “K” cups. What a disappointment. **The ‘quality promise’ states that the coffee “is made with some of the world’s highest quality Arabica beans, roasted and ground to perfection to ensure peak flavor, then packaged to lock in optimum freshness.” This is a very misleading, as there is NO ‘ground’ coffee in the cup.** The ingredients list “soluble and microground coffee.” Again, very misleading. I believe I purchased instant coffee in a “K” cup. as the “K” cup is totally void of product when brewed!!! This product should be labeled as such. Again, I am most disappointed in your product.” (GROVE SQUARE 0001994) (bold and underline added)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

46. Another complaint forwarded to Sturm is dated November 9, 2010, and states: “First thing this morning, I opened the box and took one out, and was surprised at the light weight of the cup, gave it a shake and put into my Keurig. I added my usual sugar and half and half and sat down to taste it. Frankly, it was no better than instant coffee, which I NEVER buy...I tore off the foil lid and lo and behold, the cup was completely empty of coffee grounds! HMMMM! I came to the realization that you are selling INSTANT coffee in a plastic cup, calling it micro ground coffee!....When I purchased a Keurig machine for \$135.00, I did not think so [sic] manufacturer would make such a cheap imitation for ground roast coffee. Maybe you should go back to the drawing board and think of a way to make this product taste better, and not try to pawn off instant coffee on an unsuspecting public.” (GROVE SQUARE 0001995) (underline added)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

47. Another complaint forwarded to Sturm is dated January 12, 2011, and states: “Its not about taste expectations, **the consumer has a reasonable expectation to honesty when it comes to buying products. your product clearly deceives the consumer no matter how you try and justify it with clever wording. Its INSTANT coffee at 3x’s the price of other instant coffees. the fact you mention nothing about your product as instant shows your contempt for the**

**consumer. please keep my money, invest it in an ethics board**” (GROVE SQUARE 0002008) (underline and bold added)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

48. Another complaint forwarded to Sturm is dated December 11, 2010, and states: “I recently purchased this coffee and wanted to tell you how disgusting it is. Marketing instant coffee in K-cups is a deceptive practice and I intend to file a formal complaint with The State of Connecticut Department of Consumers Affairs.” (GROVE SQUARE 0002020) (underline added)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

49. Another complaint forwarded to Sturm from the on-line retailer is dated January 15, 2011, and states: “I recently purchased your coffee singles for Keurig coffee makers. What a disappointment! You should print on the box that it is instant coffee!! I paid \$8 for 18 cups of your instant coffee-quite expensive when I can buy a can of instant coffee, which has more taste, for \$6 and get over 100 cups of coffee.” (GROVE SQUARE 0002021) (underline added)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

50. Another complaint forwarded to Sturm is dated January 27, 2011, and states: “We purchased a keurig coffee maker and try different k cups to see which is better and cost efficient. We saw your k cups in walmart and noted they were \$2 cheaper however, as we all know and have learned cheaper is not always better...Being curious my husband after using the kcup opened it was empty we were shocked no grounds nothing empty which only leads is to believe that you use instant coffee in your k cups which explains the coarse sound and less weight. The other k cups all had coffee left in them yours did not. Needless to say we wont be buying your kcups anymore and I think that you should put on your packaging what exactly you are using for the coffee. Thanks” (GROVE SQUARE 0002027)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication and denies any characterizations of wrongdoing on its part.

51. Another complaint forwarded to Sturm ne [sic] retailer and states: “these are sold as “k-cups” but they are extremely misleading. Normal k-cup style coffee “pods” have a filter lining and coffee inside. These do not. These are weak and when we investigated exactly what was inside, there was not coffee or filter---instead, it was instant coffee inside the plastic pod things. Nobody who is buying pods for their Keurig machine is going to want instant coffee for it AND the packaging is misleading because it leads you to believe that it is just kind of store brand of the traditional k-cup style pods.” (GROVE SQUARE 0002035) (underline added)

**ANSWER:** Sturm admits that Sturm received this communication, including the consumer comment, which is quoted in part, but Sturm denies the allegations stated in the comment and denies any characterizations of wrongdoing on its part.

#### **E. Sturm’s Retailers Hear Complaints Too**

52. In February of 2011, one of Sturm’s on-line retailers notified Sturm that it was facing threats from Amazon because of the extremely high complaint rate it had received for selling on Amazon. (DCM0000135) The on-line retailer also sent to Sturm some of the complaints it had received from consumers. As one consumer stated: “I have received this order and am very disappointed with your product. All you did was put instant coffee in the k-cups. I was so excited about your prices I started to tell my friends and co-workers. Now I feel like an ass. For the money, I could have bought instant coffee and put it in the reusable k-cup filter.” (DCM0000135-136)

**ANSWER:** Sturm admits that it received the February 2011 communication referenced in this paragraph, including the consumer comment that is quoted in part. Sturm denies the allegations stated in the comment, denies any characterizations of wrongdoing on its part and denies the remaining allegations of the paragraph.

53. Another complaint forwarded to Sturm from the on-line retailer is dated February 24, 2011, and states: “Nowhere on the box did it mention any difference in the making of the cups. So, much to our surprise, something was definitely amiss when we brewed our first cup. . . After opening the cup itself, we found no filter, nothing left. Hence instant coffee. This attests for the ‘instant coffee’ taste as well. I call that deceptive advertising. If we had known this we never would

have purchased your brand, seeing it was indeed a waste of money. . . If I were duped, how many other people are as well. (DCM0000136) (underline added)

**ANSWER:** Sturm admits that it received the February 2011 communication referenced in this paragraph, including the consumer comment that is quoted in part. Sturm denies the allegations stated in the comment and denies any characterizations of wrongdoing on its part.

54. Another complaint forwarded to Sturm from the on-line retailer is dated February 23, 2011, and states: “I purchased some Grove square coffee k cups at Walmart to try and about the third cup, I realized that this was instant coffee. The whole idea of the K cups is that you can have fresh BREWED coffee one cup at a time. . . . I will be returning the remaining coffee to walmart tomorrow with a complaint they should pull it from the shelves. If I wanted instant coffee, I would buy a large cheaper jar and put it directly into hot water in a cup. No one should be selling this stuff. They are lying to the American people.” (DCM0000136) (underline added)

**ANSWER:** Sturm admits that it received the February 2011 communication referenced in this paragraph, including the consumer comment that is quoted in part. Sturm denies the allegations stated in the comment and denies any characterizations of wrongdoing on its part.

