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**UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

RENEE YOUNG and JOYCETTE GOODWIN,  
 individually and on behalf of all others similarly  
 situated,

Plaintiffs,

v.

NEUROBRANDS, LLC, a Delaware limited  
 liability company;

Defendant.

Case No:

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Renee Young and Joycette Goodwin (collectively, “Plaintiffs”), hereby bring this  
2 Action against Defendant Neurobrands, LLC (“Defendant”), alleging that certain products  
3 manufactured, packaged, labeled, advertised, distributed and sold by Defendant are misbranded and  
4 falsely advertised and otherwise violates consumer protection laws, and upon information and belief  
5 and investigation of counsel alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction over this action under the Class Action Fairness Act  
8 of 2005 (“CAFA”), 28 U.S.C. § 1332(d). The Defendant is a citizen of a state different from that of the  
9 Plaintiffs, the putative class size is greater than 100 persons, and the amount in controversy in the  
10 aggregate for the putative Class exceeds the sum or value of \$5 million exclusive of interest and costs.

11 2. This Court has both general and specific personal jurisdiction over the Defendant  
12 because Defendant has conducted and continues to conduct substantial business in the State of  
13 California and Defendant’s principal place of business is located in the State of California, County of  
14 Los Angeles.

15 3. This Court has specific personal jurisdiction arising from Defendant’s decision to  
16 advertise and sell the Products in California. Defendant has sufficient minimum contacts with this State  
17 and sufficiently avails itself to the markets of this State through its manufacture, promotion, sales, and  
18 marketing of the Products to consumers within the State to render the exercise of jurisdiction by this  
19 Court reasonable.

20 4. Venue is proper in this Court because Defendant conducts substantial business in this  
21 District. Plaintiff Young also purchased the Product within this District.

22 **NATURE OF THE ACTION**

23 5. This is a consumer class action for violations of warranty, negligent and intentional  
24 misrepresentations/omissions and consumer protection laws, with a nationwide and California class for  
25 violation of consumer protection laws.

26 6. Defendant manufactures, distributes, advertises, markets and sells a variety of  
27 purportedly natural fruit flavored products known as the Neuro beverage products, including, without  
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1 limitation, the neuroSONIC Energy Refreshed superfruit infusion, neuroBLISS white raspberry, and the  
2 neuroPROTEIN watermelon mint products (collectively, the “Products”).

3 7. The labeling of the Products is false and misleading and the Products are thus misbranded  
4 under consumer protection laws. Specifically, the Products are labeled as if they are flavored only with  
5 natural ingredients when they in fact contain an undisclosed artificial flavor, malic acid, in violation of  
6 state and federal law.

7 8. Defendant’s packaging, labeling, and advertising scheme is intended to give consumers  
8 the impression that they are buying a premium, all-natural product with only natural flavoring  
9 ingredients instead of a product that contains artificial chemicals and that is artificially flavored.

10 9. Plaintiffs, who were deceived by Defendant’s unlawful conduct and purchased the  
11 Products in California, bring this action on their own behalf and on behalf of consumers to remedy  
12 Defendant’s unlawful actions.

13 10. On behalf of the Class as defined herein, Plaintiffs seek an Order compelling Defendant  
14 to, among other things: (1) cease packaging, distributing, advertising and selling the Neuro beverage  
15 products in violation of U.S. FDA regulations and California consumer protection laws and state  
16 common laws; (2) re-label or recall all existing deceptively packaged Neuro beverage products; (3)  
17 conduct a corrective advertising campaign to inform consumers fully; (4) award Plaintiffs and other  
18 Class members restitution, actual damages, and punitive damages; and (5) pay all costs of suit, expenses,  
19 and attorneys’ fees.

20 **PARTIES**

21 11. Plaintiff Renee Young is a citizen of the State of California and resides in Windsor,  
22 California.

23 12. Plaintiff Joycette Goodwin is a citizen of the State of California and resides in Torrance,  
24 California.

25 13. Plaintiffs purchased the neuroSONIC Energy Refreshed superfruit infusion, neuroBLISS  
26 white raspberry, and the neuroPROTEIN watermelon mint products for personal consumption several  
27 times during the last three years in the State of California.

