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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EDL

ROBERT FIGY and MARY SWEARINGEN, for themselves and on behalf of all others similarly situated,

Plaintiffs,

vs.

FRITO-LAY NORTH AMERICA, INC.,

Defendant.

Case No. CV 13 3988

CLASS ACTION AND REPRESENTATIVE ACTION COMPLAINT FOR EQUITABLE AND INJUNCTIVE RELIEF

Action Filed: August 27, 2013

Plaintiffs ROBERT FIGY and MARY SWEARINGEN ("Plaintiffs") bring this lawsuit against Defendant FRITO-LAY NORTH AMERICA, INC. ("FRITO-LAY" or "Defendant") based upon their personal knowledge as to his acts and upon information and belief as to all other matters.

INTRODUCTION

1. This case seeks to recover for the injuries suffered by the Plaintiffs and the Class as a direct result of the Defendant's unlawful sale of misbranded food products. Defendant's actions violate the unlawful prong of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 ("UCL") and the Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.* ("CLRA"). Defendant packaged and labeled its food products in violation of California's Sherman Law which adopts, incorporates, and is, in all relevant aspects, identical to the federal Food Drug & Cosmetic Act, 21 U.S.C. § 301 *et seq.* ("FDCA") and the regulations adopted pursuant to that act. These violations render Defendant's food products "misbranded."

2. Under California law, misbranded food products cannot be legally sold or possessed, have no economic value and are legally worthless. Indeed, the sale or possession of misbranded food products is a criminal act in California.

3. By selling such illegal products to the unsuspecting Plaintiffs, the Defendant profited at the Plaintiffs' expense and unlawfully deprived Plaintiffs of the money they paid to purchase food products that were illegal to sell, possess or resell and had no economic value.

4. The "Class Period" is August 27, 2009 to the present.

5. "Purchased Products" are those products that were purchased by Plaintiffs during the Class Period. Plaintiffs ROBERT FIGY and MARY SWEARINGEN purchased FRITO-LAY'S ROLD GOLD STICKS PRETZELS, ROLD GOLD THINS PRETZELS and ROLD GOLD TINY TWISTS PRETZELS ("ROLD GOLD PRETZELS"). Photographs of the Purchased Product are attached as Exhibits 1-3.

6. "Class Products" are the Purchased Products bearing the identical unlawful and illegal label statements. FRITO-LAY'S ROLD GOLD PRETZELS have illegal labels with improper nutrient content claims on products containing disqualifying levels of sodium. The Class Products are either labeled "LOW FAT" or "FAT FREE" despite containing a disqualifying amount of sodium. Because of that disqualifying level of sodium, Defendant must either 1) not make the "LOW FAT" or "FAT FREE" statement, or 2) disclose the disqualifying level of sodium immediately adjacent to the "LOW FAT" or "FAT FREE" statement. Defendant's nutrient content claims are improper because Defendant failed to include disclosure statements required by law that are designed to inform consumers of the inherently unhealthy nature of those products in violation of 21 C.F.R. § 101.13(h), which has been incorporated in California's Sherman Law. Additionally, FRITO LAY'S ROLD GOLD PRETZELS are labeled "All Natural" despite the fact they contain artificial, synthetic and unnatural preservatives and ingredients, specifically "niacin, reduced iron, thiamin mononitrate, riboflavin, folic acid and ammonium bicarbonate."

PARTIES, JURISDICTION AND VENUE

7. Plaintiffs ROBERT FIGY and MARY SWEARINGEN are a citizens of the state of California. During the Class Period, Plaintiffs purchased, in San Francisco, California, FRITO-LAY'S ROLD GOLD PRETZELS that were unlawfully labeled "LOW FAT" or "FAT FREE" despite containing a disqualifying amount of sodium necessitating a disclosure statement not present on the label. The ROLD GOLD PRETZELS were also labeled "All Natural" despite the fact they contain artificial, synthetic and unnatural preservatives and ingredients. Plaintiffs purchased FRITO-LAY's Rold Gold Sticks Pretzels, Rold Gold Thins Pretzels and Rold Gold Tiny Twists Pretzels

(Low Fat version). Plaintiffs purchased those products regularly and during most months throughout the Class Period, purchased in excess of one hundred bags of those products during that time.

8. Defendant FRITO-LAY is a Texas corporation with its principal place of business at 7701 Legacy Drive, Plano Texas. FRITO-LAY manufactures, advertises, markets and sells misbranded food products to tens of thousands of consumers nationwide, including many residing in California.

9. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because this is a Class Action in which: (1) there are over 100 members in the proposed Class; (2) members of the proposed Class have a different citizenship from Defendant; and (3) the claims of the proposed Class members exceed $5,000,000 in the aggregate.

10. The Court has personal jurisdiction over Defendant because a substantial portion of the wrongdoing alleged in this Complaint occurred in California, Defendant is authorized to do business in California, Defendant has sufficient minimum contacts with California, and Defendant otherwise intentionally availed itself of the markets in California through the promotion, marketing and sale of products, sufficient to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

11. Because a substantial part of the events or omissions giving rise to these claims occurred in this District and because the Court has personal jurisdiction over Defendant, venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) and (b).

