

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

<b>JACLYN WATERS,</b>	)	
<b>individually and on behalf of</b>	)	
<b>all others similarly situated in</b>	)	
<b>Missouri,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CIVIL ACTION NO.: 4:17-cv-00197</b>
<b>v.</b>	)	
	)	<b>JURY TRIAL DEMANDED</b>
<b>FERRARA CANDY CO. ,</b>	)	
	)	
<b>Defendant.</b>	)	

**NOTICE OF REMOVAL**

Defendant Ferrara Candy Company (“Ferrara”), hereby gives notice that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, this civil action filed by Plaintiff Jaclyn Waters (“Plaintiff”) is hereby removed from the Circuit Court of the City of St. Louis, Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division. In support of this Notice of Removal and this Court’s jurisdiction, Defendant Ferrara states:

1. On December 8, 2016, Plaintiff filed a putative class action petition in the Circuit Court of the City of St. Louis, Missouri (the “Petition”) (attached hereto as Exhibit 1).
2. Plaintiff brings this action on behalf of a proposed class consisting of “[a]ll Missouri citizens who purchased the Products in the five years preceding the filing of this Petition.” *See* Petition ¶ 28.
3. The Petition asserts causes of action for violation of Missouri’s Merchandising Practices Act and for Unjust Enrichment. *See* Petition ¶¶ 37-50.

**Timeliness of Removal**

4. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely because it is being filed within 30 days of Ferrara’s receipt of the Petition on December 12, 2016.

**CAFA Jurisdiction Pursuant to 28 U.S.C. § 1332(d)**

5. This civil action is removable because this Court has jurisdiction of this action under 28 U.S.C. § 1332(d) (as amended by the Class Action Fairness Act of 2005 (“CAFA”)).

6. Under 28 U.S.C. § 1332(d), this Court has original jurisdiction over class actions in which (i) there are at least 100 members in the plaintiff’s proposed class, (ii) any member of the putative class is a citizen of a state different from any defendant, and (iii) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, based on the aggregated claims of the class members. All of these requirements are satisfied.

**The Class Exceeds 100 Members.**

7. CAFA’s first requirement—that class membership be no less than 100 (28 U.S.C. § 1332(d)(5)(B))—is satisfied.

8. According to the Petition, the “Class consists of hundreds or thousands of purchasers.” Petition ¶ 30. Accordingly, a reasonable basis exists to conclude that there are more than 100 class members.

**Diversity of Citizenship Exists.**

9. CAFA’s second requirement—that any one member of the purported class is a citizen of a state different from any defendant (28 U.S.C. § 1332(d)(2)(A))—is also satisfied.

10. Per the Petition, Plaintiff is a citizen of Missouri. Petition ¶ 5.

11. Per the Petition, Ferrara is an Illinois corporation with its principal place of business in Illinois. Petition ¶ 6.

12. Accordingly, CAFA’s requirement of minimal diversity is satisfied.

**The Amount in Controversy Requirement Is Satisfied.**

13. CAFA’s third requirement—that the aggregate amount in controversy exceeds \$5,000,000 exclusive of interest and costs (28 U.S.C. § 1332(d)(2))—is satisfied as well.

14. Under CAFA, “the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6).

15. “[W]hen determining the amount in controversy, the question ‘is not whether the damages *are* greater than the requisite amount, but whether a fact finder *might* legally conclude that they are.’” *Raskas v. Johnson & Johnson*, 719 F.3d 884, 887 (8th Cir. 2013) (“*Raskas*”) (emphasis in original) (quoting *Bell v. Hershey Co.*, 557 F.3d 953, 959 (8th Cir. 2009)). The defendant’s Notice of Removal need include only a plausible allegation that the amount in controversy exceeds \$5,000,000; the Notice of Removal need not contain evidentiary submissions. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551, 554 (2014).

16. The Plaintiff’s statements in the Petition that the aggregated amount in controversy will not exceed \$4,999,999 for the entire class, *see, e.g.*, Petition ¶ 8, do not prevent removal of this action. *See Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1350 (2013) (holding that the named plaintiff’s stipulation that the class will not seek relief exceeding \$5,000,000 is not binding on the putative class members and should thus be ignored).

17. The Petition seeks compensatory damages, or alternatively, disgorgement or restitution of Ferrara’s alleged unjust enrichment. *See* Petition, Prayer for Relief ¶ (c). The

putative class includes Missouri citizens who purchased the products at issue in the five years preceding the filing of the Petition. Petition ¶ 28.

18. Sales of Red Hots products in the last five years in Missouri have been in excess of \$779,296. The allegations, claims and prayer of the Petition put this full amount in controversy as possible damages or restitution.

19. The Petition seeks attorneys' fees. *See* Petition, Prayer for Relief ¶ (e). Attorneys' fees are potentially available under the Missouri Merchandising Practices Act. Mo. Rev. Stat. § 407.025. Courts in the Eighth Circuit have held that attorneys' fees of 40 percent may be included in calculations of the amount in controversy in a putative class action. *See Basham v. Am. Nat'l Cnty. Mut. Ins. Co.*, 979 F. Supp. 2d 883, 890 (W.D. Ark. 2013), *appeal denied*, No. 13-8038 (8th Cir. Dec. 2, 2013); *Knowles v. Standard Fire Ins. Co.*, No. 4:11-cv-04044, 2013 WL 3968490, at \*6 (W.D. Ark. Aug. 2, 2013), *appeal denied*, No. 13-8027 (8th Cir. Sept. 11, 2013). In this case, the attorneys' fees calculation puts an additional \$311,718 in controversy.

20. Punitive damages are potentially available under the Missouri Merchandising Practices Act. Mo. Rev. Stat. § 407.025. It is legally possible that the putative class could recover punitive damages of five times the sum of actual damages and attorneys' fees. *See* Mo. Rev. Stat. § 510.265 (allowing punitive damages of “[f]ive times the net amount of the judgment awarded to the plaintiff against the defendant”); *Hervey v. Missouri Dep't of Corr.*, 379 S.W.3d 156, 163 (Mo. 2012) (the “net amount of the judgment” includes attorneys' fees). In this case, the punitive damages calculation puts an additional \$5,455,070 in controversy.

21. Thus, it is legally possible that the putative class could recover \$6,546,084, representing the sum of compensatory damages, attorneys' fees, and punitive damages.

22. The Petition also seeks injunctive relief. *See* Petition ¶¶ 4, 44. Injunctive relief is potentially available under the Missouri Merchandising Practices Act. Mo. Rev. Stat. § 407.025. The changes in production processes and/or capital equipment that would be necessitated by an injunction requiring an increase in the percentage fill in the product packages at issue could possibly cost Ferrara in excess of \$6,000,000.

23. Thus, it is legally possible that the amount in controversy exceeds \$5,000,000, accounting for potential recovery of compensatory damages, attorneys' fees, punitive damages, and injunctive relief. For the avoidance of doubt, Ferrara does not agree that any such relief, including any such injunctive relief, is warranted or would be proper. Rather, such relief should be included in the calculation of the amount in controversy.

24. Federal jurisdiction exists over this putative class action unless Plaintiffs can establish that recovery of more than \$5,000,000 in this putative class action would be legally impossible. “Once the proponent of federal jurisdiction has explained plausibly how the stakes exceed \$5 million . . . then the case belongs in federal court unless it is legally impossible for the plaintiff to recover that much.’ Even if it is highly improbable that the Plaintiffs will recover the amounts Defendants have put into controversy, this does not meet the legally impossible standard.” *Raskas*, 719 F.3d at 888 (quoting *Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008)) (internal citation omitted).

**The Other Removal Prerequisites Have Been Satisfied.**

25. The procedural requirements set forth in 28 U.S.C. § 1446 have also been met.

26. The U.S. District Court for the Eastern District of Missouri is the federal judicial district encompassing the Circuit Court of the City of St. Louis, where this suit was originally filed. Venue is therefore proper in this district pursuant to 28 U.S.C. §§ 1441(a), 1446(a).

27. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and other papers received by Ferrara are attached hereto as Exhibit 1.

28. Pursuant to 28 U.S.C. § 1446(d), undersigned counsel is serving this Notice of Removal on plaintiff's counsel and is filing a copy of this Notice of Removal with the Circuit Court of the City of St. Louis.

29. The allegations of this Notice of Removal are true and correct and this cause is within the jurisdiction of the United States District Court for the Eastern District of Missouri, Eastern Division, and this cause is removable to the United States District Court for the Eastern District of Missouri, Eastern Division.

30. If any question arises as to the propriety of the removal of this action, Ferrara requests the opportunity to submit a brief and present oral argument in support of its position that this case was properly removed.

WHEREFORE, Defendant Ferrara respectfully gives notice that this action is removed from the Circuit Court of the City of St. Louis, Missouri to the United States District Court for the Eastern District of Missouri.

Dated: January 11, 2017

Respectfully Submitted,

By: /s/ Troy A. Bozarth  
Troy A . Bozarth (5209515 E.D. Mo.)  
Matthew H. Noce (57883MO)  
Charles N. Insler (58623MO)  
HEPLER BROOM LLC  
One Metropolitan Square  
211 North Broadway Suite 2700  
St. Louis, MO 63102  
Phone: 314-241-6160  
Fax: 314-241-6116  
mhn@heplerbroom.com  
cni@heplerbroom.com

*Counsel for the Defendant Ferrara Candy  
Company*

**CERTIFICATE OF SERVICE**

I certify that on the 11th day of January 2017, I electronically filed a true and correct copy of the foregoing Notice to the Plaintiff of Removal with the Clerk of the United States District Court for the Eastern District of Missouri using the CM/ECF system, and that I also served a true and correct copy of the foregoing Notice to the Plaintiff of Removal by First Class U.S. Mail on

Matthew H. Armstrong  
Armstrong Law Firm LLC  
8816 Manchester Road, No. 109  
St. Louis, MO 63144

/s/ Troy A. Bozarth  
Troy A. Bozarth



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

Judge or Division: <b>BRYAN L HETTENBACH</b>	Case Number: 1622-CC11493
Plaintiff/Petitioner: <b>JACLYN WATERS</b>	Court Address: <b>CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101</b>
vs.	
Defendant/Respondent: <b>FERRARA CANDY CO</b>	
Nature of Suit: CC Other Tort	

(Date File Stamp)

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

**Notice**

**To: FERRARA CANDY CO**  
ILLINOIS CORPORATION SERVICE  
801 ADLAI STEVENSON DR  
SPRINGFIELD, IL 62703

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

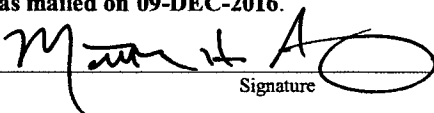
You may sign and date the acknowledgement part of this form and return one copy of the completed form to the sender within thirty days of 09-DEC-2016.

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

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

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

**I declare, under penalty of perjury, that this notice was mailed on 09-DEC-2016.**

  
 \_\_\_\_\_  
 Signature

**Acknowledgment of Receipt of Summons and Petition**

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Relationship to Entity/Authority to receive service of process





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

Judge or Division: <b>BRYAN L HETTENBACH</b>	Case Number: 1622-CC11493
Plaintiff/Petitioner: <b>JACLYN WATERS</b>	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101
vs.	
Defendant/Respondent: <b>FERRARA CANDY CO</b>	
Nature of Suit: CC Other Tort	

(Date File Stamp)

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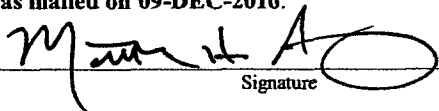
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If you are served on behalf of a corporation, unincorporated association, including a partnership, or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized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

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

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

**I declare, under penalty of perjury, that this notice was mailed on 09-DEC-2016.**

  
 \_\_\_\_\_  
 Signature

**Acknowledgment of Receipt of Summons and Petition**

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Relationship to Entity/Authority to receive service of process




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

Judge or Division: <b>BRYAN L HETTENBACH</b>	<b>Case Number: 1622-CC11493</b>
Plaintiff/Petitioner: <b>JACLYN WATERS</b>	Plaintiff's/Petitioner's Attorney/Address: <b>MATTHEW HALL ARMSTRONG</b> 8816 MANCHESTER RD SUITE 109 SAINT LOUIS, MO 63144
Defendant/Respondent: <b>FERRARA CANDY CO</b>	Court Address: <b>CIVIL COURTS BUILDING</b> 10 N TUCKER BLVD SAINT LOUIS, MO 63101
Nature of Suit: CC Other Tort	(Date File Stamp)

**Summons for Service by Registered or Certified Mail**

**The State of Missouri to: FERRARA CANDY CO**  
Alias:

**ILLINOIS CORPORATION SERVICE**  
801 ADLAI STEVENSON DR  
SPRINGFIELD, IL 62703



**COURT SEAL OF**  
**CIRCUIT COURT OF MISSOURI**  
**CITY OF ST LOUIS**

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

**December 9, 2016**  
Date Issued

**THOMAS KLOEPPINGER**  
Clerk

Further Information:

**Certificate of Mailing**

I certify that on 12-9-2016 (date), I mailed a copy of this summons and a copy of the petition to Defendant/Respondent **FERRARA CANDY CO** by registered or certified mail, requesting a return receipt by the addressee only, to the said Defendant/Respondent at the address furnished by Plaintiff/Petitioner.

12-9-2016  
Date

*Matthew H. Armstrong*

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

JACLYN WATERS, individually and on )  
behalf of all others similarly situated in )  
Missouri, )

Plaintiff, )

v. )

FERRARA CANDY CO., )

Defendant. )

Serve by Mail to: )

FERRARA CANDY CO. )  
Illinois Corporation Service RAGT )  
801Adlai Stevenson Dr. )  
Springfield IL 62703 )

No. \_\_\_\_\_

JURY DEMAND

PETITION AND JURY DEMAND

Plaintiff Jaclyn Waters, individually and on behalf of all others similarly situated in Missouri (“Class Members” or the “Class”), alleges the following facts and claims upon personal knowledge, investigation of counsel, and information and belief.

NATURE OF THE CASE

1. “Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages . . . should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons.” 15 U.S.C.A. § 1451.

2. The average consumer spends a mere 13 seconds making an in-store purchasing decision.<sup>1</sup> That decision is heavily dependent on a product’s packaging, and particularly the

<sup>1</sup> <http://www.nielsen.com/us/en/insights/news/2015/make-the-most-of-your-brands-20-second-window.html> (citing the Ehrenberg-Bass Institute of Marketing Science’s report “Shopping Takes Only Seconds... In-Store and Online”) (last accessed Nov. 29, 2016).

package dimensions: “Most of our studies show that 75 to 80 percent of consumers don’t even bother to look at any label information, no less the net weight’ . . . . Faced with a large box and a smaller box, both with the same amount of product inside . . . consumers are apt to choose the larger box because they think it’s a better value.”<sup>2</sup>

3. Plaintiff brings this class-action lawsuit based on Defendant’s misleading, deceptive and unlawful conduct in packaging its Chewy Red Hots candy (“Products”) in non-transparent cardboard boxes, which are substantially under-filled or “slack-filled.” The slack-fill serves no functional purpose. Consumers paid a premium for the Products, which they would not have purchased had they known that the containers were substantially empty, or would have purchased them on different terms.

4. Accordingly, Plaintiff brings this action on behalf of herself and all others similarly situated to recover damages and injunctive relief for Defendant’s false, deceptive, and misleading conduct in violation of the Missouri Merchandising Practices Act (“MMPA”) and Missouri common law, and for disgorgement of Defendant’s unjust enrichment.

5. Plaintiff, Jaclyn Waters, is a Missouri citizen and resident of the City of St. Louis, Missouri. On at least one occasion during the Class Period (as defined below), Plaintiff purchased Chewy Red Hots candy at a Wal-Mart store in the City of St. Louis, Missouri, for personal, family, or household purposes. The purchase price of the Product was \$0.98. Plaintiff’s claim is typical of all Class Members in this regard. In addition, the non-functional slack-fill contained in the Product purchased by Plaintiff is typical of the slack-fill contained in the Products purchased by Class Members.

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<sup>2</sup> <http://www.consumerreports.org/cro/magazine-archive/2010/january/shopping/product-packaging/overview/product-packaging-ov.htm> (quoting Brian Wansink, professor and director of the Cornell Food and Brand Lab, who studies shopping behavior of consumers) (last accessed Nov. 29, 2016).

6. Defendant Ferrara Candy Company is an Illinois corporation with its corporate headquarters located in Oakbrook Terrace, Illinois. Defendant and its agents manufacture, market, distribute, label, promote, advertise and sell the Products.

**JURISDICTION AND VENUE**

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

8. Moreover, because the value of Plaintiff's claims is typical of the claim value of each Class Member, the total damages to Plaintiff and Class Members, inclusive of costs and attorneys' fees, will not exceed \$4,999,999 and is less than the five million dollar (\$5,000,000) minimum threshold necessary to create federal court jurisdiction.

9. Defendant cannot plausibly allege it has sold sufficient Products in Missouri during the Class Period to satisfy CAFA's jurisdictional minimum amount in controversy.

10. Based on the allegations of the foregoing paragraphs, there is no diversity or CAFA jurisdiction for this case.

11. This Court has personal jurisdiction over Defendant pursuant to § 506.500, RSMo., as Defendant has had more than sufficient minimum contact with the State of Missouri and has availed itself of the privilege of conducting business in this state. Additionally, and as explained below, Defendant has committed affirmative tortious acts within the State of Missouri that give rise to civil liability, including distributing and selling the misbranded Products throughout the State of Missouri.

12. Venue is proper in this forum pursuant to §§ 508.010 and 407.025.1, RSMo., because the transactions complained of occurred in the City of St. Louis, Missouri and Plaintiff was injured in the City of St. Louis, Missouri.

**ALLEGATIONS OF FACT**

**Federal and Missouri State Law Prohibit Non-Functional Slack-Fill**

13. Defendant's deceptive and misleading conduct, as described herein, violates the Federal Food, Drug and Cosmetic Act ("FDCA") Section 403 (21 U.S.C. § 343); Section 403(d) (21 U.S.C. § 343(d)); and the Code of Federal Regulations Title 21 part 100, *et seq.*, as well as parallel Missouri statutes. As described in detail below, these violations contravene Missouri's Merchandising Practices Act, which prohibits deceptive, fraudulent, misleading and unfair conduct in connection with the sale or advertisement of any merchandise in trade or commerce. § 407.020.43, RSMo.

14. 21 C.F.R. § 100.100 prohibits nonfunctional slack-fill:

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Unavoidable product settling during shipping and handling;
- (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

- (5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or
- (6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

15. In addition, pursuant to 21 C.F.R. § 100.100, a container is presumptively misleading if it does not allow the consumer to fully view its contents and if it contains nonfunctional slack-fill.

16. Missouri state law also prohibits non-functional slack-fill and incorporates language identical to the C.F.R.: “[F]ood shall be deemed to be misbranded: . . . . (4) If its container is so made, formed or filled as to be misleading.” § 196.075, RSMo.

17. None of the enumerated safe-harbor provisions described above applies to the Products, thereby rendering the Products’ slack-fill “nonfunctional” and unlawful. Defendant intentionally incorporated non-functional slack-fill in its packaging of the Products in order to mislead consumers, including Plaintiff and Members of the Class. *Waldman v. New Chapter, Inc.*, 714 F. Supp. 2d 398, 405 (E.D.N.Y. 2010) (“Misleading consumers is not a valid reason to package a product with slack-fill. *See* 21 C.F.R. § 100.100(a)(1-6).”).

**Defendant’s Products Contain Substantial Non-Functional Slack-Fill**

18. Defendant manufactures, markets, promotes, labels, advertises, and sells a variety of confectionery products, including the Products at issue.

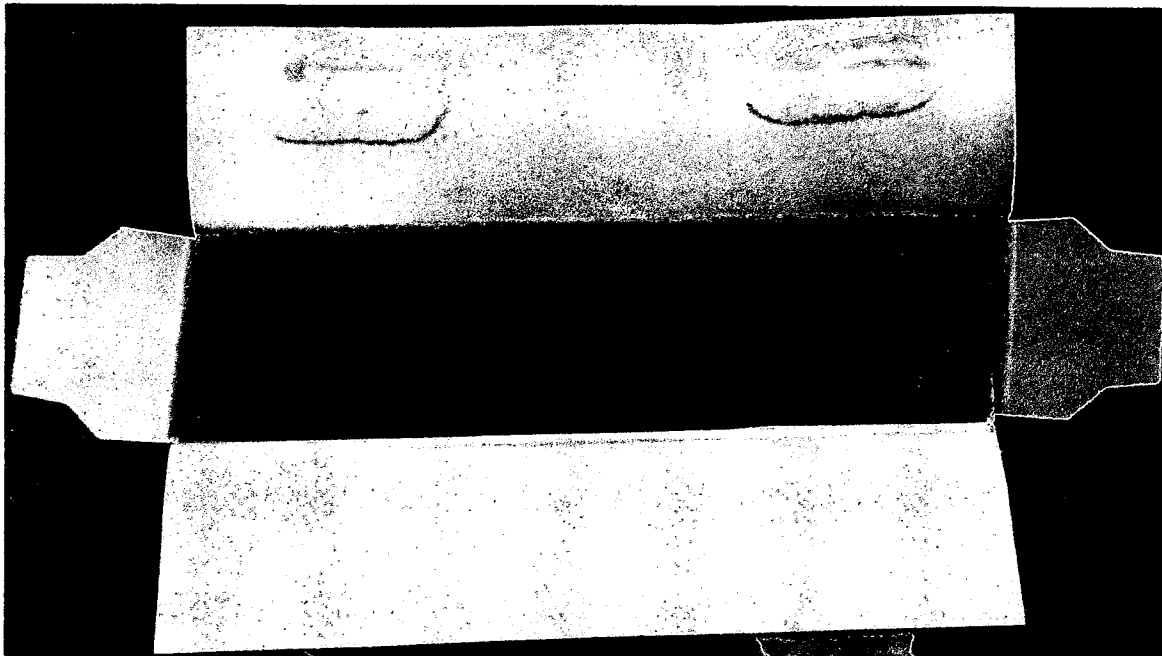
19. The Products are sold in a variety of flavors, including but not limited to Original Cinnamon, Intense Cinnamon, Sizzling Sour, Kick'n Mango-Lime, and Dark-Chocolate Covered Chewy Red Hots.



20. The Products are sold throughout the State of Missouri, and are regularly sold at grocery stores, convenience stores, supermarkets and other food retail outlets.

21. Defendant's Products are packaged in non-transparent cardboard containers, which contain substantial non-functional slack-fill, as depicted below.





22. The Product containers are an implicit representation of the amount of product contained therein, because consumers reasonably assume that the Products will contain a full complement of product.

23. Reasonable consumers, such as Plaintiff, attached importance to the Products' size as a basis for their purchasing decisions.

24. Defendant's Products are misleading because they contain non-functional slack-fill and the Products' non-transparent cardboard containers prevented Plaintiff and Class Members from viewing the amount of product contained therein. Moreover, the slack-fill cannot be legally justified under any of the enumerated safe-harbor provisions of 21 C.F.R. § 100.100.

25. Plaintiff and Class Members did not know, and had no reason to know, that the Product packaging contained non-functional slack-fill.

26. Defendant's Product packaging was a material factor in Plaintiff's decision to purchase the Products. Based on the Product packaging, Plaintiff and the Class Members

believed that they were getting more Product than was actually being sold. Had Plaintiff and Class Members known Defendant's packaging was slack-filled, they would not have purchased the Products, or would not have paid a premium to purchase them.

27. Plaintiff and Class Members suffered an ascertainable loss as a result of Defendant's unlawful conduct, including the percentage of non-functional slack-fill relative to the purchase price paid.

### **CLASS ALLEGATIONS**

28. Pursuant to Missouri Rule of Civil Procedure 52.08 and § 407.025.2 of the MMPA, Plaintiff brings this action on her own behalf and on behalf of a proposed class of all other similarly situated persons consisting of:

All Missouri citizens who purchased the Products in the five years preceding the filing of this Petition (the "Class Period").

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

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

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

- a. Whether the Products' container or packaging is so made, formed, or filled as to be misleading;
- b. Whether the Products contained non-functional slack-fill;
- c. Whether Defendant violated the MMPA by selling the Products in containers with non-functional slack-fill;
- d. Whether, and to what extent, injunctive relief should be granted to prevent such conduct in the future;
- e. Whether Defendant has been unjustly enriched by the sale of the Products to the Plaintiff and Class;
- f. Whether Plaintiff and Class Members have sustained damages as a result of Defendant's unlawful conduct; and
- g. The proper measure of damages sustained by Plaintiff and Class Members.

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

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

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

- a. The claims presented in this case predominate over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. Absent a Class, the Class Members will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoys its ill-gotten gains;
- c. Given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. When the liability of Defendant has been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. This action presents no difficulty that would impede its management by the court as a class action which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendant.

35. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying

adjudications with respect to individual member of the Class, which would establish incompatible standards of conduct for Defendant.

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

### **CLAIMS FOR RELIEF**

#### **COUNT I**

##### **Violation of Missouri's Merchandising Practices Act**

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

38. Plaintiff brings this claim individually and on behalf of the Class for Defendant's violations of the MMPA. The MMPA "is designed to regulate the marketplace to the advantage of those traditionally thought to have unequal bargaining power as well as those who may fall victim to unfair practices." *Huch v. Charter Commc'ns Inc.*, 290 S.W. 3d 721, 725 (Mo. banc. 2009). The MMPA provides that it is unlawful to "act, use or employ . . . deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . ." § 407.020.1, RSMo.

39. Defendant's conduct as described above constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts in connection with the sale or

advertisement of any merchandise in trade or commerce in that Defendant incorporates substantial non-functional slack-fill into the Products' non-transparent packaging. As such, the Product containers are made, formed, or filled as to be misleading.

40. Defendants' misrepresentations and omissions as set forth in this Petition are material in that they relate to matters that are important to consumers and/or are likely to affect the purchasing decisions or conduct of consumers, including Plaintiff and Class Members.

41. In violation of the MMPA, Defendant employed fraud, deception, false promise, misrepresentation and/or the knowing concealment, suppression or omission of material facts in its sale and advertisement of the Products.

42. Plaintiff and Class Members purchased the Products for personal, family, or household purposes.

43. Plaintiff and Class Members suffered an ascertainable loss as a result of Defendant's unlawful conduct as alleged herein, including the difference between the actual value of the purchased Products and the value of the Products if they had been as represented. Had Plaintiff and Class Members known the truth about the Products, they would not have purchased the Products, or would have purchased the Products on different terms.

44. In addition, Defendant's conduct has caused Plaintiff and Class Members irreparable injury. As described herein, Defendant has engaged in unlawful and misleading conduct on a routine and automated basis, harming Missouri consumers in a uniform manner. Unless restrained and enjoined, Defendant will continue such conduct. As authorized under § 407.025.2, RSMo., Plaintiff requests injunctive relief, and such other equitable relief as the Court deems just and proper.

