

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

C.M. LECOMPTE, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

Case No. 1:16-cv-221

SANTA FE NATURAL TOBACCO COMPANY, INC.
and REYNOLDS AMERICAN, INC.,

Defendants.

CLASS ACTION COMPLAINT AND JURY DEMAND

Plaintiff C.M. LeCompte (“Plaintiff”), individually and on behalf of all others similarly situated (the “Class”), and by her undersigned counsel, hereby files her Class Action Complaint asserting claims against Defendants Santa Fe Natural Tobacco Company, Inc. and Reynolds American, Inc. (collectively, “Defendants”). For her Complaint, Plaintiff alleges, based upon her own personal knowledge, the investigations of counsel, and upon information and belief, as follows:

SUMMARY OF THE CASE

1. This class action challenges the deceptive sales practices of Defendants Santa Fe Natural Tobacco Company, Inc. and Reynolds American, Inc. due to their conduct in marketing and selling their “Natural American Spirit” brand cigarettes to Plaintiff (and the Class defined below) as “Additive-Free Natural Tobacco.” Defendants’ Natural American Spirit cigarettes are sold in several flavors, all of which are uniformly labeled and marketed as “Natural” and “Additive-Free.” The terms “Natural” and “Additive-Free” Defendants use to describe their products are false, deceptive, and misleading. Defendants use the terms to imply a safer cigarette, allowing Defendants to charge consumers a premium and inflated price for the cigarettes. Reasonable consumers faced with the choice between Defendants’ cigarettes and

those with labels that do not bear these deceptive and misleading statements, would be led to understand that Natural American Spirit cigarettes are in fact substantially healthier and cause substantially less harm than other cigarettes. However, such an understanding would be incorrect. As described more fully herein, Natural American Spirit cigarettes are not natural (because they contain ammonia), and they are just as harmful as other cigarettes. Defendants' marketing and labeling Natural American Spirit cigarettes in the manner they do, in order to reap inflated prices and revenue, is therefore deceptive and misleading, resulting in injury and financial loss to the Class.

2. This suit is brought pursuant to the California Consumer Legal Remedies Act, Civil Code § 1750 *et seq.* ("CLRA"), the California Unfair Competition Law, Business & Professions Code § 17200 *et seq.* ("UCL"), and under the common law theory of money had and received / unjust enrichment, on behalf of a class of California consumers who purchased Natural American Spirit cigarettes from March 22, 2012 to the present. This suit seeks, *inter alia*, refunds, injunctive relief, restitution, attorneys' fees, and the costs of this suit, as well as all other relief available at law and equity under the causes of action alleged.

3. Plaintiff has complied with Civil Code § 1782(a) by notifying Defendants in writing, by certified mail, on behalf of the class, of the violations alleged herein and demanded that Defendants remedy those violations. If Defendants fail to rectify or agree to rectify the problems detailed above and give notice to all affected consumers in the class defined herein within 30 days of the date of written notice pursuant to California Civil Code § 1782, Plaintiff will amend this Complaint to add claims for actual, punitive, and statutory damages pursuant to the CLRA.

PARTIES

4. Plaintiff C.M. LeCompte ("Plaintiff") is a citizen of the State of California with residence in Los Angeles County. During the proposed class period, Plaintiff viewed Defendants' advertisements representing the Natural American Spirit cigarettes as "Natural" and "Additive- Free" and regularly purchased varieties of Natural American Spirit cigarettes in

California that were all uniformly labeled as “Natural” or “Additive-Free.”

5. Defendant Santa Fe Natural Tobacco Company, Inc. is a New Mexico corporation whose principal place of business is located at One Plaza La Prensa, Santa Fe, New Mexico 87507. *See generally* <https://www.sfntc.com/>.

6. Defendant Reynolds American Inc. is a North Carolina corporation whose principal place of business is located at 401 North Main Street, Winston-Salem, North Carolina 27101. Since 2002, Santa Fe Natural Tobacco Company, Inc. has been an operating subsidiary of Defendant Reynolds American, Inc. *See* <https://www.sfntc.com/site/ourCompany/our-parent-company/>.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d) because the aggregate claims of the Class (as defined below) exceed the sum or value of \$5,000,000.00, and there is minimal diversity of citizenship between Plaintiff and proposed Class members, and both Defendants.

8. This Court has personal jurisdiction over Defendants because they intentionally avail themselves of the rights and privileges of conducting business in New Mexico and they have continuous and systematic contacts with the State of New Mexico, owing to Defendants’ advertising targeting New Mexico citizens and sales of their products in New Mexico. Defendant Santa Fe Natural Tobacco Company, Inc. is a New Mexico corporation that maintains its principal place of business in Santa Fe, New Mexico.

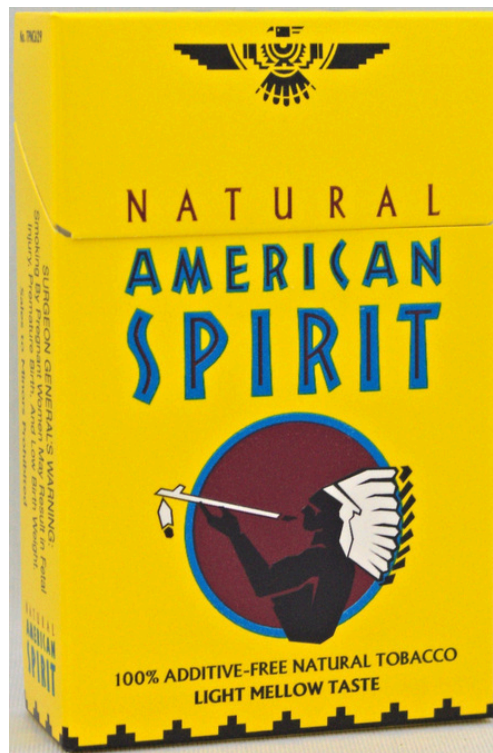
9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because substantial acts in furtherance of the alleged improper conduct giving rise to the claims herein, including the dissemination of false information regarding Natural American Spirit cigarettes, occurred within the state of New Mexico including this District.

FACTUAL ALLEGATIONS

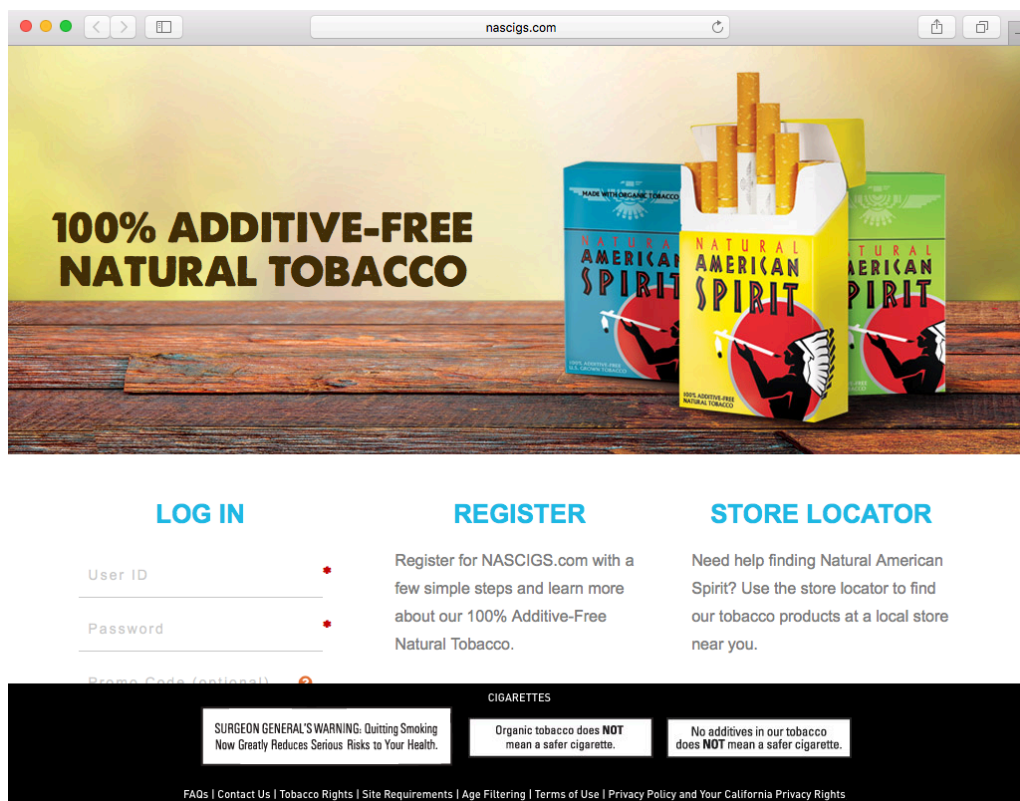
10. Defendants sell a variety of Natural American Spirit cigarettes (such as regular, light, organic and menthol), all of which Defendants uniformly label and advertise with representations that the cigarettes are “Natural” and “Additive-Free.” *See generally* <https://www.sfntc.com/site/ourApproach/natural-solutions/>.

11. By marketing Natural American Spirit cigarettes as “Natural” and “Additive-Free,” Defendants represent explicitly and/or implicitly that Natural American Spirit cigarettes present a lower risk of tobacco-related disease and/or are less harmful than other commercially marketed tobacco products.

12. The label of Natural American Spirit cigarettes prominently states that the cigarettes are “Natural” and “Additive-Free.” The following photograph is an accurate representation of the “Light Mellow Taste” product packaging:



13. Defendants' Natural American Spirit's website located at <http://www.nascigs.com> also prominently features the "100% Additive-Free Natural Tobacco" misrepresentation:



14. Defendants' advertising and marketing for Natural American Spirit cigarettes has contained numerous representations that cigarettes are "Natural" and "Additive-Free," throughout the proposed class period. *See generally* <https://www.sfntc.com/site/ourApproach/natural-solutions/>.

15. Defendants' advertisements for Natural American Spirit cigarettes shows use of the "Natural" and "Additive-Free" misrepresentations has grown increasingly prominent during the proposed Class period.¹ Defendants' website further features these representations. *See* <https://www.sfntc.com/site/ourApproach/natural-solutions/> ("Santa Fe Natural Tobacco

¹ Slideshow: Advertising for Natural American Spirit Cigarettes 2000-2015, Campaign for Tobacco Free Kids, http://www.tobaccofreekids.org/press_office/2015/natural_american_spirit (last visited November 2, 2015).

Company is the manufacturer of the finest additive-free and organic tobacco products in the world. Period. But to have the best finished products, you’ve got to be the best at every stop along the way — from seed to cigarette.”). Defendants’ website also boasts of its commitment to quality control standards. *See* <https://www.sfntc.com/site/ourApproach/natural-solutions/> (“Meeting our high standards for quality isn’t easy. And there’s really only one way it can consistently be done: passionate and committed people. Without our employees’ dedication and commitment to being the best, we’d be just another tobacco company. SFNTC employees take ownership of their part in the process. They participate in internal audits—not only about tasks like manufacturing processes—but also about our environmental practices.... ‘Our customers want the highest quality products,’ she says. ‘And as you can see, so do we!’”).

16. Defendants represent that their products contain only two ingredients, tobacco and water, and no additives. This is stated on the Product Overview page of their website. <https://www.sfntc.com/site/ourProduct/overview/> (“We at Santa Fe Natural Tobacco Company are the manufacturer and marketer of Natural American Spirit cigarettes and roll-your-own tobacco products. Natural American Spirit products are made with 100 percent additive-free tobacco and include thirteen cigarette styles and four roll-your-own style.”... “We make our cigarettes with 100 percent additive-free tobacco, including styles with 100 percent U.S. grown tobacco, and with certified organic tobacco. Our blenders create the highest quality tobacco blends and only use two ingredients: whole leaf tobacco and water.”... “The central concept on which the company has been built is that consumers of tobacco products have the right to know exactly what they are consuming.” — Robin Sommers, former president of SFNTC”).

17. While consumers understand that smoking cigarettes is generally unhealthy, Defendants deceive reasonable consumers into believing that cigarettes that are “Natural” and “Additive-Free” are less unhealthy than other cigarettes. As a result, consumers are willing to pay a price premium for Natural American Spirit cigarettes as compared to other cigarettes that are not so labeled, and Defendants do in fact charge a substantial price premium for their cigarettes.

18. As Defendants are well aware, consumer research and cigarette industry documents establish that smokers associate the terms “Natural” and “Additive-Free” with reduced risk. Indeed, reasonable consumers buying cigarettes marketed as “Natural” and “Additive-Free” expect to get a healthier product.²

19. Unfortunately, Natural American Spirit cigarettes are not safer than other cigarettes. In fact, the Food and Drug Administration (“FDA”) recently sent a “warning letter” to Defendants informing them that the use of descriptors like “Natural” and “Additive-Free” lead consumers to believe that such cigarettes pose less of a health risk than other cigarettes, when there is no scientific support for such a claim. *See* FDA Warning Letter to Santa Fe Natural Tobacco Company, Inc. dated August 27, 2015, *available at* <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2015/ucm459778.htm> (last visited March 18, 2016). In that letter, the FDA stated:

You sell or distribute cigarette products the label, labeling, or advertising of which represents explicitly and/or implicitly that the products or their smoke do not contain or are free of a substance and/or that the products present a lower risk of tobacco-related disease or are less harmful than one or more other commercially marketed tobacco products. Specifically, you sell or distribute Natural American Spirit cigarettes described in product labeling as “Natural” and “Additive Free.”

A tobacco product is considered a “modified risk tobacco product” under section 911(b)(2)(A)(i) of the FD&C Act (21 U.S.C. § 387k(b)(2)(A)(i)) if its label, labeling, or advertising explicitly or implicitly represents that: (1) the product presents a lower risk of tobacco-related disease or is less harmful than one or more other commercially marketed tobacco products; (2) the product or its smoke contains a reduced level of a substance or presents a reduced exposure to a substance; or (3) the product or its smoke does not contain or is free of a substance. Under section 911(a) of the FD&C Act (21 U.S.C. § 387k(a)), no person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product without an FDA order in effect under section 911(g) of the FD&C Act (21 U.S.C. § 387k(g)). A product that is in violation of section 911(a) of the FD&C Act (21 U.S.C. § 387k(a)) is adulterated under section 902(8) of the FD&C Act (21 U.S.C. § 387b(8)). Your product labeling for Natural American Spirit cigarettes, which uses the descriptors “Natural” and “Additive Free,” represents explicitly and/or implicitly

² McDaniel, Patricia A. & Ruth E. Malone, “*I Always Thought They Were All Pure Tobacco*”: *American Smokers’ Perceptions of ‘Natural’ Cigarettes and Tobacco Industry Advertising Strategies*, 16 Tobacco Control e7 (2007), *available at* <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2807204/> (last visited Nov. 2, 2015).

that the products or their smoke do not contain or are free of a substance and/or that the products present a lower risk of tobacco-related disease or are less harmful than one or more other commercially marketed tobacco products. As such, these products are modified risk tobacco products. Because these products are sold or distributed to customers in the United States without an appropriate FDA order in effect under section 911(g) of the FD&C Act (21 U.S.C. § 387k(g)), these products are adulterated under section 902(8) of the FD&C Act (21 U.S.C. § 387b(8)).

FDA recognizes that Santa Fe Natural Tobacco Company, Inc. has entered into a consent order with the Federal Trade Commission (FTC) regarding the company's use of additive free claims in tobacco product advertising (Federal Trade Commission, *In the Matter of Santa Fe Natural Tobacco Company, Inc., a corporation*, Docket No. C-3952, Decision and Order, Issued June 12, 2000). This order requires, in part, that the company display certain disclosures (e.g., "No additives in our tobacco does NOT mean safer") in any advertisements using claims that represent tobacco products as having no additives, unless the company possesses and relies upon competent and reliable scientific evidence demonstrating that such products pose materially lower health risks than other tobacco products of the same type. This consent order predates the Tobacco Control Act, which was enacted on June 22, 2009 and gave FDA authority to regulate the manufacture, sale, distribution, and promotion of tobacco products, including authority over modified risk tobacco products under Section 911 of the FD&C Act (21 U.S.C. § 387k). As noted above, under section 911(a) of the FD&C Act (21 U.S.C. § 387k(a)), no person may introduce or deliver for introduction into interstate commerce any modified risk tobacco product without an FDA order in effect under section 911(g) of the FD&C Act (21 U.S.C. § 387k(g)). Because you sell or distribute modified risk tobacco products without an appropriate FDA order in effect under section 911(g) of the FD&C Act (21 U.S.C. § 387k(g)), you are in violation of the FD&C Act, notwithstanding your consent order with FTC.

20. According to the advocacy group Campaign for Tobacco-Free Kids, the marketing for Natural American Spirit is the most deceptive of any major U.S. cigarette brand currently on the market. Defendants' deceptive marketing of Natural American Spirit cigarettes has helped the brand increase sales by 86 percent from 2009 to 2014, even as overall cigarette sales in the United States fell by 17 percent during the same period. *See* Meyers, Matthew L., "FDA Warning About Deceptive Marketing of Natural American Spirit Cigarettes, Other Brands Is Critically Important to Protect Consumers," PRNewsire-USNewswire (Aug. 27, 2015), available at <http://www.prnewswire.com/news-releases/fda-warning-about-deceptive-marketing-of-natural-american-spirit-cigarettes-other-brands-is-critically-important-to-protect-consumers-300134309.html> (last visited Nov. 2, 2015):

The Food and Drug Administration today has taken a critically important action to protect the American public from tobacco industry deception by warning several manufacturers—most prominently Reynolds American’s subsidiary, Santa Fe Natural Tobacco Company, and its Natural American Spirit cigarette brand—that they are violating the law by marketing their products with health-related claims, including “additive-free” and “natural.” If these products continue to make these claims, the FDA can and should order them removed from the market.

This is not the first time the government has had to act to prevent the tobacco industry from using its marketing of the term “additive-free” in ways that mislead the public and it is a reflection of the length to which the tobacco industry has gone to undermine the effectiveness of the prior efforts. The FDA’s warning sends a strong message to the tobacco industry that its long history of deception about the dangers of tobacco use will no longer be tolerated. It is one of the strongest enforcement actions the FDA has taken under the landmark 2009 law that gave the agency authority over tobacco products, including the power to strictly regulate any health claims.

There is no question that terms such as “additive-free” and “natural” imply a safer cigarette, as confirmed by consumer research and the industry’s own documents. Consumers buying goods marketed with such terms expect to get a healthier product. Studies have found that smokers associate these terms with reduced risk, and a 2007 review of tobacco industry documents showed that tobacco companies have understood, for decades, that “natural” implies unwarranted health claims. Reynolds has provided no evidence that Natural American Spirit cigarettes expose smokers to any fewer toxins or carry any lower risk of disease.

The marketing for Natural American Spirit is the most deceptive of any major U.S. cigarette brand currently on the market. It has helped the brand increase sales by 86 percent from 2009 to 2014, even as overall cigarette sales in the United States fell by 17 percent during the same period. The FDA today also warned ITG Brands LLC—which now owns Winston—and Sherman’s 1400 Broadway N.Y.C. Ltd.—which owns Nat Sherman cigarettes.

While marketing for Natural American Spirit has long featured terms such as “100% additive-free” and “natural”—and also “organic,” which is also commonly used in Natural American Spirit marketing—their use has become larger and bolder over time. These claims are featured more prominently than ever in a new magazine advertising campaign launched in July (view current and past advertising for Natural American Spirit).

As a result, these claims overwhelm two legally mandated disclaimers at the bottom of Natural American Spirit ads that state “No additives in our tobacco does NOT mean a safer cigarette” and “Organic tobacco does NOT mean a safer cigarette.” These disclaimers were added to resolve deceptive advertising complaints made by the Federal Trade Commission in 2000 and state attorneys general in 2010.

Reynolds' ever-bolder use of these claims, even after facing legal action, shows that the company has not changed despite its frequent claims to be "transforming tobacco" for the better.

The FDA took action under a key provision of the 2009 law that prohibits tobacco companies from making health claims without premarket FDA review and an FDA order allowing the claim. This provision prohibits implicit or explicit claims that a tobacco product is less harmful than other tobacco products (called "modified risk" claims) unless the manufacturer provides the FDA with scientific evidence to support such a claim and demonstrates that allowing the claim will benefit public health. This provision is intended to end the tobacco industry's long record of deception about the health risks of its products, most prominently in the marketing of "light" and "low-tar" cigarettes as safer when in fact they were no less hazardous than other cigarettes.

In response to the new advertising campaign for Natural American Spirit, the Campaign for Tobacco-Free Kids and 27 other public health organizations earlier this week wrote to the FDA urging action to stop the brand's claims implying a safer cigarette. Given the timing of the FDA's action, it is clear that the FDA both initiated its investigation and made the decision to take action even before receipt of this letter.

21. Defendants themselves concede that just because Natural American Spirit cigarettes are "natural" and do not have additives does not render them safer than other cigarettes. Placed on the side of Natural American Spirit packages, in a location reasonable consumers would likely overlook or not expect to have to view in order to determine the truthfulness of a statement made on the front of the label, is the following admission: "No additives in our tobacco does NOT mean a safer cigarette." However, Defendants' deceptive marketing claims overwhelm their disclaimers.

22. Moreover, Natural American Spirit cigarettes are also not "natural," because they contain ammonia. Researchers at the Oregon Health and Science University looked at 11 U.S. cigarette brands and found that some had up to 20 times more freebase nicotine—a form of the drug that is quickly absorbed and transmitted to the brain and central nervous system. Natural American Spirit cigarettes, for example, had 36% freebase nicotine, compared to 1% in a benchmark cigarette, 2.7% in Camel, 5-6.2% in Winston, and 9.6% in Marlboro. Natural nicotine is not typically this potent; on information and belief, the high level of freebase

nicotine in Natural American Spirit cigarettes is achieved through the addition of ammonia. *See generally* http://www.ohsu.edu/xd/about/news_events/news/2003/07-24-ohsu-researcher-publishes.cfm. (“Since scientists have shown that a drug becomes more addictive when it is delivered to the brain more rapidly,” the author continued, “free-base nicotine levels in cigarette smoke thus are at the heart of the controversy regarding the tobacco industry’s use of additives like ammonia and urea, as well as blending choices in cigarette design.” ... The study found a wide range of free-base nicotine levels among other brands such as Camel, Winston, Doral, GPC, Kamel Red, Virginia Slims, American Spirit and the French brand Gauloises.”).

23. Defendants’ use of the term “natural” to describe their products is false, deceptive, and misleading because they contain ammonia. The Consumer Reports National Research Center recently conducted a national survey of over 1,000 American consumers asking what percentage believe “natural” means or should mean no artificial ingredients are used. Although the survey was related to food, the results are likewise informative here. The survey findings revealed that 66% of consumers believe the “natural” label means no artificial ingredients are used. And 86% of consumers believe the “natural” label *should* mean that no artificial ingredients are used. *See FDA Request for Public Comment*, 80 FR 69905, available at <http://federalregister.gov/a/2015-28779>.

CLASS ACTION ALLEGATIONS

24. Plaintiff brings this action on her own behalf on behalf of all others similarly situated and additionally, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

25. All requirements for class certification under Fed. R. Civ. P. 23 (a) and 23(b)(2) and 23(b)(3) are satisfied.

26. The Class that Plaintiff seeks to represent is defined as:

All persons who purchased Natural American Spirit cigarettes in California from March 22, 2012 to the present.

27. Excluded from the Class are Defendants; any parent, subsidiary, or affiliate of Defendants; any entity in which Defendants have or had a controlling interest, or which Defendants otherwise control or controlled; any officer, director, employee, legal representative, predecessor, successor, or assignee of Defendants; any counsel of record in this case and any of their employees; any judge that is appointed to preside over this case, as well as any court employees.

28. The class is sufficiently numerous. Plaintiff does not know the exact number of persons in the Class, but believes them to be in the several thousands, making joinder of all these actions impracticable. The identity of the individual members is ascertainable and public notice can be provided.

29. There is a well-defined community of interest in the questions of law and fact involved affecting the members of The Class. The questions of law and fact common to the Class predominate over questions affecting only individual class members, and include, but are not limited to, the following:

- a. whether Defendants engaged in deceptive acts or practices by marketing Natural American Spirit cigarettes as “Natural” and “Additive-Free;”
- b. whether Defendant’s practices are “unfair” as defined by California Business and Professions Code §17200;
- c. whether Defendant’s practices are “unlawful” as defined by California Business and Professions Code §17200;
- d. whether Defendant’s practices are “fraudulent” as defined by California Business and Professions Code §17200;
- e. whether the above-described practice violates California Business and Professions Code §17200;
- f. whether Defendants violated California Bus. & Prof. Code §17500 *et seq.*;
- g. whether Defendants violated the California Legal Remedies Act, California Civil Code § 1770 *et seq.*;

- h. whether Defendants were unjustly enriched at the expense of the Class; and
- i. whether members of the Classes are entitled to declaratory relief.

30. Plaintiff will fairly and adequately protect the interest of the Class.

31. Plaintiff has retained the undersigned counsel who are experienced in consumer class action litigation and are competent to represent the Class.

32. Plaintiff's claims are typical of the claims of the Class which all arise from the same operative facts involving Defendants' practices.

33. A class action is a superior method for the fair and efficient adjudication of this controversy.

34. Classwide damages are essential to induce Defendants to comply with the federal and state laws alleged in the Complaint.

35. Class members are unlikely to prosecute such claims on an individual basis since the individual damages are small. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims, *e.g.*, securities fraud.

36. Defendants have acted on grounds generally applicable to the Class thereby making appropriate final declaratory relief with respect to the class as a whole.

37. Members of the Class are likely to unaware of their rights.

38. Plaintiffs request certification of a hybrid class combining the elements of Fed. R. Civ. P. 23(b)(3) for monetary damages and Fed. R. Civ. P. 23(b)(2) for equitable relief.

INTENT

39. All acts of Defendants described within were done intentionally and purposefully with a goal towards maximizing their profits and gain, at the expense of Plaintiff and the Class.

FIRST CAUSE OF ACTION
VIOLATION OF CONSUMERS LEGAL REMEDIES ACT
CIVIL CODE § 1750, *ET SEQ.*

(Against All Defendants)

40. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

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

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

43. The Natural American Spirit cigarettes purchased by Plaintiff and the Class are goods and services within the meaning of Civil Code § 1761(a).

44. Based on the foregoing, Defendants violated the CLRA in at least the following respects:

a. in violation of §1770(a)(5), Defendants represented that the Natural American Spirit cigarettes had characteristics, ingredients, and benefits which they do not have;

b. in violation of §1770(a)(7), Defendants represented that the Natural American Spirit cigarettes are of a particular standard, quality, or grade when they are of another;

c. in violation of §1770(a)(9), Defendants have advertised Natural American Spirit cigarettes with intent not to sell them as advertised; and

d. in violation of §1770(a)(16), Defendants represented that Natural American Spirit cigarettes were supplied in accordance with previous representations, when they were not.

45. Defendants knew, or should have known, that their representations and advertisements were deceptive, false and misleading.

46. As a direct and proximate result of Defendants' deceptive, misleading and false advertising, Plaintiff and the other Class members have suffered injury in fact and have lost money or property based on either the purchase price of Natural American Spirit cigarettes or the price premium Defendants are able to charge, and that Plaintiff and the Class pay.

47. Damages on this Count alone are not sought at this time, only injunctive and declaratory relief and all other relief available at law or equity. Absent injunctive relief, Defendants will continue to deceptively market their cigarettes.

48. Plaintiff has complied with Civil Code § 1782(a) by notifying Defendants in writing, by certified mail, of the violations alleged herein and demanded that Defendants remedy those violations with respect to the entire Class.

49. If Defendants fail to rectify or agree to rectify the problems detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to California Civil Code § 1782. Plaintiff will amend this Complaint to add claims for actual, punitive, and statutory damages pursuant to the CLRA.

SECOND CAUSE OF ACTION
VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200
(Against All Defendants)

50. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

51. As described more fully above, Defendants falsely and materially misrepresented their cigarettes as "Natural" and "Additive-Free" when, in fact, the Natural American Spirit cigarettes are not healthier than other cigarettes.

52. Actions for relief under the unfair competition law may be based on any business act or practice that is within the broad definition of the UCL. Such violations of the UCL occur as a result of unlawful, unfair, or fraudulent business acts and practices.

53. California Business & Professions Code § 17200 prohibits any “unfair ... business act or practice.”

54. In order to satisfy the “unfair” prong of the UCL, a consumer must show that the injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or competition; and (3) is not one that consumers themselves could reasonably have avoided.

55. Defendants’ representations made by statement, word, design, device, sound, or any combination thereof, and also the extent to which the Defendants’ advertising fails to reveal material facts with respect to Natural American Spirit cigarettes, as described above, constitute false advertising and unlawful, unfair and fraudulent conduct. Defendants’ conduct was knowing and intentional. Defendants’ actions have caused direct, foreseeable, and proximate injury to Plaintiff and the Class

56. Defendants’ acts, omissions, misrepresentations, and practices as alleged herein constitute “unfair” business acts and practices within the meaning of the UCL in that its conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefits attributable to such conduct. There were reasonably available alternatives to further Defendants’ legitimate business interests, other than the conduct described herein.

57. Here, Defendants’ conduct have caused and continues to cause substantial injury to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury in fact due to Defendants’ conduct.

58. Moreover, Defendants’ conduct as alleged herein solely benefits Defendants while providing no benefit of any kind to any consumer. Such deception utilized by Defendants convinced Plaintiff and members of the Class that the money paid for the Natural American Spirit cigarettes was a reasonable fair market value, when in fact, Defendants knew that they were selling an inferior product. Thus, the injury suffered by Plaintiff and the members of the Class is not outweighed by any countervailing benefits to consumers.

59. Finally, the injury suffered by Plaintiff and members of the Class is not an injury that these consumers could reasonably have avoided.

60. Based on the foregoing, Defendants' conduct has violated the "unfair" prong of California Business & Professions Code § 17200.

61. California Business & Professions Code § 17200 also prohibits any "fraudulent ... business act or practice."

62. In order to prevail under the "fraudulent" prong of the UCL, a consumer must allege that the fraudulent business practice was likely to deceive members of the public. The test for "fraud" as contemplated by California Business and Professions Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a § 17200 violation can be established even if no one was actually deceived, relied upon the fraudulent practice, or sustained any damage.

63. Here, Plaintiff and the Class members were actually deceived by Defendants' conduct described above. The facts at issue would have been material to any reasonably minded consumer, including Plaintiff, in their determination of whether to purchase Natural American Spirit cigarettes, and at what price. Plaintiff's reliance upon Defendants' deceptive statements and omissions is reasonable due to the unequal bargaining powers and knowledge of Defendants and Plaintiff. For the same reason, it is likely that Defendants' fraudulent business practices would deceive other members of the public.