FACTUAL ALLEGATIONS

12. FRITO-LAY'S ROLD GOLD PRETZELS, with their distinctive packaging, are available at most major supermarket chains throughout California. The following FRITO-LAY's ROLD GOLD PRETZELS have an unlawful and misleading "LOW FAT" or "FAT FREE" claim despite containing disqualifying levels of sodium, which necessitates a disclaimer immediately adjacent to those low fat or fat free claims. Those disqualifying statements are not present on the labels of :

- **Rold Gold Sticks Pretzels**
- **Rold Gold Thins Pretzels**
- **Rold Gold Tiny Twists (Low Fat) Pretzels**
- **Rold Gold Fat Free Tiny Twists Pretzels**

13. All of those products listed in paragraph 12, as well as FRITO-LAY'S Rold Gold Rods Pretzels state "All Natural" on the front-of-package despite the fact that each of those products contain the same artificial, synthetic and unnatural ingredients, namely "niacin, reduced iron,

thiamin mononitrate, riboflavin, folic acid and ammonium bicarbonate."

14. A true and correct copy of the Rold Gold Sticks Pretzels label is attached hereto as **Exhibit "1."**

15. A true and correct copy of the Rold Gold Thins Pretzels label is attached hereto as **Exhibit "2."**

16. A true and correct copy of the Rold Gold Tiny Twists Pretzels label is attached hereto as **Exhibit "3."** Plaintiffs purchased the Rold Gold Sticks Pretzels, Rold Gold Thins Pretzels and Rold Gold Tiny Twists Pretzels (Low Fat version) regularly, typically monthly, during the class period.

17. Throughout the Class Period, the front-of-package label for Rold Gold Sticks Pretzels, Rold Gold Thins Pretzels and Rold Gold Tiny Twists Pretzels (Low Fat version) included the statement "All Natural." The products Plaintiffs purchased included those statements.

18. Throughout the Class Period, despite the label statement that those Purchased Products were "All Natural," those Purchased Products included artificial, synthetic and unnatural ingredients "niacin, reduced iron, thiamin mononitrate, riboflavin, folic acid and ammonium nitrate."

19. Throughout the Class Period, the front-of-package label for Rold Gold Sticks Pretzels included the statement "FAT FREE."

20. The Rold Gold Sticks Pretzels Plaintiffs' purchased included the statement "FAT FREE."

21. Throughout the Class Period, Rold Gold Sticks Pretzels contained more than 480 milligrams of sodium per 50 grams.

22. Throughout the Class Period, Rold Gold Sticks Pretzels contained 875 mg of sodium per 50 g.

23. During the Class Period, Defendant sold and distributed Rold Gold Sticks Pretzels products that did not state "see nutrition information for sodium content" adjacent to the "FAT FREE" statement on the front-of-package label.

24. Throughout the Class Period, the front-of-package label for Rold Gold Thins Pretzels included the statement "LOW FAT."

25. The Rold Gold Thins Pretzels Plaintiffs purchased included the statement "LOW FAT."

26. Throughout the Class Period, Rold Gold Thins Pretzels contained more than 480 mg of sodium per 50 g.

27. Throughout the Class Period, Rold Gold Thins Pretzels contained 875 mg of sodium per 50 g.

28. During the Class Period, Defendant sold and distributed Rold Gold Thins Pretzels products that did not state "see nutrition information for sodium content" adjacent to the "LOW FAT" statement on the front-of-package label.

29. Throughout the Class Period, the front-of-package label for Rold Gold Tiny Twists Pretzels included the statement "LOW FAT."

30. The Rold Gold Thins Pretzels Plaintiffs purchased included the statement "LOW FAT."

31. Throughout the Class Period, Rold Gold Tiny Twists Pretzels contained more than 480 mg of sodium per 50 g.

32. Throughout the Class Period, Rold Gold Tiny Twists Pretzels contained 875 mg of sodium per 50 g.

33. During the Class Period, Defendant sold and distributed Rold Gold Tiny Twists Pretzels products that did not state "see nutrition information for sodium content" adjacent to the "LOW FAT" statement on the front-of-package label.

34. Throughout the Class Period, Defendant also sold Rold Gold Fat Free Tiny Twists Pretzels that had the identical failure to include the statement of the disqualifying level of sodium on the label and had the identical "All Natural" statement despite containing the same artificial, synthetic and unnatural ingredients "niacin, reduced iron, thiamin mononitrate, riboflavin, folic acid and ammonium bicarbonate." Throughout the Class Period, Defendant also sold Rold Gold Rods Pretzels that had the identical "All Natural" statement despite containing the same artificial, synthetic and unnatural ingredients "niacin, reduced iron, thiamin monomitrate, riboflavin, folic acid and ammonium bicarbonate."

35. The Rold Gold Fat Free Tiny Twists Pretzels and Rold Gold Rods Pretzels were not purchased by Plaintiffs, but the products are included within the class as a substantially similar products. They have the identical unlawful misbranding.

36. Like the Purchased Products, throughout the Class Period, the front-of-package label for Rold Gold Fat Free Tiny Twists Pretzels included a positive attribute statement.