55. A February 22, 2011, e-mail from the on-line retailer further informed Sturm that “Grove Square continues to struggle with the high customer complaints...**INSTANT and BAD taste are the problems. Below are more customer feedback. . . Keep in mind that these are communications that we’re receiving from customers that have bought Grove Square at Wal-Mart, Winn-Dixie, Amazon and discount coffee.**” (DCM0000138) (bold in original) (bold added)

**ANSWER:** Sturm admits that it received the February 2011 communication referenced in this paragraph, which is paraphrased in part, but denies the allegations contained in the e-mail and denies any characterization of wrongdoing on its part.

56. One of the aforementioned complaints states: “I just wasted \$8 at WalMart on instant coffee, this is terrible! The box should be clearly labeled as INSTANT COFFEE. I feel it is false advertising and I just wasted my money. What a ripoff! I would have happily paid \$9 for a decent brand had I known how bad this was. FALSE ADVERTISING at its finest.” (DCM0000138) (Caps in original)

**ANSWER:** Sturm admits that it received the February 2011 communication referenced in this paragraph, including the consumer comment that is quoted in part. Sturm denies the allegations stated in the comment and denies any characterizations of wrongdoing on its part.

57. Another e-mail the on-line retailer received states: "I BOUGHT A BOX OF YOUR COFFEE AT WALMART. . . . OPEN UP THE K CUP AND FOUND NO COFFEE OR FILTER. OPENED UP A NEW ONE AND FOUND INSTANT COFFEE. I HAVE BEEN RIPPED OFF. I EXAMINED THE BOX WITH A MAGNIFYING GLASS AND FOUND THE WORDS SOLUBLE & MICRO GROUND ARABICA COFFEE. I BELIEVE THAT YOU DECEIVED THE PUBLIC ON PURPOSE WHICH REQUIRES ME TO RESPOND TO WALMART, BBB, AND THE INTERNET. IT'S A SHAME THAT BUSINESS HAS STOOPED TO LIEING AND CHEATING TO MAKE A BUCK." (DCM0000139) (Caps in original)

**ANSWER:** Sturm admits that it received the February 2011 communication referenced in this paragraph, including the consumer comment that is quoted in part. Sturm denies the allegations stated in the comment and denies any characterizations of wrongdoing on its part.

58. Similarly, another purchase [sic] explained her experience upon opening a single serve cup: "So we decided after brewing we would open them. To our surprise the Grove Square coffee was empty! It had to be instant coffee because there were no grounds in my coffee mug. . . . To think I bought real coffee only to find it was instant. . . . I feel this was and is false advertisement." (DCM0000139) Likewise, another complaint explained that "[p]eople use Keurig K-Cups and pay the extra price to make sure we get a fresh cup of GOOD coffee. If I wanted to use instant I certainly wouldn't need it in a K-Cup." (DCM0000139) (underline added) Likewise, another consumer posed this question: "Why would someone make instant in the k-cups? K-cups are fast to begin with." (DCM0000144) (underline added)

**ANSWER:** Sturm admits that it received the February 2011 communication referenced in this paragraph, including the consumer comment that is quoted in part. Sturm denies the allegations stated in the comment and denies any characterizations of wrongdoing on its part.

59. In response to these complaints the on-line retailer added the word instant to its website, but because the product itself did not state that it was instant coffee, consumers were still misled about the true nature of the product. One consumer explained: "Checking the site again, I see that it does not say "instant coffee." It does say instant in the description, which I apparently took as a description of how fast the single cup process is." (DCM0000142) Another consumer explained: "The word instant when you are talking about single serve K-cup coffee is very misleading, all K-cup give you an instant cup of coffee, but the others aren't instant coffee. Can I return my order and either get a refund or exchange for real coffee? I don't expect a miracle, but I did expect this to be real coffee." (DCM0000142)

**ANSWER:** Sturm admits that it received the February 2011 communication referenced in this paragraph, including the consumer comment that is quoted in part. Sturm denies the allegations stated in the comment and denies any characterizations of wrongdoing on its part. Sturm lacks knowledge sufficient to form a belief about the truth of the remaining allegations regarding the actions of an on-line retailer in this paragraph and therefore denies them on that basis. Sturm denies the remaining allegations of this paragraph.

60. Other similar comments follow: "Nowhere in your ad does it state that your coffee is instant crystals. I am so sorry I purchased \$70 worth of product. . . it is going in the trash." (DCM0000143)

**ANSWER:** Sturm admits that it received the February 2011 communication referenced in this paragraph, including the consumer comment that is quoted in part. Sturm denies the allegations stated in the comment and denies any characterizations of wrongdoing on its part.

61. In fact, customer complaints were so bad that the on-line retailer summarized in an e-mail the Grove Square Results: "**We have introduced grove Square, advertised and marketed the product and now have sufficient date to determine there are serious product considerations that need to be immediately addressed.** . . .Customer reaction to Grove Square has been overwhelmingly negative. . . .Grove Square does not stack up to that 'coffee house quality' taste preference demanded by a single cup coffee drinker. As a result of the loud voices being spoken throughout the internet, the grove Square brand has established a 'black eye' for the product and anyone associated with selling it." (DCM0000166) The on-line retailer further noted that



**“Grove Square has been the poorest performing introductory of product that we have had in our 12 year history.”** (DCM0000167) (bold added)

**ANSWER:** Sturm admits that it received the communication referenced in this paragraph, which is paraphrased, although the quoted portion is not identical to the original. Sturm denies the allegations stated in the comment and denies any characterizations of wrongdoing on its part.

**F. Sturm offers Refunds to some Consumers**

62. For those consumers that took the time and effort to complaint to either Discount Coffe.com [sic], to the Better Business Bureau, to some other retailer, or to Sturm directly, and the complaint made its way to Sturm, the consumer might have received a canned response from Sturm to this effect:

Thank you for sharing your comments about Grove Square Single Serve Coffee Cups. We are sorry it did not meet your expectations.

