

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PAUL GEORGE, individually and on behalf
of all others similarly situated in Missouri,

Plaintiff,

vs.

BLUE DIAMOND GROWERS,

Defendant.

Case No. _____

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

Defendant Blue Diamond Growers (“Blue Diamond” or “Defendant”) files this notice of removal of this action from the Circuit Court of the City of St. Louis, Missouri, to the United States District Court for the Eastern District of Missouri, Eastern Division, pursuant to 28 U.S.C. §§ 1332(a), 1332(d), and 1441.

I. INTRODUCTION

1. This action alleges violations of the Missouri Merchandising Practices Act (“MMPA”) and unjust enrichment in connection with the sale of All Natural Blue Diamond Almond Breeze Almond Milk in Missouri.

2. The Petition (“Complaint” or “Compl.”) was filed in the Circuit Court of the City of St. Louis on or about April 20, 2015.

3. Plaintiff is Paul George (“George” or “Plaintiff”), a resident of the City of St. Louis, Missouri. (Compl. ¶ 5.)

4. Defendant is Blue Diamond Growers, a California corporation with its principal place of business in California. (*See* Compl. ¶ 6.)

5. Plaintiff seeks an unspecified amount of compensatory damages and costs, and attorneys' fees for himself and on behalf of a proposed class of "[a]ll persons in Missouri who purchased All Natural Blue Diamond Almond Breeze Almond Milk in the five years preceding the filing of this Petition." (Compl. ¶ 31; *see also* Prayer for Relief.)

6. On May 20, 2015, Blue Diamond accepted service of the Complaint. A true and correct copy of all process, pleadings, orders, and other documents on file in the state court are attached hereto as Exhibit A.

7. In accordance with 28 U.S.C. § 1446(d), Blue Diamond is filing with the state court, and serving on Plaintiff, a Notice of Filing Notice of Removal. A true and correct copy of the Notice of Filing Notice of Removal is being filed concurrently herewith.

II. VENUE

8. Venue is proper in this Court under 28 U.S.C. § 1441(a) because the removed action was filed in the Circuit Court of the City of St. Louis, Missouri, a court encompassed by the Eastern District of Missouri, Eastern Division.

III. REMOVAL PURSUANT TO THE CLASS ACTION FAIRNESS ACT OF 2005

9. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1332(d), 1453. Under the Class Action Fairness Act ("CAFA"), federal district courts have original jurisdiction when: (1) the putative class consists of at least 100 members; (2) the citizenship of at least one proposed member of the class is different from that of Defendant; and (3) the aggregated amount in controversy exceeds \$5,000,000, exclusive of interests and costs. 28 U.S.C. § 1332(d).

A. There Are More Than 100 Putative Class Members

10. Plaintiff purports to represent a class of: “All persons in Missouri who purchased All Natural Blue Diamond Almond Breeze Almond Milk in the five years preceding the filing of this Petition.” (Compl. ¶ 31.)

11. Plaintiff admits that the class he purports to represent consists of “hundreds or thousands of purchasers.” (Compl. ¶ 33.)

12. Consequently, there are more than 100 putative class members.

B. Minimal Diversity Exists Between the Parties

13. At the time this lawsuit was filed and, on information and belief, at all times since, Plaintiff was and is a citizen of Missouri. (*See* Compl. ¶ 5.)

14. At the time this lawsuit was filed and at all times since, Blue Diamond was and is a California corporation with its principal place of business in California. Therefore, at the time this action was filed and at all times since, Blue Diamond was and is a citizen of California. 28 U.S.C. § 1332(c)(1).

15. Because Plaintiff is a citizen of Missouri and Defendant is a citizen of California, there is minimal diversity.

C. The Amount in Controversy Exceeds \$5 Million in the Aggregate

16. Under 28 U.S.C. § 1332(d)(2), an action is removable under CAFA only when “the matter in controversy exceeds the sum or value of \$5,000,000” To determine whether the matter in controversy exceeds the sum or value of \$5,000,000, “the claims of the individual class members shall be aggregated.” 28 U.S.C. § 1332(d)(6).

17. Here, the Complaint tries to plead around the \$5 million threshold by stating that the “total damages of Plaintiff and Class Members, inclusive of costs and attorneys’ fees, will not exceed \$4,999,999” (Compl. ¶ 6.) Plaintiff, however, does not get to make this

determination, because a plaintiff “who files a proposed class action cannot legally bind members of the proposed class before the class is certified.” *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1349 (2013) (holding that plaintiff’s stipulation not to seek damages exceeding \$5 million “does not bind anyone but himself” and thus “has not reduced the value of the putative class members’ claims”). Nor has Plaintiff submitted any such binding stipulation. *See Bell v. Hershey Co.*, 557 F.3d 953, 958 (8th Cir. 2009).

