

## Starbucks Drinkers Can Move Ahead With Slimmed Latte Suit

By **Kat Greene**

*Law360, Los Angeles (June 17, 2016, 10:25 PM ET)* -- Starbucks Corp. will have to face the bulk of a proposed class action alleging its baristas systematically serve drinks that aren't filled to the brim, according to a California court order Friday that kept alive claims the company is deceiving customers with its allegedly too-small drink recipes.

U.S. District Judge Thelton E. Henderson poured off a few of the claims lodged by coffee drinkers Siera Strumlauf and Benjamin Robles, mostly connected to the way plaintiffs might eventually collect damages from Starbucks if they win their suit, according to the order, but the duo's arguments that Starbucks is lying to customers by selling them, for example, a "tall" drink in a 12-ounce cup with less than 12 ounces of drink in it were allowed to stand, according to Friday's order.

The judge cut out the drinkers' bid for an injunction over the practice, and for breach of implied merchantability, in part because that claim requires the product sold to be unfit for use, according to the ruling. Strumlauf and Robles hadn't said the lattes were undrinkable, just that there wasn't enough in the cup, the judge found.

But on claims under California's Consumer Legal Remedies Act, Unfair Competition Law and False Advertising Law, the judge said the plaintiffs had sufficiently supported their accusations with facts.

"If all Starbucks lattes are made pursuant to a standardized recipe which results in the lattes being uniformly underfilled, and plaintiffs allege that they purchased lattes, it is reasonable to conclude that — even without measuring — plaintiffs' lattes were underfilled," Judge Henderson wrote.

The latte drinkers said in their March complaint that Starbucks is ripping off consumers by habitually underfilling its popular beverages by about 25 percent, court records show.

A standardized recipe for making lattes that Starbucks implemented in 2009 to save money on milk has resulted in beverages that don't come close to their supposed 12-, 16- and 20-fluid ounce sizes, a breach of the retailer's express and implied warranty with customers, the plaintiffs said. What's more, Starbucks knows full well that its lattes are underfilled yet sells them anyway, an act of fraud that has brought in money for the coffee giant, Strumlauf and Robles alleged.

Before 2009, there was no uniform system for making lattes at Starbucks, which allegedly resulted in a significant waste of product and loss of money, the two said. In 2009, however, Starbucks devised a uniform system for making the beverage by using standardized pitchers with etched "fill lines" to give

baristas a measure of how much milk and espresso to put into each drink, the complaint explained.

What resulted is a uniform system of underfilling the lattes, Strumlauf and Robles said. For instance, in making a “grande” 16-ounce latte, baristas are required to use 12 ounces of milk, plus two 1-ounce shots of espresso. Therefore, the maximum possible fluid ounce amount of latte a customer could possibly receive is 14 ounces, the pair alleged.

Starbucks late last month asked a multidistrict judicial panel to consolidate a handful of similar proposed class actions against the company, saying that since the facts and the witnesses of the four pending suits — in California, New York and Illinois — are nearly identical, it would be more convenient for it to perform discovery and call employees to the stand in Seattle, where the company is headquartered.

Representatives for the parties didn’t immediately respond to requests for comment on Friday.

Strumlauf and Robles are represented by L. Timothy Fisher, Julia A. Luster and Scott A. Bursor of Bursor & Fisher PA and Gerald Healy and John Hafemann of Military Justice Attorneys PLLC.

Starbucks is represented by Robert James Guite, Fred R. Puglisi, Robin Andrea Achen and Sascha Von Mende Henry of Sheppard Mullin Richter & Hampton LLP.

The case is Siera Strumlauf et al. v. Starbucks Corp., case number 3:16-cv-01306, in the U.S. District Court for the Northern District of California.

--Additional reporting by Steven Trader and Kat Sieniuc. Editing by Bruce Goldman.

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