1 14. Plaintiffs are informed and believe, and upon such information and belief allege, that  
2 Defendant Neurobrands, LLC is a Delaware limited liability company with its principal place of  
3 business located in Sherman Oaks, California.

4 15. Plaintiffs are informed and believe, and upon such information and belief allege, that  
5 Defendant, at all times relevant, conducted business in the State of California and within this District.

6 **FACTUAL BACKGROUND**

7 **Defendant Does Not Disclose that the Products Are Artificially Flavored.**

8 16. Defendant’s labeling and advertising scheme is deliberately intended to give consumers  
9 the false impression that the Products are composed only of natural flavors, including, in the case of the  
10 neuroSONIC Energy Refreshed superfruit infusion product purchased by Plaintiffs, “natural flavors”  
11 and “no artificial colors or flavors.”

12 17. The image below is a reproduction of the front label of the neuroSONIC Energy  
13 Refreshed superfruit infusion product.



1 18. As depicted, the neuroSONIC Energy Refreshed superfruit infusion product’s front label  
2 prominently displays a “natural flavors” designation with the notation “no artificial colors or flavors.”  
3 Defendant painstakingly and intentionally designed this product label and the other labels for its  
4 Products to deceive consumers into believing that there are no artificial ingredients, including artificial  
5 flavoring agents or artificial chemicals contained in the products.

6 19. All of the Products, however, contain a synthetic chemical flavoring compound  
7 identified as “malic acid.” Specifically, the neuroSONIC Energy Refreshed superfruit infusion  
8 product’s back label states that the ingredients include: “Ingredients: reverse osmosis filtered water,  
9 crystalline fructose, natural flavors, reduced sugar fruit extracts (acai, pomegranate, blueberry), caffeine,  
10 L-theanine (L-TeaActive®), citric acid, *malic acid*, fruit & vegetable juice (for color), sodium benzoate  
11 & potassium sorbate (to preserve freshness), sucralose, alpha GPC, pyridoxine HCL, ergocalciferol,  
12 cyanocobalamin.” (Emphasis added).

13 20. This “malic acid” is an inexpensive synthetic chemical used in processed food products  
14 to make the taste like tangy fresh fruits – like blueberries, lemons, mangos, or cherries, and in the  
15 Products Plaintiffs purchased, like the “superfruit” flavors advertised.

16 21. Under these circumstances, the labels of the Neuro Products violate California and  
17 federal statutes and state common law in multiple respects.

18 22. First, because each of the Products contains additional flavoring ingredients that simulate  
19 and reinforce the characterizing flavor, the front label is required by law to disclose those additional  
20 flavors rather than misleadingly suggest that the product is flavored only by natural fruit juices.  
21 (California Health & Safety Code § 109875 *et seq.*, (Sherman Law), incorporating 21 C.F.R. § 101.22.)<sup>1</sup>

22 23. Second, the Products’ ingredient lists violate federal and state law because they identify,  
23 misleadingly, the malic acid flavoring only as the general “malic acid” instead of using the specific,  
24 non-generic name of the ingredient. (*See* 21 C.F.R. § 101.4(a)(1).)

25 \_\_\_\_\_  
26 <sup>1</sup> California’s Sherman Food, Drug and Cosmetic Act, California Health & Safety Code § 109875 *et*  
27 *seq.*, incorporates into California law all regulations enacted pursuant to the U.S. Food Drug and  
28 Cosmetic Act. An act or omission that would violate an FDCA regulation necessarily violates  
California’s Sherman Law. (Health & Safety Code, § 110100.) Regulatory citations in the text are to  
California’s Sherman Law and reference the corresponding federal regulation for convenience.

1 24. Even more deceptive, however, is the fact that the Products, rather than being flavored  
2 only with natural juices and flavors as the labels suggest, contain an undisclosed artificial flavor made  
3 from petrochemicals. Defendant conceals this from consumers.

4 25. There is a different, naturally-occurring form of malic acid found in some fruits and  
5 vegetables. Defendant does not use this type of malic acid; it instead adds a synthetic industrial chemical  
6 called d-l malic acid,<sup>2</sup> in the form of a racemic mixture of d- and l-isomers, to flavor the Products and  
7 make them taste like fresh fruit.