18. For purposes of removal, Defendant needs only to make a “plausible allegation” that the amount in controversy exceeds \$5 million. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). A removing defendant is no longer required to submit evidence in support of those allegations. *Id.* Once a defendant makes such a showing, “the case belongs in federal court unless it is legally impossible for the plaintiff to recover that much.” *Raskas v. Johnson & Johnson*, 719 F.3d 884, 888 (8th Cir. 2013) (quotation omitted).

19. Assuming the truth of the allegations in the Complaint, there is more than \$5 million in controversy, as required for removal by 28 U.S.C. § 1332(d)(2).

20. Plaintiff purports to represent “[a]ll persons in Missouri” who, over the past five years, purchased All Natural Blue Diamond Almond Breeze Almond Milk. (Compl. ¶ 31.) Plaintiff estimates that the proposed class consists of “thousands of purchasers.” (*Id.* ¶ 33.) Plaintiff alleges that compensatory damages and attorneys’ fees “will not exceed \$75,000 per Class Member.” (*Id.* Prayer for Relief ¶¶ c, d.)

21. By seeking damages and attorneys’ fees¹ of up to \$75,000 per class member, and by alleging thousands of purchasers, it is apparent from the face of the Complaint that the

¹ For purposes of determining whether CAFA’s \$5 million threshold has been exceeded, attorneys’ fees are included. *See Chochorowski v. Home Depot USA*, 585 F. Supp. 2d 1085, (footnote continued)

amount in controversy exceeds \$5 million. *See Stafford v. Whole Foods Mkt. California, Inc.*, No. 4:14CV00420, 2014 U.S. Dist. LEXIS 134539, at *7 (E.D. Ark. Sept. 24, 2014) (finding in a similar food labeling case that “[t]aking the complaint at face value, if each class member has a claim that might be as much as \$74,999.00, and if the class is in the thousands, a jury might conclude that the class suffered damages of more than \$5,000,000.00”).

22. Additionally, among the relief Plaintiff seeks is “the refund of the purchase price he paid for the Milk.” (Compl. ¶ 6.) Based on retail sales information that Blue Diamond has obtained from Information Resources, Inc. (“IRI”), the retail sales of All Natural Blue Diamond Almond Breeze Almond Milk in Missouri in the five years preceding the filing of the Complaint totaled approximately \$14.2 million.

23. As noted, Plaintiff also seeks attorneys’ fees in this matter. (Compl. Prayer for Relief ¶ e.)

24. Attorneys’ fees in an MMPA class action can be significant. Indeed, the Missouri Supreme Court has affirmed attorneys’ fees that exceeded \$6 million on actual damages lower than the approximately \$14.2 million in purchases here. *Berry v. Volkswagen Grp. of America, Inc.*, 397 S.W.3d 425, 429 (Mo. banc 2013) (affirming trial court’s award of \$6,174,640 in attorneys’ fees under the MMPA when total payout to the 130 class members was \$125,261).

25. Punitive damages may also be considered in determining whether damages exceed \$5 million under CAFA. *See Raskas*, 719 F.3d at 887. While Plaintiff does not presently seek punitive damages (Compl. ¶ 10), Plaintiff or an intervening class member may amend the Complaint to seek punitive damages at a later date. *See Knowles*, 133 S. Ct. at 1349. Under

1093 (E.D. Mo. 2008) (“Defendant is correct that in determining the amount in controversy . . . attorney’s fees are considered.”).

Missouri law, punitive damages on an MMPA claim are capped at the “*greater of*: (1) Five hundred thousand dollars; or (2) Five times the net amount of the judgment awarded to the plaintiff against the defendant.” Mo. Rev. Stat. § 510.265 (emphasis added). “[J]udgment’ for purposes of calculating punitive damages includes the attorney’s fee award.” *Raskas*, 719 F.3d at 887 (citing *Harvey v. Mo. Dep’t of Corr.*, 379 S.W.3d 156, 165 (Mo. banc 2012)).

