

1 William M. Aron (SBN No. 234408)

2 **ARON LAW FIRM**

3 15 West Carrillo Street, Suite 217

4 Santa Barbara, CA 93101

5 Tel: (805) 618-1768

6 bill@aronlawfirm.com

7 *Attorneys for Plaintiffs and the Class*

8 [Additional Counsel Listed on Signature Page]

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

11  
12 VERONICA MUNOZ, JENNIFER  
13 WILKINSON, KATHERINE HETHERTON,  
and MICHELLE IRWIN, individually and on  
behalf of all those similarly situated,

14 Plaintiffs,

15 v.

16 PEET'S COFFEE, INC., a Virginia  
17 Corporation,

18 Defendant.

Case No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiffs, VERONICA MUNOZ, JENNIFER WILKINSON, KATHERINE HETHERTON,  
2 and MICHELLE IRWIN (referred to individually as “Plaintiff” or collectively as “Plaintiffs”) bring  
3 this Class Action Complaint against the above-named PEET’S COFFEE, INC., a Virginia  
4 Corporation, (“Defendant” or “Peet’s”), and in support thereof states the following:

5 **INTRODUCTION**

6 1. Plaintiffs bring this action against Peet’s on behalf of all consumers in California,  
7 Texas, Massachusetts and in the United States who, within four years of the filing of this lawsuit,  
8 have purchased coffee-based drinks, tea-based drinks, or other beverages from Peet’s that contained  
9 non-dairy milk alternatives such as oat milk or almond milk (“Non-Dairy Alternatives”) and paid a  
10 surcharge for the Non-Dairy Alternatives, including plant-based or lactose-free milk.

11 2. Plaintiffs suffer from lactose intolerance and milk allergies. It is medically necessary  
12 for persons like Plaintiffs to avoid consuming drinks that contain milk. Plaintiffs ordered coffee-  
13 based, tea-based, and other drinks at Peet’s retail coffee shops in their respective states of residence  
14 from at least 2020 to the present.

15 3. When Plaintiffs visited Peet’s coffee shops, they ordered drinks that included milk as  
16 part of the regular menu item. Plaintiffs requested to substitute milk for Non-Dairy Alternatives,  
17 specifically oat milk, soy milk or almond milk and were charged an extra at least \$0.80 surcharge by  
18 Peet’s for the substitution, depending on the date and the location of the store.

19 4. Peet’s charged at least an \$.80 surcharge (“Surcharge”) to its customers who were  
20 lactose intolerant to substitute milk for Non-Dairy Alternative products in its beverages throughout  
21 the class period.

22 5. Defendant’s Surcharge is the same for all Non-Dairy Alternatives, making no  
23 distinction among the costs of the various different Non-Dairy Alternatives and does not apply to any  
24 type of milk or milk product.

25 6. In 2023, the average price of a Peet’s crafted coffee drink was \$4.00, therefore the  
26 Surcharge could be up to 20% of the average drink price. Also, milk is not the only ingredient in a  
27 drink at Peet’s, therefore the Surcharge represents an even higher percentage proportional to the price  
28 of milk (up to 200%).

1           7.       There is no material difference between the price of lactose-containing milks and the  
2 price of Non-Dairy Alternatives that would support levying the Surcharge to substitute for a Non-  
3 Dairy Alternative in Peet's drinks.

4           8.       Peet's standard offering in most beverages is 2% cow's milk.

5           9.       Peet's will substitute whole milk, or fat-free skim milk for the 2% milk ingredient to  
6 its beverages at no additional charge.

7           10.      Peet's offers several options when it comes to the content of fat in the milk but does  
8 not offer a lactose-free milk option.

9           11.      Peet's will modify its regular beverage offerings to remove caffeine or make caffeine-  
10 free beverages at no additional charge for persons with a variety of conditions, including  
11 hypertension.

12          12.      Peet's will modify its regular beverage offerings to remove sugar or use sugar-free  
13 sweeteners at no additional charge for those persons with diabetes or who need to control weight.

14          13.      There is no expertise or additional work required of Peet's employees that would  
15 substitute whole milk or fat-free milk in place of 2% regular milk, or who would make caffeine-free  
16 or sugar-free beverages, to also be able to substitute Non-Dairy Alternatives such as almond or oat,  
17 or other lactose-free "milk" in place of 2% regular milk.

18          14.      Lactose intolerance is a disability.

19          15.      A milk allergy is a disability.

20          16.      Peet's charges customers with lactose intolerance and milk allergies an excessively  
21 high Surcharge to substitute Non-Dairy Alternatives in its drinks.

22          17.      In this way, Defendant's conduct violates the Americans with Disabilities Act,  
23 California Unruh Civil Rights Act, Texas Human Resource Code, Massachusetts Anti-Discrimination  
24 Law, and constitutes common law Unjust Enrichment.

