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**NICOLLE DISIMONE**

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

NICOLLE DISIMONE, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

ROBERT'S AMERICAN GOURMET  
FOOD, LLC, a Delaware Limited Liability  
Company dba PIRATE BRANDS

Defendants.

Case No. **CV 13-05493-GAF**

**CLASS ACTION COMPLAINT** (CFMx)

**JURY TRIAL DEMANDED**

- 1. Violation of California Unfair Competition Law, California Business & Professions Code § 17200, et seq.;**
- 2. Violation of Consumers Legal Remedies Act, California Civil Code § 1750, et seq.;**
- 3. Breach of Express Warranty; and**
- 4. Violation of California False Advertising Law, California Business & Professions Code § 17500, et seq.**

**CLASS ACTION COMPLAINT**

**COMPLAINT**

1 Plaintiff Nicolle Disimone ("Plaintiff"), by and through her counsel, brings this  
2 Class Action Complaint against Robert's American Gourmet Food, LLC, doing  
3 business as Pirate Brands (hereinafter "Robert's" or "Defendant") on behalf of herself  
4 and all others similarly situated, and allege, upon personal knowledge as to her own  
5 actions and her counsel's investigations, and upon information and belief as to all other  
6 matters, as follows:

7 **NATURE OF THE CASE**

8 1. This is a consumer protection and false advertising class action. Defendant  
9 markets, advertises, and distributes various snack foods under the Pirate Brands name,  
10 which they prominently advertise as "all natural." The snack foods at issue include  
11 Original Tings Crunchy Corn Sticks, Pirate's Booty Aged White Cheddar Rice and  
12 Corn Puffs, Pirate's Booty Barrrrrbeque Rice and Corn Puffs, Pirate's Booty Chocolate  
13 Rice and Corn Puffs, Pirate's Booty New York Pizza Rice and Corn Puffs, Pirate's  
14 Booty Sour Cream & Onion Rice and Corn Puffs, Pirate's Booty Veggie Rice and Corn  
15 Puffs, Potato Flyers Baked Potato Chips Homestyle Barbeque, Potato Flyers Baked  
16 Potato Chips Sour Cream & Onion, Potato Flyers Baked Potato Chips The Original, and  
17 Smart Puffs Real Wisconsin Cheddar Baked Cheese Puffs (collectively, the  
18 "Products").

19 2. These snacks are not natural, for two independent reasons. First, the  
20 Products are made with genetically modified crops. A genetically modified ("GM")  
21 crop, such as the corn, soy, and rapeseed (canola) from which the Products are derived,  
22 is a crop whose genetic material has been altered by humans using genetic engineering  
23 techniques. The World Health Organization defines GM organisms (which include  
24 crops) as "organisms in which the genetic material (DNA) has been altered in a way  
25 that does not occur naturally." GM crops are not natural, but man-made. There are  
26 wide-ranging controversies related to GM crops, including health risks from ingesting  
27 GM foods and negative environmental effects associated with growing GM crops. The  
28 use and labeling of GM foods is the subject of a variety of laws, regulations, and

1 protocols worldwide.

2 3. Second, some of the Products' ingredients are so heavily processed that  
3 they bear no chemical resemblance to the sources from which they were derived. In  
4 addition, the Products are the result of high temperature puffing, baking, or cooking that  
5 chemically alters the rice, corn, and potatoes to contain a potentially carcinogenic  
6 chemical. Through heavy industrialized processing, Pirate Brands snack foods have  
7 become man-made, rather than natural. Ironically, the GM attributes of the ingredients  
8 persist despite this heavy processing because the changes are chemical, and not genetic.

9 4. Although the Products are not "all natural," Defendant prominently labels  
10 every package of the Products sold in the United States as "all natural." Defendant does  
11 this because consumers perceive all natural foods as better, healthier, and more  
12 wholesome. In fact, the market for all natural foods has grown rapidly in recent years, a  
13 trend for which Defendant seeks to take advantage of through false advertising.

14 5. Plaintiff brings claims against Defendant in her individual capacity and on  
15 behalf of a California class of all other similarly situated purchasers of the Products for  
16 violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et*  
17 *seq.* ("UCL"), Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*  
18 ("CLRA"), breach of express warranties, and a violation of California's False  
19 Advertising Law, Cal. Bus & Prof. Code § 17500, *et seq.* ("FAL"). Plaintiff seeks an  
20 order requiring Defendant to, among other things: (1) cease the unlawful marketing; (2)  
21 conduct a corrective advertising campaign; and (3) pay damages and restitution to  
22 Plaintiff and Class members in the amounts paid to purchase the products at issue.