37. Specifically, the label stated "FAT FREE."

38. The label also stated "All Natural."

39. Throughout the Class Period, Rold Gold Fat Free Tiny Twists Pretzels contained more than 480 mg of sodium per 50 g.

40. Throughout the Class Period, Rold Gold Fat Free Tiny Twists Pretzels contained 804 milligrams of sodium per 50 g.

41. Throughout the Class Period, despite including the label statement that the product was "All Natural," Rold Gold Fat Free Tiny Twists included artificial, synthetic and unnatural ingredients "niacin, reduced iron, thiamin mononitrate, riboflavin, folic acid and ammonium bicarbonate."

42. During the Class Period, Defendant sold and distributed Rold Gold Fat Free Tiny Twists Pretzels products that did not state "see nutritional information for sodium content" adjacent to the "FAT FREE" statement on the front-of-package label.

43. Like the Purchased Products, throughout the Class Period, the front-of-package label for Rold Gold Rods Pretzels included the statement "All Natural."

44. Throughout the Class Period, despite the label statement that the product was "All Natural," those Rold Gold Rods Pretzels included artificial, synthetic and unnatural ingredients "niacin, reduced iron, thiamin mononitrate, riboflavin, folic acid and ammonium nitrate."

To appeal to consumer preferences, Defendant has repeatedly made improper nutrient content claims on products containing disqualifying levels of fat, saturated fat, cholesterol or sodium. These nutrient content claims are improper because Defendant failed to include disclosure statements required by law that are designed to inform consumers of the inherently unhealthy nature of those products in violation of 21 C.F.R. § 101.13(h), which has been incorporated in California's Sherman Law. 21 C.F.R. § 101.13 (h)(l) provides that:

> If a food ... contains more than 13.0 g of fat, 4.0 g of saturated fat, 60 milligrams (mg) of cholesterol, or 480 mg of sodium per reference amount customarily consumed, per labeled serving, or, for a food with a reference amount customarily consumed of 30 g or less ... per 50 g ... then that food must bear a statement disclosing that the nutrient exceeding the specified level is present in the food as follows: "See nutrition information for __ content" with the blank filled in with the identity of the nutrient exceeding the specified level, e.g., "See nutrition information for fat content.

45. 21 C.F.R. § 1.21 establishes that failure to disclose material facts is a violation of the disclosure rules and is *per se* "misleading."

46. Defendant repeatedly violates these provisions on its labels which prominently states "LOW FAT" or "FAT FREE" claim on the label despite disqualifying levels of sodium that exceed the 480 milligram disclosure threshold.

47. Pursuant to 21 C.F.R. § 101.13(h), Defendant is prohibited from making the unqualified nutrient claims of "LOW FAT" or "FAT FREE" claim on its food products if its products contain fat in excess of 13 grams, saturated fat in excess of 4 grams, cholesterol in excess

of 60 milligrams, or sodium in excess of 480mg per 50 grams, unless the product also displays a disclosure statement that informs consumers of the product's fat, saturated fat and sodium levels. These regulations are intended to ensure that consumers are not misled into the erroneous belief that products like FRITO-LAY'S ROLD GOLD PRETZELS that claim, for instance, to be low in fat or fat free, but actually has unhealthy sodium levels, is a healthy choice, because of the lack of fat.

48. Nevertheless, Defendant's products label states that this product is "LOW FAT" or "FAT FREE" without such a disclosure even though the products contain sodium in excess of 480 milligrams.

49. Based on the fat, saturated fat, cholesterol and sodium content in Defendant's (i) Rold Gold Sticks Pretzels, (ii) Rold Gold Thins Pretzels, and (iii) Rold Gold Tiny Twists Pretzels (Low Fat), pursuant to federal and California law, Defendant must include a warning statement adjacent to the "LOW FAT" or "FAT FREE" nutrient claim that informs consumers of the high levels of fat, saturated fat, cholesterol or sodium. Defendant's FRITO-LAY'S ROLD GOLD PRETZELS contain sodium exceeding 800 mg per 50 g of product. This triggers a disclosure statement requirement and no such disclosure statement currently exists on these products. Therefore, Defendant's Frito-Lay's Rold Gold Pretzels are misbranded as a matter of federal and California law and cannot be sold and because of this fact have no economic value and are legally worthless.

50. Likewise, Defendant's use of the term "All Natural" on products containing unnatural ingredients is unlawful.

51. 21 U.S.C. §343 (a)(1), which California's Sherman Law incorporates into California Law, deems a food misbranded if its label is "false or misleading in any particular. food manufacturers and distributors from making false or misleading statements on labels.

52. By stating on its labels that the Purchased Products are "All Natural," while the products contain artificial, synthetic and unnatural ingredients, Defendant violates California law that incorporated the § 343 (a)'s prohibition on false and misleading label statements.

53. Plaintiffs reasonably relied on the label representation and based and justified the decision to purchase FRITO-LAY'S ROLD GOLD PRETZELS, in substantial part, on the label representation. Also, Plaintiffs reasonably relied on the fact that the FRITO-LAY'S ROLD GOLD PRETZELS were not misbranded under the Sherman Law and were therefore legal to buy and possess. Plaintiffs would not have purchased FRITO-LAY'S ROLD GOLD PRETZELS had they known it was illegal to purchase and possess the products.