25          18.      Defendant discriminates against Plaintiffs and the putative class members by levying  
26 a Surcharge for its Non-Dairy Alternatives in the form of Non-Dairy Alternatives added to its coffee-  
27 based drinks and other beverages.

28          19.      Plaintiffs also seek declaratory and injunctive relief to ensure that Defendant charges

1 the same price to lactose intolerant customers and customers with milk allergies for the same menu  
2 items as regular customers and that it does not add a Surcharge for Non-Dairy Alternatives such as  
3 almond milk, oat milk or other lactose-free “milk.”

#### 4 **JURISDICTION AND VENUE**

5 20. This Court has jurisdiction over the subject matter of this civil action pursuant to 28  
6 U.S.C. § 1332(d). This is a putative class action where: (i) the proposed nationwide class consists of  
7 more than 100 members; (ii) at least one class member has a different citizenship from Defendant;  
8 and (iii) the claims of the proposed class exceed \$5,000,000 in the aggregate. The Court has  
9 supplemental jurisdiction over the state law claims alleged herein pursuant to 28 U.S.C. § 1367(a).

10 21. The Court has personal jurisdiction over the Defendant due to its continuous and  
11 systemic contacts with the State of California. Defendant operates more than 200 retail stores within  
12 the State of California, including within the Northern District of California. Defendant’s principal  
13 place of business is located in Emeryville, California, within the Northern District of California.

14 22. Plaintiffs Munoz and Irwin reside in California. A substantial part of the events or  
15 omissions giving rise to the claim occurred in the State of California.

16 23. Venue is proper in the Northern District of California, pursuant to 28 U.S.C. §  
17 1391(b)(1) and (2).

#### 18 **THE PARTIES**

##### 19 **A. Plaintiffs**

20 24. Plaintiff Veronica Munoz is and was at all times material a resident of Santa Clara  
21 County, in the State of California. Ms. Munoz has purchased items, including coffee drinks, at various  
22 Peet’s’ locations in San Jose and throughout the state of California. As a result of her lactose  
23 intolerance, Ms. Munoz is substantially impaired in several major life activities and is required to  
24 consume non-dairy milk alternatives. Ms. Munoz has consumed Peet’s beverages at various Peet’s  
25 retail outlets in California and plans to continue to do so in the future.

26 25. Plaintiff Jennifer Wilkinson is and was at all times material a resident of the State of  
27 Texas. Ms. Wilkinson has purchased items, including coffee drinks, at various Peet’s’ locations  
28 throughout the state of Texas. As a result of her lactose intolerance and milk allergy, Ms. Wilkinson

1 is substantially impaired in several major life activities and is required to consume non-dairy milk  
2 alternatives. Ms. Wilkinson has consumed Peet's beverages at various Peet's retail outlets in Texas  
3 and plans to continue to do so in the future.

4 26. Plaintiff Michelle Irwin is and was at all times material a resident of the State of  
5 California. Ms. Hernandez has purchased items, including tea-based drinks, at various Peet's  
6 locations throughout the state of California. As a result of her lactose intolerance, Ms. Irwin is  
7 substantially impaired in several major life activities and is required to consume non-dairy milk  
8 alternatives. Ms. Irwin has consumed Peet's beverages at various Peet's retail outlets in California  
9 and plans to continue to do so in the future.

10 27. Plaintiff Katherine Hetherton is and was at all times material a resident of the State of  
11 Massachusetts. Ms. Hetherton has purchased items, including coffee drinks, at various Peet's  
12 locations in Massachusetts. As a result of her lactose intolerance, Ms. Hetherton is substantially  
13 impaired in several major life activities and is required to consume non-dairy milk alternatives. Ms.  
14 Hetherton has consumed Peet's beverages at various Peet's retail outlets in Massachusetts and plans  
15 to continue to do so in the future.

16 **B. Defendant**

17 28. Defendant Peet's Coffee, Inc. is incorporated in the State of Virginia and its principal  
18 place of business is located at 1400 Park Avenue, Emeryville, CA 94608. Peet's operates over 280  
19 coffee stores in the United States and over 200 in the state of California.

20 **BACKGROUND FACTS**

21 29. Plaintiffs are lactose intolerant or have a milk allergy, requiring that they each  
22 consume drinks that do not contain lactose or lactose-based products, which includes milk and many  
23 milk-containing products.

24 30. Plaintiffs will suffer adverse health effects if they ingest milk or milk-containing  
25 products, including stomach pain, digestive tract inflammation, bloating, bowel irregularities and  
26 vomiting. As a result, Plaintiffs must pay very careful attention to the drinks they consume and can  
27 only consume non-dairy products in drinks that contain Non-Dairy Alternatives including lactose-  
28 free milk.

