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ON SIGNATURE PAGE]

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Cheryl Northrup

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**CHERYL NORTHRUP,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

**BLUEBONNET NUTRITION
CORPORATION,**

Defendant.

Case No.: '16CV0080 JAH NLS

**CLASS ACTION COMPLAINT
FOR:**

- 1) **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT (CAL. CIVIL CODE §§ 1750, ET SEQ.);**
- 2) **CALIFORNIA BUS. & PROF. §§ 17500 ET SEQ;**
- 3) **CALIFORNIA BUS. & PROF. §§ 17200 ET SEQ;**
- 4) **NEGLIGENT MISREPRESENTATION;**
- 5) **INTENTIONAL MISREPRESENTATION.**

JURY TRIAL DEMANDED

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INTRODUCTION

- 1
2 1. CHERYL NORTHRUP (“Plaintiff”) brings this Class Action Complaint to
3 challenge the deceptive advertising and business practices of BLUEBONNET
4 NUTRITION CORPORATION (“Defendant”) with regard to Defendant’s false
5 and misleading promotion of its consumable liquid B vitamin supplements (the
6 “Products”).¹ Defendant promotes that its Products contain various amounts of
7 B vitamins per serving, when, in fact, Defendant’s Products become unstable
8 upon opening and degrade over time; and, therefore fail to provide the amount
9 of vitamin B, including vitamin B12, stated on the Product labels. The
10 unlawfully labeled consumable Products are sold online and in various stores
11 throughout the United States.
- 12 2. Plaintiff alleges as follows upon personal knowledge as to herself and her own
13 acts and experiences, and, as to all other matters, upon information and belief,
14 including investigation conducted by her attorneys.
- 15 3. As stated by the California Supreme Court in *Kwikset v. Superior Court*
16 (January 27, 2011) 51 Cal. 4th 310, 328-29:

Simply stated: labels matter. The marketing industry is based on the premise that labels matter, that consumers will choose one product over another similar product based on its label and various tangible and intangible qualities...

22 ¹ Plaintiff purchased Defendant’s mislabeled Liquid CellularActive
23 Methylcobalamin Vitamin B12 product, which is advertised via its label, among
24 others, as containing 1,000 micrograms of liquid B12 vitamins per serving,
25 Plaintiff seeks class wide relief on behalf of all purchasers of any of Defendant’s
26 Products that are substantially similar to the product purchased by Plaintiff (i.e.,
27 all of Defendant’s liquid B vitamin products, regardless of the brand they are
28 advertised under and the exact amount of liquid B vitamin advertised per serving).
Included among the Products for which Plaintiff seeks relief is Defendant’s liquid
Vitamin B-12 & Folic Acid, which does not contain the amount of B-12 as stated
on the product label.

- 1 4. This nationwide sale and advertising of deceptively labeled products constitutes
 2 violations of: (1) California’s Consumer Legal Remedies Act (“CLRA”), Cal.
 3 Civ. Code §§ 1750 *et seq.*; (2) California’s False Advertising Law (“FAL”),
 4 Bus. & Prof. Code §§ 17500 *et seq.*; (3) California’s Unfair Competition Law
 5 (“UCL”), Bus. & Prof. Code §§ 17200 *et seq.*; (4) negligent misrepresentation;
 6 and (5) intentional misrepresentation. This conduct caused Plaintiff and other
 7 similarly situated damages, and requires restitution and injunctive relief to
 8 remedy and prevent further harm.
- 9 5. Unless otherwise indicated, the use of Defendant’s name in this Complaint
 10 includes all agents, employees, officers, members, directors, heirs, successors,
 11 assigns, principals, trustees, sureties, subrogees, representatives and insurers of
 12 the named Defendant.

13 JURISDICTION AND VENUE

- 14 6. This Court has jurisdiction over this matter pursuant to the Class Action
 15 Fairness Act (CAFA) because the amount in controversy in this matter exceeds
 16 \$5,000,000.00² as to all putative Class members, inclusive of attorneys’ fees
 17 and costs, and injunctive relief. *See* 28 U.S.C. § 1332(d).
- 18 7. Venue is proper in the United States District Court for the Southern District of
 19 California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff
 20 resides in the County of San Diego, State of California, which is within this
 21 judicial district; (ii) the conduct complained of herein occurred within this
 22 judicial district; and, (iii) many of the acts and transactions giving rise to this
 23 action occurred in this district because Defendant:

24
 25 _____
 26 ² On information and belief, Defendant sells its Products in bricks and mortar
 27 stores and on websites throughout the Nation. Based upon the advertised price of
 28 Defendant’s Products and their nationwide availability, Plaintiff is informed,
 believes, and thereon alleges the class damages exceed the \$5,000,000 threshold
 as set by 28 U.S.C. § 1332(d).

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- 1 (a) is authorized to conduct business in this district and has
- 2 intentionally availed itself of the laws and markets within this
- 3 district;
- 4 (b) does substantial business within this district;
- 5 (c) is subject to personal jurisdiction in this district because it has
- 6 availed itself of the laws and markets within this district; and,
- 7 (d) the harm to Plaintiff occurred within this district.

PARTIES

8
9 8. Plaintiff is an individual residing in the County of San Diego, State of
10 California.

11 9. Defendant is a corporation that is organized and exists under the laws of the
12 State of Texas with a principal place of business in Texas, and does business
13 within the State of California and within this district.

14 10. Defendant is an American conglomerate that manufactures and/or distributes
15 various products, including consumable consumer packaged goods such as
16 dietary supplements. Defendant conducts business through bricks and mortar
17 and Internet sales and enjoys wide retail distribution at numerous stores within
18 the United States.

NATURE OF THE CASE

19
20 11. At all times relevant, Defendant made, and continues to make, affirmative
21 misrepresentations regarding the liquid B vitamin supplements it manufactures,
22 markets and sells. Specifically, Defendant packaged, advertised, marketed,
23 promoted, and sold its Products to Plaintiff and other consumers similarly
24 situated with the false representation that its Products contain a specified
25 amount of liquid B vitamins per serving, including, but not limited to, 1,000
26 micrograms of liquid vitamin B12 per serving.

27 12. On Defendant’s website, for example, Defendant states that “[b]y the time a
28 Bluebonnet supplement appears on a store shelf, it has been subjected to

1 stringent examinations for potency, purity, uniformity, hardness, disintegration
2 and dissolution. And not just by in-house quality control technicians, but by
3 respected independent laboratories. That is quality that will last even after you
4 have opened the bottle.”³ Defendant’s website further states that: “Before a
5 Bluebonnet supplement arrives at a natural food store, it is analyzed and
6 evaluated by lab technicians. Through ICP-MS, HPLC assay and a variety of
7 other tests, *Bluebonnet documents with 100% accuracy that what is on the*
8 *label is in the bottle. We even perform accelerated stability tests to ensure that*
9 *potency levels will be maintained through the expiration date. Bottom line, on*
10 *Bluebonnet labels, what you read is always what you get.”*⁴ (Emphasis added).

11 13. Defendant’s Products, however, do not contain the amount of vitamin B per
12 serving as represented on their labels, as the Products become unstable
13 immediately upon opening, degrading over time such that the amount of
14 vitamin B becomes negligible and ineffective.

15 14. As a consequence of Defendant’s unfair and deceptive practices, Plaintiff and
16 other similarly situated consumers purchased Defendant’s Products under the
17 false impression that the Products contained a specific amount of micrograms of
18 vitamin B per serving as stated on their labels.

19 15. Each consumer, including Plaintiff, was exposed to virtually the same material
20 misrepresentations, as the similar labels were prominently placed on all of
21 Defendant’s liquid B vitamin Products that were sold, and are currently being
22 sold, throughout the United States and the State of California.

23 16. As a result of Defendant’s misrepresentations, Plaintiff and other consumers
24 similarly situated overpaid for the Products, and/or purchased the Products
25 under the false belief that the supplement they purchased would deliver the

26 ³ <http://www.bluebonnetnutrition.com/about/quality>. Accessed on December 16,
27 2015.

28 ⁴ <http://www.bluebonnetnutrition.com/about/truth>. Accessed on December 16,
2015.

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1 specific amount of B vitamins per serving advertised on Defendant's labels.
2 Had Plaintiff and other consumers similarly situated been made aware that
3 Defendant's Products become unstable and degrade as soon as they are opened,
4 they would not have purchased the Products, would have paid less for them, or
5 would have purchased different B vitamin products.

6 17. As a result of Defendant's false and misleading statements and failure to
7 disclose (or adequately disclose), as well as Defendant's other conduct
8 described herein, Plaintiff and other similarly situated consumers purchased
9 thousands, if not millions, of bottles of Defendant's liquid B vitamin Products
10 and have suffered, and continue to suffer, injury in fact including the loss of
11 money and/or property.

12 18. Defendant's conduct as alleged herein violates several California laws, as more
13 fully set forth herein.

14 19. This action seeks, among other things, equitable and injunctive relief;
15 restitution of all amounts illegally retained by Defendant; and disgorgement of
16 all ill-gotten profits from Defendant's wrongdoing alleged herein.

17 **FACTUAL ALLEGATIONS**

18 20. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
19 this Complaint as though fully stated herein.

20 21. Defendant manufactures, markets and/or sells various dietary supplements and
21 over the counter pharmaceutical products. Specific to this Complaint,
22 Defendant sells bottles of liquid B vitamin supplements and advertises, via the
23 Products' labels, that they contain a specific amount of B vitamins per serving,
24 including, but limited to, 1,000 micrograms of liquid B12 vitamin per serving.

25 22. Vitamin B12 is believed to be important to maintaining the health of one's
26 metabolism, blood cells, and nerves, as serious vitamin B12 deficiency may
27 result in stomach/intestine problems, low red blood cell count (anemia), and
28 permanent nerve damage. Vitamin B12 deficiency may occur in certain health

1 conditions, such as: poor nutrition, cancer, HIV infection, pregnancy, old age,
2 and alcoholism. It may also occur in people who follow a strict vegetarian or
3 vegan diet. Although most people receive enough vitamin B12 through their
4 diet, special circumstances may require some individuals to supplement their
5 vitamin B12 intake.

6 23. On July 7, 2015, Plaintiff purchased a bottle of Defendant's "Liquid
7 CellularActive Methylcobalamin" liquid B12 vitamin supplement for \$17.26,
8 plus \$4.64 in shipping & handling, on amazon.com.

9 24. In making the decision to purchase Defendant's supplement, Plaintiff relied
10 upon Defendant's labeling, packaging, advertising and/or other promotional
11 materials prepared and approved by Defendant and/or its agents and
12 disseminated through its Products' packaging, advertising, and/or marketing
13 containing the misrepresentations alleged herein.

14 25. Based on the misrepresentations that the supplement contained 1,000
15 micrograms of liquid vitamin B12 per serving, Plaintiff believed Defendant's
16 supplement actually contained the advertised amount of vitamin B12 and
17 maintained this amount throughout its shelf life, and relied upon said
18 misrepresentations when purchasing Defendant's product.

19 26. Plaintiff is informed and believes, and thereupon alleges, that vitamin B12 as
20 methylcobalamin, in liquid form, undergoes degradation at an unknown rate.

21 27. Plaintiff's claims do not seek to bring a private action against the Products'
22 formal name and labeling in areas for which the Food and Drug Administration
23 ("FDA") has promulgated regulations implementing the Federal Food and Drug
24 and Cosmetic Act ("FFDCA"). Plaintiff's claim is, instead, predicated on the
25 fact that the labeling and associated advertising is misleading and deceptive
26 even if in compliance with the minimum requirements set forth by the FDA.
27 Indeed, compliance with the minimum requirements is necessary, but it is not
28 sufficient to determine whether a product's label is false and misleading, and

1 simply does not provide a shield from liability. *See e.g., Wyeth v. Levine*, 129
2 S. Ct 1187, 12012 (2009).

3 28. As a result of Defendant's misrepresentations regarding its liquid B vitamin
4 supplements, Plaintiff and other putative class members were induced into
5 purchasing and overpaying for Defendant's Products under the belief that the
6 supplements they purchased contained the specified amount of B vitamins per
7 serving, as stated on the Products' labels, and maintained that specific
8 advertised amount of B vitamins for the duration of the Products' shelf life.
9 Had Plaintiff and putative class members been made aware that Defendant's
10 Products did not in fact contain and maintain the amount of B vitamins per
11 serving as advertised, they would not have purchased the Products, would have
12 paid less for them, or would have purchased a different product. In other
13 words, Plaintiff would not have purchased Defendant's liquid B12 vitamin
14 supplement, but for the representations on the product's label.

15 29. During the "Class Period," as defined below, Plaintiff and others similarly
16 situated were exposed to and saw Defendant's advertising, marketing, and
17 packaging claims disseminated by Defendant for the purpose of selling goods.
18 Plaintiff and putative class members purchased Defendant's Products in
19 reliance on these claims, and thereby suffered injury in fact and lost money
20 and/or property as a result of Defendant's unfair, misleading and unlawful
21 conduct described herein.

22 30. Defendant's misleading advertising was and is publicly disseminated on a
23 widespread and continuous basis during the Class Period as the offending
24 labels, containing the inaccurate amount per serving of B vitamins, were affixed
25 to all of Defendant's liquid B vitamin supplement bottles Defendant sold
26 throughout the State of California and throughout the United States.

27 31. Defendant's label was untrue, false, and misleading to Plaintiff and putative
28 class members, as a reasonable consumer would expect Defendant's Products to

1 contain and maintain the advertised amount of vitamin B. Specifically,
2 Plaintiff, a reasonable consumer, expected Defendant's claim of 1,000
3 micrograms of vitamin B12 per serving to mean that the product contained such
4 amount of vitamin B12 when purchased and maintained that amount for the
5 duration of its shelf life. Accordingly, the reasonable consumer would have
6 been misled into believing Defendant's B vitamin supplements contain and
7 maintain the specified amount of B vitamin per serving, when in fact
8 Defendant's Products do not.

9 32. Defendant's Liquid CellularActive Methylcobalamin Vitamin B12 1000 mcg
10 product is not the only dietary supplement produced and/or sold by Defendant
11 that does not contain and/or maintain the specified amount of B vitamin per
12 serving. The following products produced and/or sold by Defendant also do not
13 contain and/or maintain the amount of B vitamin per serving, as listed on the
14 product's label:

- 15
- 16 • Liquid CellularActive Methylcobalamin Vitamin B12 5000 mcg; and
- 17 • Liquid Vitamin B12 & Folic Acid.
- 18

19 33. Defendant knew, or in the exercise of reasonable care should have known, its
20 labels were misleading. Defendant could have easily disclosed on its packaging
21 that its Products become unstable upon opening and degrade over time, such
22 that the amount of B vitamins becomes negligible and ineffective. However,
23 Defendant deliberately chose to omit such text and intentionally or negligently
24 retained a false claim within its Products' packaging for the purpose of selling
25 its Products.

26 34. Defendant made a tactical decision to deceive consumers with the intent of
27 reaping the financial benefit of the false, misleading, and deceptive advertising
28 regarding the amount per serving of B vitamin contained and maintained in its

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1 Products, intentionally capitalizing on a reasonable consumer’s trust in a
2 nationally branded company perceived to supply quality vitamin products.

3 CLASS ACTION ALLEGATIONS

4 35.Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
5 this Complaint as though fully stated herein.

6 36.Plaintiff brings this action individually and on behalf of all others similarly
7 situated against Defendant, pursuant to Federal Rules of Civil Procedure, Rules
8 23(a), 23(b)(1), 23(b)(2) and 23(b)(3).

9 37.Subject to additional information obtained through further investigation and/or
10 discovery, the proposed “Class” consists of:

11 “All persons within California who purchased one or more of
12 Defendant’s liquid B vitamin products within the four years
13 prior to the filing of this Complaint, regardless of the brand
14 under which Defendant markets the product, and regardless of
15 the specific amount of B vitamins advertised on the products’
labels.”

16 38.Excluded from the Class are Defendant and any of its officers, directors, and
17 employees, or anyone who purchased Defendant’s Products for the purposes of
18 resale. Plaintiff reserves the right to modify or amend the Class definition
19 before the Court determines whether certification is appropriate.

20 39.The “Class Period” means four years prior to the filing of the Complaint in this
21 action.

22 40.Ascertainability. The members of the Class are readily ascertainable from
23 Defendant’s records and/or Defendant’s agent’s records regarding retail and
24 online sales, as well as through public notice.

25 ///

26 ///

27 ///

28 ///

1 41.Numerosity. The members of the Class are so numerous that their individual
2 joinder is impracticable. Plaintiff is informed and believes, and on that basis
3 alleges, that the proposed class consists of thousands of members, if not
4 millions.

5 42.Existence and Predominance of Common Questions of Law and Fact. Common
6 questions of law and fact exist as to all members of the Class and predominate
7 over any questions affecting only individual Class members. All members of
8 the Class have been subject to the same conduct and their claims are based on
9 the same standardized marketing, advertisements and promotions. The common
10 legal and factual questions include, but are not limited to, the following:

- 11 a. Whether Defendant's liquid B vitamins supplements become unstable
12 upon opening and degrade over time;
- 13 b. Whether Defendant's liquid B vitamins supplements actually contain
14 the advertised amount of B vitamins per serving;
- 15 c. Whether Defendant's liquid B vitamins supplements maintain the
16 advertised amount of B vitamins per serving throughout their shelf
17 life;
- 18 d. Whether Defendant's claims and representations above are untrue, or
19 are misleading, or reasonably likely to deceive;
- 20 e. Whether Defendant's conduct violates California Civil Code §§ 1750;
- 21 f. Whether Defendant's advertising is false, untrue, or misleading within
22 the meaning of California Business & Professions Code §§ 17500 *et*
23 *seq.*;
- 24 g. Whether Defendant's conduct is an unlawful act or practice within the
25 meaning of California Business & Professions Code §§ 17200 *et seq.*;
- 26 h. Whether Defendant's conduct is a fraudulent act or practice within the
27 meaning of California Business & Professions Code §§ 17200 *et seq.*;
- 28

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- 1 i. Whether Defendant’s conduct is an unfair act or practice within the
- 2 meaning of California Business & Professions Code §§ 17200 *et seq.*;
- 3 j. Whether Defendant’s advertising is unfair, deceptive, untrue or
- 4 misleading within the meaning of California Business & Professions
- 5 Code §§ 17200 *et seq.*;
- 6 k. Whether Defendant’s advertising is false, untrue, or misleading within
- 7 the meaning of California Business & Professions Code §§ 17500 *et*
- 8 *seq.*;
- 9 l. Whether Defendant acted negligently or intentionally in making the
- 10 misrepresentations contained in its product labels;
- 11 m. Whether Defendant, through its conduct, received money that, in
- 12 equity and good conscience, belongs to Plaintiff and members of the
- 13 Class;
- 14 n. Whether Plaintiff and proposed members of the Class are entitled to
- 15 equitable relief, including but not limited to restitution and/or
- 16 disgorgement; and
- 17 o. Whether Plaintiff and proposed members of the Class are entitled to
- 18 injunctive relief sought herein.

19 43. Typicality. Plaintiff’s claims are typical of the claims of the members of the
20 Class in that Plaintiff is a member of the Class that Plaintiff seeks to represent.
21 Plaintiff, like members of the proposed Class, purchased Defendant’s liquid B
22 vitamins supplement after exposure to the same material misrepresentations
23 and/or omissions appearing in the product’s labeling, and received a product
24 that becomes unstable and degrades upon opening such that the amount of
25 vitamin B becomes negligible and ineffective over time. Plaintiff is advancing
26 the same claims and legal theories on behalf of herself and all absent members
27 of the Class. Defendant has no defenses unique to the Plaintiff.
28

1 44. Adequacy of Representation. Plaintiff will fairly and adequately protect the
2 interests of the members of the Class. Plaintiff has retained counsel
3 experienced in consumer protection law, including class actions. Plaintiff has
4 no adverse or antagonistic interest to those in the Class, and will fairly and
5 adequately protect the interests of the Class. Plaintiff's attorneys are aware of
6 no interests adverse or antagonistic to those of Plaintiff and proposed Class.

7 45. Superiority. A class action is superior to all other available means for the fair
8 and efficient adjudication of this controversy. Individualized litigation would
9 create the danger of inconsistent and/or contradictory judgments arising from
10 the same set of facts. Individualized litigation would also increase the delay
11 and expense to all parties and court system and the issues raised by this action.
12 The damages or other financial detriment suffered by individual Class members
13 may be relatively small compared to the burden and expense that would be
14 entailed by individual litigation of the claims against the Defendant. The injury
15 suffered by each individual member of the proposed class is relatively small in
16 comparison to the burden and expense of individual prosecution of the complex
17 and extensive litigation necessitated by Defendant's conduct. It would be
18 virtually impossible for members of the proposed Class to individually redress
19 effectively the wrongs to them. Even if the members of the proposed Class
20 could afford such litigation, the court system could not. Individualized litigation
21 of the complex legal and factual issues of such a case increases the delay and
22 expense to all parties, including the court. By contrast, the class action device
23 presents far fewer management difficulties, and provides the benefits of single
24 adjudication, economy of scale, and comprehensive supervision by a single
25 court. Therefore, a class action is maintainable pursuant to Fed. R. Civ. P.
26 23(b)(3).

27 46. Unless the Class is certified, Defendant will retain monies received as a result
28 of Defendant's unlawful and deceptive conduct alleged herein. Unless a class-

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1 wide injunction is issued, Defendant will also likely continue to, or allow its
2 resellers to, advertise, market, promote and package Defendant’s liquid B
3 vitamin Products in an unlawful and misleading manner, and members of the
4 Class will continue to be misled, harmed, and denied their rights under
5 California law.

6 47. Further, Defendant has acted or refused to act on grounds that are generally
7 applicable to the class so that declaratory and injunctive relief is appropriate to
8 the Class as a whole, making class certification appropriate pursuant to Fed. R.
9 Civ. P. 23(b)(2).

10 **FIRST CAUSE OF ACTION**
11 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**
12 **CAL. CIV. CODE SECTION 1750, ET SEQ.**

13 48. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
14 this Complaint as though fully stated herein.

15 49. California Civil Code Section 1750 *et seq.*, entitled the Consumers Legal
16 Remedies Act (hereinafter “CLRA”), provides a list of “unfair or deceptive”
17 practices in a “transaction” relating to the sale of “goods” or “services” to a
18 “consumer.” The Legislature’s intent in promulgating the CLRA is expressed
19 in Civil Code Section 1760, which provides, *inter alia*, that its terms are to be:

20 *Construed liberally and applied to promote its underlying*
21 *purposes, which are to protect consumers against unfair*
22 *and deceptive business practices and to provide efficient*
23 *and economical procedures to secure such protection.*

24 50. Defendant’s products constitute “goods” as defined pursuant to Civil Code
25 Section 1761(a).

26 51. Plaintiff, and the Class members, are each a “consumer” as defined pursuant to
27 Civil Code Section 1761(d).

28 52. Each of Plaintiff’s and the Class members’ purchases of Defendant’s products
constituted a “Transaction” as defined pursuant to Civil Code Section 1761(e).

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1 53. Civil Code Section 1770(a)(2), (5), (7) and (9) provide that:

2 The following unfair methods of competition and unfair
3 or deceptive acts or practices undertaken by any person
4 in a transaction intended to result or which results in the
5 sale or lease of goods or services to any consumer are
6 unlawful:

7 [m]isrepresenting the source, sponsorship, approval, or
8 certification of goods or services,

9 [r]epresenting that goods or services have sponsorship,
10 approval, characteristics, ingredients, uses, benefits, or
11 quantities which they do not have,

12 [r]epresenting that goods or services are of a particular
13 standard, quality, or grade... if they are of another, [and]
14 [a]dvertising goods or services with intent not to sell
15 them as advertised.”

16 54. Defendant violated Civil Code Section 1770(a)(2), (5), (7) and (9) by
17 marketing and representing that its Products have a certain amount of B
18 vitamins in liquid form, when, in fact, each and every liquid dietary supplement
19 containing vitamin B produced and sold by Defendant does not contain the
20 amount of vitamin B per serving as advertised.

21 55. On information and belief, Defendant’s Products degrade or become unstable
22 immediately upon opening, rapidly degrading over time such that the amount of
23 liquid B vitamins become negligible, thereby rendering Defendant’s Products
24 ineffective and misbranded

25 56. On information and belief, Defendant’s violations of the CLRA set forth herein
26 were done with awareness of the fact that the conduct alleged was wrongful and
27 was motivated solely for Defendant’s self-interest, monetary gain and increased
28 profit. Plaintiff further alleges that Defendant committed these acts knowing
the harm that would result to Plaintiff and Defendant engaged in such unfair
and deceptive conduct notwithstanding such knowledge.

57. Plaintiff suffered an “injury in fact” because Plaintiff’s money was taken by
Defendant, as a result of Defendant’s false representations set forth on
Defendant’s actual Products.

1 58. As a direct and proximate result of Defendant's violations of the CLRA,
2 Plaintiff and members of the Class are entitled to a declaration that Defendant
3 violated the Consumer Legal Remedies Act.

4 59. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting
5 such conduct in the future and to recover money damages.

6 **SECOND CAUSE OF ACTION**
7 **VIOLATION OF BUSINESS & PROFESSIONS CODE**
8 **BUS. & PROF. CODE, SECTION 17500 ET SEQ.**

9 60. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
10 this Complaint as though fully stated herein.

11 61. Plaintiff and Defendant are both "person[s]" as defined by California Business
12 & Professions Code § 17506. California Business & Professions Code § 17535
13 authorizes a private right of action on both an individual and representative
14 basis.

15 62. The misrepresentations, acts, and non-disclosures by Defendant of the material
16 facts detailed above constitute false and misleading advertising and therefore
17 violate Business & Professions Code §§ 17500 *et seq.*

18 63. At all times relevant, Defendant's advertising and promotion regarding its
19 Products were untrue, misleading and likely to deceive the reasonable consumer
20 and the public; and, in fact, Defendant has deceived Plaintiff and consumers
21 similarly situated by representing that the its Products contained various
22 micrograms of liquid B vitamins per serving when Defendant knew and failed
23 to disclose that its Products become unstable once opened and degrade over
24 time until the amount of vitamin B is negligible and ineffective.

25 64. State law claims based on a food product's misleading and deceptive labels are
26 expressly permitted when they impose legal obligations identical to those of the
27 Federal Food, Drug, and Cosmetic Act ("FFDCA") and its implementing FDA
28 regulations, including FDA regulations concerning naming and labeling. *See*

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1 e.g., *In re Farm Raised Salmon Cases*, 22 Cal. 4th 1077, 1094-95 (2008).
 2 Plaintiff's § 17500 claim that the labels of Defendant's Products are false or
 3 misleading imposes legal obligations identical to 21 U.S.C. § 343(a) of the
 4 FFDCFA, which states that, "a food shall be deemed to be misbranded...[i]f (1)
 5 its labeling is false or misleading in any particular[.]" Further, section 343(a) of
 6 the FFDCFA is not subject to express preemption provision set forth in 21 U.S.C.
 7 § 343-1 of the FFDCFA.

8 65. Defendant engaged in the false and/or misleading advertising and marketing as
 9 alleged herein with the intent to directly or indirectly induce the purchase of its
 10 Products that Defendant knew, or had reason to know, did not contain and
 11 maintain the advertised micrograms of B vitamins per serving.

12 66. In making and publicly disseminating the statements and/or omissions alleged
 13 herein, Defendant knew or should have known that the statements and/or
 14 omissions were untrue or misleading, and acted in violation of California
 15 Business & Professions Code §§ 17500 *et seq.*

16 67. Plaintiff and members of the putative Class have suffered injury in fact and
 17 have lost money and/or property as a result of Defendant's false advertising, as
 18 more fully set forth herein. Plaintiff and members of the Class have been
 19 injured because they were induced to purchase Defendant's Products on the
 20 belief that Defendant's Products contained and maintained a specific amount of
 21 micrograms of B vitamins per serving. Plaintiff and members of the putative
 22 Class have been injured because had they been made aware that Defendant's
 23 liquid vitamin B Products become unstable upon opening and degrade
 24 thereafter, they would not have purchased the supplements, would have paid
 25 less for them, or would have purchased a different product from another
 26 manufacturer.

27 68. At a date presently unknown to Plaintiff, but at least four years prior to the
 28 filing of this action, and as set forth above, Defendant has committed acts of

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1 untrue and misleading advertising and promotion of its Products, as defined by
2 Business & Professions Code §§ 17500 *et seq.*, by engaging in the false
3 advertising and promotion of its supplements as containing and maintaining a
4 certain amount of micrograms of B vitamins per serving on its Products’
5 labeling.

6 69. The false and misleading advertising of Defendant, as described above, presents
7 a continuing threat to consumers, as Defendant continues to use the deceptive
8 labels and advertising, which will continue to mislead consumers who purchase
9 Defendant’s liquid vitamin B Products under false premises.

10 70. As a direct and proximate result of the aforementioned acts and representations
11 of Defendant, Defendant received and continues to hold monies rightfully
12 belonging to Plaintiff and other similarly situated consumers who were led to
13 purchase Defendant’s Products, due to the unlawful acts of Defendant, during
14 the Class Period.

15 **THIRD CAUSE OF ACTION**
16 **VIOLATION OF BUSINESS & PROFESSIONS CODE**
17 **BUS. & PROF. CODE, SECTION 17200, ET SEQ.**

18 71. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
19 this Complaint as though fully stated herein.

20 72. Plaintiff and Defendant are each “person[s]” as defined by California Business
21 & Professions Code § 17201. California Business & Professions Code § 17204
22 authorizes a private right of action on both an individual and representative
23 basis.

24 73. “Unfair competition” is defined by Business and Professions Code Section §
25 17200 as encompassing several types of business “wrongs,” including: (1) an
26 “unlawful” business act or practice, (2) an “unfair” business act or practice, (3)
27 a “fraudulent” business act or practice, and (4) “unfair, deceptive, untrue or
28 misleading advertising.” The definitions in § 17200 are drafted in the

1 disjunctive, meaning that each of these “wrongs” operates independently from
2 the others.

3 74. By and through Defendant’s conduct alleged in further detail above and herein,
4 Defendant engaged in conduct which constitutes unlawful, unfair, and/or
5 fraudulent business practices, and unfair, deceptive, untrue or misleading
6 advertising prohibited by Bus. & Prof. Code § 17200 *et seq.*

7 **A. “Unlawful” Prong**

8 75. Beginning at a date currently unknown through the time of the filing of this
9 Complaint, Defendant has committed acts of unfair competition, including
10 those described above, by engaging in a pattern of “unlawful” business
11 practices, within the meaning of Bus. & Prof. Code § 17200 *et seq.* by
12 manufacturing, distributing, and/or marketing Defendant’s Products in violation
13 of California’s Consumers Legal Remedies Act, Civil Code Section 1759, *et*
14 *seq.*, California’s False Advertising Law, Business & Professions Code §§
15 17500 *et seq.* and California’s Health & Safety Code §§110660 by falsely
16 representing that the Products referenced herein contain a certain amount of
17 micrograms of B vitamins per serving, when, in fact, the Products do not
18 contain or maintain the advertised amount, as they become unstable upon
19 opening and degrade over time.

20 **B. “Unfair” Prong**

21 76. Beginning at a date currently unknown and continuing up through the time of
22 this Complaint, Defendant has committed acts of unfair competition that are
23 prohibited by Bus. & Prof. Code section 17200 *et seq.* Defendant engaged in a
24 pattern of “unfair” business practices that violate the wording and intent of the
25 abovementioned statutes by engaging in conduct and practices that threaten an
26 incipient violation of law/s or violate the policy or spirit of law/s by
27 manufacturing, distributing, and/or marketing Defendant’s Products as
28

1 containing a certain amount of micrograms of B vitamins per serving, when, in
 2 fact, the Products do not contain or maintain the advertised amount, as they
 3 become unstable upon opening and degrade over time.

4 77. Alternatively, Defendant engaged in a pattern of “unfair” business practices that
 5 violate the wording and intent of the abovementioned statute/s by engaging in
 6 practices that are immoral, unethical, oppressive or unscrupulous, the utility of
 7 such conduct, if any, being far outweighed by the harm done to consumers and
 8 against public policy by manufacturing, distributing, and/or marketing
 9 Defendant’s Products as containing a certain amount of micrograms of B
 10 vitamins per serving, when, in fact, the Products do not contain or maintain that
 11 advertised amount, as they become unstable upon opening and degrade over
 12 time.

13 78. Alternatively, Defendant engaged in a pattern of “unfair” business practices that
 14 violate the wording and intent of the abovementioned statute/s by engaging in
 15 practices, including manufacturing, distributing, marketing, and/or advertising
 16 Defendant’s Products as containing a certain amount of micrograms of B
 17 vitamins per serving, when, in fact, the Products do not contain or maintain that
 18 advertised amount, as they become unstable upon opening and degrade over
 19 time; wherein: (1) the injury to the consumer was substantial; (2) the injury was
 20 not outweighed by any countervailing benefits to consumers or competition;
 21 and (3) the injury was not of the kind that consumers themselves could not have
 22 reasonably avoided.

23 **C. “Fraudulent” Prong**

24 79. Beginning at a date currently unknown and continuing up through the time of
 25 this Complaint, Defendant engaged in acts of unfair competition, including
 26 those described above and herein, prohibited and in violation of Bus. & Prof.
 27 Code § 17200 *et seq.*, by engaging in a pattern of “fraudulent” business
 28

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1 practices within the meaning of Bus. & Prof. Code § 17200 *et seq.*, by
2 manufacturing, distributing, and/or marketing Defendant’s Products in violation
3 of California’s Consumers Legal Remedies Act, Civil Code Section 1759, *et*
4 *seq.*, California’s False Advertising Law, Business & Professions Code §§
5 17500 *et seq.* and California’s Health & Safety Code §§110660 by falsely
6 representing that the Products referenced herein contain a certain amount of
7 micrograms of B vitamins per serving, when, in fact, the Products do not
8 contain or maintain the advertised amount, as they become unstable upon
9 opening and degrade over time.

10 80. Plaintiff reserves the right to allege further conduct that constitutes other
11 fraudulent business acts or practices. Such conduct is ongoing and continues to
12 this date.

13 **D. “Unfair, Deceptive, Untrue or Misleading Advertising” Prong**

14 81. Defendant’s advertising is unfair, deceptive, untrue or misleading in that
15 consumers are led to believe that Defendant’s Products contain a certain amount
16 of B vitamins per serving, when, in fact, the Products do not contain or maintain
17 the advertised amount, as they become unstable upon opening and degrade over
18 time.

19 82. Plaintiff, a reasonable consumer, and the public would likely be, and, in fact
20 were, deceived and misled by Defendant’s advertising as they would, and did,
21 interpret the representation in accord with its ordinary usage, that the Products
22 actually contain the advertised amount of micrograms of B vitamins per
23 serving.

24 83. Defendant’s unlawful, unfair, and fraudulent business practices and unfair,
25 deceptive, untrue or misleading advertising presents a continuing threat to the
26 public in that Defendant continues to engage in unlawful conduct resulting in
27 harm to consumers.
28

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1 84. Defendant engaged in these unlawful, unfair, and fraudulent business practices
2 motivated solely by Defendant's self-interest with the primary purpose of
3 collecting unlawful and unauthorized monies from Plaintiff and all others
4 similarly situated; thereby unjustly enriching Defendant.

5 85. Such acts and omissions by Defendant are unlawful and/or unfair and/or
6 fraudulent and constitute a violation of Business & Professions Code section
7 17200 *et seq.* Plaintiff reserves the right to identify additional violations by
8 Defendant as may be established through discovery.

9 86. As a direct and proximate result of the aforementioned acts and representations
10 described above and herein, Defendant received and continues to receive
11 unearned commercial benefits at the expense of its competitors and the public.

12 87. As a direct and proximate result of Defendant's unlawful, unfair and fraudulent
13 conduct described herein, Defendant has been and will continue to be unjustly
14 enriched by the receipt of ill-gotten gains from customers, including Plaintiff,
15 who unwittingly provided money to Defendant based on Defendant's
16 misleading representations.

17 88. Plaintiff suffered an "injury in fact" because Plaintiff's money was taken by
18 Defendant as a result of Defendant's false representations set forth on the
19 Defendant's Products.

20 89. In prosecuting this action for the enforcement of important rights affecting the
21 public interest, Plaintiff seeks the recovery of attorneys' fees, which is available
22 to a prevailing plaintiff in class action cases such as this matter.

23 **FOURTH CAUSE OF ACTION FOR**
24 **NEGLIGENT MISREPRESENTATION**

25 90. Plaintiff repeats, re-alleges and incorporates by reference the above allegations
26 as if fully stated herein.
27
28

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1 91. At a date presently unknown to Plaintiff, but at least four years prior to the
2 filing of this action, and as set forth above, Defendant represented to the public,
3 including Plaintiff, by packaging and other means, that Defendant's Products
4 contain a certain amount B vitamins per serving as described herein.

5 92. Defendant made the representations herein alleged with the intention of
6 inducing the public, including Plaintiff and putative class members, to purchase
7 Defendant's Products.

8 93. Plaintiff and other similarly situated persons saw, believed, and relied upon
9 Defendant's advertising representations and, in reliance on them, purchased the
10 Products, as described herein.

11 94. At all times relevant, Defendant made the misrepresentations herein alleged
12 when Defendant should have known these representations to be untrue, and
13 Defendant had no reasonable basis for believing the representations to be true.

14 95. As a proximate result of Defendant's negligent misrepresentations, Plaintiff and
15 other consumers similarly situated were induced to purchase, purchase more of,
16 or pay more for Defendant's Products, due to the unlawful acts of Defendant, in
17 an amount to be determined at trial, during the Class Period.

18 **FIFTH CAUSE OF ACTION FOR**
19 **INTENTIONAL MISREPRESENTATION**

20 96. Plaintiff repeats, re-alleges and incorporates herein by reference the above
21 allegations as if fully stated herein.

22 97. At a date presently unknown to Plaintiff, but at least four years prior to the
23 filing of this action, and as set forth above, Defendant intentionally represented
24 to the public, including Plaintiff, by promoting and other means, that
25 Defendant's Products contain a certain amount of B vitamins per serving in the
26 Products' labeling, as described herein. Defendant's representations were
27 untrue.
28

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1 98. Defendant made the representations herein alleged with the intention of
2 inducing the public, including Plaintiff, to purchase Defendant's Products, for
3 Defendant's own financial gain.