54. Plaintiffs reasonably relied on this label representation when making their purchase decisions and were misled by this "LOW FAT" or "FAT FREE" representation as described below. Plaintiffs also reasonably relied on the "All Natural" label statements when making their purchase decisions and were misled by that misrepresentation. Plaintiffs would not have purchased the FRITO-LAY'S ROLD GOLD PRETZELS had they known the truth about these products, i.e. that the products failed to only make positive contributions to Plaintiffs' diet and did contain one or more nutrients like sodium at levels in the food that increased the risk of disease or health related condition that is diet related. Plaintiffs had other food alternatives that satisfied such standards and Plaintiffs also had cheaper alternatives. Reasonable consumers would have been misled in the same manner as Plaintiffs.

55. FRITO-LAY uses the terms "LOW FAT," "FAT FREE" and "All Natural" to make its products appear healthier than a product that does not contain this unlawful nutrient content claim. This illegal label is used to increase sales and to charge a premium by making a product seem healthier than it is in reality.

56. FRITO-LAY sells a number of products with identical "LOW FAT" OR "FAT FREE" label statements including:

FRITO-LAY Rold Gold Pretzel Products
Rold Gold Sticks Pretzels – Ex.1
Rold Gold Thins Pretzels – Ex. 2
Rold Gold Tiny Twists Pretzels– Ex. 3
Rold Gold Fat Free Pretzels Tiny Twists

57 Each of the above listed FRITO-LAY ROLD GOLD PRETZEL products has the identical "LOW FAT" OR "FAT FREE" LABEL but contains over 480 mg of sodium per 50 g of product, without the necessary disclosure statement, "See nutrition information for sodium content".

58. FRITO-LAY also sells a number of products stating with the identical "All Natural" label statement, despite the fact that they all include artificial, synthetic and unnatural ingredients "niacin, reduced iron, thiamin mononitrate, riboflavin, folic acid and ammonium nitrate." Those FRITO-LAY products with that identical unlawful "All Natural" label statement include:

FRITO-LAY Rold Gold "All Natural" Pretzels
Rold Gold Sticks Pretzels - Ex. 1
Rold Gold Thins Pretzels - Ex. 2
Rold Gold Tiny Twists Pretzels (Low Fat) - Ex. 3
Rold Gold Fat Free Tiny Twists Pretzels
Rold Gold Rods Pretzels

59. At all times during the Class Period, the above listed FRITO-LAY ROLD GOLD PRETZEL products were misbranded by unlawfully stating "FAT FREE," "LOW FAT" and/or "All Natural."

60. Consumers paid a premium price for products that fail to comply with mandatory labeling requirements and standards established by law such that the products are misbranded and rendered unfit for sale. These products are illegal to sell or possess. In fact, the products are worthless due to this illegality and thus the unjustified premium paid for these products equals the purchase price.

61. Plaintiffs and the Class paid a premium price for FRITO-LAY ROLD GOLD PRETZEL products with the illegal nutrient content claim. Plaintiffs and the Class also paid a premium for FRITO-LAY ROLD GOLD PRETZEL products with the illegal "All Natural" claims. Plaintiffs and the Class have been damaged by FRITO-LAY's illegal conduct in that he purchased misbranded and worthless products that were illegal to sell or possess based on Defendant's illegal labeling of the products.

DEFENDANT'S CONDUCT IS UNLAWFUL

62. Plaintiffs' case is brought pursuant to the unlawful prong of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 ("UCL") and the California Legal Remedies Act, Cal. Civ. Code § 1750, et seq. Plaintiffs allege that Defendant packaged and labeled the Purchased Products and Class Products in violation of California's Sherman Law which adopts, incorporates, and is, in all relevant aspects, identical to the federal Food Drug & Cosmetics Act, 21 U.S.C. § 301 *et. seq.* ("FDCA"). Purchased Products and Class Products with the identical labeling violations are "misbranded."

63. FRITO-LAY's act of selling an illegally misbranded product violates Sherman Law § 110760 which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded. The sale of a misbranded product results in an independent violation of the unlawful prong of the UCL that is separate from any labeling violation.

64. Pursuant to Sherman Law § 11825, the sale of such a misbranded product constitutes a criminal act punishable by up to twelve months in jail. As a result, the injury to the Class arises from the Defendant illegally selling a product it misbranded, the sale of which is a criminal act. Plaintiffs and the Class have been unlawfully deprived of money because the Defendant sold them a worthless, illegal product that could not be legally sold or possessed. Due to the law's prohibition of possession of such a product, consumers have been unwittingly placed, solely and directly by FRITO-LAY's conduct, in a legal position that no reasonable consumer would choose. Consumers have thus been directly injured by the Defendant's illegal act of unlawfully selling them an illegal product. Such unlawful conduct by Defendant FRITO-LAY is actionable under California law irrespective of any reliance by consumers such as Plaintiffs.