1           31.     Plaintiffs' disability limits the major life activities of drinking (and the nutritional  
2 benefits from ingesting drinks), and digestion.

3           32.     Lactose intolerance is a disability that makes it difficult to digest lactose. Lactose is a  
4 type of natural sugar found in milk and dairy products.

5           33.     When lactose moves through the large intestine without being properly digested, it can  
6 cause gas, bloating, belly pain and diarrhea. Many people who have a lactose intolerance cannot eat  
7 or drink any amount of milk or milk-containing products.

8           34.     Persons with lactose intolerance and milk allergies experience various levels of  
9 reactions to the ingestion of milk and milk-containing products, including a bloated stomach,  
10 intestinal gas, nausea and vomiting, stomach pain and cramping, and diarrhea.

11          35.     Lactose intolerance occurs when the small intestine does not make enough of an  
12 enzyme called lactase. The body needs lactase to break down and digest lactose. A person's body  
13 may stop making lactase after a short-term illness such as an infection or as part of a lifelong chronic  
14 disease such as cystic fibrosis.

15          36.     A dairy allergy, or milk allergy, occurs when the immune system overreacts to the  
16 presence of proteins in milk. When a person with a dairy allergy encounters products containing dairy,  
17 it results in their immune system overreacting.

18          37.     A main type of milk allergy, Immunoglobulin E (IgE) refers to a type of antibody that  
19 the immune system may produce after recognizing a foreign substance, the presence of milk and dairy  
20 products.

21          38.     With IgE, the immune system mistakenly determines that dairy proteins are harmful  
22 and responds by releasing chemicals, such as histamine. This release of chemicals causes symptoms  
23 of an allergic response, which occur immediately. The symptoms may include swelling, breathing  
24 problems, rashes, loss of consciousness and anaphylaxis.

25          39.     A second type of milk allergy, non-IgE, may be confused with lactose intolerance in  
26 some people because often reactions do not appear as quickly and can cause gastrointestinal systems  
27 such as vomiting, bloating and diarrhea.

28          40.     Because of their milk allergies, Plaintiffs must order Non-Dairy Alternatives at Peet's

1 containing Non-Dairy Alternatives such as almond milk, oat milk, or other lactose-free “milk.”  
2 Plaintiffs have, on every occasion, been levied the Surcharge by Peet’s for Non-Dairy Alternatives in  
3 their coffee drinks ordered and consumed from Defendant’s stores in numerous states, including  
4 California, Texas, and Massachusetts.

5 41. The Non-Dairy Alternative Surcharge has real and practical consequences for  
6 consumers suffering from lactose intolerance and milk allergies. A consumer will pay at least \$0.60-  
7 \$2.00 more for a coffee-based drink at Peet’s for Non-Dairy Alternatives. Non-Dairy Alternatives,  
8 which do not contain lactose, are medically necessary for individuals with lactose intolerance and  
9 milk allergies. For those persons, the use of these Non-Dairy Alternatives is not a choice.

10 42. And this surcharge is not justified by the costs of the Non-Dairy Alternatives. There  
11 are no additional labor costs associated with using a Non-Dairy Alternative Surcharge in a beverage.  
12 Additionally, the retail cost of Non-Dairy Alternatives is not significantly more than dairy products  
13 (if at all). For example, as of the filing of this complaint, Whole Milk was priced at between \$0.03-  
14 05 per fluid ounce, Half & Half between \$0.09-19 per fluid ounce, and Heavy Cream between \$0.17-  
15 32 per fluid ounce. Yet, coconut, oat and soy milk only sells for between \$0.06-07 per fluid ounce.  
16 Similarly, almond milk sells for between \$0.04-07 per fluid ounce. Accordingly, the retail price of  
17 Whole Milk, Half & Half, and Heavy Cream (which is provided for free by Defendant) is the same,  
18 if not more, than their Non-Dairy Alternatives.

19 43. Accordingly, Non-Dairy Alternative Surcharges are not to defray the added costs of  
20 use of these ingredients. Instead, the Surcharges are designed to profit from those consumers with  
21 lactose intolerance and milk allergies. Indeed, only Non-Dairy Alternative incur a surcharge, when  
22 cream may be more expensive than any other Non-Dairy Alternative.

23 44. Without the availability of Non-Dairy Alternatives options, consumers with lactose  
24 intolerance and milk allergies are deprived of the opportunity to enjoy consuming Peet’s’ coffee  
25 beverages and drinks with their friends, family, and business associates.

26 45. Upon information and belief, Peet’s sells in excess of 1 million coffee-based drinks  
27 per day at its retail stores in the United States.

28 46. Various studies in the United States concluded that the portion of the U.S. population

1 that is lactose intolerant is at least 12% and may be as high as 48%.