### 23 JURISDICTION AND VENUE

24 6. The Court has subject matter jurisdiction over this action pursuant to 28  
25 U.S.C. § 1332(d)(2), because the proposed class has more than 100 members, the class  
26 contains at least one member of diverse citizenship from Defendant, and the amount in  
27 controversy exceeds \$5 million.



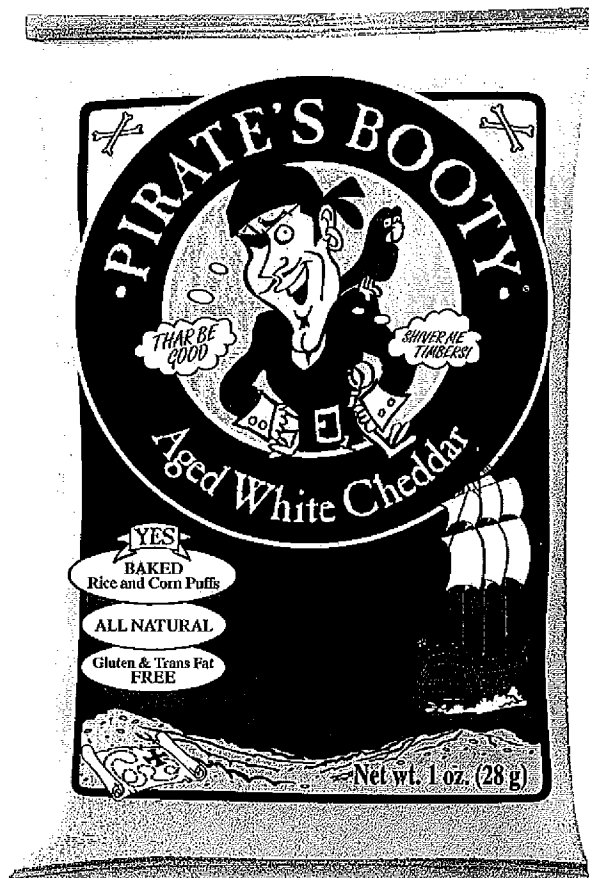
10. Defendant Robert's American Gourmet Food, LLC ("Pirate Brands") is a Delaware limited liability company with its principal place of business at 100 Roslyn Avenue, Sea Cliff, New York, 11579. Defendant manufactures and distributes the Products from the Pirate Brands manufacturing plant in Sea Cliff, New York to consumers in California and throughout the United States.

### **SUBSTANTIVE ALLEGATIONS**

#### **Defendant Deceptively Labeled The Products As "All Natural"**

11. This case concerns eleven types of Pirate Brands snack foods. Throughout the Class Period, Defendant has prominently labeled and otherwise advertised the Products as "all natural" in product packaging, in print advertisements, in television commercials, on the Pirate Brands website, and on social media sites such as Facebook. The "all natural" message is inherently intertwined with the Pirate Brands' definition and recognition.

12. For example, Defendant labels every bag of the Products as "ALL NATURAL" to the left below the main product logo and the product description:



13. The back of such bags also features numerous slogans and representations to induce the purchaser into believing that the Products are all natural, including the following statements:

- “These tasty puffs are baked to perfection with real, all natural ingredients.”
- “At Pirate Brands, we have been creating healthier treasures since 1987 with the belief you shoudn’t have to ‘sacrifice’ taste for health... Arrr!”
- “We’ve created products for the whole family that are all natural, baked AND delicious.”

14. On the Pirate Brands website <http://www.piratebrands.com>, Defendant makes numerous statements and representations to re-enforce the “all natural” part of their brand. For example, in the middle of the homepage, a banner appears with the following message:

Ahoy There!

You’ve discovered the isle of healthy snacking. Abundant with all natural, deliciously baked treasures. We’ve eliminated trans fats and gluten to keep our ingredients simple and family snacking guilt free. Our only additives are just good fun. So get onboard with Pirate’s Booty, Smart Puffs, Tings, and Potato Flyers, and join the healthy snacking revolution.

(<http://www.piratebrands.com>)

15. In recounting the company’s history, and referring to Pirate Brands’ alleged founder, Defendant states, among other things:

The Pirate Brands story began in 1987 in Sea Cliff, NY with our founder, Robert. Robert, a snack industry renegade and father of two, scoured the high-seas for a tasty treasure that would inspire people to live a little healthier and have fun while doing it. That’s when Robert discovered the cheesy rice and corn puffs we know today as, Pirate’s Booty.