65. Under California law, a food product that is misbranded cannot be legally manufactured, advertised, distributed, possessed or sold. These products are illegal to possess, have no economic value and are legally worthless. Indeed, the sale or possession of misbranded food is a criminal act in California. When Plaintiffs and the Class purchased an illegally misbranded product there is causation and injury even absent reliance on the misrepresentation that misbranded the product.

THE UCL's UNLAWFUL PRONG DOES NOT REQUIRE CONSUMER RELIANCE ON AN ILLEGAL LABEL

66. The unlawful sale of misbranded food products that are illegal to sell or possess– standing alone without any allegations of deception by Defendant other than the implicit misrepresentation that its products are legal to sell or possess, or any review of or reliance on the particular labeling claims by Plaintiffs – gives rise to Plaintiffs' cause of action under the UCL and the CLRA. In short, Defendant's injury causing unlawful conduct is the only necessary element needed for UCL liability. All Plaintiffs need to show is that they bought an unlawful product that they would not have otherwise purchased absent the Defendant's failure to disclose the material fact that the product was unlawful to sell or possess. Therefore, Plaintiffs' claims do not sound in fraud; instead, they allege strict liability pursuant to the above cited provisions of federal law and Sherman Law.

67. Under California law, which is identical to federal law, the sale of Defendant's products listed above are unlawful, because they are misbranded in violation of the Sherman Law.

68. FRITO-LAY's unlawful, identical ingredient lists render these products misbranded under California law.

69. In addition to the violations of law listed above, the Defendant has violated a number of additional California laws.

70. Defendant's Purchased Products and Class Products are misbranded under California Health & Safety Code § 110705 because words, statements and other information required by the Sherman Law to appear on his labeling either are missing or not sufficiently conspicuous.

71. Defendant violated California Health & Safety Code § 110760 which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded.

72. Defendant violated California Health & Safety Code § 110765 which makes it unlawful for any person to misbrand any food.

73. Defendant violated California Health & Safety Code § 110770 which makes it unlawful for any person to receive in commerce any food that is misbranded or to deliver or proffer for deliver any such food.

74. Defendant's act of selling a misbranded product violates Sherman Law § 110760 (unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded). The sale of a misbranded product results in an independent violation of the unlawful prong that is separate from the labeling violations listed above. When Plaintiffs purchased Defendant's misbranded products there was causation and injury even absent reliance on the misrepresentation/omission that misbranded the product. This injury arises from the unlawful sale of an illegal product that is a crime to sell and a crime to possess. Plaintiffs were deprived of money in an illegal sale and given a worthless illegal product in return. In addition, due to the law's prohibition of possession of such a product, consumers have been unwittingly placed by the Defendant's conduct in a legal position that no reasonable consumer would agree to be placed.

75. Thus, in this case, where Defendant unlawfully sold products containing the unlawful nutrient content and/or all natural claim there is: 1) a violation of specific labeling regulations and 2) a violation of the UCL unlawful prong due to the Defendant's sale of an illegal product that is unlawful to possess.

76. Plaintiffs would not have bought the misbranded food products if Defendant had disclosed the material fact that the misbranded food products were illegal to sell and possess. Plaintiffs were injured by the Defendant's unlawful act of selling an illegal product that was illegal to sell or possess.

CLASS ALLEGATIONS

77. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of the following "Class:" All persons in the United States who, within the Class Period, purchased one or more of the following FRITO-LAY products:

* FRITO LAY ROLD GOLD STICKS PRETZELS
* FRITO LAY ROLD GOLD THINS PRETZELS
* FRITO LAY ROLD GOLD TINY TWISTS PRETZELS
* FRITO LAY ROLD GOLD FAT FREE TINY TWISTS PRETZELS
* FRITO LAY ROLD GOLD RODS PRETZELS

78. The following persons are expressly excluded from the Class: (1) Defendant and its subsidiaries and affiliates; (2) all persons who make a timely election to be excluded from the proposed Class; (3) governmental entities; and (4) the Court to which this case is assigned and its staff.

79. This action can be maintained as a Class Action because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

80. Numerosity: Based upon Defendant's publicly available sales data with respect to the misbranded products at issue, it is estimated that the Class numbers in the thousands, and that joinder of all Class members is impracticable.

81. Common Questions Predominate: This action involves common questions of law and fact applicable to each Class member that predominate over questions that affect only individual Class members. Thus, proof of a common set of facts will establish the right of each Class member to recover. Questions of law and fact common to each Class member include, for example:

a. Whether Defendant engaged in unlawful business practices by failing to properly label its Purchased and Class Products sold to consumers;

b. Whether Defendant unlawfully sold illegal misbranded food products that were illegal to sell or possess;

c. Whether the Purchased and Class Products were misbranded as a matter of law;

d. Whether Defendant labeled and distributed food with identical unlawful "Fat Free," "Low Fat" and/or "All Natural" labels;

e. Whether Defendant violated California Bus. & Prof. Code § 17200 *et seq.*, the CLRA and the Sherman Law;

f. Whether Plaintiffs and the Class are entitled to equitable and injunctive relief; and

g. Whether Defendant's unlawful practices harmed Plaintiffs and the Class such that he would be entitled to restitution.