Prior to introducing a new item, we present various flavors, formulations, styles and varieties to consumer panels. Their feedback assists us in determining which products to market based on broad consumer acceptance. We realize, however, that people’s tastes differ and are sorry this product didn’t appeal to you.

Because Sturm Foods stands behind the products we manufacture, we would be happy to send a refund, please forward your address. Your comments are very helpful and will be shared with our Marketing team.

Grove Square 0002137; 2140; 2141; 2142; 2144; 2145; 2147; 2148.

**ANSWER:** Sturm admits that the quoted response was sent to some consumers, but denies that the quoted text appears in all of the referenced documents. Although the substance of the response is found in all of the referenced documents, the responses are not all identical.

63. This same canned response was sent to countless other consumers and there are too many pages in Sturm’s production to reference all of them.

**ANSWER:** Sturm admits that the substance of the quoted response in Paragraph 62 was sent to some other consumers, but denies that each response was identical as Plaintiffs imply in this paragraph.

64. Accordingly, some consumers who were lucky enough to have their complaint reach Sturm may have received refunds.

**ANSWER:** Sturm admits that some consumers did receive refunds, but denies Plaintiffs' characterizations of Sturm's actions.

65. As previously noted, however, Plaintiffs Cardillo and Ritchie received no satisfaction from Sturm even though they complained to the BBB.

**ANSWER:** Sturm lacks knowledge or information to form a belief as to the truth of this allegation, because Sturm may not have complete records of all refunds, and therefore denies the allegation on that basis.

66. On information and belief, Sturm did provide some refunds but it is also clear that other consumers that took the time and effort to complain about the product did not receive refunds.

**ANSWER:** Sturm admits that it did not give all consumers who inquired about the Grove Square product refunds, but Sturm further states that not all such consumers requested a refund.

#### **G. Defendants Change the Label of the Product**

67. After the public outrage to the deceptive nature of the product, Sturm decided at some point to rework the content of its box.

**ANSWER:** Sturm admits that in 2011 it made changes to its packaging, but denies the remaining allegations in this paragraph and demands strict proof thereof.

68. As previously noted, in January of 2011, Sturm told Plaintiff DiBenedetto the following:

**Subject: Fwd: Grove Square Coffee**

Hi Deborah:

Thank you for inquiring about Grove Square Single Serve Coffee Cups. This is a relatively new product and we are anxious to hear consumer feedback.

**While the Grove Square Coffee Cups are different from other K-cups, it is not instant coffee.** It is a similar concept to instant because it does dissolve, but it is actually a high quality coffee bean pulverized into a powder so fine that will dissolve. The natural flavor is coffee extracts. I hope you find this information helpful, please let me know if I can be of further assistance. (bold and underline added)

Jodi Rickert

Sturm Foods

Consumer Affairs

215 Center St

PO Box 287

Manawa, WI 54949

866-596-2736

**ANSWER:** Sturm admits that Plaintiffs have accurately quoted the response from Ms. Rickert.

69. On February 09, 2011, another consumer wrote Sturm and explained:

**I purchased 6 boxes of your Grove Square Coffee from Amazon and I am very disappointed with it. It is not ground coffee. It appears to be instant because it dissolves when done and there is no filter inside like all the other brands that I buy. When you open up any other K-Cup it has the grounds left with a filter inside as well. Could you please explain this to me?** (Grove Square 0002139) (bold in original)

**ANSWER:** Sturm admits that Sturm received this communication, which is quoted in part, but Sturm denies the allegations stated in the communication, admits that no filter is in the Grove Square cartridge, and denies any characterizations of wrongdoing on its part.

70. After following up with Sturm because the consumer found “it kind of strange that the attached e-mail was never answered,” Sturm gave the following response:

Thank you for inquiring about Grove Square Single Serve Coffee Cups. This is a relatively new product and we are anxious to hear consumer feedback.

**While the Grove Square Coffee Cups are different from other K-cups, it is not instant coffee.** It is a similar concept to instant because it does dissolve, but it is actually a high quality coffee bean pulverized into a powder so fine that will dissolve. The natural flavor is coffee extracts. (Grove Square 0002138)

**ANSWER:** Sturm admits that Plaintiffs have accurately quoted a portion of the response from Ms. Rickert.

71. In December of 2010 a consumer wrote Sturm and asked: “I read the entire box and could not find anything that said instant coffee, is it or isn’t it?” In response, Sturm told the consumer: “The coffee used for the Grove Square Single Cups is a soluble, microground coffee. . . We think it is much better tasting than instant or freeze dried coffees.” (Grove Square 0002151). Again, Sturm told a consumer or conveyed the impression that its coffee was not instant.

**ANSWER:** Sturm admits that Sturm received the consumer communication, which is quoted in part, but Sturm denies the allegations of the consumer’s actions for lack of knowledge to form a belief as to their truth and denies any characterizations of wrongdoing on its part. Sturm further admits that that Plaintiffs have accurately quoted a portion of the response from Ms. Rickert. Sturm denies Plaintiffs’ characterizations of Sturm’s response and denies any characterizations of wrongdoing on its part.

72. At the time that Sturm made these misrepresentations, its product was at least 95 percent instant coffee. Accordingly, at least through January and February of 2011, Sturm continued to provide outright misstatements about the nature and quality of its product when consumers inquired about it. Eventually, Sturm realized that it could no longer deceive the American public and pretend its product was not instant coffee as consumers realized that the emperor was not wearing any clothes. Hence, at some point in 2011 Sturm decided to add the word “instant” to its packaging. However, Sturm did not conduct a recall of the product it had already put in the stream of commerce so consumers continued to encounter its product at retail establishments without the word “instant” contained on the container.

**ANSWER:** Sturm admits that it changed its packaging to add the words “instant and microground” in place of “soluble and microground” but denies the remaining allegations in this paragraph and denies Plaintiffs’ characterizations of Sturm’s response and denies any characterizations of wrongdoing on its part.