**COUNT II**

**Unjust Enrichment**

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

46. By purchasing the Products, Plaintiff and Class Members conferred a benefit on Defendant in the form of the purchase price of the slack-filled Products.

47. Defendant had knowledge of such benefits.

48. Defendant appreciated the benefit because, were consumers not to purchase the Products, Defendant would not generate revenue from the sales of the Products.

49. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent and misleading representations and omissions.

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

**PRAYER FOR RELIEF**

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

- a. Grant certification of this case as a class action;
- b. Appoint Plaintiff as Class Representative and Plaintiff's counsel as Class Counsel;
- c. Award compensatory damages to Plaintiff and the proposed Class in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class, or,

alternatively, require Defendant to disgorge or pay restitution in an amount which, when aggregated with all other elements of damages, costs, and fees, will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;

- d. Award pre- and post-judgment interest in an amount which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class;
- e. Award reasonable and necessary attorneys' fees and costs to Class counsel, which, collectively with all other elements of damages, costs, and fees will not exceed \$75,000 per Class Member and/or \$4,999,999 for the entire Class; and
- f. For all such other and further relief as may be just and proper.

Dated: December 8, 2016

Respectfully submitted,

Jaclyn Waters, Individually, and on Behalf of a Class of Similarly Situated Individuals, Plaintiff

By: /s/ Matthew H. Armstrong  
Matthew H. Armstrong, MoBar 42803  
**ARMSTRONG LAW FIRM LLC**  
8816 Manchester Rd., No. 109  
St. Louis, MO 63144  
Tel: 314-258-0212  
Email: matt@mattarmstronglaw.com

Attorney for Plaintiff and the Putative Class



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Armstrong Law Firm LLC  
8816 Manchester Rd. #109  
St. Louis MO 63144

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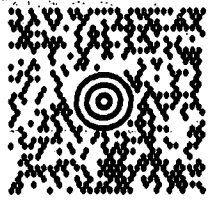
Ferrara Candy Company  
Illinois Corporation Service  
801 Adlai Stevenson Dr.  
Springfield IL 62703

MATT ARMSTRONG  
(314) 258-0212  
THE UPS STORE #0373  
8816 MANCHESTER RD  
BRENTWOOD MO 63144-2602

1 LBS 1 OF 1  
SHP WT: 1 LBS  
DATE: 09 DEC 2016

SHIP ILLINOIS CORPORATION SERVICE  
TO: FERRARA CANDY COMPANY  
801 ADLAI STEVENSON DR

SPRINGFIELD IL 62703-4261

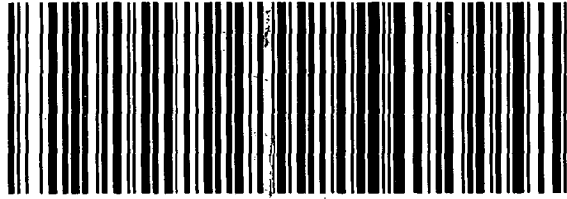


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# CIVIL COVER SHEET

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

Jaclyn Waters

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

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

Armstrong Law Firm LLC  
8816 Manchester Road, No. 109  
St. Louis, MO 63144 Tel: 314-258-0212

### DEFENDANTS

Ferrara Candy Co.

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

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

Attorneys (If Known)

Hepler Broom LLC  
211 N. Broadway St., Suite 2700  
St. Louis, MO 63102 Tel: 314-241-6160

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

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

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

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

### 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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input checked="" 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 <b>LABOR</b> <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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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

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

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

### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. s1332

Brief description of cause:  
MMPA Action based on under-filled or slack-filled candy boxes.

### VII. REQUESTED IN COMPLAINT:

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

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

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 01/11/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Troy A. Bozarth

### 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.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

Jaclyn Waters, individually and on	)	
behalf of all others similarly situated	)	
in Missouri	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
Ferrara Candy Co.	)	
	)	
	)	
Defendant,	)	
	)	

**ORIGINAL FILING FORM**

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

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

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

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

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

Date: 01/11/2017

/s/ Troy A. Bozarth  
Signature of Filing Party