82. Typicality: Plaintiffs' claims are typical of the claims of the Class because Plaintiffs bought Defendant's Purchased Products during the Class Period. Defendant's unlawful actions concern the same business practices described herein irrespective of where he occurred or were experienced. Plaintiffs and the Class sustained similar injuries arising out of Defendant's conduct in violation of California law. The injuries of each member of the Class were caused directly by Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

83. Adequacy: Plaintiffs will fairly and adequately protect the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiffs have retained highly competent and experienced Class action attorneys to represent his interests and those of the members of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this Class action, and Plaintiffs and his counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

84. Superiority: There is no plain, speedy or adequate remedy other than by maintenance of this Class action. The prosecution of individual remedies by members of the Class will tend to establish inconsistent standards of conduct for Defendant and result in the impairment of Class members' rights and the disposition of his interests through actions to which he were not parties. Class action treatment will permit a large number of similarly situated persons to prosecute his common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a Class action. Class treatment of common questions of law and fact would

also be superior to multiple individual actions or piecemeal litigation in that Class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

85. The prerequisites to maintaining a Class action for injunctive or equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) are met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

86. The prerequisites to maintaining a Class action pursuant to Fed. R. Civ. P. 23(b)(3) are met as questions of law or fact common to Class members predominate over any questions affecting only individual members, and a Class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

87. Plaintiffs and Plaintiffs' counsel are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a Class action.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Business and Professions Code § 17200, *et seq.*

Unlawful Business Acts and Practices

88. Plaintiffs incorporate by reference each allegation set forth above.

89. Defendant's conduct constitutes unlawful business acts and practices.

90. Under California law, unlawful injury causing conduct, such as Defendant's unlawful sale of an illegal product, is the only element necessary for the UCL claim. No reliance is necessary. Plaintiffs' claims are based on California law identical to the federal law.

91. Defendant sold Purchased Products and Class Products in California and throughout the United States during the Class Period.

92. Defendant is a corporation and, therefore, is a "person" within the meaning of the Sherman Law.

93. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of Defendant's violations of the advertising provisions of Article 3 of the Sherman Law and the misbranded food provisions of Article 6 of the Sherman Law.

94. Defendant's business practices are unlawful under § 17200, *et seq.* by virtue of Defendant's violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*

95. Defendant sold Plaintiffs and the Class Purchased Products and Class Products that were not capable of being sold or held legally and have no economic value and which were legally worthless. Plaintiffs and the Class lost money as a direct result of Defendant's unlawful conduct.

96. As a result of Defendant's illegal business practices, Plaintiffs and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and to restore to any Class Member any money paid for the Purchased Products and Class Products.

97. Defendant's unlawful business acts present a threat and reasonable continued likelihood of injury to Plaintiffs and the Class.

98. As a result of Defendant's conduct, Plaintiffs and the Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future conduct by Defendant, and such other orders and judgments which may be necessary to disgorge Defendant's ill-gotten gains and restore any money paid for Defendant's Purchased Products by Plaintiffs and any money paid for Defendant's Class Products purchased by the Class.

SECOND CAUSE OF ACTION

Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*

99. Plaintiffs incorporate by reference each allegation set forth above.

100. This cause of action is brought pursuant to the CLRA. This cause of action does not currently seek monetary relief and is limited solely to injunctive relief. Plaintiffs intend to amend this Complaint to seek damages in accordance with the CLRA after providing Defendant's with notice pursuant to Cal. Civ. Code § 1782.

101. At the time of any amendment seeking damages under the CLRA, Plaintiffs will demonstrate that the violations of the CLRA by Defendant was willful and oppressive thus supporting an award of punitive damages.

102. Consequently, Plaintiffs and the Class will be entitled to actual and punitive damages against Defendant for its violations of the CLRA. In addition, pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiffs and the Class will be entitled to an order enjoining the above-described acts and practices, providing restitution to Plaintiffs and the Class, ordering payment of costs and attorneys' fees, and any other relief deemed appropriate and proper by the Court pursuant to Cal. Civ. Code § 1780.

103. Defendant's actions, representations and conduct have violated, and continue to violate the CLRA, because it extends to transactions that are intended to result, or which have resulted, in the sale of goods to consumers.

104. Defendant sold Purchased Products and Class Products in California and throughout the United States during the Class Period.

105. Plaintiffs and members of the Class are "consumers" as that term is defined by the CLRA in Cal. Civ. Code §1761(d).

106. Defendant's Purchased Products and Class Products were and are "goods" within the meaning of Cal. Civ. Code §1761(a).

107. By engaging in the conduct set forth herein, Defendant violated and continues to violate Sections 1770(a)(5) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair acts or practices in that it misrepresents the particular ingredients, characteristics, uses, benefits and quantities of the goods.

108. By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(7) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair acts or practices in that it misrepresents the particular standard, quality or grade of the goods.

109. By engaging in the conduct set forth herein, Defendant violated and continues to violate Section 1770(a)(9) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair acts or practices in that it advertises goods with the intent not to sell the goods as advertised.