26. In MMPA cases, punitive damage awards are common and can be substantial.

See, e.g.:

- *Kerr v. Ace Cash Experts, Inc.*, No. 4:10 CV 1645 DDN, 2010 U.S. Dist. LEXIS 132203, at *5-6 (E.D. Mo. Dec. 14, 2010) (considering the possibility of more than \$4.4 million in attorneys’ fees and punitive damages based upon allegations of \$594,000 in actual damages);
- *Bass v. Carmax Auto Superstores, Inc.*, No. 07-0883-CV-W-ODS, 2008 U.S. Dist. LEXIS 11180, at *5 (W.D. Mo. Feb. 14, 2008) (noting that if 4,419 Missouri class members had total actual damages of \$658,431, the “total of punitive damages and attorney fees could easily (and legally) be sufficient to bring the total amount in controversy over the [\$5 million] jurisdictional requirement”; and
- *Dowell v. Debt Relief Am., L.P.*, No. 2:07-CV-27 (JCH), 2007 U.S. Dist. LEXIS 46610, at *6 (E.D. Mo. June 27, 2007) (denying remand after considering two prior judgments in MMPA cases and noting that “juries are inclined to assess large punitive damages awards in MMPA cases”).

27. As a result of the approximately \$14.2 million in retail sales of All Natural Blue Diamond Almond Breeze Almond Milk in Missouri over the past five years, even without the possibility of substantial awards of attorneys’ fees and punitive damages, the total amount in controversy easily exceeds \$5 million.² Thus, it is clear that CAFA’s \$5 million amount in controversy requirement for federal jurisdiction has been satisfied. 28 U.S.C. § 1332(d)(2).³

² By alleging here that Plaintiff might legally recover a judgment exceeding the jurisdictional amount in controversy, Blue Diamond neither confesses any liability nor admits the appropriate amount of damages if found liable for any part of Plaintiff’s claims. Blue Diamond is only stating what the potential damages in the litigation could be. *Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 945 (8th Cir. 2012) (citations and internal quotation marks omitted) (footnote continued)

IV. DEFENDANT HAS COMPLIED WITH ALL PREREQUISITES FOR REMOVAL

28. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81-2.03, attached hereto and marked as Exhibit A is a true and correct copy of all process, pleadings, orders, and other documents on file in the state court.

29. Pursuant to 28 U.S.C. § 1446(d), promptly upon filing this Notice of Removal, copies thereof will be sent to Plaintiff's counsel and filed with the Clerk of the Court in the state court action.

30. Defendant reserves the right to amend or supplement this Notice of Removal, and reserves all rights and defenses, including those available under Federal Rule of Civil Procedure 12.

("The removing party need not confess liability in order to show that the controversy exceeds the threshold.").

³ Removal is also proper pursuant to 28 U.S.C. § 1332(a) because there is complete diversity between Plaintiff and Defendant and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Attorneys' fees may be awarded under the MMPA, *see* Mo. Rev. Stat. § 407.025, and may be considered in establishing the \$75,000 amount in controversy. *See Crawford v. F. Hoffman-La Roche Ltd.*, 267 F.3d 760, 766 (8th Cir. 2001). Attorneys' fees in individual MMPA cases can exceed \$75,000, even when actual damages are relatively small. *See, e.g., Peel v. Credit Acceptance Corp.*, 408 S.W.3d 191, 195 (Mo. Ct. App. 2013) (awarding attorney's fees of \$165,350 when actual damages were \$11,008); *Heckadon v. CFS Enters., Inc.*, 400 S.W.3d 373, 377 (Mo. Ct. App. 2013) (awarding attorney's fees of \$114,390 when actual damages were \$2,144); *see also Grabinski v. Blue Springs Ford Sales, Inc.*, 203 F.3d 1024, 1025 (8th Cir. 2000) (claimed attorneys' fees of \$125,000 with actual damages of \$7,835). For purposes of removal, "[t]he jurisdictional fact . . . is not whether damages *are* greater than the requisite amount, but whether a fact finder *might* legally conclude that they are" *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002) (emphasis added). Once a defendant makes such a showing, "the case belongs in federal court unless it is legally impossible for the plaintiff to recover that much." *Raskas v. Johnson & Johnson*, 719 F.3d 884, 888 (8th Cir. 2013) (quotation omitted). While Plaintiff alleges that the amount in controversy is less than \$75,000 per Plaintiff, (Compl. ¶ 6), this does not prevent removal because Plaintiff has not filed a binding stipulation limiting his recovery to this amount. *See Bell v. Hershey Co.*, 557 F.3d 953, 958 (8th Cir. 2009). Although a fact finder might legally conclude that Plaintiff is only entitled to a small amount in actual damages, Blue Diamond could be found liable for attorneys' fees that alone exceed \$75,000. Accordingly, the total amount in controversy is above the \$75,000 jurisdictional threshold and removal is proper on this additional ground.

31. This Notice of Removal is timely because it was filed within 30 days of Defendant being served. 28 U.S.C. § 1446(b). Blue Diamond accepted service of the Summons and Complaint on May 20, 2015.

WHEREFORE, Defendant Blue Diamond gives notice of the removal of this action from the Circuit Court of the City of St. Louis, Missouri, to the United States District Court for the Eastern District of Missouri, Eastern Division.

DATED: June 18, 2015

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

By /s/ James P. Muehlberger

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Attorneys for Blue Diamond Growers

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2015, the foregoing document was served upon the following via the Court's electronic filing system and/or electronic mail:

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EXHIBIT A

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

PAUL GEORGE, individually and on)	
behalf of all others similarly situated in)	
Missouri,)	
)	
Plaintiff,)	No. _____
)	
v.)	
)	
BLUE DIAMOND GROWERS,)	JURY TRIAL DEMANDED
)	
Defendant.)	
)	
)	
Serve: Blue Diamond Growers)	
c/o Dean Lavalley, Reg. Agent)	
1802 C Street)	
Sacramento, California 95811)	

PETITION AND JURY DEMAND

Plaintiff, Paul George, individually and on behalf of all others similarly situated in Missouri, alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

NATURE OF THE CASE

1. This case arises out of Defendant Blue Diamond Growers' ("BD" or "Defendant") deceptive, unfair, and false merchandising practices regarding its All Natural Blue Diamond Almond Breeze Almond Milk (the "Milk").

2. On the label of the Milk, Defendant prominently represents that the Milk is "All Natural." It is not. The Milk contains artificial, synthetic ingredients, including, on information and belief, potassium citrate, and the synthetic vitamins Vitamin A Palmitate, and Vitamin D-2 (the "Artificial Ingredients").

3. In addition, the ingredient list of the Milk includes the ingredient “evaporated cane juice” (“ECJ”). In reality, however, ECJ is not a juice—it is sugar. By disguising and naming sugar as ECJ, Defendant falsely and misleadingly lead Missouri consumers to believe the product does not contain sugar, or not as much sugar.

4. Plaintiff brings this case to recover damages for Defendant’s false, deceptive, and misleading marketing and advertising in violation of the Missouri Merchandising Practices Act (“MMPA”) and Missouri common law.

PARTIES

5. Plaintiff, Paul George, is a resident of the City of St. Louis, Missouri. On at least one occasion during the Class Period (as defined below), including in November 2014, Plaintiff purchased individual containers of the Milk at Schnucks for personal, family, or household purposes. The purchase price of the individual containers was \$2.99. Plaintiff also purchased cases of the Milk during the class period from Costco, in the amount of about \$9.39 per case. The value of Plaintiff’s claim is typical of all class members in this regard.

6. Defendant Blue Diamond Growers is a California corporation with its principal place of business at 1701 C Street, Sacramento, CA 95811. Defendant can be served with process by service on its registered agent in California: Robert Donovan, 1802 C Street, Sacramento, California 95811.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court. The amount in controversy, however, is less than \$75,000 per Plaintiff and Class Member individually and less than \$5,000,000 in the aggregate. Indeed, Plaintiff believes and alleges that the total value of his individual claims is, at most, equal to the refund of the purchase price he paid for the Milk.

Moreover, because the value of Plaintiff's claims is typical of all class members with respect to the value of the claim, the total damages of Plaintiff and Class Members, inclusive of costs and attorneys' fees, will not exceed \$4,999,999 and is far less than the five million dollar (\$5,000,000) minimum threshold to create federal court jurisdiction. There is therefore no diversity or CAFA jurisdiction for this case.

7. Defendant cannot plausibly allege that it had sufficient sales of the Milk in Missouri during the Class Period to establish an amount in controversy that exceeds CAFA's jurisdictional threshold.

8. This Court has personal jurisdiction over Defendant pursuant to Missouri Code § 506.500, as Defendant has had more than minimum contact with the State of Missouri and has purposefully availed itself of the privilege of conducting business in this state. In addition, as explained below, Defendant has committed affirmative tortious acts within the State of Missouri that gives rise to civil liability, including distributing the fraudulent Milk for sale throughout the State of Missouri.

9. Venue is proper in this forum pursuant to Missouri Code § 508.010 because plaintiff's injury occurred in the City of St. Louis and because Defendant is not a resident of this State.

10. Plaintiff and Class Members do not seek to recover punitive damages or statutory penalties in this case.

11. Pursuant to Missouri Rule of Civil Procedure 8(a), this pleading demands unliquidated damages. Accordingly, it is intended, and shall by rule be interpreted, to limit recovery to an amount less than that required for diversity or CAFA jurisdiction in federal court.

BACKGROUND AND FACTUAL ALLEGATIONS

12. The Federal Food, Drug, and Cosmetic Act (“FDCA”) gives the FDA the responsibility to protect the public health by ensuring that “foods are safe, wholesome, sanitary, and properly labeled,” 21 U.S.C. § 393(b)(2)(A), and the FDA has promulgated regulations pursuant to this authority. *See e.g.*, 21 C.F.R. § 101.1 *et seq.*.

13. Congress passed the Nutrition Labeling and Education Act of 1990 amending the FDCA to prescribe national uniform nutrition labeling for foods. HR Rep 101–538 (June 13, 1990).

14. Under FDCA section 403(a), a food is “misbranded” if “its labeling is false or misleading in any particular,” or if it does not contain certain information on its label or its labeling. 21 U.S.C. § 343(a).

15. While there is no private right of enforcement under the FDCA, conduct that violates the FDCA is actionable under state law if it also violates state consumer protection statutes.

“All Natural”

16. The FDA has issued informal guidance stating a policy that the use of the term “natural” means that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in the food. See 58 FR 2302, 2407, January 6, 1993.

17. Thus, any artificial ingredients or any coloring or preservative can preclude the use of the term “natural,” even if the coloring or preservative is derived from natural sources.

18. Defendant falsely and misleadingly labeled the Milk as “All Natural” when it is not because it in fact contains the Artificial Ingredients.



19. A reasonable consumer would not expect a product labeled “All Natural” to contain artificial ingredients.

Evaporated Cane Juice

20. In its guidance for industry and warning letters to manufacturers, the FDA has repeatedly stated its policy of restricting the ingredient names listed on product labels to their common or usual name, as provided in 21 C.F.R. § 101.4(a)(1).

21. An ingredient's common or usual name is the name established by common usage or regulation, as provided in 21 C.F.R. § 102.5(d).

22. The common or usual name must accurately describe the basic nature of the food or its characterizing properties or ingredients, and may not be "confusingly similar to the name of the other food that is not reasonably encompassed within the same name," as provided in 21 C.F.R. § 102.5(a).

23. In October 2009, the FDA issued Guidance for Industry¹ concerning "evaporated cane juice" claims stating:

- the term "evaporated cane juice" has started to appear as an ingredient on food labels, most commonly to declare the presence of sweeteners derived from sugar cane syrup. However, FDA's current policy is that sweeteners derived from sugar cane syrup should not be declared as "evaporated cane juice" because that term falsely suggests that the sweeteners are juice...
- "Sugar cane products with common or usual names defined by regulation are sugar (21 CFR 101.4(b)(20)) and cane sirup (alternatively spelled "syrup") (21 CFR 168.130). Other sugar cane products have common or usual names established by common usage (e.g., molasses, raw sugar, brown sugar, turbinado sugar, muscovado sugar, and demerara sugar)...
- "The intent of this draft guidance is to advise the regulated industry of FDA's view that the term "evaporated cane juice" is not the common or usual name of any type of sweetener, including dried cane syrup. Because cane syrup has a standard of identity defined by regulation in 21 CFR 168.130, the common or usual name for the solid or dried form of cane syrup is "dried cane syrup."...

¹ See

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm181491.htm>

- “Sweeteners derived from sugar cane syrup should not be listed in the ingredient declaration by names which suggest that the ingredients are juice, such as “evaporated cane juice.” FDA considers such representations to be false and misleading under section 403(a)(1) of the Act (21 U.S.C. 343(a)(1)) because they fail to reveal the basic nature of the food and its characterizing properties (i.e., that the ingredients are sugars or syrups) as required by 21 CFR 102.5. Furthermore, sweeteners derived from sugar cane syrup are not juice and should not be included in the percentage juice declaration on the labels of beverages that are represented to contain fruit or vegetable juice (see 21 CFR 101.30).

24. Defendant nonetheless falsely and misleadingly listed “evaporated cane juice” as an ingredient on the Milk, when that ingredient was in fact sugar.

25. Missouri consumers are thus misled into purchasing the Milk believing the Milk does not contain sugar, or not as much sugar.

Defendant’s False and Misleading Practices

26. Defendant manufactures, sells, and distributes almond and other nut-based products, including the Milk.

27. Knowing that consumers like Plaintiff are more-and-more interested in purchasing healthy food products that do not contain potentially harmful synthetic ingredients and are free of added sugar, BD has sought to take advantage of this growing market by labeling certain products as “all natural” and as containing “evaporated cane juice” instead of sugar.

28. By affixing such a label and ingredient list to the packaging of the Milk, BD is able to entice consumers like Plaintiff to pay a premium for supposed the “all natural” products.

29. The label of the Milk is deceptive, false, and misleading in that BD prominently represents that the Milk is “All Natural” and contains ECJ, when in fact the Milk contains artificial ingredients and sugar.

30. Defendant’s misrepresentations violate the MMPA’s prohibition of the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material

fact in connection with the sale or advertisement of any merchandise in trade or commerce. § 407.020, RSMo.

CLASS ALLEGATIONS

31. Pursuant to Missouri Rule of Civil Procedure 52.08 and § 407.025.2 of the MMPA, Plaintiff brings this action on his own behalf and on behalf of a proposed class of all other similarly situated persons (“Class Members” of the “Class”) consisting of:

All persons in Missouri who purchased All Natural Blue Diamond Almond Breeze Almond Milk in the five years preceding the filing of this Petition (the “Class Period”).

32. Excluded from the Class are: (a) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in which Defendant has a controlling interest, to include, but not limited to, their legal representative, heirs, and successors; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (d) any judicial officer in the lawsuit and/or persons within the third degree of consanguinity to such judge.

33. Upon information and belief, the Class consists of hundreds or thousands of purchasers. Accordingly, it would be impracticable to join all Class Members before the Court.

34. There are numerous and substantial questions of law or fact common to all of the members of the Class and which predominate over any individual issues. Included within the common question of law or fact are:

a. Whether the “All Natural” claim on the product’s label is false, misleading, and deceptive;

b. Whether listing “evaporated cane juice” as an ingredient is false, misleading, and deceptive;

c. Whether Defendant violated the MMPA by selling the Milk with false, misleading, and deceptive representations;

d. Whether Defendant’s acts constitute deceptive and fraudulent business acts and practices or deceptive, untrue, and misleading advertising; and

e. The proper measure of damages sustained by Plaintiff and Class Members.

35. The claims of the Plaintiff are typical of the claims of Class Members, in that they share the above-referenced facts and legal claims or questions with Class Members, there is a sufficient relationship between the damage to Plaintiff and Defendant’s conduct affecting Class Members, and Plaintiff has no interests adverse to the interests other Class Members.

36. Plaintiff will fairly and adequately protect the interests of Class Members and have retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

37. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. The claim presented in this case predominates over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. Absent a Class, the Class Members will continue to suffer damage and Defendants’ unlawful conduct will continue without remedy while Defendant profits from and enjoys its ill-gotten gains;

- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. When the liability of Defendant has been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the court as a class action, which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendant.

38. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual member of the Class, which would establish incompatible standards of conduct for Defendant.

39. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

First Claim for Relief

Violation of Missouri's Merchandising Practices Act

30. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

31. Missouri's Merchandising Practices Act (the "MMPA") prohibits the act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce § 407.020, RSMo.

32. Defendant's conduct constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts in connection with the sale or advertisement of any merchandise in trade or commerce in that Defendant misrepresents that the Milk is "All Natural" when it in fact is not because it contains artificial ingredients.

33. Defendant's conduct further constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts in connection with the sale or advertisement of any merchandise in trade or commerce in that Defendant lists ECJ as an ingredient, instead of calling it sugar.

34. Because the Milk is not "All Natural" as represented and contains undisclosed sugar, Plaintiff and Class Members paid extra for the Milk; the Milk as purchased was worth less than the Milk as represented.

35. Plaintiff and Class Members purchased the Milk for personal, family, or household purposes and thereby suffered an ascertainable loss as a result of Defendant's unlawful conduct as alleged herein, including the difference between the actual value of the product and the value of the product if it had been as represented.

36. Defendant's unlawful practices have caused similar injury to Plaintiff and numerous other persons. § 407.025.2.

Second Claim for Relief

Unjust Enrichment

37. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

38. By purchasing the Milk, Plaintiff and the class members conferred a benefit on Defendant in the form of the purchase price of the fraudulent product.

39. Defendant appreciated the benefit because, were consumers not to purchase the Milk, Defendant would have no sales and make no money.

40. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent and misleading representations about the Milk as set forth herein.

41. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at Plaintiff and Class Members' expense and in violation of Missouri law, and therefore restitution and/or disgorgement of such economic enrichment is required.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all similarly situated persons, prays the Court:

- a. Grant certification of this case as a class action;
- b. Appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. Award compensatory damages to Plaintiff and the proposed Class in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class, or, alternatively, require Defendant to disgorge or pay restitution in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;
- d. Award pre- and post-judgment interest in an amount which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;
- e. Award reasonable and necessary attorneys' fees and costs to Class counsel, which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class; and
- g. For all such other and further relief as may be just and proper.

Dated: April 20, 2015

PAUL GEORGE, Individually, and on Behalf of a Class of Similarly Situated Individuals, Plaintiff

By: /s/ Matthew H. Armstrong
Matthew H. Armstrong (MoBar 42803)
ARMSTRONG LAW FIRM LLC

8816 Manchester Rd., No. 109
St. Louis MO 63144
Tel: 314-258-0212
Email: matt@mattarmstronglaw.com

and

Julie Piper-Kitchin (MoBar 60737)
KamberLaw LLC
4514 Cole Ave., Ste. 600
Dallas, TX 75205
(214) 306-4854
jkitchin@kamberlaw.com

Attorneys for Plaintiff and the Putative Class

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

PAUL GEORGE, individually and on)	
behalf of all others similarly situated in)	
Missouri,)	
)	
Plaintiff,)	No. 1522-CC00850
)	
v.)	Div. 1
)	
BLUE DIAMOND GROWERS,)	
)	
Defendant.)	

ENTRY OF APPEARANCE

COMES NOW Julie E. Piper-Kitchin, of KamberLaw LLC, and hereby enters her appearance as an attorney of record for the above-named Plaintiff.

Respectfully submitted,

By: /s/ Julie E. Piper-Kitchin
Julie E. Piper-Kitchin, MoBar 60737
KamberLaw LLC
4514 Cole Ave., Suite 600
Dallas, TX 75205
Tel: 214-306-4854
Email: jkitchin@kamberlaw.com

One of the Attorneys for Plaintiff



IN THE 22ND JUDICIAL CIRCUIT COURT, CITY OF ST LOUIS, MISSOURI

Judge or Division: BRYAN L HETTENBACH	Case Number: 1522-CC00850	(Date File Stamp)
Plaintiff/Petitioner: PAUL GEORGE	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	
vs.		
Defendant/Respondent: BLUE DIAMOND GROWERS		
Nature of Suit: CC Other Tort		

Notice and Acknowledgement for Service by Mail
(Circuit Division Cases)

Notice

To: BLUE DIAMOND GROWERS

**DEAN LAVALLEE RAGT
1802 C STREET
SACRAMENTO, CA 95811**

The enclosed summons and petition are served pursuant to Missouri Supreme Court Rule 54.16.

You may sign and date the acknowledgement part of this form and return one copy of the completed form to the sender within thirty days of 20-APR-2015.

If you are served on behalf of a corporation, unincorporated association, including a partnership, or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within thirty days, you or the party on whose behalf you are being served may be required to pay any expenses incurred in serving a summons and petition in any other manner permitted by law.

If you do complete and return this form, you or the party on whose behalf you are being served must answer the petition within thirty days of the date you sign in acknowledgment below. If you fail to do so, judgment by default may be taken against you for the relief demanded in the petition.

I declare, under penalty of perjury, that this notice was mailed on 20-APR-2015.

Signature

Acknowledgment of Receipt of Summons and Petition

I declare, under penalty of filing a false affidavit, that I received a copy of the Summons and of the Petition in the above captioned matter.

Date

Signature

Relationship to Entity/Authority to receive service of process



IN THE 22ND JUDICIAL CIRCUIT COURT, CITY OF ST LOUIS, MISSOURI

Judge or Division: BRYAN L HETTENBACH	Case Number: 1522-CC00850	(Date File Stamp)
Plaintiff/Petitioner: PAUL GEORGE	Plaintiff's/Petitioner's Attorney/Address: MATTHEW HALL ARMSTRONG 8816 MANCHESTER RD SUITE 109 SAINT LOUIS, MO 63144	
Defendant/Respondent: BLUE DIAMOND GROWERS	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	
Nature of Suit: CC Other Tort		

Summons for Service by Registered or Certified Mail**The State of Missouri to: BLUE DIAMOND GROWERS**

Alias:

DEAN LAVALLEE RAGT
1802 C STREET
SACRAMENTO, CA 95811

COURT SEAL OF



CITY OF ST LOUIS

You are summoned to appear before this court and to file your pleading to the petition, copy of which is attached, and to serve a copy of your pleading upon the attorney for the Plaintiff/Petitioner, or Plaintiff/Petitioner, if pro se, at the above address all within 30 days after the return registered or certified mail receipt signed by you has been filed in this cause. If you fail to file your pleading, judgment by default will be taken against you for the relief demanded in the petition.