Thanks to Robert and his tasty treasure, no longer do you have to eat “cheese” puffs dusted with neon orange powder with incomprehensible ingredients. When you buy Pirate Brands products, you are getting wholesome goodness without the guilt.

We’ve created products for the whole family that are all natural, baked AND delicious. We’ve eliminated fryers and trans fats from all of our products and keep the ingredients simple (no need to Google® search today). Our only additives are just good, wholesome fun.

1 It's been 20 years and we're still continuing our journey by  
2 offering fun, and deliciously baked all-natural snacks. You can  
3 find Pirate Brands products including, Pirate's Booty, Smart  
Puffs Potato Flyers and Original Tings at a supermarket near  
you or at our online store!

4 Our consumers, family and friends are very important to us.  
5 Your loyalty has been longstanding and we thank you for being  
part of our journey.

6 (<http://www.piratebrands.com/story/>)

7 16. The "Frequently Asked Questions" of the website boasts as follows:

8 **What makes Pirate Brands' products unique?**

9 Pirate Brands' snack food products are delectably crunchy, all-  
10 natural, baked, trans fat, gluten free and possess great subtle  
flavors that will have you craving more!

11 **What are the quality standards of Pirate Brands' ingredients?**

12 All-natural  
13 Gluten free  
14 Trans fat free  
15 No preservatives  
No artificial sweeteners  
Kosher

16 **Is Pirate's Booty popcorn?**

17 Pirate's Booty is made from corn and rice meal that is extruded  
18 and results in a puff of rice and corn. In some industry circles,  
the puffs are known as hull-less popcorn.

19 **Are Pirate Brands' products organic?**

20 No, our products do not qualify as organic, but all Pirate  
21 Brands' products are all-natural. According to the Food and  
22 Drug Act, products are deemed "all-natural" if nothing artificial  
or synthetic including color additives, regardless of source has  
23 been included in or added to a food that would normally be  
expected to be in that food. All of Pirate Brands' products meet  
and exceed the Food and Drug Act's definition of "all-natural."

24 **Who conducts Pirate Brands' all-natural certification?**

25 The natural label claim is certified by Pirate Brands' through  
26 ingredient sourcing and how the products fall under the auspice  
and regulatory mandate of the Food and Drug Act.

27 (<http://www.piratebrands.com/faq/>)  
28

1        17.        The “all natural” claim is re-enforced and re-iterated throughout television  
2 commercials for the Products. For example, one TV ad featuring a “limited edition”  
3 SpongeBob SquarePants flavor and Defendant’s pirate cartoon characters:

- 4            • “An all natural snack to guide you through a journey to find your booty”;
- 5            and
- 6            • “Pirate’s Booty: The All Natural Baked Snack.”

7 (<http://www.youtube.com/watch?v=V-2hM1C4KkA>)

8        18.        Similarly, the Pirate Brands Facebook page states the following message  
9 under company information: “Ahoy matey! Drop anchor and discover our all natural  
10 treasure, Pirate’s Booty!” (<https://www.facebook.com/piratesbooty>)

11        19.        By consistently labeling the Products as “all natural” within the Class  
12 Period, Defendant ensured that all consumers purchasing the Products would be  
13 exposed to their “all natural” claim.

14            **Food Derived From Genetically Modified Organisms Is Not Natural**

15        20.        GM crops are not crops occurring in nature, and are not “all natural.”  
16 They are genetically manipulated from their natural state. Monsanto, one of the largest  
17 producers of GM crop seed, defines GM organisms as “Plants or animals that have had  
18 their genetic makeup altered to exhibit traits that are not naturally theirs. In general,  
19 genes are taken (copied) from one organism that shows a desired trait and transferred  
20 into the genetic code of another organism.”

21 (<http://www.monsanto.com/newsviews/Pages/glossary.aspx#g>)

22        21.        This definition is consistent with the World Health Organization, which  
23 defines GM organisms as “organisms in which the genetic material (DNA) has been  
24 altered in a way that does not occur naturally. The technology is often called ‘modern  
25 biotechnology’ or ‘gene technology’, sometimes also ‘recombinant DNA technology’  
26 or ‘genetic engineering’. It allows selected individual genes to be transferred from one  
27 organism into another, also between non-related species. Such methods are used to  
28 create GM plants -- which are then used to grow GM food crops.” (World Health



1 Organization, 20 Questions on Genetically Modified (GM) Foods at  
2 [http://www.who.int/foodsafety/publications/biotech/en/20questions\\_en.pdf](http://www.who.int/foodsafety/publications/biotech/en/20questions_en.pdf)

3 22. The Environmental Protection Agency has distinguished between  
4 conventional breeding of plants “through natural methods, such as cross-pollination”  
5 and genetic engineering. (United States Environmental Protection Agency,  
6 Prevention, Pesticides and Toxic Substances, Questions & Answers Biotechnology:  
7 Final Plant-Pesticide/Plant Incorporated Protectants (PIPs) Rules (Jul. 19, 2001) at  
8 <http://www.epa.gov/scipoly/biotech/pubs/qanda.pdf> (“Conventional breeding is a  
9 method in which genes for pesticidal traits are introduced into a plant through natural  
10 methods, such as cross-pollination. . . . Genetically engineered plant-incorporated  
11 protectants are created through a process that utilizes several different modern  
12 scientific techniques to introduce a specific pesticide-producing gene into a plant's  
13 DNA genetic material.”) (emphasis of “through natural methods” added; remaining  
14 emphasis in original.)

15 23. Romer Labs, a company that provides diagnostic services to the  
16 agricultural industry, including tests to detect and determine the existence of GM  
17 crops, defines GM crops as “[a]griculturally important plants [that] are often  
18 genetically modified by the insertion of DNA material from outside the organism into  
19 the plant's DNA sequence, allowing the plant to express novel traits that normally  
20 would not appear in nature, such as herbicide or insect resistance. Seed harvested  
21 from GMO plants will also contain these modifications.”  
22 (<http://www.romerlabs.com/en/knowledge/gmo/>)

23 24. As indicated by the definitions above, which come from a wide array of  
24 sources, including industry, government, and health organizations, GM crops are not  
25 “all natural,” and products made from those crops, including the Products, are not “all  
26 natural.”

27 25. Testing by an independent third party has revealed that Defendant's  
28 Products are made from GM crops.

1       26. Defendant's "all natural" representations are false, deceptive, misleading,  
2 and unfair to consumers, who are injured in fact by purchasing products that  
3 Defendant claims are "all natural" when in fact they are not.

4               **The Products Are Not Natural Because They Are Highly Processed**

5       27. Independent of the use of GM crops to manufacture the Products,  
6 Defendant's "all natural" claims are false because the Products contain ingredients that  
7 are synthetic and so heavily processed that they no longer are chemically the same as  
8 the raw ingredients. The various processes by which the ingredients are synthesized  
9 render the final Products chemically derived and non-natural. While they retain the  
10 non-natural genetic attributes of the GM crops from which they are sourced, many of  
11 the Products' ingredients no longer bear any natural chemical resemblance to their  
12 source crops as a result of the extensive process by which they are refined.

13       28. The Products contain sunflower oil and corn oil, which are heavily  
14 processed cooking oils and are not natural. Many types of oil are extracted through  
15 processes that allow the oils to retain the chemical composition occurring in nature.  
16 Cold pressed olive oil, for example, is produced through a mechanical process of  
17 compressing the oil from olives. Chemicals can also be used in the extraction process  
18 to obtain a higher yield of oil. However, chemically, the oil at the end of the process  
19 is the same as it was at the beginning of the process. In contrast, the processes used to  
20 create the cooking oils used in the Products go well beyond mere extraction  
21 techniques, resulting in chemically altered goods. These cooking oils typically  
22 undergo several distinct chemical processes: (1) extraction; (2) alkali-neutralization;  
23 (3) bleaching/deodorizing; and (4) conditioning:

24           a. To extract crude oil from sunflower seeds and corn kernels, the  
25 manufacturer first applies a physical press to the seeds or kernels, which typically  
26 extracts a fraction of the extractable oil. Sunflower oil extraction also utilizes  
27 hydrolysis to remove gums (phospholipids) that are naturally occurring in the seed.  
28 As part of the extraction process, the sunflower seeds or corn kernels are then treated

1 with Hexane, a carcinogenic chemical linked to cancer and other major health  
2 problems in studies conducted on animals, to extract the remaining crude oil. Residual  
3 Hexane may be present in the final product.

4           b. After it has been extracted from the sunflower seed or corn kernel,  
5 the crude oil is neutralized with an alkaline soap solution that separates and removes  
6 the free fatty acids ("FFAs"). The soap solution is typically separated from the  
7 neutralized oil by centrifugal separation. Potassium Hydroxide, a corrosive acid, is  
8 used to facilitate the reaction between the alkaline solution and FFAs. Sunflower oil  
9 also undergoes dewax crystallization, which chills the oil to crystallize and remove  
10 sunflower wax from the oil.

11           c. After neutralization, the cooking oils are bleached and deodorized  
12 with additional cleaning solutions to lighten the oil's color and minimize its odor.

13           d. After being bleached and deodorized, the cooking oils are  
14 conditioned by the use of a high-concentration Phosphoric Acid, consumption of which  
15 has been linked to lower bone density as well as chronic kidney disease.

16       29. In addition, the Products contain one or more of the following synthetic  
17 substances:

18           a. Maltodextrin: A powder additive often used in processed foods as  
19 a filler or thickener. Maltodextrin is highly glycemic, refined, carbohydrate complex  
20 derived from partial chemical hydrolysis of corn, rice, or potato starch into a white  
21 spray-dried powder.

22           b. Evaporated Cane Syrup: Sometimes also labeled as evaporated  
23 cane juice, evaporated cane syrup is produced by pressing sugar cane and then boiling  
24 it at high heat, which often destroys the sugar cane's beneficial nutrients. It is then  
25 further refined by crystallization through evaporation, rendering the final ingredient a  
26 chemical of no nutrient value, similar to white sugar.

27           c. Citric Acid: A chemically-synthesized acid that is commonly used  
28 in food as an acidifier and/or emulsifier (to keep fats from separating). The

1 fermentation process used to synthesize citric acid includes extraction with sulfuric  
2 acid.

3 d. Dextrose: A commercially produced sugar derived from plant  
4 starch (usually corn or potato) to add sweetness to processed food. Commercially,  
5 Dextrose is produced by employing chemical enzymes to completely break down, or  
6 hydrolyze, corn starch.

7 30. In addition, the Products are puffed or baked at high temperatures:  
8 Original Tings are baked corn sticks, Pirate's Booty are baked rice and corn puffs,  
9 Potato Flyers are baked potato chips, and Smart Puffs are baked cheese puffs.  
10 Typically, the "puffing" of rice and corn utilizes temperatures up to 520 degrees  
11 Fahrenheit. The high puffing and baking temperatures of starchy foods catalyzes a  
12 chemical synthesis of Acrylamide, a tasteless genotoxic chemical byproduct that has  
13 been linked to cancer in animal studies.

#### 14 CLASS ACTION ALLEGATIONS

15 31. Plaintiff seeks relief in her individual capacity and seeks to represent a  
16 class consisting of all others who are similarly situated. Pursuant to Fed. R. Civ. P.  
17 23(a) and (b)(2) and/or (b)(3), Plaintiff seeks certification of a class initially defined as  
18 follows:

19 All California consumers who from July 30, 2009 until the date notice is  
20 disseminated to the Class (the "Class Period"), purchased the following  
21 Pirate Brands Products: (1) Original Tings Crunchy Corn Sticks, (2)  
22 Pirate's Booty Aged White Cheddar Rice and Corn Puffs, (3) Pirate's  
23 Booty Barrrrrbeque Rice and Corn Puffs, (4) Pirate's Booty Chocolate  
24 Rice and Corn Puffs, (5) Pirate's Booty New York Pizza Rice and Corn  
25 Puffs, (6) Pirate's Booty Sour Cream & Onion Rice and Corn Puffs, (7)  
26 Pirate's Booty Veggie Rice and Corn Puffs, (8) Potato Flyers Baked Potato  
27 Chips Homestyle Barbeque, (9) Potato Flyers Baked Potato Chips Sour  
28

1 Cream & Onion, (10) Potato Flyers Baked Potato Chips The Original, and  
2 (11) Smart Puffs Real Wisconsin Cheddar Baked Cheese Puffs.

3 32. Excluded from the Class are Defendant and their subsidiaries and affiliates,  
4 Defendant's executives, board members, legal counsel, the judges and all other court  
5 personnel to whom this case is assigned, their immediate families, and those who  
6 purchased the Products for the purpose of resale.

7 33. Numerosity. Fed. R. Civ. P. 23(a)(1). The Class is so numerous that  
8 joinder of all members is unfeasible and not practicable. While the precise number of  
9 Class members has not been determined at this time, Plaintiff is informed and believes  
10 that many thousands or millions of consumers have purchased the Products.