110. By engaging in the conduct set forth herein, Defendant has violated and continues to violate Section 1770(a)(16) of the CLRA, because Defendant's conduct constitutes unfair methods of competition and unfair acts or practices in that it represents that a subject of a transaction has been supplied in accordance with a previous representation when it has not.

111. Plaintiffs were misled by the Defendant's failure to disclose the material fact that the misbranded food products were illegal to sell and possess. They were misled by the Defendant's implicit representation that the misbranded food products were legal to sell and possess. Plaintiffs relied on the Defendant's representation that the misbranded products were legal. Plaintiffs would not have bought the misbranded food products if the Defendant had disclosed the material fact that the misbranded food products were illegal to sell and possess. A reasonable person would find it important when determining whether to purchase a product that it is unlawful to sell or possess that product. A reasonable person would not knowingly commit a criminal act. In such a situation, classwide reliance will be presumed because the misrepresentation or omission is material. There is no impediment to establishing reliance on a classwide basis for the CLRA claim in this case because it can be established by showing that the alleged misrepresentation—that the Defendant's products

were legal—was material.

112. Plaintiffs request that the Court enjoin Defendant from continuing to employ the unlawful methods, acts and practices alleged herein pursuant to Cal. Civ. Code § 1780(a)(2). If Defendant is not restrained from engaging in these practices in the future, Plaintiffs and the Class will continue to suffer harm. At the present time, Plaintiffs do not seek damages pursuant to the CLRA and only seeks injunctive relief for his CLRA cause of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, for themselves and on behalf of all others similarly situated, and on behalf of the general public, prays for judgment against Defendant as follows:

A. For an order certifying this case as a national Class action and appointing Plaintiffs and their counsel to represent the Class;

B. For an order awarding, as appropriate, restitution pursuant to the UCL to Plaintiffs and the Class; for all causes of action other than the CLRA, as Plaintiffs do not seek monetary relief under the CLRA, but intend to amend their Complaint to seek such relief;

C. For an order requiring Defendant to immediately cease and desist from selling its Class Products listed in violation of law; enjoining Defendant from continuing to market, advertise, distribute, and sell these products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;

D. For all equitable remedies available pursuant to Cal. Civ. Code § 1780;

E. For an order awarding attorneys' fees and costs;

F. For an order awarding pre-and post-judgment interest; and

G. For an order providing such further relief as this Court deems proper.

Dated: August 27, 2013

By: Pierce Gore

Ben F. Pierce Gore (SBN 128515)
PRATT & ASSOCIATES
1871 The Alameda, Suite 425
San Jose, CA 95126
Telephone: (408) 429-6506
Fax: (408) 369-0752
pgore@prattattorneys.com

EXHIBIT 1

THE GOLD STANDARD
JIS CLA
JIS
FREE

...date, price and numbers
found be... price for each package.

Nutrition Facts

Serving Size 1 oz (28g/About 53 pretzels)
Servings Per Container 16

Amount Per Serving	
Calories 100	Calories from Fat 0
	% Daily Value*
Total Fat 0g	**0%**
Saturated Fat 0g	**0%**
Trans Fat 0g	
Cholesterol 0mg	**0%**
Sodium 490mg	**20%**
Potassium 70mg	**2%**
Total Carbohydrate 23g	**8%**
Dietary Fiber 1g	**4%**
Sugars 1g	
Protein 2g	

Vitamin A **0%**	•	Vitamin C 0%
Calcium **0%**	•	Iron 8%
Thiamin **8%**	•	Riboflavin 6%
Niacin **6%**	•	Phosphorus 2%
Magnesium **2%**		

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

Meg... values are ... may be higher or ... wer

* Percent Daily Values may be higher or lower depending on your calorie needs:

	Calories	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium		2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Fat 9 • Carbohydrate 4 • Protein 4

Ingredients: Enriched Flour (Wheat Flour ... in, Reduced Iron, Thiamin Mononitrate. ...riboflavin, Folic Acid), Salt, Corn Syrup. Ammonium Bicarbonate and Malt Extract. CONTAINS A WHEAT INGREDIENT.

No Preservatives.

FritoLay

FRITO-LAY, INC.
PLANO, TX 75024-4099
© 2011 FRITO-LAY NORTH AMERICA, INC.
U.S. Pat. 6,2...,...

Visit our website @ fritolay.com

even the
discriminating
pretzel lover.