8 26. This type of “malic acid” is not naturally-occurring but is in fact manufactured in  
9 petrochemical plants from benzene or butane – components of gasoline and lighter fluid, respectively –  
10 through a series of chemical reactions, some of which involve highly toxic chemical precursors and  
11 byproducts.

12 27. Both the natural and unnatural forms of malic acid are considered “GRAS” (generally  
13 recognized as safe) for use as flavorings in foods marketed to adults<sup>3</sup>; the d-malic acid form, however,  
14 has never been extensively studied for its health effects in human beings. Both forms confer a “tart,  
15 fruity” flavor to food products.<sup>4</sup>

16 28. Defendant uses this artificial petrochemical, d-l malic acid, in its Products but pretends  
17 otherwise, conflating the natural and artificial flavorings and deceiving consumers.

18 29. Because they contain artificial flavor, both federal and state law require the Products to  
19 display both front- and back-label disclosures to inform consumer that they are artificially flavored. (21  
20 C.F.R. § 101.22.)

21 30. These Products have neither front-label nor back-label disclosures. Defendant  
22 intentionally designed these Product labels without the required disclosure of “Artificial Flavoring” on  
23 the front or back of the label for the purpose of deceiving consumers into believing that there are no  
24 artificial ingredients, artificial flavoring agents or artificial chemicals contained in the Products. It is

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25 <sup>2</sup> D-malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

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27 <sup>3</sup> The d-l form of malic acid, the one used by Defendant, is forbidden for use in baby foods out of health  
concerns if consumed by infants.

28 <sup>4</sup> <https://thechemco.com/chemical/malic-acid/> (last visited September 26, 2018).

1 currently unknown whether the Products are also contaminated with precursor chemicals used in the  
2 manufacture of d-1 malic acid.

3 31. California law, incorporating and identically mirroring U.S. Food, Drug and Cosmetic  
4 Act regulations by reference, requires that a food's label accurately describe the nature of the food  
5 product and its characterizing flavors. (21 C.F.R. § 102.5(a).)

6 32. Under FDA regulations, a recognizable primary flavor identified on the front label of a  
7 food product is referred to as a "characterizing flavor." (21 C.F.R. § 101.22.)

8 33. FDA regulations and California law establish that if "the label, labeling, or advertising  
9 of a food makes any direct or indirect representations with respect to the primary recognizable flavors  
10 by word, vignette, e.g., description of a fruit, or other means" then "such flavor shall be considered the  
11 characterizing flavor." (California's Sherman Law, incorporating 21 C.F.R. § 101.22(i).)

12 34. "[W]atermelon Mint" and "natural flavors" are primary recognizable flavors identified  
13 on the neuroPROTEIN beverage products' front labels. These are characterizing flavors under  
14 California and federal regulations.

15 35. If a product's characterizing flavor is not created exclusively by the characterizing flavor  
16 ingredient, the product's front label must state that the product's flavor was simulated or reinforced with  
17 either or both of natural or artificial flavorings. If any artificial flavor is present which "simulates,  
18 resembles or reinforces" the characterizing flavor, the food must be prominently labeled as "Artificially  
19 Flavored." (California's Sherman Law, incorporating 21 C.F.R. § 101.22(i)(3), (4).)

20 36. A food product's label also must include a statement of the "presence or absence of any  
21 characterizing ingredient(s) or component(s) ... when the presence or absence of such ingredient(s) or  
22 component(s) in the food has a material bearing on price or consumer acceptance ... and consumers  
23 may otherwise be misled about the presence or absence of the ingredient(s) or component(s) in the  
24 food." (California's Sherman Law, incorporating 21 C.F.R. § 102.5(c).) Such statements must be in  
25 boldface print on the front display panel and of sufficient size for an average consumer to notice. (*Id.*)

26 37. The synthetic d-1 malic acid in the Products simulates, resembles, and reinforces the  
27 characterizing fruit flavors for the Products. Under these regulations, Defendant was required to place  
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1 prominently on the Products' front labels a notice sufficient to allow California consumers to understand  
2 that the Products contained artificial flavorings.

3 38. Defendant failed to do so, deceiving consumers and violating California law, federal law,  
4 and corresponding state common laws.

5 39. Accordingly, Plaintiffs and the Class were unaware that the Products contained artificial  
6 flavoring when they purchased them.

7 40. When purchasing the Products, Plaintiffs and Class Members were seeking products of  
8 particular qualities that were flavored only with the natural ingredients claimed on the label and which  
9 did not contain artificial flavoring.

10 41. Plaintiffs are not alone in these purchasing preferences. As reported in Forbes Magazine,  
11 88% of consumers polled recently indicated they would pay more for foods perceived as natural or  
12 healthy. "All demographics [of consumers] – from Generation Z to Baby Boomers – say they would  
13 pay more" for such products, specifically including foods with no artificial flavors.<sup>5</sup> Forty-one percent  
14 (41%) of consumers rated the absence of artificial flavors in food products as "Very Important," and  
15 eighty percent (80%) of North American consumers are willing to pay a premium for foods with no  
16 artificial ingredients.<sup>6</sup>

17 42. John Compton, the CEO of a beverage manufacturer, spoke to investors at the Morgan  
18 Stanley Consumer & Retail Conference, stating: "We have talked extensively to consumers about this  
19 idea, and they come back and tell us the number one motivation for purchase is products that claim to  
20 be natural." Defendant's labeling and advertising reflect these consumer preferences – not by making  
21 the Products solely with natural ingredients, but instead by concealing the fact that the Products are  
22 artificially flavored.

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25 <sup>5</sup> *Consumers Want Healthy Foods - And Will Pay More For Them*"; Forbes Magazine, February 15,  
26 2015. <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#4b8a6b4b75c5>; (last visited September 26, 2018).

27 <sup>6</sup> The Nielsen Company, Global Health and Wellness Survey, "Healthy Eating Habits Around the  
28 World," 2015; <https://www.nielsen.com/content/dam/nielsen-global/eu/nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%20-%20January%202015.pdf>; (last visited September 26, 2018)



1 43. California’s Health & Safety Code states that “[a]ny food is misbranded if it bears or  
2 contains any artificial flavoring, artificial coloring, or chemical preservative, unless its labeling states  
3 that fact.” (California Health & Safety Code, § 110740.)

4 44. California law requires Defendant to include sufficient notice on the Products’ labels to  
5 alert California consumers that the Products are artificially flavored. Defendant failed to do so.  
6 Accordingly, Defendant’s Products were misbranded and illegal to distribute or sell in California.  
7 (California Health & Safety Code, §§ 110740, 110760, 110765.)

8 45. Because the Products violated California law, they were misbranded when offered for  
9 sale in California.

10 46. Plaintiffs and the Class lost money as a result of Defendant’s conduct because they  
11 purchased Products that contained undisclosed artificial flavors and were illegal to sell.

12 **Plaintiffs’ Purchase of the Neurobrand Beverage Products**

13 47. Plaintiff Renee Young purchased the neuroPROTEIN watermelon mint products in  
14 Windsor, California during the Class Period defined herein.

15 48. Plaintiff Joycette Goodwin purchased the neuroSONIC superfruit infusion,  
16 neuroPROTEIN watermelon mint, and neuroBLISS white raspberry products in Torrance, California  
17 during the Class Period defined herein.

18 49. Plaintiff Renee Young’s most recent purchase was in July 2016 at Wal-Mart located at  
19 6650 Hembree Lane, Windsor, CA 95492.

20 50. Plaintiff Joycette Goodwin’s most recent purchase was in July 2018 at Wal-Mart located  
21 at 19503 Normandie Avenue, Torrance, CA 90501.

22 51. Plaintiffs subsequently discovered Defendant’s unlawful acts as described herein, when  
23 they learned that the Neurobrand beverage Products’ characterizing flavors were deceptively created or  
24 reinforced using artificial flavoring even though Defendant failed to disclose that fact on the Neurobrand  
25 labels.

26 52. Plaintiffs were deceived by and relied upon the Products’ deceptive labeling, and  
27 specifically the omission of the legally-required notice that it contained artificial flavorings. Plaintiffs  
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1 purchased the Neurobrand Products believing it was naturally flavored, based on the Products' deceptive  
2 labelling and failure to disclose that it was artificially flavored.