4 99. Defendant intentionally made such misrepresentations by printing a specified
5 amount of liquid vitamin B under the amount per serving on its Products' label,
6 including, but not limited to, 1,000 micrograms of liquid B12 vitamin.

7 100. The statement regarding Defendant's Products containing a specific amount
8 of B vitamins per serving was misleading because vitamin B, in liquid form,
9 becomes unstable and degrades over time. The supplement therefore does not
10 contain the advertised amount of vitamin B per serving as Defendant advertises
11 on its Products' labeling.

12 101. Plaintiff and other similarly situated persons saw, believed, and relied upon
13 Defendant's advertising representations and, in reliance on such
14 representations, purchased the Products, as described above.

15 102. At all times relevant, Defendant intentionally made the misrepresentations
16 herein alleged, allowed the misrepresentations to continue to be made by its
17 resellers and Defendant knew the representations to be false.

18 103. As a proximate result of Defendant's intentional misrepresentations, Plaintiff
19 and other consumers similarly situated were induced to spend an amount of
20 money to be determined at trial on Defendant's misrepresented Products.

21 104. Defendant knew that its Products did not contain the advertised amount of B
22 vitamins per serving, but nevertheless made representations that it did with the
23 intention that consumers rely on Defendant's representations.

24 105. Defendant also knew that retailers were advertising its Products as
25 containing a certain amount of B vitamins per serving, as Defendant designed,
26 manufactured, and affixed the product labeling to its Products before supplying
27 them to the retailers.

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1 106. Plaintiff and other consumers similarly situated, in purchasing and using the
2 Products as herein alleged, did rely on Defendant’s representations, including
3 the representations on Defendant’s Products’ labels, all to their damage and/or
4 detriment as herein alleged.

5 107. Plaintiff alleges the “who, what, when, where, and how” of the alleged
6 deception by Defendant as follows:

- 7 i. The “who” is Defendant;
- 8 ii. The “what” is the representation that Defendant’s liquid B
9 vitamin Products contain a specific amount of micrograms of B
10 vitamins per serving;
- 11 iii. The “when” is the date Plaintiff purchased the product and the
12 Class Period of four years prior to the filing of the Complaint;
- 13 iv. The “where” is in Defendant’s product labeling; and
- 14 v. The “how” is the allegation that Defendant did not disclose that
15 its Products do not actually deliver the advertised micrograms
16 of B vitamins per serving because they become unstable and
17 degrade over time.

18 108. By engaging in the acts described above, Defendant is guilty of malice,
19 oppression, and fraud, and Plaintiff and the Class are therefore entitled to
20 recover exemplary or punitive damages.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff respectfully requests the Court grant Plaintiff and
23 the Class members the following relief against Defendant:

- 24 • That this action be certified as a Class Action, Plaintiff be appointed as
25 the representatives of the Class, and Plaintiff’s attorneys be appointed
26 Class counsel;

- 1 • That Defendant's wrongful conduct alleged herein be adjudged and
2 decreed to violate the consumer protection statutory claims asserted
3 herein;
- 4 • A temporary, preliminary and/or permanent order for injunctive relief
5 requiring Defendant to: (i) discontinue advertising, marketing and
6 otherwise representing its liquid B vitamin Products as containing a
7 specified amount of B vitamins per serving; (ii) disclose the instability
8 and degradation that Defendant's liquid B vitamin Products undergo when
9 opened; (iii) correct any erroneous impression consumers may have
10 derived concerning the amount of vitamin B contained in Defendant's
11 Products, including without limitation, the placement of corrective
12 advertising and providing written notice to the public;
- 13 • An order requiring imposition of a constructive trust and/or disgorgement
14 of Defendant's ill-gotten gains and to pay restitution to Plaintiff and all
15 members of the Class and to restore to Plaintiff and members of the class
16 all funds acquired by means of any act or practice declared by this court to
17 be an unlawful, fraudulent, or unfair business act or practice, in violation
18 of laws, statutes or regulations, or constituting unfair competition;
- 19 • Distribution of any monies recovered on behalf of members of the Class
20 via fluid recovery or cy pres recovery where necessary and as applicable,
21 to prevent Defendant from retaining the benefits of their wrongful
22 conduct;
- 23 • Prejudgment and post judgment interest;
- 24 • Special, general, and compensatory damages to Plaintiff and the Class for
25 negligent and/or intentional misrepresentations;
- 26 • Exemplary and/or punitive damages for intentional misrepresentations
27 pursuant to, inter alia, Cal. Civ. Code § 3294;
- 28 • Costs of this suit;

- Reasonable attorneys’ fees pursuant to, inter alia, California Code of Civil Procedure § 1021.5; and
- Awarding any and all other relief that this Court deems necessary or appropriate.

TRIAL BY JURY

109. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: January 12, 2016

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ ABBAS KAZEROUNIAN
ABBAS KAZEROUNIAN, ESQ.
ATTORNEYS FOR PLAINTIFF

[ADDITIONAL PLAINTIFF’S COUNSEL]

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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

Cheryl Northrup, individually and on behalf of all others similarly lituated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Abbas Kazerounian, Esq. (SBN: 249203) Kazerouni Law Group, APC 245 Fischer Avenue, Suite D1, Costa Mesa, CA 92626 (800) 400-6808

DEFENDANTS

Bluebonnet Nutrition Corporation

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) '16CV0080 JAH-NLS

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 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(d); Class Action Fairness Act. Brief description of cause: Violations of Cal. Civ. Code §§1750, et seq.; Cal. Bus. & Prof. Code §§17500 et seq, and §§17200 et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/12/2016 SIGNATURE OF ATTORNEY OF RECORD s/Abbas Kazerounian, Esq.

FOR OFFICE USE ONLY

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.