73. Even when Sturm decided to add the word “instant” to its packaging, however, it did so in a way to minimize the effect that word would have on the unsuspecting buying public. Plaintiffs consumer expert has examined the packaging of the product and other materials, and he will opine in sum or substance that: (1) the marketing of Grove Square K-cup coffee has been misleading and deceptive regarding the basic content and quality of the coffee contained in Grove Square K-cups from that product’s marketplace introduction in October 2010 throughout the class period (i.e., until the present); (2) that Sturm’s packaging and other marketing activities concealed that Grove Square’s coffee content is largely instant coffee,” instead of regular ground coffee like that contained in all the K-cup coffee products sold under Keurig’s licensed brands; (3) that the vast majority (i.e., virtually all) of reasonable consumers who bought a package of Grove Square K-cups during this class period did so without understanding that Grove Square coffee was almost entirely “instant coffee;” and, (4) that Sturm’s marketing practices in their entirety were designed to foster this deception.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

#### **CLASS ALLEGATIONS**

74. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23 of the Federal Rules of Civil Procedure on behalf of themselves individually and on behalf of the following class of persons: All persons or consumers that during the Class Period, from September of 2010, up through the date the case is certified and notice is disseminated, who purchased Defendants’ Grove Square Coffee (“GSC”) products in Alabama, California, Illinois, New Jersey, New York, North Carolina, South Carolina, and Tennessee. Excluded from the Class are: (a) Defendants’ Board members or executive-level officers, including its attorneys; (b) persons or entities who purchased the GSC primarily for resale; (c) retailers or re-sellers of the GSC; (d) governmental entities, including this Court; and (e) any consumer that already received a refund from Defendants. The named Plaintiffs assert claims under their respective state’s consumer protection laws. Excluded from the class are any consumers that purchased the GSC on-line or from the internet. Plaintiffs are no longer seeking any injunctive relief.

**ANSWER:** Sturm admits that Plaintiffs’ purpose is to bring this civil action individually and on behalf of putative classes from Alabama, California, Illinois, New York, New Jersey, North Carolina, South Carolina, and Tennessee but denies that Plaintiffs have stated the definition of a proper class or subclasses and further denies that the action can be certified as a class action.

75. Pursuant to Fed. R. Civ. P. 23(a)(1) the members of the Class or subclasses are so numerous and geographically dispersed that joinder of all members is impracticable. On

information and belief, plaintiff alleges that there are tens of thousands if not hundreds of thousands of Class members throughout these states.

**ANSWER:** The allegations in the first sentence of this paragraph call for a legal conclusion and, thus, no answer is required. Sturm lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph and therefore denies the allegations on that basis, but admits that it has sold more than tens of thousands of packages.

76. Pursuant to Fed. R. Civ. P. 23(a)(2) common questions of law and fact exist as to all members of the Class. These common questions include, but are not limited to, whether:

- a. Defendants' packaging of the Grove Square product misled, or tended to mislead, consumers into believing that they purchased brewed coffee as opposed to instant coffee.
- b. Defendants misrepresented, concealed, omitted, and/or suppressed the true nature of their product from consumers;
- c. Defendants violated the Deceptive Business Practices Acts, or analogous statutes, of (1) Alabama; (2) California; (3) Illinois (4) New Jersey; (5) New York; (6) North Carolina; (7) South Carolina; and (8) Tennessee.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

77. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, and fairness and equity than other available methods for the fair and efficient adjudication of this controversy.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

78. Plaintiffs' claims are typical of the claims of absent members of the Class and any applicable Subclasses.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

79. Plaintiffs will fairly and adequately represent and protect the interests of the Class and any applicable Subclasses. Plaintiffs have no interests that are antagonistic to the absent Class members or members of any applicable Subclasses. Plaintiffs are represented by capable counsel that has experience regarding consumer fraud class actions.

**ANSWER:** Sturm denies the allegations in the first two sentences of this paragraph and demands strict proof thereof. Sturm lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations and therefore denies these allegations on that basis.

80. Without the Class representation provided by Plaintiffs, virtually no Class or Subclass members will receive legal representation or redress for their injuries; Plaintiffs and counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and Class counsel are aware of their fiduciary responsibilities to the class members and Subclass members and are determined diligently to discharge those duties by vigorously seeking the maximum possible recovery for the Class and applicable Subclasses.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

81. Plaintiffs no longer seek class certification under Fed. R. Civ. P. 23(b)(2) as the GSCs are no longer being sold.

**ANSWER:** Sturm states that this is not an allegation to which an answer is required. Sturm further states that it no longer sells Grove Square Coffees consisting of soluble (or instant) and microground coffee.

82. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) with respect to Plaintiffs' demand for damages because common questions of fact or law will predominate in determining the outcome of this litigation and because maintenance of the action as a class action is a superior manner in which to coordinate the litigation.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

## COUNT I

### ALABAMA DECEPTIVE TRADE PRACTICES ACT

83. Plaintiffs incorporate by reference all allegations previously set forth as if fully restated herein.

**ANSWER:** Sturm realleges and incorporates by reference its answers to the allegations that are set forth above in paragraphs 1 through 82 as its answer to paragraph 83.

84. Plaintiff McManus brings a claim on his own behalf and on behalf of a class of consumers in Alabama under Alabama Code § 8-19-1 et seq. McManus is a consumer as defined under Alabama's Act. Sturm violated Alabama Code 8-19-5(7) by representing that its goods or services are of a particular standard, quality, or grade, or that its goods are of a particular style or model, when they were of another. Alabama Code 8-19-6 provides that it is the intent of the legislature that in construing Section 8-19-5, due consideration and great weight shall be given where applicable to interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C.45(a)(1)), as from time to time amended. Pursuant to Alabama Code 8-19-10, McManus seeks \$100 per violation on behalf of himself and a class of Alabama consumers.

**ANSWER:** Sturm admits that Plaintiff McManus' purpose is to bring a claim on his own behalf and on behalf of a class of consumers in Alabama and that he purports to seek \$100 per alleged violation on behalf of himself and a class of Alabama consumers, but denies that McManus has even stated the definition of a proper class and further denies that the action can be certified as a class action. The allegations in the second sentence of this paragraph call for a legal conclusion, and thus, no answer is required. Sturm denies the third sentence of this paragraph and demands strict proof thereof. Sturm admits that McManus has stated language found in Alabama Code § 8-19-6. Sturm admits that Alabama Code § 8-19-10 allows recovery of "[a]ny actual damages sustained by such



consumer or person, or the sum of \$100, whichever is greater,” but denies that McManus or his putative class are entitled to such relief or to any relief whatsoever against Sturm.

