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7 Attorneys for Plaintiff

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

10 STEPHANIE BROWN, on Behalf of
Herself and All Others Similarly
11 Situated,

12 Plaintiff,

13 v.

14 DYNAMIC PET PRODUCTS, LLC
15 and FRICK'S MEAT PRODUCTS,
16 INC.,

17 Defendants.
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Case No: '17CV0659 JAH BLM

CLASS ACTION

CLASS ACTION COMPLAINT

- CLASS ACTION COMPLAINT FOR:
1. VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT, MISSOURI REVISED STATUTE §§407.101, *et seq.*;
 2. FRAUD; and
 3. NEGLIGENT MISREPRESENTATION

DEMAND FOR JURY TRIAL

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1 Plaintiff Stephanie Brown, by and through her attorneys, brings this action
2 on behalf of herself and all others similarly situated against Defendants Dynamic
3 Pet Products, LLC (“Dynamic”) and Frick’s Meat Products, Inc. (“Frick’s”), and
4 states:

5 **NATURE OF THE ACTION**

6 1. This is a consumer protection class action arising out of
7 misrepresentations and omissions made by Defendants Dynamic Pet Products,
8 LLC and Frick’s Meat Products, Inc. regarding the Real Ham Bone For Dogs.
9 Frick’s is a meat product manufacturer. In an effort to profit from the waste
10 produced by slaughterhouses and meat manufacturers, Frick’s or its principals
11 created Dynamic to sell waste ham bones to pet owners. Through Dynamic, a
12 wholly owned subsidiary of Frick’s, Defendants manufacture, market, and sell
13 the Real Ham Bone For Dogs as an appropriate and safe chew toy for dogs.
14 Indeed, on each product label and as the name suggests, Defendants explicitly
15 market the Dynamic Real Ham Bone For Dogs as a chew toy *for dogs*.

16 2. The Real Ham Bone For Dogs is not a safe or appropriate chew toy
17 for dogs and is not fit for its intended purpose, despite Defendants’ contrary
18 representations. The Real Ham Bone For Dogs is an 8” hickory-smoked pig
19 femur, which when chewed is prone to splintering into shards. When swallowed,
20 these shards slice through dogs’ digestive systems and cause severe internal
21 injuries. Thousands of dogs have suffered a terrible array of illnesses, including
22 stomach, intestinal, and rectal bleeding, vomiting, diarrhea, constipation, and
23 seizures, and have died gruesome, bloody deaths as a result of chewing
24 Defendants’ Real Ham Bone For Dogs.

25 3. Defendants have known as early as 2006 that the Real Ham Bone
26 For Dogs is not safe or appropriate for dogs. Over the past nine years,
27 consumers have complained directly to Defendants about the horrific injuries and
28 agony that their pets have endured as a result of the Real Ham Bone For Dogs,

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1 all of which Defendants casually ignored.

2 4. In response to public outcry, in 2010, the Missouri Better Business
3 Bureau alerted Defendants about the increasing number of complaints it was
4 receiving. Also in 2010, similarly responding to customer complaints, the Food
5 and Drug Administration issued a notice that bones such as the Real Ham Bone
6 For Dogs are not suitable for dogs. The Federal Drug Administration (“FDA”)
7 found that “bones are unsafe for your dog” and that giving bones to dogs is a
8 “dangerous practice and can cause serious injury.” These injuries, the FDA
9 noted, include pieces of bone becoming lodged in the dog’s esophagus,
10 windpipe, stomach, or intestines, constipation, severe bleeding from the rectum,
11 and deadly bacterial infections.

12 5. Despite knowing that the Real Ham Bone For Dogs is dangerous
13 and not appropriate for dogs, Defendants expressly and impliedly represented
14 and continue to represent on the product label and on Dynamic’s website and
15 other marketing that the Real Ham Bone For Dogs is “safe for your pet” and is
16 “meant to be chewed.” It has failed to inform consumers of the known dangers
17 and that the Real Ham Bone For Dogs is not safe and that when used as directed
18 may cause injury or death. As a result of Defendants’ misrepresentations and
19 omissions, Plaintiff and the proposed Class purchased a product that is other than
20 that which they thought they were purchasing and one that is not fit for its
21 intended purpose—to be chewed by dogs.

22 6. Plaintiff brings this action on behalf of herself and other consumers
23 who have purchased the Real Ham Bone For Dogs. Plaintiff seeks monetary
24 redress for all consumers who purchased the deceptively advertised Dynamic
25 Real Ham Bone For Dogs.

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JURISDICTION AND VENUE

7. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000, is a class action in which there are in excess of 100 class members, and many members of the class are citizens of a state different from Defendants.

8. This Court has personal jurisdiction over Defendants because Dynamic and Frick’s are authorized to conduct business and do conduct business in California. Defendants marketed, promoted, distributed, and sold the Real Ham Bone For Dogs in California, and continue to do so, and have sufficient minimum contacts with this State and/or have sufficiently availed themselves of the markets in this State through their promotion, sales, distribution, and marketing, to render the exercise of jurisdiction by this Court permissible.

9. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) and (b) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district where Defendants advertise and sell the Real Ham Bone For Dogs. Venue is also proper under 18 U.S.C. §1965(a) because Defendants transact substantial business in this District.

PARTIES

10. Plaintiff Stephanie Brown resides in Londell, Missouri. On or about December 24, 2014, Plaintiff Brown purchased the Dynamic Real Ham Bone For Dogs from Walmart in Washington, Missouri.

11. Defendant Frick’s Meat Products, Inc. is a Missouri Corporation with its headquarters at 360 M E Frick Drive, Washington, Missouri 63090-1050. Frick’s Meat Products, Inc. is a major meat product manufacturer and supplies sausages and other prepared meats to food retailers nationwide. To profit from the waste bones resulting from the manufacture of meat products and slaughterhouse waste, Frick’s or its principals created Dynamic Pet Products,

1 LLC and knowingly and intentionally supplies Dynamic with bones for the
2 purpose of selling them as the Real Ham Bone For Dogs.

3 12. Defendant Dynamic Pet Products, LLC is a Missouri Corporation
4 with its headquarters located at the same location as Frick's, 360 M E Frick
5 Drive, Washington, Missouri 63090-1050. Dynamic is in the business of
6 manufacturing and selling chew toys for dogs and holds itself out to the public as
7 a manufacturer of safe, high-quality pet products. Dynamic has sold the Real
8 Ham Bone For Dogs since 2001. The Real Ham Bone For Dogs is Dynamic's
9 "number one seller." With Frick's, Dynamic has marketed, distributed, and sold
10 the Real Ham Bone For Dogs to many thousands of consumers in the United
11 States through nationwide retailers such as Walmart, Sam's Club, H.E.B., and
12 Dollar General. Dynamic also sells the Real Ham Bone For Dogs directly to
13 consumers nationwide through direct sales websites such as www.walmart.com
14 and www.heb.com, and its own website, www.dynamicpet.net. Dynamic's
15 website is a virtual store where consumers can view descriptions and pictures of
16 the products, make purchases and have items shipped directly to them. On its
17 website, Dynamic charges consumers \$36.00 for a case of 12 Real Ham Bone
18 For Dogs, or \$72.00 for a case of 24.

19 13. Dynamic and Frick's are the alter egos of one another and operate as
20 a single business enterprise for the production, marketing, and sale of the Real
21 Ham Bone For Dogs. Dynamic and Frick's share the same ownership,
22 management, and headquarters. The Real Ham Bone For Dogs is manufactured
23 and packaged in Frick's packaging facility, under the supervision and at the
24 direction of David Frick (also an owner of Frick's Meat Products), who also
25 determines Dynamic's plan of operations, makes hiring decisions, and directs
26 employees in the manufacture and packaging process. In packaging the Real
27 Ham Bone For Dogs, Dynamic shares with Frick's the packaging lines used by
28 Frick's for its meat products. The Frick's family member who directs marketing

1 for Frick's also directs marketing for Dynamic. Retailers direct purchasers with
2 complaints about the Real Ham Bone For Dogs to Frick's as the product
3 supplier. Frick's and Dynamic work in concert with each other to profit from the
4 sale of waste ham bones by marketing them to pet owners as safe and appropriate
5 chew toys for dogs, when they are not.

6 **FACTUAL ALLEGATIONS**

7 14. To profit from the waste resulting from the manufacture of meat
8 products, Frick's, or its principals, created Dynamic to sell waste pig bones to pet
9 owners, marketing them as appropriate and safe for dogs. Through Dynamic,
10 Defendants manufacture, market, and sell the Real Ham Bone For Dogs as a
11 chew toy for dogs. The Real Ham Bone is an 8" pig femur which is brined and
12 then smoked and baked in an oven for approximately ten hours at between 130
13 and 150 degrees centigrade. Ten hours of smoking and baking dries out the
14 bone, gives the bone a rich smoky color, and gives it a long shelf life—up to one
15 year. It also increases the bone's brittleness.

16 15. On each label, Defendants state that the Real Ham Bone For Dogs is
17 "meant to be chewed" and is "for dogs." In reality, the Real Ham Bone For Dogs
18 is not appropriate for dogs and is not safe for its intended purpose, despite
19 Defendants' contrary representations. When chewed, the Real Ham Bone For
20 Dogs is prone to splintering into shards and breaking into small pieces. When
21 swallowed, these shards slice through dogs' digestive systems and cause severe
22 internal injuries. Thousands of dogs have suffered a terrible array of illnesses,
23 including stomach, intestinal and rectal bleeding, vomiting, diarrhea,
24 constipation, and seizures, and have died gruesome, bloody deaths as a result of
25 chewing Defendants' Real Ham Bone For Dogs.

26 16. As a result of Defendants' omissions and misrepresentations,
27 Plaintiff and the Class members purchased an inherently unsafe and dangerous
28 product that is other than as advertised and has caused many Class members,

1 including Plaintiff, to incur costly veterinarian bills and, tragically, to lose their
2 pets.

3 17. On or about December 24, 2014, Plaintiff Brown purchased the
4 Dynamic Real Ham Bone For Dogs from Walmart in Washington, Missouri.
5 Plaintiff found the product in the pet toy and treat aisle, the area of the store in
6 which Defendants intended the product to be sold. She purchased two of the
7 bones, one for each of her dogs, as Christmas treats. Prior to making the
8 purchase, Ms. Brown read the label for the Real Ham Bone For Dogs. The label
9 stated expressly and impliedly that the Real Ham Bone For Dogs was meant for
10 dogs and was safe for dogs to chew on. The label omitted material information
11 about the safety of the Real Ham Bone For Dogs, including that it was not
12 appropriate for dogs and that dogs who chew on it are subject to serious health
13 risks, including death. In reliance on the express and implied representations,
14 unaware of the material omitted facts, and based on her reasonable expectation
15 that it was safe for her dogs, Plaintiff purchased the Real Ham Bone For Dogs.

16 18. On Christmas Day, Ms. Brown gave a Real Ham Bone For Dogs to
17 each of her pit bulls: one to Harley and one to Kya. Plaintiff watched her dogs
18 chew on the Real Ham Bone For Dogs for approximately an hour after which she
19 took the bones away because she noticed they were starting to splinter. That
20 evening, both of her dogs became ill. They were vomiting, had blood in their
21 mouths and in the vomit, and in Harley's vomit, she also saw bone shards.
22 Plaintiff Brown called her veterinarian who recommended she bring the dogs in
23 immediately, which she did. A veterinarian treated both dogs on an emergency
24 basis, and fortunately both dogs survived and recovered. Had Plaintiff known
25 the truth about the Real Ham Bone For Dogs, Plaintiff would not have purchased
26 the product and would not have given it to her dogs. As a direct result of
27 Defendants' conduct as described herein, Plaintiff purchased an unsafe product
28 that she reasonably believed to be safe and suffered injury in fact and lost money

1 and property.

2 19. Plaintiff's experience is common, and Defendants have known (or
3 should have known) for many years that the Real Ham Bone For Dogs posed an
4 unreasonable risk of harm to dogs. Since 2006, consumers have complained to
5 Dynamic directly and posted complaints to online forums after their pets became
6 ill or died after chewing on the Real Ham Bone For Dogs. The complaints
7 evince a common and continuing danger, of which Defendants are fully aware,
8 and that Defendants have failed to warn consumers about.

- 9 • On August 4, 2015, a dog owner reported: "I recently purchased this Ham
10 dog bone from Walmart on a Monday and my dog got really sick on
11 Tuesday. Really bad vomiting and diarrhea. He could not keep water
12 down and I thought he just had an upset stomach. I found him dead the
13 next day under our kid's bed. He was the healthiest dog I have ever seen.
14 When I moved him he started bleeding from the mouth. After reading all
15 the other cases on this website I would have never bought this product. I
16 highly recommend that Walmart remove this and that no one ever
17 purchases this product."
- 18 • On March 22, 2015, another dog owner reported: "I bought this horrible
19 bone at caputo's [*sic*] market . . . over the weekend and now my poor dog
20 Diva is suffering cause of this bone. I discovered her in shock and
21 couldn't move. She puked and had Diarrhea and couldn't stand up. So we
22 rushed her to the vet. She has spent 3 days in the hospital on iv's, pain
23 meds, antibiotics and had a fever trying to pass this deadly bone. A week
24 later we had to bring her back and now waiting to see how she improves.
25 So far vet bills are over \$2400."
- 26 • On March 21, 2015, another dog owner reported: "We had bought a
27 Dynamic Pet Real Ham bone at Walmart the other day. The next day he
28 went outside to go to the bathroom and I heard a scream like he was being
killed. I ran to go see what was wrong, my poor dog was so bound up with
the bone his poop was stuck and he could not pass it. That was 3 days ago.
He is still not better he is having a hard time going to the bathroom and
vomiting."
- On March 11, 2015, another dog owner reported: "On February 21, 2015 I
bought a dynamic ham bone for my dog, Checkers. I gave it to him.
Within 8 hrs he was throwing up, panting, pacing, and having diarrhea. I
rushed him to the vet they xrayed him and found bone splinters in his

1 stomach. He needed IV therapy for a couple of days, powerful pain
 2 medication, and antibiotics and be on a special diet. I knew cooked bones
 3 aren't good for dogs but I thought if they sell it in the pet section that it
 must be safe. It won't splinter. Well I was wrong."

- 4 • On March 8, 2015, another dog owner reported: "My fiancé bought this
 5 real ham bone for our 9 month puppy to occupy her time on Friday March
 6 6, 2015. On Saturday, March 7 at 3 AM, I woke up to see my puppy in
 7 her own urine in her crate (she has never made a mess in her crate). That
 8 Saturday afternoon, she could not make it outside to poop and ended up
 9 pooping on the floor in the house and I immediately took her outside
 where she had Diarrhea. It is now Sunday and she has had diarrhea and
 vomiting and has done it all over the house. I have been up all night
 taking care of my puppy."
- 10 • On October 27, 2014, another dog owner reported: "On Friday October 24,
 11 2014, I purchased a Dynamic Femur Bone for my dog. Although I
 12 joyfully watched her enjoy the product, it was not less than 6 hours later
 13 that my dog became sick. She started vomiting throughout Friday night
 14 and all day Saturday. On Saturday night she suffered her first seizure.
 Saturday night she was also blessed to have bloody stools. On Sunday
 another seizure."
- 15 • On June 18, 2013, another dog owner reported: "My son brought home 3
 16 of these bones, one for each dog. The two black labs ended up throwing
 17 them up, lots of bone fragments. However, our 5 year old golden retriever
 18 was not as lucky. They messed up her whole insides. After losing about 3
 gallons of blood through the rectum and a \$400 vet bill"
- 19 • On April 1, 2013, another dog owner reported: "I bought this ham bone
 20 from Dollar General yesterday and gave it to my American bulldog (which
 21 is in a very good health). An hour later, he was vomiting pieces of the
 22 bone. That was all in his vomit. So the next morning, we went to check
 23 on him and he was laid over on his side - foaming, having convulsions,
 24 urinating on himself. He vomited on his bed and all over the ground in the
 garage and his eyes were opened in agony. We took him to the vet
 emergency hospital where he is there now and might not make it. We
 have to pay \$564"
- 25 • On February 1, 2012, another dog owner reported: "I recently purchased a
 26 Dynamic Ham Bone from the local Dollar General store for \$3.00. I gave
 27 it to my dog Sunday night 1/29 and by the following morning, he was in
 28 pain. He was dripping blood from his bottom and constipated. I carried
 him to the vet and she tried to dislodge the bones. She did get them out

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but it was too late. My beloved pet was in such distress. She kept him overnight on an IV and some type hotplate to try and bring his temperature back up but he didn't pull through."

- On January 24, 2012, another dog owner reported: "On December 6, 2011, we gave our beloved Sadie a Dynamic Ham Bone. By morning she was very ill. By 6:30 pm, we were told by our vet that she died! Hours before she was running around playing, so excited that we got her a treat. Little did I know it would be her last!"
- On Dec. 28, 2011, another dog owner reported: "My dogs almost died after having the 'real ham bone' from Dynamic Pet out of Washington, MO. We gave them a bone for a Christmas present we purchased from Dollar General. My male Italian greyhound ended up on the emergency vets office on Christmas day. They said he almost didn't make it. The x-rays revealed a blockage and splinters from the bone. I even sat with my dogs while they chewed on their bones and I did not see a splinter or I would have taken it away immediately. After two days of hospitalization, he came home but is still not acting like before he went in. He vomited and had bloody diarrhea from these."
- On December 22, 2010, another dog owner reported: "We bought a couple of their ham bone treats for the dogs on Saturday, December 11. By Monday, December 13, my 4 year old chocolate labrador was dead and my 6 year old rottweiler was ill and in the hospital. We have all the information and facts from the Veterinarian. My \$1500.00 labrador and great friend is dead and \$1400.00 spent on veterinary bills for the rottweiler."
- On July 9, 2010, another dog owner reported: "On July 6 2010 I purchased a Dynamic Pet ham bone. On July 7th I found my dog, Jake (Pit Bull Terrier), dead in a pool of blood the next morning. I had no idea this bone was the case until my other dog was throwing up chards of bone."
- On March 6, 2009, another dog owner reported: "I bought a Real Ham Bone made by Dynamic Pet Products of Missouri from Walmart Trace, my dog, enjoyed chewing on this bone. It did not splinter or anything, in fact there is quite a large piece of it still left. Then in the evening she started vomiting. She spent the next day at a veterinarian's office where she was diagnosed with a blockage of the colon. That night she endured a 4 hour surgery at Brandon Veterinary Specialists where the vet picked out small round pellets of the bone, up to the size of about a b-b. The next morning she was moved to Florida Veterinary Specialist critical care unit. Again in the evening she had another 2 hour surgery,

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1 because the blockage had caused poison in her body. She passed away at
2 4:30 the next afternoon My vet bills were \$14,000.”

- 3 • On August 15, 2006, another dog owner reported: “Packaged dog ham
4 bone lodged in my dogs intestines from inside his stomach [*sic*] to the
5 length of his intestines. Chewed bone particles cemented together and
6 prevented dog from excreting waste. Dog was vomiting and unable
7 excrete waste though he tried. Two times in emergency [*sic*] room for
8 xrays & emimas [*sic*].”

9 20. In 2010, the FDA issued a statement against giving bones to dogs as
10 chew toys. The FDA found that bones are unsafe no matter what their size.
11 “Giving your dog a bone may make your pet a candidate for a trip to your
12 veterinarian’s office later, possible emergency surgery, or even death.”
13 According to the 2010 FDA statement, the risks associated with giving bones to
14 dogs include bone or splinters of bone becoming lodged in the esophagus or
15 windpipe obstructing breathing, intestinal blockages and gastroenterological
16 complications, bacterial infections, intestinal lacerations, and severe rectal
17 bleeding. These injuries are so severe that they often require immediate and
18 costly veterinarian care or emergency surgeries to attempt to prevent an
19 agonizing death. In 2012, in response to consumer complaints, the FDA
20 inspected Dynamic’s operations and was told by David Frick that Dynamic was
21 considering more warnings and bolder statements on its label or ceasing
22 production of the Real Ham Bone For Dogs.

23 21. In 2010, based on the volume of consumer complaints it was
24 receiving, the Missouri Better Business Bureau issued a warning to Defendants
25 about the dangers posed by their Real Ham Bone For Dogs product. Defendants
26 ignored this notice. Defendants’ response to consumer complaints is dismissive,
27 with David Frick denigrating the reports from consumers as “these people get
28 lathered up and they say stuff.”

29 22. In 2015, based on the increasing number of consumer complaints,
30 the Missouri Better Business Bureau began pushing for congressional action to

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1 remove the Real Ham Bone For Dog from store shelves by sending a letter to
2 every United States senator.

3 23. After receiving reports from customers about the dangers of the
4 Real Ham Bone For Dogs, some retailers dropped the product from their
5 inventory and refused to sell them, squarely placing Defendants on notice of the
6 dangers posed by the Real Ham Bone For Dogs.

7 24. As the manufacturer and distributor of the Real Ham Bone For
8 Dogs, Defendants nonetheless expressly and impliedly represent that their
9 product is safe and appropriate for dogs. Further, as the suppliers and
10 manufacturers of Real Ham Bone For Dogs, Defendants are in a superior
11 position to investigate possible risks associated with the Real Ham Bone For
12 Dogs.

13 25. Despite having knowledge that Real Ham Bones For Dogs is
14 inherently dangerous for dogs, Defendants represent the opposite. Defendants
15 advertised the Real Ham Bone For Dogs as a safe product for dogs and failed to
16 warn consumers that the Real Ham Bone For Dogs may cause serious bodily
17 harm or death to their dogs.

18 26. None of the instructions on the product’s packaging or in other
19 marketing informed Plaintiff or other consumers that allowing dogs to chew on
20 the Real Ham Bone For Dogs as instructed on the labeling would pose a
21 significant risk of serious illness or death. Nowhere do Defendants state the
22 truth—that the Real Ham Bone For Dogs is a dangerous product that should not
23 be given to dogs. Instead of properly warning consumers of the true facts and
24 removing it from store shelves, Defendants continue to falsely represent that the
25 Real Ham Bone For Dogs is “safe for your pet,” while engaging in a secret
26 warranty program by paying off pet owners who persistently pursued their
27 complaint, offering them refunds or paying their vet bills to keep them quiet.
28 Plaintiff and Class members purchased the Real Ham Bone For Dogs reasonably

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1 believing that the product was safe for its intended purpose.

2 27. The dangers presented by the Real Ham Bone For Dogs are material
3 facts. The defect poses an unreasonable risk of harm to consumers' dogs and
4 Plaintiff would not have purchased the product had she known it was dangerous
5 and could cause serious bodily harm or kill her dog.

6 28. Defendants' omissions and misrepresentations were a material
7 factor in influencing Plaintiff's decision to purchase the Real Ham Bone For
8 Dogs and Defendants reaped, and continue to reap, enormous profits from their
9 deceptive marketing and sale of Real Ham Bones For Dogs.

10 **CLASS DEFINITION AND ALLEGATIONS**

11 29. Plaintiff brings this action on behalf of herself and all others
12 similarly situated pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil
13 Procedure and seeks certification of the following class:

14 All persons who purchased one or more Real Ham Bone For
15 Dogs other than for purpose of resale.

16 30. Excluded from the Class are Defendants, their parents, subsidiaries,
17 affiliates, officers, and directors.

18 31. Members of the Class are so numerous and geographically dispersed
19 that joinder of all Class members is impracticable. Plaintiff is informed and
20 believes, and on that basis alleges, that the proposed Class contains many
21 thousands of members. The precise number of Class members is unknown to
22 Plaintiff.

23 32. Common questions of law and fact exist as to all members of the
24 Class and predominate over questions affecting only individual Class members.
25 The common legal and factual questions include, but are not limited to, the
26 following:

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- 1 i. Whether Defendants' Real Ham Bone For Dogs are unmerchantable
- 2 because they present a danger and medical hazard when used in
- 3 accordance with the label instructions;
- 4 ii. Whether Defendants knew or should have known the Real Ham
- 5 Bone For Dogs cause harm to Class members and their dogs;
- 6 iii. Whether Defendants knew or should have known that the Real Ham
- 7 Bone For Dogs are inherently dangerous and can cause serious
- 8 injury in the normal course of use;
- 9 iv. Whether Defendants have a duty to inform Plaintiff and Class
- 10 members that the Real Ham Bone For Dogs may cause harm to
- 11 dogs;
- 12 v. Whether Defendants' omissions or representations concerning the
- 13 safety and appropriate uses of the Real Ham Bone For Dogs are
- 14 likely to deceive;
- 15 vi. Whether Defendants' alleged conduct violates public policy;
- 16 vii. Whether the alleged conduct constitutes violations of the laws
- 17 asserted herein;
- 18 viii. Whether Defendants engage in false or deceptive advertising, fraud,
- 19 and negligent misrepresentations;
- 20 ix. Whether Plaintiff and Class members have sustained monetary loss
- 21 and the proper measure of that loss;
- 22 x. Whether Plaintiff and Class members are entitled to restitution or
- 23 disgorgement of Defendants' profits; and
- 24 xi. Whether Plaintiff and Class members are entitled to an award of
- 25 compensatory damages.

26 33. The claims asserted by Plaintiff in this action are typical of the

27 claims of the members of the Class, as the claims arise from the same course of

28 conduct by Defendants, and the relief sought is common.

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1 34. Plaintiff will fairly and adequately represent and protect the interests
2 of the members of the Class. Plaintiff retained counsel competent and
3 experienced in both consumer protection and class litigation.

4 35. A class action is superior to other available methods for the fair and
5 efficient adjudication of this controversy. The expense and burden of individual
6 litigation would make it impracticable or impossible for proposed Class members
7 to prosecute their claims individually. It would thus be virtually impossible for
8 purchasers, on an individual basis, to obtain effective redress for the wrongs
9 done. Furthermore, even if Class members could afford such individualized
10 litigation, the court system could not. Individualized litigation would create the
11 danger of inconsistent or contradictory judgments arising from the same set of
12 facts. Individualized litigation would also increase the delay and expense to all
13 parties and the court system from the issues raised by this action. By contrast,
14 the class action device provides the benefits of adjudication of these issues in a
15 single proceeding, economies of scale, and comprehensive supervision by a
16 single court, and presents no unusual management difficulties under the
17 circumstances here.

18 36. Unless a class is certified, Defendants will retain monies that were
19 taken from Plaintiff and Class members as a result of Defendants' wrongful
20 conduct.

21 **COUNT I**

22 **Fraud**

23 **On Behalf of Plaintiff and All Class Members**

24 37. Plaintiff realleges and incorporates by reference the allegations
25 contained in the paragraphs above as if fully set forth herein.

26 38. Defendants have known for many years that the Real Ham Bone For
27 Dogs was dangerous for dogs because it posed a significant risk of severe or
28 deadly injury to dogs. Defendants had actual knowledge of these risks at the

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1 time of sale to Plaintiff and members of the Class.

2 39. As such, Defendants were under a duty and failed to discharge their
3 duty to exercise reasonable care to not make misrepresentations about the
4 product, including that this product was appropriate and safe for dogs. They also
5 had a duty to disclose to Plaintiff and members of the Class the true facts about
6 Real Ham Bone for Dogs. As the manufacturer, marketer, and distributor of the
7 Real Ham Bone For Dogs, Defendants had special knowledge of the hazards
8 associated with the Real Ham Bone For Dogs, which was not reasonably
9 available to Plaintiff and members of the Class. Defendants made affirmative
10 representations in violation of the applicable laws and actively concealed
11 material facts relating to the dangerous nature of the Real Ham Bone For Dogs,
12 knowing that Plaintiff and Class members would rely on the presumption that no
13 such facts exist.

14 40. By purchasing a product that was not as represented, Plaintiff and
15 members of the Class did in fact rely upon Defendants' representations,
16 including the product's packaging, at the time they purchased the Real Ham
17 Bone For Dogs. Plaintiff and members of the Class justifiably relied on these
18 representations to their detriment and/or were induced by Defendants' false
19 statements and active concealment over the safety of the Real Ham Bone For
20 Dogs, in part, because at no time did Plaintiff and members of the Class have the
21 knowledge or expertise necessary to independently evaluate the safety of the
22 product.

23 41. Plaintiff and members of the Class could not have discovered
24 Defendants' fraudulent and misleading conduct at an earlier date through the
25 exercise of reasonable diligence because Defendants actively concealed their
26 deceptive, misleading, and unlawful activities.

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1 42. Defendants' misrepresentations, concealment, suppression, and
2 omissions were made in order to induce Plaintiff and members of the Class to
3 purchase the Real Ham Bone For Dogs. Plaintiff and members of the Class did
4 just that and reasonably and justifiably relied upon the material
5 misrepresentations and omissions made by Defendants when agreeing to
6 purchase the product and permitting their dogs to chew on it.

7 43. As a direct and proximate result of Defendants' false representations
8 of material facts regarding the safety and efficacy of the Real Ham Bone For
9 Dogs, dogs belonging to Plaintiff and members of the Class sustained severe and
10 debilitating injuries, and many died. Plaintiff and members of the Class have
11 suffered additional damages including, but not limited to, costs of medical care,
12 rehabilitation, mental anguish and pain and suffering, for which they are entitled
13 to compensatory damages.

14 44. At all times relevant hereto, Defendants actually knew of the
15 defective nature of the products as herein set forth and continued to manufacture,
16 market, and sell the products so as to maximize sales and profits at the expense
17 of public health and safety, including the health and safety of dogs. Defendants'
18 conduct exhibits a wanton or reckless disregard and a want of care as to establish
19 that their actions were a result of fraud, evil motive, actual malice, and the
20 conscious and deliberate disregard of foreseeable harm to Plaintiff and members
21 of the Class, as well as their dogs. Therefore, Plaintiff and the Class are entitled
22 to punitive damages.

23 **COUNT II**

24 **Negligent Misrepresentation**

25 **On Behalf of Plaintiff and All Class Members**

26 45. Plaintiff realleges and incorporates by reference the allegations
27 contained in the paragraphs above as if fully set forth herein.
28

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1 46. Defendants owed Plaintiff and members of the Class a duty to
2 exercise reasonable care in representing that the Real Ham Bone For Dogs was
3 safe and appropriate for dogs.

4 47. Defendants knew or should have known for many years that the
5 Real Ham Bone For Dogs posed a serious risk of injury or death to dogs.
6 Despite this knowledge, Defendants misrepresented that the Real Ham Bone For
7 Dogs was safe and appropriate for dogs.

8 48. Defendants had superior knowledge and information regarding the
9 risks associated with the Real Ham Bone For Dogs. Plaintiff and members of the
10 Class did not have access to this information.

11 49. Defendants' misrepresentations concern issues material to the
12 transaction in question. Defendants intended for Plaintiff and members of the
13 Class to rely on their representations that the Real Ham Bone For Dogs was safe
14 for use. Had Plaintiff and members of the Class known that use of the Real Ham
15 Bone For Dogs could result in serious injury or death to their dogs, they would
16 not have purchased the product.

17 50. The foregoing misrepresentations and practices proximately caused
18 Plaintiff and members of the Class to suffer damages in that they purchased the
19 Real Ham Bone For Dogs without knowing that the alleged misrepresentations
20 and about the product were false.

21 51. As a proximate cause of Defendants' false representations, Plaintiff
22 and members of the Class suffered loss of money and injury to property,
23 including in the illness and deaths of their pets and associated expenses, and
24 continue to suffer damages. Plaintiff seeks compensatory damages in an amount
25 to be proven at trial.

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COUNT III

Violation of the Missouri Merchandising Practices Act

Missouri Revised Statute §§407.101, *et seq.*

On Behalf of Plaintiff and a Sub-Class of Missouri Purchasers

52. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

53. This cause of action is brought pursuant to the Missouri Merchandising Practices Act, Mo. Rev. Stat. §§407.101, *et seq.* (the “Missouri MPA”), on behalf of Plaintiff and the Class. The Missouri MPA makes unlawful the “act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . in or from the state of Missouri.” Mo. Rev. Stat. §407.020(1).

54. Dynamic, Frick’s, Plaintiff, and members of the Class are “persons” as defined by Mo. Rev. Stat. §407.010(5).

55. The Real Ham Bone For Dogs is “merchandise” within the meaning of the Missouri MPA, and the “sale” of the merchandise by Defendants demonstrates they were engaged in and committed the unlawful acts alleged herein in the course of “trade” or “commerce” within the meaning of the Missouri MPA. Mo. Rev. Stat. §407.010(4), (6), and (7).

56. Plaintiff and the members of the Class purchased the Real Ham Bone For Dogs for personal, family, or household use.

57. Defendants violated the Missouri MPA by engaging in deception, fraud, false pretense, false promise, misrepresentation, unfair practice, and the concealment, suppression, or omission of any material fact in connection with the sale and advertisement of the Real Ham Bone For Dogs in trade or commerce by, *inter alia*, deceptive and misleading advertising and failing to warn

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1 consumers and omitting material facts from its labeling, advertising, and
2 marketing materials.

3 58. Defendants knew or should have known of the falsity of their
4 representations and of the materiality of the omissions at all material times.
5 Defendants knew or should have known that their conduct violated the Missouri
6 MPA. Defendants' unlawful acts and practices complained of herein affect the
7 public interest.

8 59. Defendants' unfair or deceptive acts or practices, including the
9 concealment, omission, and suppression of material facts regarding the Real Ham
10 Bone For Dogs, were directed at consumers and had a tendency or capacity to
11 mislead and create a false impression in consumers in violation of the Missouri
12 MPA.

13 60. As a direct and proximate result of Defendants' violations of the
14 Missouri MPA, Plaintiff and the Class suffered injury-in-fact and incurred actual
15 damages from an ascertainable loss of money and property, including the cost of
16 purchasing the Real Ham Bone For Dogs.

17 61. Pursuant to Mo. Rev. Stat. §407.025(1) and (2), Plaintiff, on behalf
18 of herself and members of the Class, seeks an order for the following: actual
19 damages; punitive damages; any equitable relief the Court deems necessary or
20 proper, such as restitution and disgorgement; and an award of reasonable
21 attorneys' fees and costs.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff prays for a judgment:

- 24 A. Certifying the Class as requested herein;
- 25 B. Awarding Plaintiff and members of the proposed Class damages,
26 including punitive damages;
- 27 C. Awarding restitution and disgorgement of Defendants' revenues to
28 Plaintiff and the proposed Class members;

- D. Awarding attorneys' fees and costs; and
- E. Providing such further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: March 31, 2017

BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
LESLIE E. HURST (178432)
THOMAS J. O'REARDON II (247952)

By: s/ Timothy G. Blood

TIMOTHY G. BLOOD

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tblood@bholaw.com
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toreardon@bholaw.com

Attorneys for Plaintiff and the Proposed Class

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JS 44 (Rev. 12/12)

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

STEPHANIE BROWN, on Behalf of Herself and All Others Similarly Situated

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

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

Timothy G. Blood / Leslie E. Hurst / Thomas J. O'Reardon II
Blood Hurst & O'Reardon LLP
701 B Street, Suite 1700, San Diego, CA 92101 Tel: 619/338-1100

DEFENDANTS

DYNAMIC PET PRODUCTS, LLC and FRICK'S MEAT PRODUCTS, INC.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known) '17CV0659 JAH BLM

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

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

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 checked="" 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	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 checked="" 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	CIVIL RIGHTS	PRISONER PETITIONS			
<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	<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	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 USC sec. 1332(d) - Diversity
 Brief description of cause:
 Violation of Mo. Rev. Stat. sec. 407.101; Fraud; Negligent Misrepresentation

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE William Q. Hayes DOCKET NUMBER 3:15-cv-00987-WQH-DHB

DATE 03/31/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Timothy G. Blood

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.