2 47. Lactose intolerance is common in adults, almost 30 million persons in the United  
3 States have it by the age of 20.

4 48. Dairy allergies are one of the most common allergies. In the United States, greater than  
5 15 million people have a milk or dairy allergy.

6 49. Upon information and belief, Peet's annual revenue in 2022 from sales at its retail  
7 stores in the United States exceeded \$1 billion dollars and exceeded \$7 billion dollars worldwide.

8 50. Peet's is one of the largest coffee chains in the United States.

9 51. Because of its size, Peet's has the power to control the manufacturing costs for Non-  
10 Dairy Alternatives.

11 52. Upon information and belief, Peet's has earned over \$200 million dollars in the United  
12 States as a result of its discriminatory and illegal levying of the Surcharge during the Class Period.

13 53. In April 2023, Peet's eliminated in non-dairy milk alternatives surcharge for an entire  
14 month. One of the purposes of eliminating the Surcharge for this month was to better understand  
15 demand among Peet's customers in the future and to gain insight into eliminating the Surcharge for  
16 good.

17 54. Many coffee chains in the United States have eliminated the non-dairy milk alternative  
18 Surcharge, including Blue Bottle, Philz and Tim Hortons.

19 55. The largest coffee chain in the world, Starbucks Corporation, has eliminated the  
20 Surcharge at many of its international locations including in the European Union.

21 56. Upon information and belief, Peet's has not eliminated the Surcharge at its  
22 international locations and levies a flat charge on whole and skim milk in addition to non-dairy  
23 alternatives such as oat and soy milk. However, Peet's Surcharge at its international locations is  
24 significantly smaller compared to the price of the drink and not related to the origin of the milk.

25 **CLASS ALLEGATIONS**

26 57. Plaintiff brings this action as a class pursuant to Federal Rule of Civil Procedure  
27 23(b)(2) and 23(b)(3) on behalf of the following classes:

28 **National Class:** All persons who (1) suffer from lactose intolerance, or an intolerance  
to milk or milk-containing products, or milk allergies; and (2) who purchased drinks



1 or other items from Peet's within four years prior to the filing of the Complaint and  
2 continuing to the present.

3 **California Subclass:** All persons who (1) are citizens of California; (2) suffer from  
4 lactose intolerance, or an intolerance to milk or milk-containing products; and (3) who  
5 purchased drinks or other items from Peet's in California within two years prior to the  
6 filing of the Complaint and continuing to the present.

7 **Massachusetts Subclass:** All persons who (1) are citizens of Massachusetts; (2) suffer  
8 from lactose intolerance, or an intolerance to milk or milk-containing products; and (3)  
9 who purchased drinks or other items from Peet's in Massachusetts within two years  
10 prior to the filing of the Complaint and continuing to the present.

11 **Texas Subclass:** All persons who (1) are citizens of Texas; (2) suffer from lactose  
12 intolerance, or an intolerance to milk or milk-containing products, or milk allergies;  
13 and (3) who purchased drinks or other items from Peet's in Texas within two years  
14 prior to the filing of the Complaint and continuing to the present.

15 The classes exclude counsel representing the class, governmental entities, Defendant, any entity in  
16 which Defendant has a controlling interest, Defendant's officers, directors, affiliates, legal  
17 representatives, employees, co-conspirators, successors, subsidiaries, and assigns, any judicial officer  
18 presiding over this matter, the members of their immediate families and judicial staff, and any  
19 individual whose interests are antagonistic to other putative class members.

20 58. Plaintiff reserves the right to amend or modify the class descriptions with greater  
21 particularity or further division into subclasses or limitation to particular issues.

22 59. This action has been brought and may properly be maintained as a class action under  
23 Federal Rule of Civil Procedure 23 because it is a well-defined community of interest in the litigation  
24 and the class is readily and easily ascertainable.

25 60. The potential members of the class are so numerous that joinder of all members of the  
26 class is impractical. Although the precise number of putative class members has not been determined  
27 at this time, Plaintiffs are informed and believe that the proposed classes include hundreds of  
28 thousands of members.

61. There are common questions of law and fact that predominate over any questions  
affecting only individual putative class members.

62. Plaintiffs' claims are typical of the claims of the members of the putative class because  
Plaintiff ordered and consumed drinks at Defendant's stores, ordered Non-Dairy Alternatives and

1 incurred a Surcharge for that alternative milk during the applicable class period. Plaintiffs and each  
 2 class member sustained similar injuries arising out of Defendant's conduct in violation of law. The  
 3 injuries of each member of the class were caused directly by Defendant's wrongful conduct. In  
 4 addition, the factual underpinning of Defendant's misconduct is common to all members of the  
 5 putative class and represents a common thread of misconduct resulting in injury to all members of the  
 6 class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims  
 7 of putative class members and are based on the same legal theory.

8 63. A class action is superior to other available means for the fair and efficient adjudication  
 9 of this controversy. Individual joinder of putative class members is not practicable and questions of  
 10 law and fact common to the class members predominate over any questions affecting only individual  
 11 putative class members.

12 64. Each member of the putative class has been damaged and is entitled to recovery by  
 13 reason of Defendant's illegal acts.

14 65. Class action treatment will allow those similarly situated to litigate their claims in the  
 15 manner that is most efficient and economical for the parties and the judicial system.

16 66. Plaintiffs are unaware of any difficulties that are likely to be construed in the  
 17 management of this action that would preclude its maintenance as a class action.

18 67. The disposition of all claims of the members of the class in a class action, rather than  
 19 individual actions, benefits the parties and the Court. The interests of the class members in controlling  
 20 prosecution of separate claims against the Defendant is small when compared to the efficiency of a  
 21 class action.

22 68. Plaintiffs will fairly and adequately represent and protect the interests of the class.  
 23 Plaintiffs' Counsel and for the putative class members are experienced and competent in litigating  
 24 class actions.

## 25 **CAUSES OF ACTION**

### 26 **COUNT I**

### 27 **VIOLATION OF TITLE III OF AMERICANS 28 WITH DISABILITIES ACT**

(On Behalf of all Plaintiffs and all other similarly situated National Class Members)

1           69.     The allegations contained in Paragraphs 1-68 of the Complaint are incorporated by  
2 reference as if fully set out herein.

3           70.     Plaintiffs assert this count on their own behalf and on behalf of all other similarly  
4 situated persons members of the National Class.

5           71.     Defendant is a public accommodation under the Americans with Disabilities Act  
6 (“ADA”), *see* 42 U.S.C. § 12181 (7)(B), and consequently Defendant is prohibited from  
7 discriminating against Plaintiffs and other members of the putative class on the basis of disability in  
8 the full and equal enjoyment of the goods, services, facilities, privileges and advantages provided by  
9 Defendant.

10          72.     The ADA requires that a “public accommodation shall make reasonable modifications  
11 in policies, practices, or procedures, when the modifications are necessary to afford good, services,  
12 facilities, privileges, advantages or accommodations to individuals with disabilities[.]”. 28 C.F.R. §  
13 36.302(a). *See also* 42 U.S.C. § 12182(b)(2)(A)(ii) (stating that discrimination includes failing to  
14 make reasonable modifications when necessary to afford goods, services, facilities, privileges,  
15 advantages, or accommodations to individuals with disabilities).

16          73.     The ADA makes it discriminatory to afford an individual or class of individuals, on  
17 the basis of a disability or disabilities of such individual or class, directly, or through contractual,  
18 licensing, or other arrangements with the opportunity to participate in or benefit from a good, service,  
19 facility, privilege, advantage or accommodation that is not equal to that afforded to other  
20 individuals[.]” 42 U.S.C. § 12182(a)(i). *See also* 42 U.S.C. § 12182(b)(i) (making it discriminatory  
21 for a public accommodation to deny disabled persons the opportunity to participate in or benefit from  
22 goods, services, privileges, advantages, or accommodations).

23          74.     The ADA requires that a “public accommodation shall make reasonable modifications  
24 in policies, practices, or procedures, when the modifications are necessary to afford goods, services,  
25 facilities, privileges, advantages, or accommodations to individuals with disabilities[.]” 28 C.F.R. §  
26 36.302(a).

27          75.     Under the ADA, if an establishment already makes alterations or modifications, or  
28 takes special orders for its customers, it must do so for the disabled customer requests as well. *See* 28

1 C.F.R. § 36.307(a) & (b) (“A public accommodation shall order accessible or special goods at the  
2 request of an individual with disabilities, if, in the normal course of its operation, it makes special  
3 orders on requests for unstocked goods, and if the accessible or special goods can be obtained from a  
4 supplier with who the public accommodation customarily does business.”).

5 76. Most importantly, the ADA provides that a “public accommodation may not impose a  
6 surcharge on a particular individual with a disability or any group of individuals with disabilities to  
7 cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to  
8 barrier removal, and reasonable modifications in policies, practices, or procedures, that are required  
9 to provide that individual or group with the nondiscriminatory treatment required by the Act or this  
10 part.” 28 C.F.R. § 36.301.

11 77. The ADA Amendments Act of 2008 (“ADAAA”) was passed to restore the intent and  
12 protections of the Americans with Disabilities Act of 1990. The ADAAA contained specific  
13 Congressional Findings that the amendments were intended to address and reject United States  
14 Supreme Court decisions that had incorrectly found in individual cases that people with a range of  
15 substantially limiting impairments are not people with disabilities. Specifically, the ADAAA cited to  
16 the following holdings as having been incorrectly decided: 1) *Sutton v. United Air Lines, Inc.*, 527  
17 U.S. 471 (1999); and 2) *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184  
18 (2002).

19 78. The clear Congressional intent of the ADAAA was to expand and broaden the  
20 disabilities that are included for protection under the ADA.

21 79. Section 4(a) of the ADAAA amends Section 3 of the ADA to include the following  
22 language under Section 4 Rules of Construction Regarding the Definition of Disability: (A) the  
23 definition of disability in this Act shall be construed in favor of broad coverage of individuals under  
24 this Act, to the maximum extent permitted by the terms of this Act.

25 80. Lactose intolerance and milk allergies are a disability under the ADA. The ADA  
26 defines a disability, in pertinent part, as “a physical or mental impairment that substantially limits one  
27 or more major life activities.” 42 U.S.C. § 12102(1). An impairment means “[a]ny physiological  
28 disorder or condition that affects “one or more body systems,” such as the neurological, digestive, or

immune systems. 28 C.F.R. 36.105(b)(1)(i). An impairment is a disability if it “substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population.”

81. Drinking beverages, including coffee drinks, is a major life activity.

82. Digestion is a major and vital life activity.

83. Defendant violates the ADA because, as alleged above, it fails to make modifications to persons with lactose intolerance and milk allergies but instead imposes a surcharge on this group of persons, purportedly to cover the costs of such measures, even though there is no material difference between the costs of regular milk and Non-Dairy Alternatives.

84. As a direct result of Defendant’s violation of the ADA, Plaintiffs and class members have suffered injury, including but not limited to the violation of their statutory rights and loss of money as a result of Defendant’s illegal price discrimination. Therefore, Plaintiffs and the putative class members are entitled to damages and injunctive relief.

85. Defendant’s actions were willful, wanton, malicious, and intentional, and were done in willful and conscious disregard of the rights of Plaintiffs and the putative class members. Defendant’s actions were done with the express knowledge, consent, and ratification of Defendant’s managerial employees and thereby justify the awarding of punitive and exemplary damages in an amount to be determined at trial.

**COUNT II**  
**VIOLATION OF CALIFORNIA’S UNRUH**  
**CIVIL RIGHTS ACT (CA)**

(On Behalf of Veronica Munoz and Michelle Irwin, and all other similarly situated California Subclass Members)

86. The allegations contained in paragraphs 1-68 of the Complaint are incorporated by reference as if fully set out herein. Plaintiffs Munoz and Irwin assert this count on her own behalf and on behalf of the California subclass, as defined above.

87. California’s Unruh Act provides, “All persons within the jurisdiction of this state are free and equal, and no matter their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal

1 accommodations, advantages, facilities, privileges, or services in all business establishments of every  
2 kind whatsoever.” Cal. Civ. Code § 51(b).

3 88. The Unruh Act prohibits businesses from engaging in unreasonable, arbitrary, or  
4 invidious discrimination, including through the unequal treatment of patrons. For example, businesses  
5 may not offer discounts to some classes of patrons but require full price from other patrons, where  
6 the price difference is based on arbitrary, class-based generalizations (such as gender).

7 89. The Unruh Act provides that whoever “denies, aids or incites a denial, or makes any  
8 discrimination or distinction contrary to [the Act]” is liable for each and every offense, up to three  
9 times the amount of actual damages but in no case less than \$4,000 plus attorneys’ fees. *Id* at § 52(a).

10 90. Defendant’s conduct constitutes a violation of California’s Unruh Act, Cal. Civ. Code  
11 § 51, *et seq.* Defendant’s practice of surcharging Non-Dairy Alternatives purchased by consumers  
12 who are lactose intolerant constitutes price discrimination in violation of the Unruh Act.

13 **Intentional Discrimination**

14 91. The Surcharge constitutes intentional discrimination against persons with lactose  
15 intolerance and milk allergies. Defendant created a surcharge targeted to persons with lactose  
16 intolerance, because Defendant accommodates other customers’ dietary preferences and allergies free  
17 of charge but imposes a surcharge only on persons with lactose intolerance.

18 92. As alleged above, Defendant provides modifications or substitutes for persons with  
19 heart conditions (caffeine-free) or diabetes (sugar-free) at no additional charge. Consumers with these  
20 dietary preferences pay no additional money for the accommodations Defendant affords them.

21 93. Consumers who need Non-Dairy Alternatives because of their disability, specifically  
22 lactose intolerance, are targeted for the Surcharge because of their specific medical condition.

23 94. Defendant is making a choice to impose the Surcharge for necessary beverage  
24 modifications for one class of persons with a specific disability, lactose intolerance, while at the same  
25 time not imposing any extra charge for those persons with another medical condition. This is the  
26 essence of intentional discrimination.