Find us on
facebook

- ✓ No artificial flavors
- ✓ No preservatives
- ✓ No MSG
- ✓ 0g trans fat

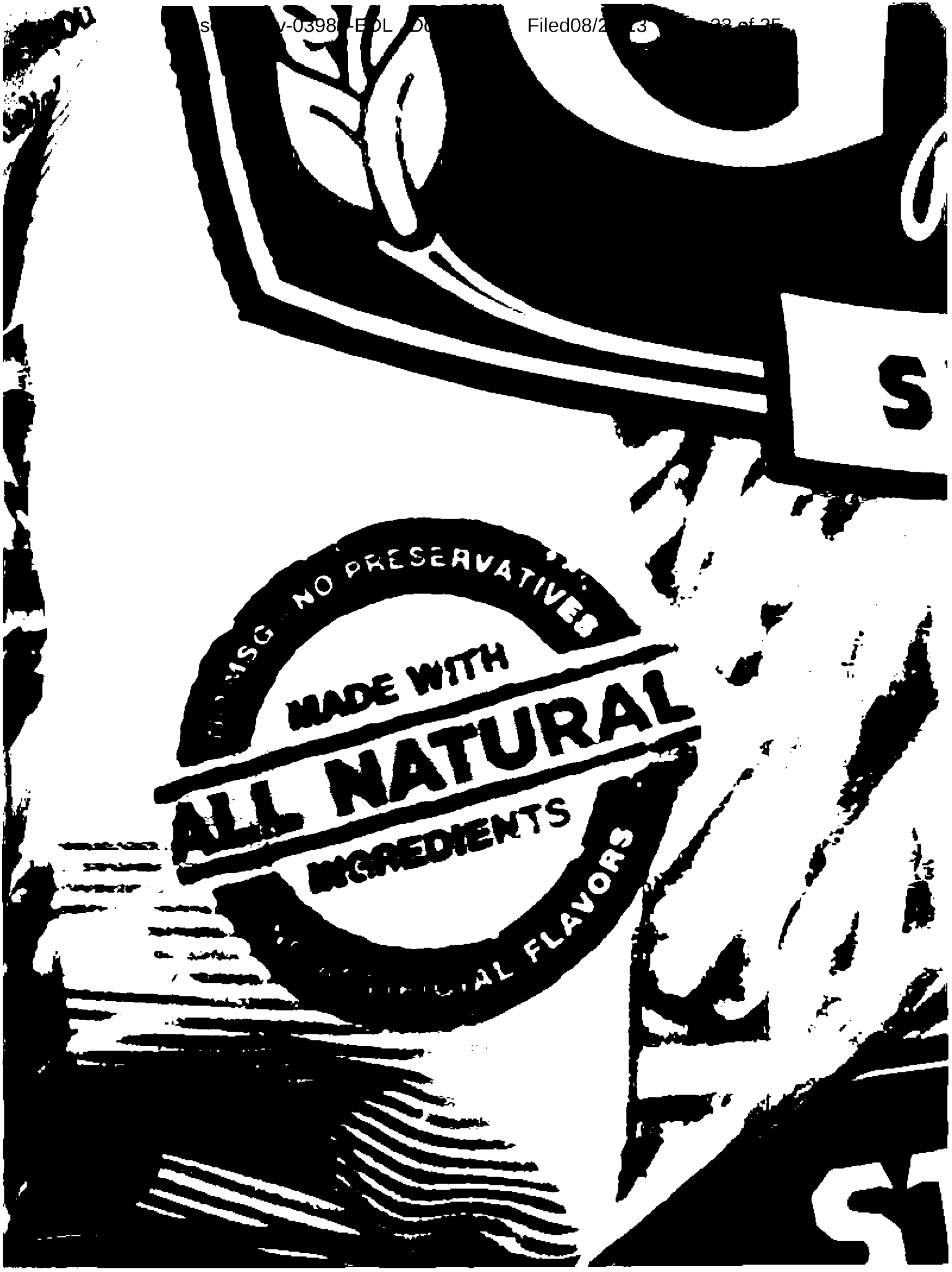
NO PRESERVATIVES
MADE WITH
ALL NATURAL
INGREDIENTS

EXHIBIT 2

EXHIBIT 3

JS 44 (Rev. 12/12)
Cand rev (1-15-13)

CIVIL COVER SHEET

The 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, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

ROBERT FIGY and MARY SWEARINGEN, for themselves and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Santa Clara
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Ben F. Pierce Gore
Pratt & Associates
1871 The Alameda, Suite 425
San Jose, CA 95126
(408) 429-6506

99

DEFENDANTS

FRITO-LAY NORTH AMERICA, INC.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

133988EDL

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities Employment
- ☐ 446 Amer. w/Disabilities Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. 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 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 USC § 1332(d)

Brief description of cause:
Food misbranding violation of Sherman Law

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Honorable Samuel Conti DOCKET NUMBER 3:2012-cv-01586

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) (X) **SAN FRANCISCO/OAKLAND** ( ) **SAN JOSE** ( ) **EUREKA**

DATE
August 27, 2013

SIGNATURE OF ATTORNEY OF RECORD
Pierce Gore

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

NORTHERN District of CALIFORNIA

EDL

ROBERT FIGY and MARY SWEARINGEN, for themselves and on behalf of all others similary situated,

Plaintiff(s)

v.

FRITO-LAY NORTH AMERICA, INC.

Defendant(s)

CV 13 3988

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
FRITO-LAY NORTH AMERICA, INC.
Address: 7701 Legacy Drive, Plano, TX 75024

Agent for Service of Process: CT Corporation System
818 W. Seventh St.
Los Angeles, CA 90017

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:
Ben F. Pierce Gore
PRATT & ASSOCIATES
1871 The Alameda, Suite 425
San Jose, CA 95126

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.

RICHARD W. WIEKING

AUG 27 2013

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

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 $ 0.00 for travel and $ 0.00 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: