

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

<b>CAROL CRUZ-ACEVEDO,</b> <i>Individually on her own behalf and others similarly situated,</i>  Plaintiffs  v.  <b>CONAGRA FOODS, INC.,</b> <i>a Delaware corporation,;</i>  Defendant	CIVIL NO.  <b>[CLASS ACTION FAIRNESS ACT] 28 U.S.C. § 1711, et. seq</b>  <b>JURY TRIAL DEMANDED</b>
--	---

**CLASS ACTION COMPLAINT**

1 Plaintiff CAROL CRUZ-ACEVEDO, (hereinafter, “Plaintiff”), a Puerto Rico resident, pursuant to Rule 23 of the Federal Rules of Civil Procedure, brings this class action, on behalf of herself and of all other similarly situated persons, against Defendant, CONAGRA FOODS INC., for violations of Puerto Rico Consumer Laws against false advertising, violation of the Unfair Competition Laws, and fraud, deceit and/or misrepresentation. Specifically, Defendants have unlawfully, negligently, unfairly, misleadingly, and deceptively represented that its Chef Boyardee food products, sold in cans or other packaging, and which include foods such as macaroni & cheese, spaghetti, ravioli, lasagna, mini bites pasta, whole grain pasta, fun flavor pasta, pizza and sauces, (“the Products”) contain “NO PRESERVATIVES” despite, in effect, containing unnatural ingredients, which are synthetic, artificial, and/or genetically modified, including but not limited to Citric Acid and/or preservatives. The following allegations are based upon

information and belief, including the investigation of Plaintiff's counsel, and the facts that are a matter of public record, as follows:

### **NATURE OF THE ACTION**

Plaintiff brings this circuit wise action individually and on behalf of a proposed class ("Class"), as more fully defined below, of similarly situated consumers, in Puerto Rico, and all U.S. Territories, seeking to redress the pervasive pattern of fraudulent, deceptive, false and otherwise improper advertising, sales and marketing practices, of Defendant ConAgra Foods, Inc., in violation of Puerto Rico Consumer Protection Laws codified at 23 LPRA § 1014 and 24 LPRA 729. Specifically, the Defendant deceptively informed Puerto Rico Consumers, on its Chef Boyardee product labels, that it contains "No Preservatives" and led its customers to believe that its products contain "No Preservatives" despite containing unnatural ingredients, which are synthetic, artificial, and/or genetically modified, including, but not limited to, Citric Acid and/or "other preservatives". Defendant obtained substantial profits from these unlawful and deceptive sales, entitling the putative Class to relief under Article 1802 of the Puerto Rico Civil Code.

### **JURISDICTION, PARTIES AND VENUE**

2. Original jurisdiction of this Court exists by virtue of 28 U.S.C. § 1332(d)(2) and the Class Action Fairness Act ("CAFA"). See 28 U.S.C. § 1711, et. seq. The Plaintiff, and the Defendant in this action, are citizens of different U.S. jurisdictions and territories and the amount in controversy in this action exceeds five million dollars (\$5,000,000.00), exclusive of interest and costs. Jurisdiction is also appropriate as Defendant ConAgra Foods Inc. otherwise intentionally avails itself of the Commonwealth of Puerto Rico market through its marketing and sales of the products in the Commonwealth of Puerto Rico and/or by having such other contacts with Puerto Rico so as to render the exercise of jurisdiction over it by the

District of Puerto Rico court consistent with traditional notions of fair play and substantial justice.

3. Venue is proper in this District under 28 U.S.C. § 1391(a), (b), and (c) because a substantial part of the events giving rise to these claims occurred in the District of Puerto Rico; Defendant and/or its agents were doing business in Puerto Rico; and/or Defendant is otherwise subject to personal jurisdiction in this judicial district.

#### **PLAINTIFFS**

4. For purposes of clarity, the Plaintiff is asserting claims on behalf of all consumers of Chef Boyardee food products, sold in cans or other packaging, in the Commonwealth of Puerto Rico and all other U.S. territories, who do not appear herein as named Plaintiffs. The named plaintiff Carol Cruz Acevedo is a resident of the Commonwealth of Puerto Rico. Plaintiff purchased the Product in Puerto Rico within the month of the filing of this Complaint. Specifically, Plaintiff purchased macaroni & cheese, spaghetti & meatballs, ravioli, lasagna at Ralph's Food Warehouse located in Gurabo, Puerto Rico. When purchasing the Products, the plaintiff relied upon the claim "No Preservatives" prominently and conspicuously displayed "front and center" on each and every product Chef Boyardee food products, as well as on all other advertising and promotional material, such as the ConAgra Foods, Inc., websites and television commercials.
5. Plaintiff viewed and relied upon the "No Preservatives" claim both at, and prior to, the point of sale. Had the plaintiff known the Product contains artificial or synthetic ingredients, and preservatives such as "citric acid", she would not have purchased the Product. (See Exhibit A, purchase receipt).

### **DEFENDANT**

Defendant ConAgra, Inc. is a Delaware corporation with its principal place of business at One ConAgra, Omaha, NE 68102-5001. ConAgra is a multi-billion dollar corporation that owns and operates American packaged food companies. It produces canned foods, frozen foods, condiments, snacks, and so forth distributed under many different brands. Among these brands include Chef Boyardee, Orville Redenbacher, Marie Calendar, PAM, Slim Jim, Swiss Miss, Blue Bonnet, Healthy Choice, Hunts, and Hebrew National. At issue in this litigation is the Chef Boyardee pasta products, which Defendant distributes to retail consumers throughout Puerto Rico and U.S. territories, through supermarkets, big box stores, and whole-sale clubs nationwide including, but not limited to, CVS, Walmart, Walgreens, SAMS Club, and Costco Wholesale.

6. Defendant is the owner, manufacturer and/or distributor of the Products, and is the company that created and/or authorized the unlawful, fraudulent, unfair, misleading and/or deceptive advertising and statements for the Products.

### **GENERAL ALLEGATIONS**

7. Defendant ConsAgra Foods, Inc., has consistently conveyed the very specific message to consumers throughout the United States, Puerto Rico and U.S. Territories, including Plaintiffs and Class members, that the Chef Boyardee products contain “No Preservatives” and meaning *no ingredients*, which are synthetic, artificial, and/or genetically modified, including but not limited to Citric Acid and/or “other preservatives. ConAgra’s ChefBoyardee website has the Class believing that its ChefBoyardee products are as fresh today as when cooked by the Chef in his restaurant. See, [www.chefboyardee.com](http://www.chefboyardee.com)
8. Defendant’s misleading marketing campaign begins with its deceptive description, “No



Preservatives”, which is prominently represented in large font print on the front label of the Products. Such visual representations, combined with an image featuring freshly cooked foods, imply that the Products are nothing but freshly cooked pasta. Defendants’ exhaustive advertising campaign builds on this deception.

9. Besides labeling the Products as with “No Preservatives,” Defendant conducted an extensive and widespread marketing campaign via the Internet, utilizing savvy social media marketing such as Facebook, Twitter, YouTube channel, Pinterest, Instagram, Tumblr, as well as other private blogs, all geared toward promoting the same idea to consumers, including Plaintiffs and Class members, that the Products contain nothing but natural freshly cooked food. .
10. Defendant’s labeling and advertising of the Products as “No preservatives” violate various Puerto Rico and federal laws against misbranding.
11. The federal Food, Drug, and Cosmetic Act (the “FDCA”) provides that “[a] food shall be deemed misbranded – (a) (1) its labeling is false or misleading in any particular.” 21 U.S.C. § 343 (a)(1).
12. Defendant’s “No Preservatives” claims also violate various Puerto Rico laws against deceptive branding which mirror federal law. Puerto Rico law codified at 23 LPRA § 1014 and 24 LPRA 729 broadly prohibits the misbranding of food in language identical to that found in regulations promulgated pursuant to the FDCA, 21 U.S.C. §§ 343 *et seq.*
13. Under the FDCA, the term “false” has its usual meaning of “untruthful,” while the term “misleading” is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, although still misleading. If anyone representation in the labeling is *misleading*, the entire food is misbranded. No other

statement in the labeling cures a misleading statement. “Misleading” is judged in reference to “the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze.” *United States v. El-O- Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove that anyone was actually misled.

***Definition of Natural***

14. The FDA did not intend to, and has repeatedly declined, to establish a final rule with regard to a definition of the term “No Preservatives” in the context of food labeling. As such, Plaintiffs’ state consumer protection law claims are not preempted by federal regulations. See *Jones v. ConAgra Foods, Inc.*, 2012 WL 6569393, \*6 (N.D. Cal. Dec. 17, 2012). Additionally, the primary jurisdiction doctrine does not apply “because the FDA has repeatedly declined to adopt formal rule-making that would define the word ‘natural.’” *Id.* at p. 8.
15. The “FDA has not developed a definition for use of the term natural or its derivatives,” but it has loosely defined the term “No Preservatives” as a product that “does not contain added color, artificial flavors, or synthetic substances.” According to federal regulations, an ingredient is synthetic if it is:

[a] substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes. 7 C.F.R. §205.2.

16. Although there is not an exact definition of “No Preservatives” in reference to food, cosmetic or oral care ingredients, there is no reasonable definition of “No Preservatives” that includes ingredients that, even if sourced from “nature,” are subjected to extensive

transformative chemical processing before their inclusion in a product. For example, the National Advertising Division of the Better Business Bureau (“NAD”) has found that a “No Preservatives” ingredient does not include one that, while “literally sourced in nature (as is every chemical substance), . . . is, nevertheless subjected to extensive processing before metamorphosing into the” ingredient that is included in the final product.

***Citric Acid Is Not a Natural Ingredient***

17. Citric acid (2-hydroxy-propane-1, 2,3-tricarboxylic acid) is a synthetic, non-natural ingredient. While the chemical’s name has the word “citric” in it, citric acid is no longer extracted from the citrus fruit but industrially manufactured by fermenting certain genetically mutant strains of the black mold fungus, *Aspergillus niger*.
18. A technical evaluation report for the substance citric acid compiled by the United States Department of Agriculture, Agricultural Marketing Service (“USDA AMS”) for the National Organic Program classified citric acid as “Synthetic Allowed”. See **EXHIBIT B**, Page 4, *available* at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5067876>. As one of the USDA AMS reviewers commented,

“[Citric acid] is a natural[ly] occurring substance that commercially goes through numerous chemical processes to get to [its] final usable form. This processing would suggest that it be classified as synthetic.”  
*Id.* at 3.

The report further explains, under the “How Made” question, that citric acid is made –

“Traditionally by extraction from citrus juice, no longer commercially available. It is now extracted by fermentation of a carbohydrate substrate (often molasses) by citric acid bacteria, *Aspergillus niger* (a mold) or *Candida guilliermondii* (a yeast). Citric acid is recovered

from the fermentation broth by a lime and sulfuric acid process in which the citric acid is first precipitated as a calcium salt and then reacidulated with sulfuric acid.” *Id.* at 4.

19. Because citric acid is a synthetic acid and cannot be reasonably considered a natural ingredient, Defendant’s claim that the Products contain “No Preservatives” is false, deceptive, and misleading, and the Products are misbranded under federal and Puerto Rico law.

**Defendants’ No Preservatives Claims Violate Identical Puerto Rico and Federal Law**

20. Defendant’s labeling, packaging and marketing practices are deceptive and or misleading because the Products fail to disclose that the citric acid is used as a preservative and/or that the Products prominently represent on the front label, that they contain “No Preservatives.” All Products use citric acid (2-hydroxypropane-1, 2, 3-tricarboxylic acid), a non-natural, highly chemically processed ingredient regularly used as a preservative (due to its acidic pH level which creates an environment where bacteria cannot thrive) in ready-to-eat packaged food products.
21. The FDCA provides that “[a] food shall be deemed misbranded – (a) (1) its labeling is false or misleading in any particular, or ... (k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, *unless* it bears labeling stating that fact... .” 21 U.S.C. §§ 343 (a)(1), 343 (k).
22. Defendant’s packaging and advertising of the Products also violate Puerto Rico law against misbranding which mirror federal law. Puerto Rico law, 24 LPRA 729 broadly prohibits the misbranding of food in language identical to that found in regulations promulgated pursuant to the FDCA, 21 U.S.C. §§ 343 *et seq.*

23. The term “chemical preservative” means “any chemical that, when added to food tends to prevent or retard deterioration thereof [.]” 21 C.F.R. § 101.22(a)(5).
24. While citric acid is listed in the fine print on the back of the Product in the list of ingredients (see below), Defendant deliberately made no mention of the function of the citric acid in violation of state and federal laws.
25. The real function of the citric acid in the Products is as a preservative. The U.S. Food and Drug Administration (“FDA”) routinely required that food manufacturers disclose the fact that citric acid is used as a preservative.
26. Defendant’s misleading labeling practices go even further. Apart from not having disclosed the function of the citric acid, Defendant expressly labeled the Products as, “No Preservatives,” even though such was patently false.
27. Because the Products are expressly labeled as containing “No Preservatives,” the Products are misbranded food under the FDCA and Puerto Rico laws which incorporate by reference federal food labeling regulations. 21 U.S.C. §§ 343(a) (1), 343(k); 24 LPRA 729.
28. By representing the Products as “No Preservatives” and free of preservatives, Defendant sought to capitalize on consumers’ preference for natural Products with no preservatives and the association between such Products and a wholesome way of life. Consumers are willing to pay more for natural Products because of this association as well as the perceived higher quality, health and safety benefits and low impact on the environment.
29. As a result of Defendant’s deception, consumers – including Plaintiffs and members of the proposed Class – have purchased Products that claimed to be “No Preservatives” and free of preservatives. Moreover, Plaintiffs and Class members have paid a premium

for the Products over other products sold on the market.

30. Although Defendant represented that the Products are “No Preservatives” and free of preservatives, they failed to also disclose material information about the Products; the fact that they contained unnatural, synthetic, and/or artificial ingredients which is used as a preservative. This non-disclosure, while at the same time branding the Products “No Preservatives” and free of preservatives was deceptive and likely to mislead a reasonable consumer, including Plaintiffs and Class members.
31. A representation that a product is “No Preservatives” and free of preservatives is material to a reasonable consumer when deciding to purchase a product.
32. Plaintiffs did, and a reasonable consumer would, attach importance to whether Defendant’s Products are “misbranded,” i.e., not legally salable, or capable of legal possession, and/or contain highly processed ingredients.
33. Plaintiffs did not know, and had no reason to know, that the Products were not natural or free of preservatives.
34. Defendant’s Product labeling and misleading online and otherwise marketing campaign was a material factor in Plaintiffs’ and Class members’ decisions to purchase the Products. Relying on Defendant’s deceptive and/or misleading Product labeling and other promotional material, Plaintiffs and Class members believed that they were getting Products that were “No Preservatives” and contain no preservatives. Had Plaintiffs known the truth about Defendant’s Products, they would not have purchased them.
35. Defendant’s Product labeling as alleged herein is deceptive and misleading and was designed to increase sales of the Products. Defendant’s misrepresentations are part of their systematic Product packaging practice.

36. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.
37. Defendant's false and deceptive labeling is misleading and in violation of the FDCA, food labeling laws and consumer protection laws of each of the fifty states, the District of Columbia, Commonwealth of Puerto Rico, and U.S. Territories, and the Products at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States. Plaintiffs and Class members would not have bought the Products had they known they were misbranded and illegal to sell or possess.
38. As a result of Defendant's misrepresentations, Plaintiffs and thousands of others throughout the United States, Puerto Rico, and its territories, purchased the Products.
39. Plaintiffs and the Class (defined below) have been damaged by Defendant's deceptive and unfair conduct in that they purchased Products with false and deceptive labeling and paid premium prices they otherwise would not have paid over other comparable products that did not claim to contain to be "No Preservatives" and/or without preservatives.

**Plaintiffs Were Injured as a Result of Defendant's Misleading and Deceptive Conduct**

40. Defendant's labeling, as alleged herein, is false and misleading and was designed to increase sales of the Products at issue. Defendant's misrepresentations are part of their systematic labeling practice.
41. Plaintiffs and Class members were exposed to and relied on Defendant's labeling, packaging, as well as extensive marketing campaign of the Products, including

misrepresentations made via social media as stated herein. At the time of purchase, Plaintiffs and Class members read the labels on Defendant's Products, including labels which represented that the Products were "No Preservatives" and contained no preservatives.

42. Defendant's labeling claims were a material factor in Plaintiffs and Class members' decisions to purchase the Products. Based on Defendant's claims, Plaintiffs and Class members believed that the Products were a better and healthier choice than other available products.
51. Plaintiffs and Class members did not know that the Products were neither "No Preservatives" nor free of preservatives. Plaintiffs and Class members would not have bought the purchased Products had they known that the Products all contain citric acid, which is highly processed, industrially produced and used as a preservative.
53. Plaintiffs and Class members were exposed to these misrepresentations prior to purchase and relied on them. As a result of such reliance, Plaintiffs and Class members deemed the Products to be more preferable to other products which do not claim to be "No Preservatives" or free of preservatives. Plaintiffs and Class members would not have bought the Products had they not been misled by Defendant's misrepresentations into believing that the Products were better and healthier than they were.
54. At the point of sale, Plaintiffs and Class members did not know, and had not reason to know, that Defendant's Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.
55. As a result of Defendant's misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Products.



56. Defendant's labeling, advertising, and marketing as alleged herein is false and misleading and designed to increase sales of the Products. Defendant's misrepresentations are a part of an extensive labeling, advertising and marketing campaign, and a reasonable person would attach important to Defendant's representations in determining whether to purchase the Products at issue. Plaintiffs and Class members would not have purchased Defendant's misbranded Products had they known they were misbranded.
57. Plaintiff and the Class (defined below) have been damaged by Defendant's deceptive and unfair conduct in that they purchased Products with false and deceptive labeling and paid premium prices they otherwise would not have paid over other comparable products that did not claim to be "No Preservatives" or free of preservatives, all of which entitle the plaintiff and putative class to relief pursuant to Article 1802 of the Puerto Rico Civil Code.
58. Plaintiff brings this action against Defendant on behalf of herself and all others similarly situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.
- Plaintiff seeks to represent a class defined as follows:

### **CLASS ACTION ALLEGATIONS**

59. Plaintiff brings this suit as a class action on behalf of himself and on behalf of other similarly situated persons pursuant to Fed.R.Civ.P.23(a), 23(b)(2), and/or 23(b)(3). Subject to additional information obtained through further investigation and/or discovery, the foregoing definition of the Classes may be expanded or narrowed. The proposed Classes are defined as follows:

60. **Class:** All persons who purchased Chef Boyardee food products, sold in cans or other packaging, and include foods such as macaroni & cheese, spaghetti, ravioli, lasagna, mini bites pasta, whole grain pasta, fun flavor pasta, pizza and sauces, in the United States, District of Puerto Rico, and all U.S. territories, between September 2012, to and including the period following the filing date of this action.
61. Excluded from the Classes are: (1) Defendants, Defendant's subsidiaries, affiliates, officers, directors, assigns and successors, and any entity which Defendants have a controlling interest; (2) the Judge to whom this case is assigned and any member of the judge's immediate family; (3) anyone who purchased ChefBoyardee products, for the purpose of resale; and (4) anyone asserting claims for personal injury. Plaintiff reserves the right to modify the Class as further investigation and/or discovery so warrant.
62. This action has been brought and may properly be maintained as a class action pursuant to Fed. R. Civ. P. 23 and case law thereunder.
63. **Numerosity:** The members of the Classes are so numerous that joinder of all members is impracticable. Plaintiff reasonably believes that the Classes are comprised of tens of thousands of consumers throughout Puerto Rico and the United States territories.
64. **Commonality:** Common questions of law and fact exist as to all members of the Classes. These common questions predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:
- a. whether Defendant's claims regarding ChefBoyardee products is deceptive or misleading;
  - b. whether Defendant engaged in false or misleading advertising;

- c. whether Defendant's conduct as alleged herein violates the Puerto Rico's Deceptive, false, or misleading labeling Law and/or other U.S. territories unfair trade practices acts;
- d. whether Defendant's conduct as alleged herein constitutes a breach of warranty;
- e. whether Defendant's conduct as alleged herein constitutes unjust enrichment;
- f. whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and
- g. whether Plaintiff and Class members are entitled to declaratory and injunctive relief.

These and other questions of law or fact which are common to the members of the Class and predominate over any questions affecting only individual members of the Class.

65. **Typicality:** Plaintiff's claims are typical of the claims of the members of the Class, as all Class members are similarly affected by Defendants' wrongful conduct. Plaintiff, like other members of the Classes, purchased Defendant's "No Preservatives" ChefBoyardee products after exposure to the same material misrepresentations and/or omissions appearing on the product packaging and on or in Defendant's marketing and advertising, and received a product that was not as represented. Plaintiff is advancing the same claims and legal theories on behalf of himself and all absent members of the Class.
66. **Adequacy:** Plaintiff's claims are made in a representative capacity on behalf of the other members of the Class. Plaintiff has no interests antagonistic to the interests of the other members of the proposed Class and is subject to no unique defenses.
67. Plaintiff is similarly situated in interest to all members of the proposed Class and is committed to the vigorous prosecution of this action and has retained competent

counsel. Accordingly, Plaintiff is an adequate representative of the proposed Class and will fairly and adequately protect the interests of the Class.

68. This suit may be maintained as a class action under Fed. R. Civ. P. 23(b) (2) because Defendant has acted, and/or refused to act, on grounds generally applicable to the Classes, thereby making appropriate final injunctive relief. Specifically, injunctive relief is necessary and appropriate to require Defendant to: (i) discontinue advertising, marketing, packaging and otherwise representing ChefBoyardee products as superior; (ii) undertake an immediate public information campaign to inform members of the proposed Class as to their prior practices; and (iii) to correct any erroneous impression consumers may have derived concerning the nature, characteristics, or qualities of the “No Preservatives” products including without limitation, the placement of corrective advertising and providing written notice to the public.

69. In addition, this suit may be maintained as a class action under Fed. R. Civ. P. 23 (b) (3) because a class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The injury suffered by each individual class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such litigation, the court system could not individualize litigation inasmuch as it presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the

case. By contrast, the class action device presents no management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

## **COUNT I (Breach of Express Warranty)**

### **Deceptive and Unfair Marketing**

70. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-69 above as if fully set forth herein.
71. Plaintiff, and each member of the Class, formed a contract with Defendant at the time they purchased Defendants' "No Preservatives" ChefBoyardee products. The terms of that contract include the promises and affirmations of fact made by Defendant on the labels of Defendant's "No Preservatives" product and through the advertising and marketing campaign, as alleged above. ChefBoyardee "No Preservatives" product's labeling and advertising constitute express warranties, are part of the basis of the bargain, and are part of a standardized contract between Plaintiff and the members of the Class, on the one hand, and Defendant, on the other.
72. Alternatively, privity was established between Defendant and Plaintiff and Class Members because Defendant, and/or its agents, were substantially, if not completely responsible for directly promoting and marketing Defendant's "No Preservatives" ChefBoyardee products to Plaintiff and Class Members and Plaintiff and Class Members were directly promoted to and marketed to by Defendant prior to purchasing "No Preservatives" ChefBoyardee products resulting in the purchase of Defendant's product by Plaintiff and Class Members. By virtue of this direct promotion and marketing to

Plaintiff and Class Members, Defendant directly made an express warranty of “No Preservatives” products attributes and benefits to Plaintiff and Class Members.

73. All conditions precedent to Defendant's liability under the warranty have been performed by Plaintiff and the Class.
74. Defendant breached the terms of the express warranty by not providing a product that provided the benefits promised. The statements made by Defendant that warranted Defendant's claims of “No Preservatives” products having a superior nature, attributes and benefits were not "puffery" or mere opinion -they were statements and affirmations of specific benefits and superior performance over alternative and lower priced sources of “No Preservatives” constitute violations of the provisions of 23 LPRA § 1014 and 24 LPRA § 729, Rules 5 and 7 of the Regulations Against Deceitful and Misleading Advertising of Puerto Rico Department of Consumer Affairs, the Virgin Islands Consumer Fraud and Business Practices Act, 12A V.I.C. § 301 et seq., and other territorial Consumer Fraud Protection Acts.
75. Plaintiffs and Class Members relied on these representations by Defendant in purchasing Defendant's “No Preservatives” ChefBoyardee instead of less expensive, but equally or more effective, alternative beverages.
76. As a result of Defendant's breach of warranty, Plaintiff and the Class have been damaged in the amount of the purchase price of Defendant's “No Preservatives” ChefBoyardee and have suffered other damages to be determined by proof at trial, entitling the Plaintiff and the putative Class to damages under Article 1802 of the Puerto Rico Civil Code.

**COUNT II (Unjust Enrichment)**

77. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1-39 above as if fully set forth herein.
78. Plaintiff and Class members conferred a tangible economic benefit upon Defendant by purchasing ChefBoyardee products. Plaintiff and Class members would have expected remuneration from Defendant at the time this benefit was conferred had they known that ChefBoyardee products contained unnatural, synthetic, and/or artificial ingredients which is used as a preservative and was not “No Preservatives” food.
79. As a direct and proximate result of Defendant's misconduct as set forth above, Defendant has been unjustly enriched at the expense of Plaintiff and Class members.
80. It would be inequitable for Defendant to retain the profits, benefits and other compensation obtained by its wrongful conduct in marketing and selling of its “No Preservatives” ChefBoyardee products, which contained unnatural, synthetic, and/or artificial ingredients such as Citric Acid used as a preservative. Plaintiff, on behalf of himself and Class members, seeks restitution from Defendant, and an order of this Court disgorging all profits, benefits and other compensation obtained by Defendant from the wrongful conduct.
81. The Defendant's acts and omissions as well as their failure to use reasonable care in this matter as alleged in this complaint, including but not limited to, the knowing misrepresentation or failure to disclose the source, affiliation, origin, characteristics, ingredients, standards and quality of “No Preservatives” ChefBoyardee products constitute violations of the provisions of 23 LPRA § 1014 and 24 LPRA § 729, Rules 5 and 7 of the Regulations Against Deceitful and Misleading Advertising of Puerto Rico Department of Consumer Affairs, the Virgin Islands Consumer Fraud and Business

Practices Act, 12A V.I.C. § 301 et seq., and other territorial Consumer Fraud Protection Acts.

82. The Defendant's unconscionable, unfair, and deceptive acts and practices set forth in this Complaint are likely and reasonably foreseeable to mislead Plaintiff and members of the Class acting reasonably in their reliance on Defendant's acts and practices, and to their detriment.
83. The Defendant engaged in the unconscionable, unfair, and deceptive acts or practices set forth in this Complaint in the conduct of trade or commerce, in violation of the provisions of 23 LPRA § 1014 and 24 LPRA § 729, Rules 5 and 7 of the Regulations Against Deceitful and Misleading Advertising of Puerto Rico Department of Consumer Affairs, the Virgin Islands Consumer Fraud and Business Practices Act, 12A V.I.C. § 301 et seq., and other territorial Consumer Fraud Protection Acts.
84. Defendant's misrepresentations or omissions as set forth in this Complaint are material in that they relate to matters which are important to consumers or are likely to affect the purchasing decisions or conduct of consumers, including Plaintiff and Class Members regarding Defendant's products.
85. The Defendant's business practice, in its advertising, marketing, packaging, labeling and sales of its ChefBoyardee products as "No Preservatives" justifying substantially higher prices over alternative sources of cheese, is an unconscionable, unfair, and deceptive act or practice, in violation of the 23 LPRA § 1014 and 24 LPRA § 729, in that it (1) offends established public policy, (2) is immoral, unethical, oppressive, or unscrupulous, and/or (3) is substantially injurious and caused actual damages to consumers, including Plaintiff and Class Members who purchased ChefBoyardee product because of Defendant's representations and conduct.



86. Plaintiff and Class Members have suffered actual damages as a result of Defendant's violation and are entitled to relief pursuant to Article 1802 of the Puerto Rico Civil Code.
87. As a direct and proximate cause of Defendant's violations of various applicable Consumer Protection Acts, Plaintiff and Class Members have incurred harm and damages as described herein, and are entitled to recover for those damages, including but not limited to, actual damages, costs, attorneys' fees, and injunctive relief, pursuant to Article 1802 of the Puerto Rico Civil Code and the various other Consumer Protection Acts.

**PRAYER FOR RELIEF**

88. **WHEREFORE**, Plaintiff, on behalf of herself and all members of the Classes defined herein, by the undersigned attorney, prays for judgment as follows:
- Certification of the Class under Federal Rule of Civil Procedure 23 and appointment of Plaintiff as representative of the Class and her legal counsel as Class legal counsel;
  - A temporary, preliminary and/or permanent order for injunctive relief requiring Defendants to: (i) discontinue advertising, marketing, packaging and otherwise representing ChefBoyardee products as containing "No Preservatives" (ii) undertake an immediate public information campaign to inform members of the proposed Class as to the prior practices; and (iii) to correct any erroneous impression consumers may have derived concerning the nature, characteristics, or qualities of Chefboyardee "No Preservatives" packaged food, including without limitation, the placement of corrective advertising and providing written notice to the public;

- An order requiring imposition of a constructive trust and/or disgorgement of Defendant's ill-gotten gains and to pay restitution to Plaintiff and all members of the Class and to restore to the Plaintiff and members of the Class all funds acquired by means of any act or practice declared by this Court to be an unlawful, fraudulent or unfair business act or practice, a violation of laws, statutes or regulations, or constituting unfair competition or false advertising, in an amount no less than FIVE MILLION DOLLARS (\$5,000,000.00);
- Distribution of any moneys recovered on behalf of members of the Class via fluid recovery or cy press recovery where necessary and as applicable, to prevent Defendant from retaining the benefits of the wrongful conduct;
- Compensatory and other damages for economic and non-economic damages identified herein, including all damages allowed by governing statutes; as well as Statutory pre-judgment and post-judgement interest.
- Reasonable attorneys fees.

**RESPECTFULLY SUBMITTED**, in San Juan, Puerto Rico, on this the 20<sup>th</sup> day of September 2015.

/s/ *José R. Franco-Rivera*  
**JOSE R. FRANCO-RIVERA, Esq.**

**USDC #129014**

P.O. Box 16834, San Juan, Puerto Rico 00907-6834

Tel. 787/407-7041; E mail address: [jrfrancolaw@gmail.com](mailto:jrfrancolaw@gmail.com)



Plaza Gurabo  
 Gurabo PR 00778  
 Tel (787) 687-0959 Fax  
 v1.2015.813

PLANTERS PEANUT BUTTER CREAMY	(A) 2.89	TF
CHEF BOYARDEE 15 BEEFARONI	(A) 1.00	TF
* Usted Ahorro 0.29		
CHEF BOYARDEE 15 BEEF RAVIOLI	(A) 1.00	TF
* Usted Ahorro 0.29		
GOYA NECTAR MELOCOTON DIET	(A) 0.59	TF
CARMELA SALCHICHAS POLLO	(A) 0.59	TF
* Usted Ahorro 0.10		
GOYA NECTAR DE PERA DIETA	(A) 0.59	TF
DEL MONTE F. MANDARIN ORANGES	2.69	F
DEL MONTE F. MANDARIN ORANGES	2.69	F
PAN DE AGUA RALPHS	1.99	F
GOYA NECTAR MELOCOTON DIET	(A) 0.59	TF
CARMELA SALCHICHAS POLLO	(A) 0.59	TF
* Usted Ahorro 0.10		
CHEF BOYARDEE 14.5 SPAGHETTI &	(A) 1.00	TF
* Usted Ahorro 0.29		
CARMELA SALCHICHAS POLLO	(A) 0.59	TF
* Usted Ahorro 0.10		
CARMELA SALCHICHAS POLLO	(A) 0.59	TF
* Usted Ahorro 0.10		
COCA-COLA 8 PK ZERO P/P \$2.99	(AB) 2.99	TF
RAID FLYING INSECT OUTDOOR FRE	(AB) 2.19	T
RAID FLYING INSECT OUTDOOR FRE	(AB) 2.19	T
CHEF BOYARDEE MICRO 7 LASAGNE	(A) 1.29	TF
CAMPBELL'S CHICKEN NOODLE	(A) 1.29	TF
JET POFED MARSHMALLOWS	(AB) 1.79	TF
CAMPBELL'S CHICKEN NOODLE	(A) 1.29	TF
HUNT'S SNACK PACK GEL S\F STW/	(A) 1.79	TF
CHEF BOYARDEE MICRO 7 SPAGHETT	(A) 1.29	TF
SUIZA LECHE FRESCA REGULAR	(A) 5.58	TF
CHEF BOYARDEE MICRO 7 RAVIOLI	(A) 1.29	TF
SUNKIST DIET 1.75 (*)	(AB) 0.99	TF
* Usted Ahorro 0.40		
HOLSUM COFFEE CAKE PIãA	(AB) 2.50	TF
* Usted Ahorro 0.69		
HOLSUM COFFEE CAKE PIãA	(AB) 2.50	TF
* Usted Ahorro 0.69		
PERDUE BUFFALO ROASTED WING	(A) 10.59	TF
HUEVOS U.S. MEDIANOS ISLAND CH	(A) 2.99	TF

SubTotal	60.04
52.67 Tax Municipal 1%	0.53
15.15 Tax Estatal 10.5%	1.59
Total	62.16
	63.00
Cash	0.84



## NOSB/NATIONAL LIST COMMENT FORM/BALLOT

Use this page to write down comments and questions regarding the data presented in the file of this National List material. Also record your planned opinion/vote to save time at the meeting on the National List.

Name of Material Citric Acid

Type of Use: ☐ Crops; ☐ Livestock; ☒ Processing

TAP Review by:

1. Steve Taylor
2. Steven Harper
3. Bob Durst

Comments/Questions:

---

My Opinion/Vote is:

Signature \_\_\_\_\_ Date \_\_\_\_\_

1.

## USDA/TAP REVIEWER COMMENT FORM

Use this page or an equivalent to write down comments and summarize your evaluation regarding the data presented in the file of this potential National List material. Attach additional sheets if you wish.

This file is due back to us within 30 days of: Jan 7

Name of Material: Citric Acid

Reviewer Name: Steve Taylor

Is this substance Natural or Synthetic? Explain (if appropriate)

Natural

Please comment on the accuracy of the information in the file:

This material should be added to the National List as:

       Synthetic Allowed        Prohibited Natural

or,        This material does not belong on the National List because:

Are there any restrictions or limitations that should be placed on this material by use or application on the National List?

Made by fermentation. Fermentation is natural but process does ~~any~~ involve use of other substances: Substrates: corn syrup, sucrose  
Any additional comments or references? ammonium bicarbonate

Need to find out more about process and processing aids to make determination.

Signature

Steve Taylor

Date

3-5-95

**USDA/TAP REVIEWER  
COMMENT FORM**

Use this page or an equivalent to write down comments and summarize your evaluation regarding the data presented in the file of this potential National List material. Attach additional sheets if you wish.

This file is due back to us within 30 days of: Jan 7

Name of Material: Citric Acid

Reviewer Name: Steven Harper

**Is this substance Natural or Synthetic? Explain (if appropriate)**

Synthetic

**Please comment on the accuracy of the information in the file:**

Good

**This material should be added to the National List as:**

  x   Synthetic Allowed        Prohibited Natural

or,        This material does not belong on the National List because:

**Are there any restrictions or limitations that should be placed on this material by use or application on the National List?**

No.

**Any additional comments or references?**

Signature

Steven Harper

Date

3/10/15

**USDA/TAP Reviewer  
Comment Form****3.**

Material: Citric acid

Reviewer: Bob Durst

---

Is this substance Natural or Synthetic? Explain (if appropriate)

It is a natural occurring substance that commercially goes through numerous chemical processes to get to it's final usable form. This processing would suggest that it be classified as synthetic.

Please comment on the accuracy of the information in the file:

The file is accurate.

This material should be added to the National List as:

- ☒ Synthetic Allowed,  
☐ Prohibited Natural, or  
☐ This material does not belong on the National List because:

Are there any restriction or limitations that should be placed on this material by use or application on the National List?

Must be listed on the ingredient label if it used used.

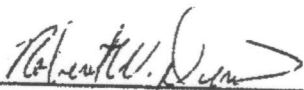
Unless it is actually derived from a natural source the labeling must not indicate that it is a natural compound.

Any additional comments or references?

As with all synthetic inorganic salts, source must be food grade. In addition each lot should be analyzed for toxic element concentrations (mercury, lead, cadmium, arsenic, thallium and antimony) and a near zero tolerance adopted.

Since citrus juices are a high natural source of citric acid, it might be advisable to find a manufacturer that is willing to isolate citric acid from organically grown fruit in an organically acceptable manner, and get a natural citric acid.

Signature



Date

3/4/95



**NOSB Materials Database**

4.

**Identification**

<b>Common Name</b>	<b>Citric Acid</b>	<b>Chemical Name</b>	B-hydroxy-tricarboxylic acid C <sub>6</sub> H <sub>8</sub> O <sub>7</sub>
<b>Other Names</b>	Citric Acid, Anhydrous USP/FCC		
<b>Code #: CAS</b>	77-92-9	<b>Code #: Other</b>	21 CFR 182-1033
<b>N. L. Category</b>	Synthetic Allowed	<b>MSDS</b>	<input checked="" type="radio"/> yes <input type="radio"/> no

**Chemistry**

<b>Family</b>	Aliphatic Acid
<b>Composition</b>	C <sub>6</sub> H <sub>8</sub> O <sub>7</sub>
<b>Properties</b>	Colorless, translucent crystals, (or) white granular to fine crystalline powder, odorless, strong acid taste.
<b>How Made</b>	Traditionally by extraction from citrus juice, no longer commercially available. It is now extracted by fermentation of a carbohydrate substrate (often molasses) by citric acid bacteria, <i>Aspergillus niger</i> (a mold) or <i>Candida guilliermondii</i> (a yeast). Citric acid is recovered from the fermentation broth by a lime and sulfuric acid process in which the citric acid is first precipitated as a calcium salt and then reacidulated with sulfuric acid.

**Use/Action**

<b>Type of Use</b>	Processing
<b>Specific Use(s)</b>	Production of fruit products, juices, oils, fats etc. for pH control, flavor enhancer, flavoring agent or adjuvant, leavening agent, sequestrant, antioxidant, solvent, antimicrobial agent, surface-active agent.
<b>Action</b>	Optimizes stability of frozen foods by enhancing the action of antioxidants and inactivating enzymes. Brings out flavor in carbonated beverages. Acts as a synergist for antioxidants employed in inhibiting rancidity in foods containing fats and oils.
<b>Combinations</b>	pure substance

**Status**

<b>OFPA</b>	
<b>N. L. Restriction</b>	Currently considered synthetic by NOSB.
<b>EPA, FDA, etc</b>	FDA -GRAS
<b>Directions</b>	
<b>Safety Guidelines</b>	Eye irritant, dust may cause mild respiratory irritation.
<b>State Differences</b>	
<b>Historical status</b>	Always been allowed in organic processing and considered natural.
<b>International status</b>	Allowed by IFOAM, EU and Codex.



## NOSB Materials Database

### OEPA Criteria

**2119(m)1: chemical interactions**      **Not Applicable**

**2119(m)2: toxicity & persistence**      **Not Applicable**

**2119(m)3: manufacture & disposal consequences**

Microbial fermentation --Clarification --Precipitation --Dissolution --Crystallization --Drying --Sifting --packaging. The NOSB judged that citric acid produced by natural fermentation of carbohydrate substrates and purified by the lime-sulfuric method is synthetic because the citric acid comes into contact with lime and sulfuric acid and because of the chemical change from citric acid to calcium citrate and then back to citric acid during purification.

Biomass residuals are usually recycled as animal feeds and for agriculture.

**2119(m)4: effect on human health**

Material has been affirmed as GRAS by FDA for use in foods. The amount of citrate added to foods by food processors is about 500 mg per person per day. This amount occurs naturally in 2 ounces of orange juice and does not constitute a significant addition to the total body load.

Long term oral over exposure may cause damage to tooth enamel. Considered an irritant to eyes and respiratory system during manufacture and handling. Recommended use of eye and respiratory protection during handling. Oral LD50 (rat) 11,700 mg/kg; dermal (acute) tested on skin of rabbit 500mg/24 hr moderate; eye 750 mg/24hr severe. FDA tests show no effect on reproduction, teratogenicity or oncogenicity in rats.

**2119(m)5: agroecosystem biology**      **Not Applicable**

**2119(m)6: alternatives to substance**

Lactic acid ( has some taste problems and not used in infant foods).

Vinegar (strange taste in some foods).

Citrus juices.

**2119(m)7: Is it compatible?**

Compatible

### References

1. FDA. 1977. Evaluation of the health aspects of citric acid, sodium citrate, potassium citrate, calcium citrate, ammonium citrate, triethyl citrate, isopropyl citrate, and stearyl citrate as food ingredients. SCOGS-84. Life Science Research Office, 9650 Rockville Pike, Bethesda, Maryland 20014.

2. Ag Partners of Davis, *Materials Report for Citric Acid*, 1995. Organic Trade Association, Greenfield, MA

-----  
**MSDS for CITRIC ACID, MONOHYDRATE**  
-----

Page 1

-----  
**1 - PRODUCT IDENTIFICATION**  
-----

PRODUCT NAME: CITRIC ACID, MONOHYDRATE  
FORMULA:  $\text{HOC}(\text{COOH})(\text{CH}_2\text{COOH})_2 \text{H}_2\text{O}$  FORMULA WT: 210.14  
CAS NO.: 5949-29-1  
COMMON SYNONYMS: 2-HYDROXY-1,2,3,PROPANE-TRICARBOXYLIC ACID, MONOHYDRATE  
PRODUCT CODES: 0118,0120,0119,0110  
EFFECTIVE: 12/01/86 REVISION #02

**PRECAUTIONARY LABELLING****BAKER SAF-T-DATA(TM) SYSTEM**

HEALTH - 0 NONE  
FLAMMABILITY - 1 SLIGHT  
REACTIVITY - 0 NONE  
CONTACT - 1 SLIGHT

HAZARD RATINGS ARE 0 TO 4 (0 = NO HAZARD; 4 = EXTREME HAZARD).  
LABORATORY PROTECTIVE EQUIPMENT: SAFETY GLASSES; LAB COAT

**PRECAUTIONARY LABEL STATEMENTS****CAUTION****MAY CAUSE IRRITATION**

DURING USE AVOID CONTACT WITH EYES, SKIN, CLOTHING. WASH THOROUGHLY AFTER  
HANDLING. WHEN NOT IN USE KEEP IN TIGHTLY CLOSED CONTAINER.  
SAF-T-DATA(TM) STORAGE COLOR CODE: ORANGE (GENERAL STORAGE)

-----  
**2 - HAZARDOUS COMPONENTS**  
-----

COMPONENT	%	CAS NO.
CITRIC ACID, MONOHYDRATE		05949-29-1

-----  
**3 - PHYSICAL DATA**  
-----

BOILING POINT: N/A	VAPOR PRESSURE(MM HG): N/A
MELTING POINT: N/A	VAPOR DENSITY(AIR=1): N/A
SPECIFIC GRAVITY: 1.54 (H <sub>2</sub> O=1)	EVAPORATION RATE: N/A (BUTYL ACETATE=1)

SOLUBILITY(H<sub>2</sub>O): APPRECIABLE (MORE THAN 10 %) % VOLATILES BY VOLUME: 0  
APPEARANCE & ODOR: WHITE, ODORLESS POWDER.

-----  
**4 - FIRE AND EXPLOSION HAZARD DATA**  
-----

FLASH POINT (CLOSED CUP) N/A  
FLAMMABLE LIMITS: UPPER - N/A % LOWER - N/A %  
FIRE EXTINGUISHING MEDIA  
USE WATER SPRAY, CARBON DIOXIDE, DRY CHEMICAL OR ORDINARY FOAM.

**SPECIAL FIRE-FIGHTING PROCEDURES**

FIREFIGHTERS SHOULD WEAR PROPER PROTECTIVE EQUIPMENT AND SELF-CONTAINED  
BREATHING APPARATUS WITH FULL FACEPIECE OPERATED IN POSITIVE PRESSURE MODE.

TOXIC GASES PRODUCED: CARBON MONOXIDE, CARBON DIOXIDE

-----  
**5 - HEALTH HAZARD DATA**  
-----

TOXICITY TEST RESULTS AND SAFETY AND HEALTH EFFECTS ARE LISTED FOR THE ANHYDROUS PRODUCT.

TOXICITY: LD50 (ORAL-RAT)(G/KG) - 11.7

LD50 (IPR-RAT)(MG/KG) - 883

LD50 (SCU-RAT)(MG/KG) - 5500

LD50 (ORAL-MOUSE)(MG/KG) - 5040

CARCINOGENICITY: NTP: NO IARC: NO Z LIST: NO OSHA REG: NO

EFFECTS OF OVEREXPOSURE

DUST MAY IRRITATE NOSE AND THROAT.

DUST MAY CAUSE HEADACHE, COUGHING, DIZZINESS OR DIFFICULT BREATHING.

DUST MAY IRRITATE OR BURN MUCOUS MEMBRANES.

CONTACT WITH SKIN OR EYES MAY CAUSE IRRITATION.

TARGET ORGANS: EYES, SKIN

MEDICAL CONDITIONS GENERALLY AGGRAVATED BY EXPOSURE: NONE IDENTIFIED

ROUTES OF ENTRY: INHALATION, EYE CONTACT, SKIN CONTACT

EMERGENCY AND FIRST AID PROCEDURES

INGESTION: IF SWALLOWED AND THE PERSON IS CONSCIOUS, IMMEDIATELY GIVE LARGE AMOUNTS OF WATER. GET MEDICAL ATTENTION.

INHALATION: IF A PERSON BREATHES IN LARGE AMOUNTS, MOVE THE EXPOSED PERSON TO FRESH AIR. GET MEDICAL ATTENTION.

EYE CONTACT: IMMEDIATELY FLUSH WITH PLenty OF WATER FOR AT LEAST 15 MINUTES. GET MEDICAL ATTENTION.

SKIN CONTACT: IMMEDIATELY WASH WITH PLenty OF SOAP AND WATER FOR AT LEAST 15 MINUTES.

-----  
**6 - REACTIVITY DATA**  
-----

STABILITY: STABLE HAZARDOUS POLYMERIZATION: WILL NOT OCCUR

INCOMPATIBLES: STRONG BASES

DECOMPOSITION PRODUCTS: CARBON MONOXIDE, CARBON DIOXIDE  
-----

**7 - SPILL AND DISPOSAL PROCEDURES**  
-----

STEPS TO BE TAKEN IN THE EVENT OF A SPILL OR DISCHARGE

WEAR SUITABLE PROTECTIVE CLOTHING. CAREFULLY SWEEP UP AND REMOVE.

DISPOSAL PROCEDURE

DISPOSE IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL ENVIRONMENTAL REGULATIONS.

-----  
**8 - PROTECTIVE EQUIPMENT**  
-----

VENTILATION: USE ADEQUATE GENERAL OR LOCAL EXHAUST VENTILATION TO KEEP FUME OR DUST LEVELS AS LOW AS POSSIBLE.

RESPIRATORY PROTECTION: NONE REQUIRED WHERE ADEQUATE VENTILATION CONDITIONS EXIST. IF AIRBORNE CONCENTRATION IS HIGH, USE AN APPROPRIATE RESPIRATOR OR DUST MASK.

EYE/SKIN PROTECTION: SAFETY GLASSES WITH SIDESHIELDS, NITRILE GLOVES RECOMMENDED.



-----  
9 - STORAGE AND HANDLING PRECAUTIONS  
-----

SAF-T-DATA(TM) STORAGE COLOR CODE: ORANGE (GENERAL STORAGE)  
SPECIAL PRECAUTIONS

KEEP CONTAINER TIGHTLY CLOSED. SUITABLE FOR ANY GENERAL CHEMICAL STORAGE  
AREA.

-----  
10 - TRANSPORTATION DATA AND ADDITIONAL INFORMATION  
-----

DOMESTIC (D.O.T.)

PROPER SHIPPING NAME    CHEMICALS, N.O.S. (NON-REGULATED)

INTERNATIONAL (I.M.O.)

PROPER SHIPPING NAME    CHEMICALS, N.O.S. (NON-REGULATED)

05 MAY 94  
DOCNUM=1937

PAGE 1

U.S. FOOD AND DRUG ADMINISTRATION  
FOOD ADDITIVE SAFETY PROFILE

CITRIC ACID

CAS#: 000077929 HUMAN CONSUMPTION: 90.5367 MG/KG BW/DAY/PERSON  
FASP#: 1937 MARKET DISAPPEARANCE: 106833333.333LBS/YR  
TYPE: ASP MARKET SURVEY: 87  
NAS#: 2306 JECFA: NL-C  
FEMA#: 2306 JECFA ADI: MG/KG BW/DAY/PERSON  
GRAS#: 3 JECFA ESTABLISHED: 1979  
POTENTIAL BEVERAGE USE LAST UPDATE: 931115

FW: 192.12 DENSITY: LOGP:

STRUCTURE CATEGORIES: A6

COMPONENTS:

SYNONYMS: CITRIC ACID, ANHYDROUS  
2-HYDROXY-1,2,3-PROPANETRICARBOXYLIC ACID  
HYDROXYTRICARBOXYLIC ACID, BETA-  
1,2,3-PROPANETRICARBOXYLIC ACID, 2-HYDROXY-  
ACIDE CITRIQUE

CHEMICAL FUNCTION: F

TECHNICAL EFFECT: PH CONTROL AGENT  
FLAVOR ENHANCER  
FLAVORING AGENT OR ADJUVANT  
LEAVENING AGENT  
SEQUESTANT  
ANTIOXIDANT  
SOLVENT OR VEHICLE  
SURFACE-ACTIVE AGENT  
ANTIMICROBIAL AGENT  
ENZYME

CFR REG NUMBERS:	173.165	172.755	182.6033
	182.1033	PART 133	PART 146
	161.190	PART 169	PART 150
	155.130	145.145	131.111
	131.112	131.136	131.144
	131.138	131.146	146.187
	150.161	150.141	166.40
	169.115	169.140	169.150
	173.160	173.280	145.131
	166.110	184.1033	

MINIMUM TESTING LEVEL: 3

COMMENTS: STUDY 1-12 FROM SCOGS-84

BOX 4A: LOWEST EFFECT LEVEL OBSERVED IN ALL AVAILABLE RAT OR MOUSE STUDIES

STUDY: 4 COMPLETENESS: RANKING FACTOR: 1.938E-2  
SPECIES: RAT LEL: 4670 MG/KG BW/DAY  
EFFECTS: CHOLESTEROL DECREASE  
GLUTAMIC-OXALOACETIC TRANSAMINASE (SGOT/AST) INCREASE  
ORGAN WEIGHT DECREASE  
CELLULAR ATROPHY  
SITES: THYMUS  
SPLEEN  
COMMENTS: MALES ONLY  
SLIGHT ATROPHY OF THYMUS AND SPLENIC FOLLICLES  
DATA FROM SCOGS-84

05 MAY 94  
 DOCNUM=1937

PAGE 2

BOX 4C: LOWEST EFFECT LEVEL OBSERVED IN ALL AVAILABLE STUDIES

STUDY: 4 COMPLETENESS: RANKING FACTOR: 1.938E-2  
 SPECIES: RAT LEL: 4670 MG/KG BW/DAY  
 EFFECTS: CHOLESTEROL DECREASE  
 GLUTAMIC-OXALOACETIC TRANSAMINASE (SGOT/AST) INCREASE  
 ORGAN WEIGHT DECREASE  
 CELLULAR ATROPHY  
 SITES: THYMUS  
 SPLEEN  
 COMMENTS: MALES ONLY  
 SLIGHT ATROPHY OF THYMUS AND SPLENIC FOLLICLES  
 DATA FROM SCOGS-84

BOX 7: ACUTE TOXICITY INFORMATION

STUDY: 2 SOURCE: J TAKEDA RES LAB 30:25-31  
 SPECIES: RAT YEAR: 1971  
 LD50: 12000 MG/KG BW  
 COMMENTS:  
 STUDY: 1 SOURCE: J TAKEDA RES LAB 30:25-31  
 SPECIES: MOUSE YEAR: 1971  
 LD50: 5000 MG/KG BW  
 COMMENTS:

BOX 9: ORAL TOXICITY STUDIES (OTHER THAN ACUTE)

STUDY: 3 COMPLETENESS: SOURCE: REV PORT FARM 20:41-46  
 TYPE: SHORT TERM YEAR: 1970  
 SPECIES: RAT LEL: 200 MG/KG BW/DAY  
 DURATION: 9 DAYS HNEL:  
 EFFECTS: BODY WEIGHT DECREASE  
 SITES:  
 COMMENTS: INITIAL DECREASE IN WEIGHT DID NOT PERSIST  
 NOT USED FOR PRIORITY RANKING  
 STUDY: 4 COMPLETENESS: SOURCE: J TAKEDA RES LAB 30:25-31  
 TYPE: SHORT TERM YEAR: 1971  
 SPECIES: RAT LEL: 4670 MG/KG BW/DAY  
 DURATION: 42 DAYS HNEL: 2260 MG/KG BW/DAY  
 EFFECTS: CHOLESTEROL DECREASE  
 GLUTAMIC-OXALOACETIC TRANSAMINASE (SGOT/AST) INCREASE  
 ORGAN WEIGHT DECREASE  
 CELLULAR ATROPHY  
 SITES: THYMUS SPLEEN  
 COMMENTS: SLIGHT ATROPHY OF THYMUS AND SPLENIC FOLLICLES  
 STUDY: 5 COMPLETENESS: SOURCE: J AM PHARM ASSOC SCI ED  
 TYPE: SUBCHRONIC RODENT 34:86-89  
 SPECIES: RAT YEAR: 1945  
 DURATION: 90 DAYS LEL: > MG/KG BW/DAY  
 EFFECTS: NO EFFECTS HNEL: 600 MG/KG BW/DAY  
 SITES:  
 COMMENTS: BODY WEIGHT, BLOOD, HISTOPATH AND REPRODUCTION OBSERVED  
 STUDY: 6 COMPLETENESS: SOURCE: J AM PHARM ASSOC SCI ED  
 TYPE: SUBCHRONIC MAMMAL (NON-RODENT) YEAR: 1945  
 SPECIES: DOG LEL: > MG/KG BW/DAY  
 DURATION: 112 DAYS HNEL: 1380 MG/KG BW/DAY  
 EFFECTS: NO EFFECTS  
 SITES:  
 COMMENTS: NO BEHAVIORAL, BIOCHEMICAL OR HISTOPATHOLOGICAL ABNORMALITIES  
 STUDY: 10 COMPLETENESS: SOURCE: GRP 7T0195 3  
 TYPE: TERATOGENICITY YEAR: 1973  
 SPECIES: RAT LEL: > MG/KG BW/DAY

11.

05 MAY 94

DOCNUM=1937

PAGE 3

DURATION: 10 DAYS  
EFFECTS: NO EFFECTS  
SITES:  
HNEL: 295 MG/KG BW/DAY

COMMENTS: ADMINISTERED DAY 6-15 OF GESTATION

STUDY: 9  
TYPE: TERATOGENICITY  
SPECIES: MOUSE  
DURATION: 10 DAYS  
EFFECTS: NO EFFECTS  
SITES:  
COMPLETENESS: SOURCE: GRP 7T0195 3  
YEAR: 1973  
LEL: > MG/KG BW/DAY  
HNEL: 241 MG/KG BW/DAY

COMMENTS: ADMINISTERED DAY 6-15 OF GESTATION

STUDY: 11  
TYPE: TERATOGENICITY  
SPECIES: HAMSTER  
DURATION: 5 DAYS  
EFFECTS: NO EFFECTS  
SITES:  
COMPLETENESS: SOURCE: GRP 7T0195 3  
YEAR: 1973  
LEL: > MG/KG BW/DAY  
HNEL: 272 MG/KG BW/DAY

COMMENTS: ADMINISTERED DAY 6-10 OF GESTATION

STUDY: 12  
TYPE: TERATOGENICITY  
SPECIES: RABBIT  
DURATION: 13 DAYS  
EFFECTS: NO EFFECTS  
SITES:  
COMPLETENESS: SOURCE: GRP 7T0195 3  
YEAR: 1973  
LEL: > MG/KG BW/DAY  
HNEL: 425 MG/KG BW/DAY

COMMENTS: ADMINISTERED DAY 6-18 OF GESTATION

STUDY: 8  
TYPE: RAT ONCOGENICITY  
SPECIES: RAT  
DURATION: 728 DAYS  
EFFECTS: NO EFFECTS  
SITES:  
COMPLETENESS: SOURCE: J AGRIC FOOD CHEM 5:759-760  
YEAR: 1957  
LEL: > MG/KG BW/DAY  
HNEL: 2000 MG/KG BW/DAY

COMMENTS: MALES ONLY

STUDY: 7  
TYPE: REPRODUCTION (3-GENERATION)  
SPECIES: RAT  
DURATION:  
EFFECTS: NO EFFECTS  
SITES:  
COMPLETENESS: SOURCE: VOEDING 17:137-148  
YEAR: 1956  
LEL: > MG/KG BW/DAY  
HNEL: 800 MG/KG BW/DAY

COMMENTS:

BOX 3: GENETIC TOXICITY STUDIES

STUDY: 15  
TYPE:  
SPECIES:  
DURATION:  
EFFECTS:  
CELLS:  
COMMENTS:  
COMPLETENESS: SOURCE:  
YEAR:  
LEL: MG/KG BW/DAY  
HNEL:



Cal. 100

Sodium 750mg	31%	Protein 9g	12%
--------------	-----	------------	-----

Vitamin A 6% • Vitamin C 0% • Calcium 2% • Iron 10%  
 Niacin 10% • Folic Acid 10% • Phosphorus 10%  
 Selenium 30% • Manganese 15%

**INGREDIENTS:** TOMATOES (TOMATO PUREE, WATER), COOKED ENRICHED SPAGHETTI (WATER, ENRICHED WHEAT FLOUR, NIACIN, IRON, THIAMINE MONONITRATE {VITAMIN B1}, RIBOFLAVIN {VITAMIN B2}, FOLIC ACID), WHEAT FLOUR, NIACIN, IRON, THIAMINE MONONITRATE {VITAMIN B1}, RIBOFLAVIN {VITAMIN B2}, FOLIC ACID, MEATBALLS (PORK, DARK CHICKEN, MECHANICALLY SEPARATED CHICKEN, BEEF, WATER, BLEACHED WHEAT FLOUR, NIACIN, IRON, THIAMINE MONONITRATE, RIBOFLAVIN, FOLIC ACID), SOY PROTEIN ISOLATE [WHEAT GLUTEN, PHOSPHATE, LACTIC ACID], GLYCERYL MONOSTEARATE, SALT, CARAMEL COLOR, FLAVORINGS, SOYBEAN OIL, CITRIC ACID\*, WATER, HIGH FRUCTOSE CORN SYRUP, MODIFIED CORN STARCH, SALT, SEA SALT, DEHYDRATED ONIONS, POTASSIUM PHOSPHATE, XANTHAN GUM, YEAST EXTRACT, LACTIC ACID, SOYBEAN OIL. **CONTAINS: MILK, SOY, WHEAT.**

ConAgra Foods, Inc.  
 2000 North 27th St., Dept. CB  
 Lincoln, NE 68503-3768 U.S.A.  
 1-800-4-A-GRAND  
 1-800-4-A-GRAND (CST)  
 1-800-4-A-GRAND (CST)  
 1-800-4-A-GRAND (CST)  
 1-800-4-A-GRAND (CST)

\* To preserve quality





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

---

---

UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff(s)*

v.

\_\_\_\_\_  
*Defendant(s)*

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

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

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

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:

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

*CLERK OF COURT*

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

\_\_\_\_\_  
*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 \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

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

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

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

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

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

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

**CATEGORY SHEET**

You must accompany your complaint with this Category Sheet, and the Civil Cover Sheet (JS-44).

Attorney Name (Last, First, MI):

FRANCO-RIVERA, JOSE R.

USDC-PR Bar Number:

129014

Email Address:

jrfranco1aw@gmail.com

1. Title (caption) of the Case (provide only the names of the first party on each side):

Plaintiff:

Christian Garcia-Catalan

Defendant:

Johnson + Johnson Consumer Companies, Inc.

2. Indicate the category to which this case belongs:

- ☒ Ordinary Civil Case  
☐ Social Security  
☐ Banking  
☐ Injunction

3. Indicate the title and number of related cases (if any).

None

4. Has a prior action between the same parties and based on the same claim ever been filed before this Court?

- ☐ Yes  
☒ No

5. Is this case required to be heard and determined by a district court of three judges pursuant to 28 U.S.C. § 2284?


- ☐ Yes  
☒ No

6. Does this case question the constitutionality of a state statute? (See, Fed.R.Civ. P. 24)

- ☐ Yes  
☒ No

Date Submitted: July 20, 2015

rev. Dec. 2009



José R. Franco-Rivera, Esq.

**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.)

**(a) PLAINTIFFS**

**CAROL CRUZ-ACEVEDO, and others similarly situated**

(b) County of Residence of First Listed Plaintiff

PUERTO RICO

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

JOSE R. FRANCO RIVERA

**P.O. BOX 16834, SAN JUAN, P.R. 00907-6834**

787-407-7041

## DEFENDANT

**CONAGRA FOODS, 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)

## UNKNOWN

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

<sup>1</sup> U.S. Government

~~XXX~~ 3 Federal Question

Plaintiff

(U.S. Government Not a Party)

'2 U.S. Government

#### '4 X Diversity

Defendant

(Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff)*

(For Diversity Cases Only)

PTF DEF

*and One Box for Defendant)*

PTE

**DEF** PTF:

Citizen of This State '1' '1 Incorporated or Principal Place '4' '4 of Business In This State

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		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
'110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>		'625 Drug Related Seizure of Property 21 USC 881	'422 Appeal 28 USC 158	'375 False Claims Act
'120 Marine	'310 Airplane	'365 Personal Injury -			'423 Withdrawal 28 USC 157	'400 State Reapportionment
'130 Miller Act	'315 Airplane Product Liability	Product Liability		'690 Other		'410 Antitrust
'140 Negotiable Instrument		'367 Health Care/				'430 Banks and Banking
'150 Recovery of Overpayment & Enforcement of Judgment	'320 Assault, Libel & Pharmaceutical Injury	Slander Personal				'450 Commerce
					<b>PROPERTY RIGHTS</b>	'460 Deportation
'151 Medicare Act	'330 Federal Employers'	XXX Product Liability			'820 Copyrights	'470 Racketeer Influenced and
'152 Recovery of Defaulted	Liability	'368 Asbestos Personal			'830 Patent	Corrupt Organizations
Student Loans (Excludes Veterans)	'340 Marine	Injury Product			'840 Trademark	'480 Consumer Credit
'153 Recovery of Overpayment	'345 Marine Product Liability	Liability				'490 Cable/Sat TV
		<b>PERSONAL PROPERTY</b>		<b>LABOR</b>	<b>SOCIAL SECURITY</b>	'850 Securities/Commodities/
of Veteran's Benefits	'350 Motor Vehicle	'370 Other Fraud		'710 Fair Labor Standards Act	'861 HIA (1395ff)	Exchange
'160 Stockholders' Suits	'355 Motor Vehicle	'371 Truth in Lending		'720 Labor/Management Relations	'862 Black Lung (923)	'890 Other Statutory Actions
'190 Other Contract	Product Liability	'380 Other Personal		'740 Railway Labor Act	'863 DIWC/DIWW (405(g))	'891 Agricultural Acts
'195 Contract Product Liability	'360 Other Personal Injury	Property Damage		'751 Family and Medical	'864 SSID Title XVI	'893 Environmental Matters
'196 Franchise		'385 Property Damage			'865 RSI (405(g))	'895 Freedom of Information
	'362 Personal Injury -	Product Liability		Leave Act		Act
	Medical Malpractice			'790 Other Labor Litigation '		'896 Arbitration
				791 Employee Retirement Income Security Act		'899 Administrative Procedure Act/Review or Appeal of
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>			<b>FEDERAL TAX SUITS</b>	
'210 Land Condemnation	'440 Other Civil Rights	<b>Habeas Corpus:</b>			'870 Taxes (U.S. Plaintiff or Defendant)	Agency Decision
'220 Foreclosure	'441 Voting	'463 Alien Detainee				
'230 Rent Lease & Ejectment	'442 Employment	'510 Motions to Vacate			'871 IRS—Third Party	'950 Constitutionality of
'240 Torts to Land	'443 Housing/	Sentence			26 USC 7609	State Statutes
'245 Tort Product Liability	Accommodations	'530 General '535				
'290 All Other Real Property	'445 Amer. w/Disabilities - Employment	Death Penalty <b>Other:</b>		<b>IMMIGRATION</b>		
	'446 Amer. w/Disabilities -	'540 Mandamus & Other		'462 Naturalization Application		
	Other	'550 Civil Rights		'465 Other Immigration		
				Actions		



**V. ORIGIN** (Place an "X" in One Box Only)

XXX' 1 Original State Court '2 Removed from Appellate Court '3 Remanded from Reopened Another District '4 Reinstated or '5 Transferred from '6 Multidistrict Proceeding Litigation (specify)

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC § 1332(d)(2) and 1711 et. Seq.

**VI. CAUSE OF ACTION**

Brief description of cause: Class Action suit for violations including false advertising, fraud, deceit and/or misrepresentation.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A **XXCLASS ACTION** DEMAND \$5,000,000.00 CHECK YES only if demanded in complaint:

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNDER RULE 23, F.R.Cv.P.

**JURY DEMAND:**

' Yes ' No

JS 44 Reverse (Rev. 12/12)

**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.