## COUNT II

### CALIFORNIA LEGAL REMEDIES ACT

85. Plaintiffs incorporate by reference all allegations previously set forth as if fully restated herein.

**ANSWER:** Sturm realleges and incorporates by reference its answers to the allegations that are set forth above in paragraphs 1 through 84 as its answer to paragraph 85.

86. This cause of action is brought by Plaintiff Avakian pursuant to the California Consumers Legal Remedies Act, Civil Code §§ 1750 et seq. (the “Act”). Plaintiff Avakian is a consumer as defined by Civil Code § 1761(d). The Grove Square product is a good within the meaning of the Act.

**ANSWER:** Sturm admits that Avakian is bringing her claim pursuant to the Act. The remaining allegations call for a legal conclusion and, thus, no answer is required, except Sturm denies any implication that it has violated the Act..

87. Defendants? [sic] violated and continue to violate the Act by engaging in the following practices proscribed by § 1770(a) of the Act in transactions with Plaintiff and the California Class or subclass, which were intended to result in, and did result in, the sale of defendants’ product:

- a. representing the product has certain characteristics, uses or benefits which it does not;
- b. representing that the product is of a particular standard, quality or grade when it is of another;

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

88. Defendants violated the Act by making representations and claims as described above when they knew, or should have known, that the representations and advertisements were unsubstantiated, false and misleading. Defendants' unfair methods of competition and unfair or deceptive acts or practices were material to Plaintiff Avakian's and other Class members' decision to - purchase Defendants' product. Plaintiff Avakian and Class members reasonably relied on the misrepresentations and misleading statements made by Defendants and sustained injury in fact as a result of Defendants' misconduct including but not limited to spending money to purchase the products, the diminution in value of the products, transaction costs, and loss of use of funds. As a result of Defendants' conduct, Plaintiff Avakian and Class members have sustained damages.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

89. Pursuant to § 1782 of the Act, Plaintiff Avakian notified defendants in writing by certified mail of the particular violations of § 1770 of the Act and demanded that defendants rectify the problems associated with the actions detailed above and give notice to all affected consumers of its intent to so act.

**ANSWER:** Sturm admits that it received a letter from Avakian's counsel, but whether the letter complies with § 1782 calls for a legal conclusion and, thus, no answer is required.

90. Pursuant to § 1782(d) of the Act, Plaintiff Avakian and the class seek a Court order enjoining the above-described wrongful acts and practices and for available and legally appropriate restitution and disgorgement.

**ANSWER:** Sturm admits that Avakian seeks the relief set forth in this paragraph for herself and on behalf of the putative class, but Sturm denies that this action can be maintained as a class action and denies that Avakian or her putative class are entitled to any relief whatsoever.

91. Defendant failed to rectify or to agree to rectify the problems associated with the actions detailed above and pursuant to § 1782 of the Act, Plaintiff Avakian seeks actual, punitive and statutory damages, as appropriate.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

### COUNT III

#### UNLAWFUL BUSINESS ACTS AND PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200 ET SEQ.

92. Plaintiffs incorporate by reference all allegations previously set forth as if fully restated herein.

**ANSWER:** Sturm realleges and incorporates by reference its answers to the allegations that are set forth above in paragraphs 1 through 91 as its answer to paragraph 92.

93. This cause of action is brought by Plaintiff Avakian pursuant to Business & Professions Code § 17200 which prohibits any “unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” For the reasons discussed above, Defendants have violated each of these provisions of Business & Professions Code §17200.

**ANSWER:** Sturm admits that Avakian brings her claims pursuant to the Business & Professions Code § 17200, but denies the remaining allegations in this paragraph and specifically denies any implication that it has violated this statute.

94. Defendants have violated § 17200’s prohibition against engaging in unlawful acts and practices by, *inter alia*, making the representations and omissions of material facts as set forth more fully herein and violating, among other statutes, Civil Code §§ 1572, 1573, 1709, 1710, 1711, 1770, Business & Professions Code §§ 172000 et seq., and the common law.

- a. Plaintiff Avakian and the class reserve the right to allege other violations of law which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.
- b. Defendants’ acts, omissions, misrepresentations, practices and non-disclosures as alleged herein also constitute “unfair” business acts and practices within the meaning of Business & Professions Code § 17200 et seq. in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct.
- c. As stated in the complaint, Plaintiff Avakian alleges violations of consumer protection, unfair competition and truth in advertising laws resulting in harm to consumers. Plaintiff asserts violations of the public policy of engaging in false

and misleading advertising, unfair competition and deceptive conduct towards consumers.

- d. There were reasonably available alternatives to further defendants' legitimate business interests other than the conduct described herein.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

#### COUNT IV

#### **FALSE ADVERTISING IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS §§ 17500 *et seq.***

95. Plaintiffs incorporate by reference all allegations previously set forth as if fully restated herein.

**ANSWER:** Sturm realleges and incorporates by reference its answers to the allegations that are set forth above in paragraphs 1 through 94 as its answer to paragraph 95.

96. Plaintiff Avakian and the Class or Subclass bring this claim under Business & Professions Code §§ 17500 and have suffered injury in fact and lost money or property as a result of Defendants' conduct.

**ANSWER:** Sturm admits that Avakian brings her claims under the Business & Professions Code §§ 17500 on her own behalf and on behalf of a class, but denies that this action can be maintained as a class action. Sturm denies the remaining allegations in this paragraph and denies any implication that it has violated this statute.

97. Defendants advertise and market the Grove Squaree [sic] product in a false and misleading manner as shown above.

- a. Defendants knew or should have known that this advertising and marketing is untrue and/or misleading.
- b. Defendants have committed acts of untrue and misleading advertising as defined by California Business & Professions Code § 17500 by engaging in the acts and

practices described above with the intent to induce members of the public to purchase their product.

- c. Plaintiff and class members relied on the false advertising and sustained losses as a result of the false advertising campaign.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

98. Plaintiff Avakian, on behalf of herself and all others similarly situated, seeks an injunction prohibiting Defendants from continuing such practice, restitution and all other relief this Court deems appropriate, consistent with the False Advertising Law, California Business & Professions Code §§ 17500 *et. seq.*

**ANSWER:** Sturm admits that Avakian is seeking the relief set forth in this paragraph, but denies that she or her putative class are entitled to such relief and further denies that a class action can be maintained in this case.

## COUNT V

### NEW YORK DECEPTIVE ACT AND PRACTICES LAW

99. Plaintiffs incorporate by reference all allegations previously set forth as if fully restated herein.

**ANSWER:** Sturm realleges and incorporates by reference its answers to the allegations that are set forth above in paragraphs 1 through 98 as its answer to paragraph 99.

100. Plaintiff Cardillo brings this claim on behalf of a Class or Subclass of consumers from the state of New York.

**ANSWER:** Sturm admits that Plaintiff Cardillo's purpose is to bring this claim on behalf of a Class or Subclass of consumers from the State of New York, but denies that Cardillo has stated the definition of a proper class and further denies that the action can be certified as a class action.

101. Defendants, by selling, distributing, designing, packaging and marketing the Product, as set forth above and below engaged in deceptive acts and practices.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

102. The sale of the Product in New York and to the New York Class is a “deceptive act and practice” in violation of §349 of the New York General Business Law (“New York DAPL Act”).

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

103. The Defendants engage in intentional and fraudulent consumer-oriented conduct that was deceptive or misleading, with the intent to so deceive and mislead, consumers in a material way and the New York Class members were damaged thereby.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

104. The Defendants’ conduct was such that it was likely to mislead a reasonable consumer acting reasonably under the circumstances.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

105. The New York Class relied upon such conduct and was damaged thereby.

**ANSWER:** Sturm denies the allegations of this paragraph and demands strict proof thereof.

106. Under §349(h) of the New York DAPL Act, private parties like the Class Members may bring a private action to recover the greater of \$50 or actual damages plus up to three times the actual damages up to \$1000 per person caused by acts prohibited under the New York DAPL Act, including any unfair or deceptive practices, and may also seek and be awarded attorney’s fees and costs.

**ANSWER:** Sturm admits that Plaintiff has stated requirements of §349(h) of the New York DAPL Act, but denies any implication that Sturm has violated this statute and denies that plaintiffs or any class members are entitled to any relief whatsoever against Sturm.

## COUNT VI

### NEW YORK FALSE ADVERTISING LAW

107. Plaintiffs incorporate by reference all allegations previously set forth as if fully restated herein.

**ANSWER:** Sturm realleges and incorporates by reference its answers to the allegations that are set forth above in paragraphs 1 through 106 as its answer to paragraph 107.

108. Plaintiff Cardillo brings this claim on behalf of a Class or Subclass of consumers from the state of New York.

**ANSWER:** Sturm admits that Plaintiff Cardillo's purpose is to bring this claim on behalf of a Class or Subclass of consumers from the State of New York, but denies that Cardillo has stated the definition of a proper class and further denies that the action can be certified as a class action.

109. Defendants, by selling, distributing, designing, packaging and marketing the Product, as set forth above and below engaged in false advertising, as that term is defined by §350-a of the New York General Business Law ("New York FA Act").

**ANSWER:** Sturm denies the allegations of this paragraph and demands strict proof thereof.

110. Defendants labeled and advertised the Product (a commodity under the New York FA Act) in such a way as to be intentionally misleading in a material respect and failed to reveal facts material in the light of those representations made about the commodity.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

111. The New York Class relied upon such conduct and was damaged thereby.

**ANSWER:** Sturm denies the allegation of this paragraph and demands strict proof thereof.

112. Under §350-e of the New York FA Act, private parties like the New York Class May bring a private action to recover the greater \$500 or actual damages plus up to three times the actual damages up to 10,000 per person caused by acts prohibited under the New York FA Act and may also seek and be awarded attorney's fees and costs. Plaintiffs seek such relief.

**ANSWER:** Sturm admits that Plaintiff Cardillo seeks relief under and has stated what type of damages are recoverable under §350-e of the New York FA Act, but denies that Cardillo or any putative class is entitled to such relief. Sturm also denies any implication that Sturm has violated this statute and denies that plaintiff or any class is entitled to any relief whatsoever against Sturm.

## COUNT VII

### SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT

113. Plaintiffs incorporate by reference all allegations previously set forth as if fully restated herein.

**ANSWER:** Sturm realleges and incorporates by reference its answers to the allegations that are set forth above in paragraphs 1 through 112 as its answer to paragraph 113.

114. Plaintiff Capps brings this claim on behalf of a Class or Subclass of consumers from the state of South Carolina pursuant to Title 39, Chapter 5 of the South Carolina Code.

**ANSWER:** Sturm admits that Plaintiff Capps' purpose is to bring this claim on behalf of a Class or Subclass of consumers from the State of South Carolina pursuant to Title



39, Chapter 5 of the South Carolina Code, but denies that Capps has stated the definition of a proper class and further denies that the action can be certified as a class action.

115. Section 39-5-10 defines ‘trade and commerce’ to include advertising and Section 39-5-20 declares unfair or deceptive acts or practices in the conduct of any trade or commerce as unlawful.

**ANSWER:** Sturm admits that Plaintiff Capps’s quotes an excerpt from Sections 39-5-10 and 39-5-20, but denies any implication that Sturm has violated these sections of the statute and denies that plaintiff is entitled to any relief under that statute.

116. Pursuant to Section 39-5-140, any person who suffers any ascertainable loss of money or property, from the use or employment of any unlawful deceptive practice, can bring an action to recover actual damages. Willful employment or use of such practices will result in an award three times the actual damages sustained. Reasonable attorney fees and costs will be awarded to the person bringing an action if the court finds a violation. Plaintiff Capps and the Class or Subclass seek such relief.

**ANSWER:** Sturm admits that Plaintiff Capps and the Class or Subclass seek relief under Section 39-5-140, but denies any implication that Sturm has violated this statute and denies that Capps or the putative class is entitled to any such relief against Sturm.

## COUNT VIII

### NEW JERSEY FRAUD IN SALES OR ADVERTISING OF MERCHANDISE LAW

117. Plaintiffs incorporate by reference all allegations previously set forth as if fully restated herein.

**ANSWER:** Sturm realleges and incorporates by reference its answers to the allegations that are set forth above in paragraphs 1 through 116 as its answer to paragraph 117.