11 34. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of  
12 law and fact common to the Class, which predominate over any questions affecting only  
13 individual Class members. These common questions of law and fact include, without  
14 limitation:

- 15 a. Whether Defendant conveyed to the class that the Products  
16 were "all natural";
  - 17 b. Whether Defendant's claim that the Products are "all natural"  
18 is true or false or likely to deceive a reasonable consumer;
  - 19 c. Whether Defendant violated California Business and  
20 Professions Code § 17200, *et seq.*;
  - 21 d. Whether Defendant violated California Civil Code § 1750, *et*  
22 *seq.*;
  - 23 e. Whether Defendant breached an express warranty;
  - 24 f. Whether Defendant violated California Business and Professions  
25 Code § 17500, *et seq.*; and
  - 26 g. The nature of the relief, including equitable relief, to which  
27 Plaintiff and the Class members are entitled.
- 28

1       35.     Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the  
2 claims of the Class. Plaintiff and all Class members were exposed to uniform practices  
3 and sustained injury arising out of and caused by Defendant's unlawful conduct.

4       36.     Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly  
5 and adequately represent and protect the interests of the members of the Class.  
6 Plaintiff's Counsel are competent and experienced in litigating class actions.

7       37.     Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is  
8 superior to other available methods for the fair and efficient adjudication of this  
9 controversy since joinder of all the members of the Class is impracticable.  
10 Furthermore, the adjudication of this controversy through a class action will avoid the  
11 possibility of inconsistent and potentially conflicting adjudication of the asserted  
12 claims. There will be no difficulty in the management of this action as a class action.

13       38.     Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). Defendant's  
14 misrepresentations are uniform as to all members of the Class. Defendant has acted or  
15 refused to act on grounds that apply generally to the Class, so that final injunctive relief  
16 or declaratory relief is appropriate with respect to the Class as a whole.

17                               **FIRST CAUSE OF ACTION**

18                               **(Violations of California Unfair Competition Law –**

19                               **Cal. Bus. & Prof. Code § 17200, *et seq.*)**

20       39.     Plaintiff incorporates by reference and re-alleges the substantive  
21 allegations set forth above.

22       40.     Defendant engaged in unlawful, unfair, and/or fraudulent conduct under  
23 California Business & Professional Code § 17200, *et seq.*, by representing that the  
24 Products are "All Natural," when they are not.

25       41.     Defendant's conduct is unlawful in that it violates the Consumers Legal  
26 Remedies Act, California Civil Code § 1750, *et seq.*, the False Advertising Law,  
27 California Business & Professions Code § 17500.

42. Defendant's conduct is unfair in that it offends established public policy and/or is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to Plaintiff and Class members. The harm to Plaintiff and Class members arising from Defendant's conduct outweighs any legitimate benefit Defendant derived from the conduct. Defendant's conduct undermines and violates the stated spirit and policies underlying the Consumers Legal Remedies Act and the False Advertising Law as alleged herein.

43. Defendant's actions and practices constitute "fraudulent" business practices in violation of the UCL because, among other things, they are likely to deceive reasonable consumers. Plaintiff relied on Defendant's representations and omissions.

44. As a direct and proximate result of Defendant's violations, Plaintiff suffered injury in fact and lost money because she purchased and paid the price she paid believing the Products to be all natural when they were not.

45. Plaintiff, on behalf of herself and Class members, seeks equitable relief in the form of an order requiring Defendant to refund Plaintiff and all Class members all monies they paid for the Products, and injunctive relief in the form of an order prohibiting Defendant from engaging in the alleged misconduct and performing a corrective advertising campaign.

## **SECOND CAUSE OF ACTION**

### **(Violation of Consumer Legal Remedies Act – Civil Code § 1750, *et seq.*)**

46. Plaintiff incorporates by reference and re-alleges the substantive allegations set forth above.

47. Plaintiff brings this claim individually and on behalf of the Class.

48. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.* (the "CLRA") because Defendant's actions and conduct described herein constitute transactions that have resulted in the sale or lease of goods or services to consumers.

1 49. Plaintiff and each member of the Class are consumers as defined by  
2 California Civil Code §1761(d).

3 50. The Products are goods within the meaning of Civil Code §1761(a).

4 51. Defendant violated the CLRA in at least the following respects:

5 a. in violation of §1770(a)(2), Defendant misrepresented the source of  
6 the Products as all natural, when they were not;

7 b. in violation of §1770(a)(5), Defendant represented that the Products  
8 have approval, characteristics, and uses or benefits which they do not have;

9 c. in violation of §1770(a)(7), Defendant represented that the Products  
10 are of a particular standard, quality or grade, or that the Products are of a particular  
11 style, or model, when they are of another;

12 d. in violation of §1770(a)(9), Defendant has advertised the Products  
13 with intent not to sell them as advertised; and

14 e. in violation of §1770(a)(16), Defendant represented that the  
15 Products have been supplied in accordance with previous representations, when they  
16 were not.

17 52. Defendant violated the Act by representing the Products as all natural  
18 when the Products were not all natural. Defendant knew, or should have known, that  
19 the representations and advertisements were false and misleading.

20 53. Defendant's acts and omissions constitute unfair, deceptive, and  
21 misleading business practices in violation of Civil Code §1770(a).

22 54. On July 30, 2013, Plaintiff notified Pirate Brands in writing by certified  
23 mail of the violations alleged herein and demanded that Pirate Brands remedy those  
24 violations.

25 55. Should Defendant fail to rectify or agree to rectify the problems associated  
26 with the actions detailed above and give notice to all affected consumers within 30 days  
27 of the date of written notice pursuant to §1782 of the California Act, Plaintiff will  
28 amend her Complaint to add claims for actual, punitive, and statutory damages pursuant



1 to the CLRA. Plaintiff and the Class also seek a Court order enjoining the above-  
2 described wrongful acts and practices of Defendant and for restitution, disgorgement,  
3 statutory damages, and any other relief that the Court deems proper.

4 56. Defendant's conduct is malicious, fraudulent, and wanton in that  
5 Defendant intentionally and knowingly provided misleading information to the public.

6 **THIRD CAUSE OF ACTION**

7 **(Breach of Express Warranty)**

8 57. Plaintiff incorporates by reference and re-alleges the substantive  
9 allegations set forth above.

10 58. Plaintiff brings this claim individually and on behalf of the Class.

11 59. Plaintiff and each member of the Class formed a contract with Defendant at  
12 the time Plaintiff and the other members of the Class purchased one or more of the  
13 Products. The terms of that contract include the promises and affirmations of fact made  
14 by Defendant on the packaging of the Products, as described above. The Products'  
15 packaging constitutes express warranties, became part of the basis of the bargain, and  
16 are part of a standardized contract between Plaintiff and the members of the Class on  
17 the one hand, and Defendant on the other.

18 60. All conditions precedent to Defendant's liability under this contract  
19 have been performed by Plaintiff and the Class.

20 61. Defendant breached the terms of this contract, including the express  
21 warranties, with Plaintiff and the Class by not providing the products that could  
22 provide the benefits promised, i.e. that the Products were "all natural."

23 62. As a result of Defendant's breach of their contract, Plaintiff and the Class  
24 have been damaged in the amount of the purchase price of any and all of the Products  
25 they purchased.

26 ///

27 ///

28 ///

**FOURTH CAUSE OF ACTION**

**(Violation of California False Advertising Law –**

**Cal. Bus. & Prof. Code § 17500, *et seq.*)**

63. Plaintiff incorporates by reference and re-alleges the substantive allegations set forth above.

64. Defendant publicly disseminated untrue or misleading advertising or intended not to sell the Products as advertised in violation of California Business & Professional Code § 17500, *et seq.*, by representing that the Products are “All Natural,” when they are not.

65. Defendant committed such violations of the False Advertising Law with actual knowledge or in the exercise of reasonable care should have known was untrue or misleading.

66. Plaintiff reasonably relied on Defendant’s representations and/or omissions made in violation of California Business & Professional Code § 17500, *et seq.*

67. As a direct and proximate result of Defendant’s violations, Plaintiff suffered injury in fact and lost money because she purchased and paid the price she paid believing the Products to be all natural when they were not.

68. Plaintiff, on behalf of herself and Class members, seeks equitable relief in the form of an order requiring Defendant to refund Plaintiff and all Class members all monies they paid for the Products, and injunctive relief in the form of an order prohibiting Defendant from engaging in the alleged misconduct and performing a corrective advertising campaign.

**JURY DEMAND**

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the other members of the Class proposed in this Complaint, respectfully requests that the Court enter judgment in her favor and against Defendant, as follows:

1 A. Declaring that this action is a proper class action, certifying the Class as  
2 requested herein, designating Plaintiff as Class Representative and appointing the  
3 undersigned counsel as Class Counsel;

4 B. Ordering Defendant to pay actual damages (and no less than the statutory  
5 minimum damages) and equitable monetary relief to Plaintiff and the other members of  
6 the Class;

7 C. Ordering Defendant to pay punitive damages, as allowable by law, to  
8 Plaintiff and the other members of the Class;

9 D. Ordering Defendant to pay statutory damages, as allowable by the statutes  
10 asserted herein, to Plaintiff and the other members of the Class;