27 95. Defendant is disproportionately profiting from their customers with lactose  
28 intolerance.





1 facilities, privileges, advantages, or accommodations to individuals with disabilities[.]” 28 C.F.R. §  
2 36.302(a).

3 104. Under the ADA, if an establishment already makes alterations or modifications, or  
4 takes special orders for its customers, it must do so for disabled customer requests as well. *See* 28  
5 C.F.R. § 36.307(a) & (b) (“A public accommodation shall order accessible or special goods at the  
6 request of an individual with disabilities, if, in the normal course of its operation, it makes special  
7 orders on request for unstacked goods, and if the accessible or special goods can be obtained from a  
8 supplier with whom the public accommodation customarily does business.”). Special foods are  
9 expressly included among special orders. *See* 28 C.F.R. § 36.307(c) (“Examples of accessible or  
10 special goods includes items such as Braille versions of books, books on audio cassettes, closed-  
11 captioned video tapes, special sizes or lines of clothing, and special foods to meet particular dietary  
12 needs.”)

13 105. Importantly, the ADA provides that “a public accommodation may not impose a  
14 surcharge on a particular individual with a disability or any group of individuals with disabilities to  
15 cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to  
16 barrier removal, and reasonable modifications in policies, practices, or procedures, that are required  
17 to provide that individual or group with the nondiscriminatory treatment required by the Act or this  
18 part.” 28 C.F.R. § 36.301.

19 106. Defendant violates the ADA because, as alleged above, it fails to make modifications  
20 that are necessary to afford goods and services to persons with lactose intolerance but instead imposes  
21 a surcharge on this group, purportedly to cover the cost of such measures.

22 107. Moreover, also as alleged above, although Defendant already offers modifications to  
23 non-disabled customers free of charge, it fails to offer persons with lactose intolerance this same  
24 goods and services free of charge.

25 108. Finally, Defendant’s policy of charging all customers a surcharge for Non-Dairy  
26 Alternatives disproportionately affects persons with lactose intolerance, regardless of any express  
27 intent by Defendant to discriminate against this group.

28 109. As a direct and proximate cause of Defendant’s violation of the Unruh Act, Plaintiffs



Munoz and Irwin and California Subclass members have suffered injury, including but not limited to the violation of their statutory rights and loss of money as the result of the illegal Surcharge. Therefore, they are entitled to damages and injunctive relief.

110. The aforementioned acts of Defendant were willful, wanton, malicious, intentional, oppressive, and despicable and were done in willful and conscious disregard of the rights of Plaintiffs and class members, and were done by managerial agents and employees of Defendant, or with the express knowledge, consent, and ratification of managerial employees of Defendant, and thereby justify the awarding of punitive and exemplary damages in an amount to be determined at the time of the trial.

111. Under the Unruh Act, a Plaintiff is entitled to recover actual damages and an amount up to three times the actual damages for each violation of the Unruh Act, “but in no case less than \$4,000...” for each and every offense (Cal. Civ. Code § 52(a).

112. Plaintiff and Class members are entitled to actual and treble damages for Defendant’s violation of the Unruh Act.

### **COUNT III**

#### **MASSACHUSETTS DISCRIMINATION**

(On Behalf of Plaintiff Katherine Hetherton and Massachusetts Subclass Members for violation of Massachusetts Anti-Discrimination Law)

113. Plaintiff Hetherton realleges and incorporates by reference the allegations in paragraphs 1-68 of this Complaint as if fully set forth herein.

114. Massachusetts prohibits “... any distinction, discrimination or restriction on account of physical or mental disability, ... [in] his treatment in any place of public accommodation...” *Mass Gen. Laws ch. 272, § 98*.

115. A place of public accommodation is any place “which is open to and accepts or solicits the patronage of the general public” and includes a “retail store or establishment.” *Id.* 272, §§ 92A & 92A(3).

116. Peet’s stores are a public accommodation as defined in 272, §§ 92A.

117. Plaintiff Hetherton and the Massachusetts Subclass Members who were charged the Surcharge for Non-Dairy Alternatives seek minimum statutory damages under 272, § 98.

118. Defendant's Surcharge for Non-Dairy Alternatives discriminates against people with disabilities and, through their actions described herein, Peet's has, directly denied to Plaintiff Hetherton, and the Massachusetts Subclass Members, because of their disabilities, the full and equal enjoyment of its goods, services, privileges, advantages and accommodations.

119. Plaintiff Hetherton and the Massachusetts Subclass Members have been damaged and will continue to be damaged by this discrimination as more fully set forth herein.

**COUNT IV**  
**TEXAS DISCRIMINATION**

(On Behalf of Plaintiff Jennifer Wilkinson and Texas Subclass  
Members for violation of the Texas Human Resource Code)

120. Plaintiff Jennifer Wilkinson realleges and incorporates by reference the allegations in paragraphs 1-68 of this Complaint as if fully set forth herein.