APRIL 20, 2015

Date Issued

Further Information:

Thomas Kloeppinger

Clerk

Certificate of Mailing

I certify that on _____ (date), I mailed a copy of this summons and a copy of the petition to Defendant/Respondent BLUE DIAMOND GROWERS by registered or certified mail, requesting a return receipt by the addressee only, to the said Defendant/Respondent at the address furnished by Plaintiff/Petitioner.

Date

Clerk



IN THE 22ND JUDICIAL CIRCUIT COURT, CITY OF ST LOUIS, MISSOURI

Judge or Division: BRYAN L HETTENBACH	Case Number: 1522-CC00850
Plaintiff/Petitioner: PAUL GEORGE	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101
vs.	
Defendant/Respondent: BLUE DIAMOND GROWERS	
Nature of Suit: CC Other Tort	(Date File Stamp)

Notice and Acknowledgement for Service by Mail
(Circuit Division Cases)

Notice

To: BLUE DIAMOND GROWERS

DEAN LAVALLEE RAGT
1802 C STREET
SACRAMENTO, CA 95811

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You may sign and date the acknowledgement part of this form and return one copy of the completed form to the sender within thirty days of 20-APR-2015.

If you are served on behalf of a corporation, unincorporated association, including a partnership, or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within thirty days, you or the party on whose behalf you are being served may be required to pay any expenses incurred in serving a summons and petition in any other manner permitted by law.

If you do complete and return this form, you or the party on whose behalf you are being served must answer the petition within thirty days of the date you sign in acknowledgment below. If you fail to do so, judgment by default may be taken against you for the relief demanded in the petition.

I declare, under penalty of perjury, that this notice was mailed on 20-APR-2015.

Signature

Acknowledgment of Receipt of Summons and Petition

I declare, under penalty of filing a false affidavit, that I received a copy of the Summons and of the Petition in the above captioned matter.

5/20/2015

Date

Signature

Counsel for Defendant Blue Diamond Growers
Relationship to Entity/Authority to receive service of process

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

PAUL GEORGE,

Plaintiff,

v.

BLUE DIAMOND GROWERS,

Defendant,

)
)
)
)
)
)
)
)
)
)
)

Case No.

ORIGINAL FILING FORM

**THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY
WHEN INITIATING A NEW CASE.**

☐ THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS
PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER _____
AND ASSIGNED TO THE HONORABLE JUDGE _____.

☐ THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY
PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS _____ AND
THAT CASE WAS ASSIGNED TO THE HONORABLE _____. THIS CASE MAY,
THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING.

☒ NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT
COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE
MAY BE OPENED AS AN ORIGINAL PROCEEDING.

The undersigned affirms that the information provided above is true and correct.

Date: 06/18/2015

/s/ James P. Muehlberger
Signature of Filing Party

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

PAUL GEORGE, Individually and on behalf of all others similarly situated in Missouri

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Matthew H. Armstrong, Armstrong Law Firm, LLC, 8816 Manchester Rd., No. 19, St. Louis, MO 63144 314/258-0212 & Julie Piper-Kitchin, KamberLaw LLC, 4514 Cole Ave. Ste. 600 Dallas, TX 75205 214/306-4854

DEFENDANTS

BLUE DIAMOND GROWERS

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)*
James P. Muehlberger, Shook, Hardy & Bacon L.L.P., 2555 Grand Blvd., Kansas City, MO 64108 816/474-6550

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

☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question *(U.S. Government Not a Party)*
☒ 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)*

	PTF	DEF		PTF	DEF
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

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<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 Loans (Excludes 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	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal 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 - Medical Malpractice	PERSONAL INJURY <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <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"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <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	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement				

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 U.S.C. 1332, 1441, 1453
Brief description of cause:
Plaintiff alleges unfair merchandising practices regarding milk product

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 _____ DOCKET NUMBER _____

DATE
06/18/2015

SIGNATURE OF ATTORNEY OF RECORD
/s/ James P. Muehlberger

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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.