11 E. Awarding injunctive relief as permitted by law or equity, including  
12 enjoining Defendant from continuing the unlawful practices as set forth herein, and  
13 ordering Defendant to engage in a corrective advertising campaign;

14 F. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff  
15 and the other members of the Class;

16 G. Ordering Defendant to pay both pre- and post-judgment interest on any  
17 amounts awarded; and

18 H. Ordering such other and further relief as may be just and proper.

19  
20 DATED: July 30, 2013

RIDOUT LYON + OTTOSON, LLP

21  
22 By: 

23 CHRISTOPHER P. RIDOUT, ESQ.

24 DEVON M. LYON, ESQ.

25 CALEB LHMARKE, ESQ.

26 Attorneys for Plaintiffs and the Class  
27  
28

**AFFIDAVIT OF DEVON M. LYON**

I, Devon M. Lyon, declare as follows:

1. I am an attorney with the law firm of Ridout, Lyon + Ottoson, LLP, counsel for Plaintiff Nicolle DiSimone ("Plaintiff") in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Based on my research and personal knowledge, Defendant Robert's American Gourmet Food, LLC (hereinafter "Defendant") does business within the County of Los Angeles and Plaintiff purchased Defendant's products within the County of Los Angeles, as alleged in the Class Action Complaint.

I declare under penalty of perjury under the laws of the United States and the State of California this 30th day of July, 2013 in Los Angeles, California that the foregoing is true and correct.



Devon M. Lyon, Esq.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Gary A. Feess and the assigned discovery Magistrate Judge is Frederick F. Mumm.

The case number on all documents filed with the Court should read as follows:

**CV13- 5493 GAF (FFMx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

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U

NICOLLE DISIMONE, individually and on behalf of all  
others similarly situated,

*Plaintiff*

v.

ROBERT'S AMERICAN GOURMET FOOD, LLC, a Delaware  
Limited Liability Company dba PIRATE BRANDS

*Defendant*

Civil Action No.

CV 13-05493-GAF  
(FTMx)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Robert's American Gourmet Food, LLC ("Pirate Brands")  
100 Roslyn Ave.  
Sea Cliff, NY 11579

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:


Christopher P. Ridout, Esq.  
Devon M. Lyon, Esq.  
RIDOUT LYON + OTTOSON, LLP  
555 E. Ocean Blvd., Ste. 500  
Long Beach, CA 90802  
(562) 216-7380

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: JUL 30 2013

*Marilyn Davis*  
Signature of Clerk or Deputy Clerk



1227

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) NICOLLE DISIMONE, individually and on behalf of all others similarly situated	<b>DEFENDANTS</b> ROBERT'S AMERICAN GOURMET FOOD, LLC, a Delaware Limited Liability Company dba PIRATE BRANDS
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Christopher P. Ridout, Esq. (SBN 143931), Devon M. Lyon, Esq. (SBN 218293) Ridout, Lyon + Ottoson, LLP. Add: 555 E. Ocean Blvd., Ste., 500, Long Beach, CA 90802, Tel: (562) 216-7380; Fax: (562) 216-7385	<b>Attorneys (If Known)</b>

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td></td> <td align="center"><b>PTF</b></td> <td align="center"><b>DEF</b></td> <td></td> <td align="center"><b>PTF</b></td> <td align="center"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input checked="" type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. ORIGIN** (Place an X in one box only.)

☒ 1 Original Proceeding   
 ☐ 2 Removed from State Court   
 ☐ 3 Remanded from Appellate Court   
 ☐ 4 Reinstated or Reopened   
 ☐ 5 Transferred from another district (specify):   
 ☐ 6 Multi-District Litigation   
 ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT:** JURY DEMAND: ☒ Yes    ☐ No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION** under F.R.C.P. 23: ☒ Yes    ☐ No

**MONEY DEMANDED IN COMPLAINT:** \$

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 Violation of California's Unfair Competition Law; Consumers Legal Remedies Act; California False Advertising Law; Breach of Express Warranties; Bus & Prof 1750

**VII. NATURE OF SUIT** (Place an X in one box only.)

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage-Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 535 General <input type="checkbox"/> 540 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE / PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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**FOR OFFICE USE ONLY:** Case Number:

CV 13-05493

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Incorporated in Delaware and principal place of business in New York

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note: In land condemnation cases, use the location of the tract of land involved.**

**X. SIGNATURE OF ATTORNEY (OR PRO PER)**

Date July 30, 2013

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

**Key to Statistical codes relating to Social Security Cases:**

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))