118. Plaintiff DiBenedetto brings this claim on behalf of a Class or Subclass of consumers from the state of New Jersey.

**ANSWER:** Sturm admits that Plaintiff DiBenedetto's purpose is to bring this claim on behalf of a Class or Subclass of consumers from the State of New Jersey, but denies that DiBenedetto has stated the definition of a proper class and further denies that the action can be certified as a class action.

119. Defendants, by selling, distributing, designing, packaging and marketing the Product, as set forth above and below engaged in deceptive acts and practices in violation of New Jersey Code Ann. §56:8-1 et. Seq. ("NJ Act").

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

120. Namely, Defendants used unconscionable commercial practices, deception, fraud, false pretense, false promise, misrepresentation, and the knowing, concealment, suppression, or omission of material facts with intent that others, including the New Jersey Class, rely upon such concealment, suppression or omission, in connection with the sale or advertisement of the Product, which is "merchandise" under the New Jersey Act.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

121. The sale of the Product in New Jersey to Class Members is an unlawful practice in violation of §56:8-2 of the New Jersey Act.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

122. Plaintiffs relied upon such conduct and were damaged thereby.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

123. As set forth in §56:8-2.11, Defendants a [sic] liable to Plaintiffs for a refund of all monies obtained from Plaintiffs in the purchase of the Product.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

124. As set forth in §56:8-2.12, Plaintiffs may maintain a private action to recover such refunds.

**ANSWER:** Sturm admits that private citizens may maintain a private action to recover such refunds, but denies any wrongdoing on its part, denies that plaintiff has a claim for relief and denies that plaintiff is entitled to any recovery whatsoever from Sturm.

125. As set forth in §56:8-19, Plaintiffs may bring this action and this Court “shall, in addition to any other appropriate legal or equitable relief, award threefold the damages sustained by any person in interest.. [and] the court shall also award reasonable attorneys’ fees, tiling [sic] fees and reasonable costs of suit.” Plaintiffs seek this relief.

**ANSWER:** Sturm admits that Plaintiff DiBenedetto has quoted an excerpt from §56:8-19 and admits that Plaintiffs seek this relief, but Sturm denies that Plaintiffs are entitled to such relief against Sturm and denies any wrongdoing on its part.

## COUNT IX

### NORTH CAROLINA DECEPTIVE TRADE PRACTICES ACT

126. Plaintiffs incorporate by reference all allegations previously set forth as if fully restated herein.

**ANSWER:** Sturm realleges and incorporates by reference its answers to the allegations that are set forth above in paragraphs 1 through 125 as its answer to paragraph 126.

127. Plaintiff Ritchie brings this claim on behalf of a Class or Subclass of consumers from the state of North Carolina pursuant to Article 1, Section 75-1 *et seq.* of General Statutes of North Carolina. According to Section 75-1.1, it is unlawful for any person, firm or corporation to practice any unfair methods of competition or deceptive acts or practices in North Carolina.

**ANSWER:** Sturm admits that Plaintiff Ritchie's purpose is to bring this claim on behalf of a Class or Subclass of consumers from the State of North Carolina pursuant to Article 1, Section 75-1 et seq. of General Statutes of North Carolina, and admits that Ritchie has paraphrased Section 75-1.1, but denies that Ritchie has even stated the definition of a proper class and further denies that the action can be certified as a class action.

128. In accordance with Section 75-16, Plaintiff and the Class or Subclass bring this action to recover damages. Plaintiffs request that the Court in its discretion, pursuant to Section 75-15.2, impose a civil penalty not exceeding \$5000 for each violation.

**ANSWER:** Sturm admits that Ritchie's purpose is to recover damages under Section 75-16, but Sturm denies that Ritchie or the putative class are entitled to any such recovery. Sturm further denies any characterization of wrongdoing on its part.

129. In accordance with Section 75-16, Plaintiff and the Class or Subclass seek a judgment for treble the amount fixed by the verdict. Furthermore, according to Section 75-16.1, Plaintiff seeks reasonable attorney fees.

**ANSWER:** Sturm admits that Ritchie's purpose is to recover judgment for treble the amount that might be fixed by a verdict under Section 75-16 and that Ritchie also seeks attorneys' fees under Section 75-16.1, but Sturm denies that Ritchie or the putative class are entitled to any such recovery. Sturm further denies any characterization of wrongdoing on its part and denies that plaintiffs are entitled to any relief against Sturm.

## COUNT X

### **VIOLATIONS OF ILLINOIS UNFAIR PRACTICES ACT**

130. Plaintiffs incorporate by reference all allegations previously set forth as if fully restated herein.

**ANSWER:** Sturm realleges and incorporates by reference its answers to the allegations that are set forth above in paragraphs 1 through 129 as its answer to paragraph 130.

131. The Illinois Unfair Practices Act, 815 ILCS 505/2, et seq. prohibits a corporation from engaging in unfair or deceptive trade practices. The Act provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act.

**ANSWER:** Sturm admits that Plaintiff has quoted language from the Illinois Unfair Practices Act, but denies any implication that Sturm has violated this statute.

132. Plaintiff Suchanek brings this Count on behalf of a class of Illinois consumers. This Count is brought pursuant to the provisions of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq.

**ANSWER:** Sturm admits that Suchanek's purpose is to bring a claim on her own behalf and on behalf of a class of consumers who are citizens of the State of Illinois pursuant to the provisions of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq., but denies that Suchanek has stated the definition of a proper class and further denies that the action can be certified as a class action.

133. At all relevant times, Grove Square coffee has been available for purchase by consumers throughout the State of Illinois.

**ANSWER:** Sturm admits that Grove Square coffee has been available for purchase by the public since late September 2010.

134. At all relevant times, Defendant Sturm has been engaged in advertising, offering for sale, selling and/or distributing Grove Square coffee directly or indirectly to the residents of the State of Illinois.

**ANSWER:** Sturm admits that it advertised, offered for sale, sold and/or distributed Grove Square coffee directly or indirectly to the residents of the State of Illinois beginning in August 2010

135. Plaintiff Suchanek and the members of the sub-class have purchased Grove Square coffee for their own personal and/or household use.