64. Based on the foregoing, Defendants' conduct has violated the "fraudulent" prong of California Business & Professions Code § 17200.

65. California Business and Professions Code § 17200 *et seq.* prohibits "any unlawful ... business act or practice."

66. As explained above, Defendants' conduct was unlawful. *See* FDA Warning. In addition, Defendants' conduct is unlawful in that it violates the Consumers Legal Remedies Act, California Civil Code §§ 1750 *et seq.*, as described in the First Cause of Action above.

67. These representations and omissions by Defendants are therefore an “unlawful” business practice or act under Business and Professions Code § 17200 *et seq.*

68. Defendants used false advertising, marketing, and misrepresentations to induce Plaintiff and Class members to purchase the Natural American Spirit cigarettes. Had Defendants not falsely advertised, marketed, or misrepresented their products, Plaintiff and Class members would not have purchased the Natural American Spirit cigarettes. Defendants’ conduct therefore caused and continues to cause economic harm to Plaintiff and Class members.

69. As a consequence of Defendants’ wrongful actions, Plaintiff and the other members of the Class suffered an ascertainable loss of monies based on either the purchase price of Natural American Spirit cigarettes or the price premium Defendants are able to charge, and that Plaintiff and the Class pay, as a direct result of Defendants’ deceptive marketing scheme.

70. By reason of the foregoing, Defendants are liable to Plaintiff and the other members for restitution, injunctive relief, attorneys’ fees, and the costs of this suit.

71. Plaintiff and the other members of the Class further seek to enjoin the false advertising described above.

THIRD CAUSE OF ACTION
MONEY HAD AND RECEIVED
(Against All Defendants)

72. Plaintiff incorporates by reference the allegations set forth above.

73. Plaintiff and members of the Class conferred benefits on Defendants by purchasing Natural American Spirit cigarettes at a premium price.

74. Defendants have knowledge of such benefits.

75. By engaging in the conduct described above, Defendants have unjustly enriched themselves and received a benefit at the expense of Plaintiff and the other members of the Class. Defendants appreciated the benefit and it would be inequitable for Defendants to retain this benefit because Defendants falsely and materially misrepresented as “Natural” and “Additive-Free” when, in fact, the Natural American Spirit cigarettes are not healthier than other cigarettes.

Plaintiff and members of the Class were unjustly deprived of payments because they would not have purchased (or paid a price premium) for Natural American Spirit cigarettes had the true facts been known.

76. Because it would be unjust and inequitable for Defendants to retain payments Plaintiff and the Class made for Defendants' Natural American Spirit cigarettes or to retain the price premium they charge for their cigarettes, Plaintiff and members of the Class are entitled to restitution for Defendants' unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class members pray for judgment as follows:

- A. Certifying the Class as requested herein pursuant to Fed. R. Civ. P. 23 (a), 23 (b)(2) and 23 (b)(3);
- B. Restitution of the funds obtained by Defendants from the Class, directly or indirectly;
- C. Disgorgement of the funds obtained by Defendants from the Class, directly or indirectly;
- D. Any and all damages on the claims in which damages are now sought and allowable by law or equity other than those specifically disclaimed above relating to the CLRA;
- E. All reasonable and necessary attorneys' fees and costs provided by statute, common law, equity, or the Court's inherent power;
- F. For equitable and declaratory relief; and,
- G. Any and all other relief that this Court deems just and proper at law or equity.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of all claims so triable.

LONG, KOMER & ASSOCIATES, PA

Dated: March 23, 2016

/s/ Nancy R. Long

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AFFIDAVIT OF CALEB MARKER

I, Caleb Marker, declare as follows:

1. I am an attorney with the law firm of Zimmerman Reed LLP. I am admitted to practice law in California and am a member in good standing of the State Bar of California.
2. This declaration is made pursuant to California Civil Code Section 1780(d).
3. I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.
4. Based on my research and personal knowledge, Defendants Reynolds American, Inc. and Santa Fe Natural Tobacco Company, Inc. ("Defendants") conduct business within the State of New Mexico and this District and Defendant Santa Fe Natural Tobacco Company, Inc. maintains its principal office in Santa Fe, New Mexico and this District, as alleged in the Class Action Complaint.

I declare under penalty of perjury on this 23rd day of March, 2016 in Los Angeles, California that the foregoing is true and correct.

/s/ Caleb Marker
Caleb Marker

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

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

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

DEFENDANTS

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) _____

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

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

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

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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