121. The Texas code states "[p]ersons with disabilities have the same rights as the able-bodied to the full use and enjoyment of any public facility in the state." Tex. Hum. Res. Code Ann. § 121.003(a).

122. "'Public facilities' includes ... any other place of public accommodation, ...[or] convenience, ... to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited." *Id.* § 121.002(5).

123. Peet's stores are public facilities as defined in § 121.002(5). Defendant is prohibited from discriminating against Plaintiff and other members of the putative class on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, and advantages offered by Defendant.

124. Plaintiff Wilkinson and the Texas Subclass Members who were charged the Surcharge for Non-Dairy Alternatives seek minimum statutory damages under § 121.004(b).

125. Defendant's Surcharge for Non-Dairy Alternatives discriminates against people with disabilities and, through their actions described herein, Peet's has, directly denied to Plaintiff Wilkinson and the Texas Subclass Members, because of her disabilities, the full and equal enjoyment of its goods, services, privileges, advantages and accommodations.

126. Plaintiff Wilkinson and the Texas Subclass Members have been damaged and will

1 continue to be damaged by this discrimination as more fully set forth herein.

2 **COUNT V**  
3 **UNJUST ENRICHMENT/RESTITUTION**

4 127. The allegations contained in paragraphs 1-68 of the Complaint are incorporated by  
5 reference as if fully set out herein. The named Plaintiffs assert this count on their own behalf and on  
6 behalf of the National class, as defined above.

7 128. Plaintiffs conferred a benefit to Defendant by allowing them to collect a surcharge in  
8 exchange for providing Plaintiffs with non-dairy alternatives such as lactose-free milk.

9 129. Defendant enriched itself at the expense of Plaintiffs and the putative class members  
10 by its illegal levying of the Surcharge for Non-Dairy Alternatives.

11 130. Plaintiffs and putative class members continue to suffer injuries as a result of the  
12 Defendant's illegal and discriminatory behavior. If the Defendant does not compensate the  
13 Plaintiffs, it would be unjustly enriched as a result of its unlawful acts or practices.

14 131. It is an equitable principle that no one should be allowed to profit from his own  
15 wrongdoing, therefore it would be inequitable for the Defendant to retain said benefit and reap unjust  
16 enrichment.

17 132. Since the Defendant unjustly enriched itself at the expense of the Plaintiffs and  
18 putative class members, Plaintiffs request the disgorgement of these illegally obtained monies.

19 133. Due to Defendant's conduct, Plaintiffs and the putative class members are entitled to  
20 damages according to proof, but in no event less than \$5,000,000.00.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs, VERONICA MUNOZ, JENNIFER WILKINSON, KATHERINE  
23 HETHERTON, and MICHELLE IRWIN respectfully request that this Court enter judgment in their  
24 favor and in favor of those similarly situated, as follows:

- 25 1. Certifying and maintaining this action as a class action, with the named Plaintiffs as  
26 designated class representative and with their counsel appointed as class counsel;
- 27 2. A declaration that Defendant is in violation of each of the Counts set forth above;
- 28 3. Award Plaintiffs and those similarly situated statutory, compensatory, and treble

1 damages;

- 2 4. Award Plaintiffs and those similarly situated liquidated damages;
- 3 5. Order the disgorgement of illegally obtained monies;
- 4 6. Award each named Plaintiff a service award;
- 5 7. Award attorneys' fees and costs; and
- 6 8. Grant such further relief as the Court deems just and proper.

7 **JURY TRIAL DEMAND**

8 Plaintiffs hereby demand a jury trial of the claims asserted in this Class Action Complaint.

9 Dated: March 21, 2024

Respectfully submitted,

10 /s/ William M. Aron

11 William M. Aron (SBN No. 234408)  
12 ARON LAW FIRM  
13 15 West Carrillo Street, Suite 217  
14 Santa Barbara, CA 93101  
Telephone: (805) 618-1768  
Email: bill@aronlawfirm.com

15 Bogdan Enica (*Pro Hac Vice* to be filed)  
16 KEITH GIBSON LAW, P.C.  
17 1200 N. Federal Highway, Suite 375  
18 Boca Raton, FL 33432  
Telephone: (305) 306-4989  
Email: bogdan@keithgibsonlaw.com

19 Keith L. Gibson (*Pro Hac Vice* to be filed)  
20 KEITH GIBSON LAW, P.C.  
21 490 Pennsylvania Avenue Suite 1  
22 Glen Ellyn, IL 60137  
Telephone: (630) 677-6745  
Email: keith@keithgibsonlaw.com

23  
24 *Counsel for Plaintiffs and the Putative Class*  
25  
26  
27  
28