**ANSWER:** Sturm lacks knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

136. At all relevant times, Defendant, in connection with its advertisements, offers for sale, sales and distribution of the Grove Square coffee, knowingly and purposefully misrepresented, concealed, omitted, and/or suppressed the material fact that it was selling instant coffee. Defendant intended that Plaintiff Suchanek and the members of the putative sub-class would rely upon its misrepresentations, concealments, omissions and/or suppressions so that Plaintiff and the members of the putative sub-class would purchase the Grove Square coffee. Defendant's packaging of its Grove Square product makes false or misleading representations that the cartridges contain coffee that can be "fresh brewed" which tended to deceive, or deceived or misled, the consumers. In truth, the cartridges contain instant coffee, a coffee-like product.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

137. As a direct and proximate result of the aforesaid violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, Plaintiff Suchanek and the members of the subclass have suffered economic damage.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

138. Plaintiff Suchanek and other consumers relied on the false or misleading packaging to their detriment.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

139. As a result, Plaintiff and other consumers have been injured by defendant's unlawful conduct.

**ANSWER:** Sturm denies the allegations in this paragraph and demands strict proof thereof.

## COUNT XI

### **VIOLATIONS OF TENNESSEE CONSUMER PROTECTION ACT**

140. Plaintiffs incorporate by reference all allegations previously set forth as if fully restated herein. Plaintiff Carr brings this Count on behalf of a class of Tennessee consumers.

**ANSWER:** Sturm realleges and incorporates by reference its answers to the allegations that are set forth above in paragraphs 1 through 139 as its answer to paragraph 140.

141. The Tennessee Consumer Protection Act (The Tennessee Consumer Protection Act is found in T.C.A. § 47-18-101 – T.C.A. § 47-18-130). T.C.A. § 47-18-104 provides (a) Unfair or deceptive acts or practices affecting the conduct of any trade or commerce constitute unlawful acts or practices and are Class B misdemeanors. It further states: "(b) Without limiting the scope of subsection (a), the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:

(3) Causing likelihood of confusion or misunderstanding as to affiliation, connection or association with, or certification by, another. This subdivision (b)(3) does not prohibit the private labeling of goods or services;

(4) Using deceptive representations or designations of geographic origin in connection with goods or services;

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship approval, status, affiliation or connection that such person does not have;

(7) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

(21) Using statements or illustrations in any advertisement which create a false impression of the grade, quality, quantity, make, value, age, size, color, usability or origin of the goods or services offered, or which may otherwise misrepresent the goods or services in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised goods or services to other goods or services;

**ANSWER:** The allegations in this paragraph call for a legal conclusion, and thus, no answer is required. To the extent an answer is required, Sturm admits that Carr has stated language found in T.C.A. §§ 47-18-104 and 109(a)(1) although the quoted portion is not identical to the original.

142. T.C.A. [sic] § 47-18-109(a)(1) creates a private cause of action for any person who suffers a loss as a result of one of the listed “unfair or deceptive acts or practices” found in T.C.A. § 47-18-104(b).

**ANSWER:** Sturm admits that T.C.A. § 47-18-109(a)(1) creates a private cause of action, but further states that § 47-18-109 has additional requirements for and limitations on such private cause of action. Sturm further denies any implication that Sturm has violated the statute and denies that Carr or any putative class member is entitled to any relief under that statute.



143. As a direct and proximate result of the aforesaid violations of the Tennessee Act, Plaintiff and the members of the subclass have suffered economic damage.

**ANSWER:** Sturm denies the allegations of this paragraph and demands strict proof thereof.

144. Plaintiff Carr and other consumers relied on the false or misleading packaging to their detriment.

**ANSWER:** Sturm denies the allegations of this paragraph and demands strict proof thereof.

145. As a result, Plaintiff Carr and other consumers have been injured by Defendants' unlawful conduct. Plaintiff Carr and the Class seek any and all damages and remedies to which they are entitled under the Tennessee Act.

**ANSWER:** Sturm denies the allegations of this paragraph and demands strict proof thereof.

### **AFFIRMATIVE DEFENSES**

Sturm asserts the following additional defenses. Sturm reserves the right to amend this answer by adding, deleting, or amending defenses as may be appropriate. In further answer to Plaintiffs' Second Amended Complaint, and by way of additional defenses, Sturm avers as follows:

#### **First Affirmative Defense**

As to some potential class members, the claims are barred in whole or in part, by the doctrine of accord and satisfaction.

**Second Affirmative Defense**

For the record, Sturm preserves its defense stated in its motion to dismiss that Avakian's claims are moot and therefore she lacks standing to pursue Counts 2, 3 and 4 under the authority of *Damasco v. Clearwire Corporation*, 662 F.3d 891 (7th Cir. 2011). While the Court denied the motion to dismiss these counts in its ruling entered October 22, 2012, the Court stated:

Secondly, I'm just not comfortable dismissing this case on mootness, I'm just not, and I'm not going to. Your argument is very attractive, but I'm not saying down the road my mind can't be changed. But at this stage, the answer is no. (Oct. 22, 2012 at Tr. 23).

Accordingly, Sturm preserves and realleges its affirmative defense that some or all of Avakian's claims should be dismissed for lack of standing and due to mootness.

**Third Affirmative Defense**

As to some potential class members, the claims are barred in whole or in part, by the doctrine of estoppel.

**Fourth Affirmative Defense**

As to some potential class members, the claims are barred in whole or in part, by the doctrine of waiver.

WHEREFORE Defendant Sturm Foods, Inc., respectfully requests that judgment be entered in Sturm's favor and against Plaintiffs and that Sturm be granted such other and further relief in its favor as is deemed just.

Dated: December 4, 2015

Respectfully submitted,

/s/ Aaron J. Weinzierl

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*Attorneys for Defendant Sturm Foods, Inc.*

**CERTIFICATE OF SERVICE**

I, Aaron J. Weinzierl, an attorney, hereby certify that on December 4, 2015, I filed **DEFENDANT STURM FOODS, INC.'s ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT** via the Court's CM/ECF system which will send notification of filing to all counsel of record and constitutes service under Rule 9 of the Court's Electronic Filing Rules.

*/s/ Aaron J. Weinzierl* \_\_\_\_\_

Aaron J. Weinzierl