3 53. Plaintiffs, as reasonable consumers, are not required to subject consumer food products  
4 to laboratory analysis, to scrutinize the back of the label to discover that the product's front label is false  
5 and misleading, or to search the label for information that federal regulations require be displayed  
6 prominently on the front – and, in fact, under state law are entitled to rely on statements that Defendant  
7 deliberately places on the Neurobrand products' labelling. Defendant, but not Plaintiffs, knew or should  
8 have known that this labelling was in violation of federal regulations and state law.

9 54. Because Plaintiffs reasonably assumed that the Neurobrand Products would be free of  
10 artificial flavoring, based on the Products' labels, when it was not, they did not receive the benefit of  
11 their purchase. Instead of receiving the benefit of products free of artificial flavoring, they received  
12 Products that were unlawfully labeled to deceive the consumer into believing that they were exclusively  
13 naturally flavored and contained no artificial flavoring, in violation of federal and state labelling  
14 regulations.

15 55. Plaintiffs would not have purchased the Products in the absence of Defendant's  
16 misrepresentations and omissions. Had Defendant not violated California law, Plaintiffs would not have  
17 been injured.

18 56. The Neurobrand beverage products were worth less than what Plaintiffs paid for it and  
19 Class members would not have paid as much as they have for the Products absent Defendant's false and  
20 misleading statements and omissions.

21 57. Plaintiffs and the Class therefore lost money as a result of Defendant's unlawful  
22 behavior. Plaintiffs and the Class altered their position to their detriment and suffered loss in an amount  
23 equal to the amounts they paid for the Products.

24 58. Plaintiffs intend to, seek to, and will purchase the neuroSONIC Energy Refreshed  
25 superfruit infusion, neuroprotein watermelon mint, and neuroBLISS white raspberry products again  
26 when they can do so with the assurance that the Products' labels, which indicates that the Products are  
27 naturally flavored, is lawful and consistent with the Products' ingredients.

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**CLASS ACTION ALLEGATIONS**

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2 59. Plaintiffs bring this action on behalf of themselves and all others similarly situated  
3 pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).

4 60. The Nationwide Class is defined as follows:

5 All U.S. citizens who purchased the Products in their respective state of citizenship on  
6 or after January 1, 2012 and until the Class is certified, for personal use and not for resale,  
7 excluding Defendant and Defendant’s officers, directors, employees, agents and  
8 affiliates, and the Court and its staff.

9 61. The California Class is defined as follows:

10 All California citizens who made retail purchases of the Products in California on or after  
11 January 1, 2012 and until the Class is certified, for personal use and not for resale,  
12 excluding Defendant and Defendant’s officers, directors, employees, agents and  
13 affiliates, and the Court and its staff.

14 62. During the Class Period, the Products unlawfully contained the undisclosed artificial  
15 flavors d-malic acid or d-l malic acid and were otherwise improperly labeled. Defendant failed to label  
16 the Products as required by California law.

17 63. During the Class Period, Class members purchased the misbranded Products, paying a  
18 price premium for those Products compared to similar products lawfully labeled.

19 64. The proposed Classes meet all criteria for a class action, including numerosity,  
20 commonality, typicality, predominance, superiority, and adequacy of representation.

21 65. This action has been brought and may properly be maintained as a class action against  
22 Defendant. While the exact number and identities of other Class Members are unknown to Plaintiffs at  
23 this time, Plaintiffs are informed and believe that there are hundreds of thousands of Members in the  
24 Class. The Members of the Class are so numerous that joinder of all Members is impracticable and the  
25 disposition of their claims in a class action rather than in individual actions will benefit the parties and  
26 the courts.

27 66. The proposed Classes satisfy typicality. Plaintiffs’ claims are typical of and are not  
28 antagonistic to the claims of other Class members. Plaintiffs and the Class members all purchased the

1 Products, were deceived by the false and deceptive labeling, and lost money as a result, purchasing  
2 Products that were illegal to sell in California.

3 67. The proposed Class satisfies superiority. A class action is superior to any other means  
4 for adjudication of the Class members' claims because each Class member's claim is modest, based on  
5 the Products' retail purchase prices which are generally under \$5.00 per unit. It would be impractical  
6 for individual Class members to bring individual lawsuits to vindicate their claims.

7 68. Because Defendant's misrepresentations were made on the label of the Products, all  
8 Class members including Plaintiffs were exposed to and continue to be exposed to the omissions and  
9 affirmative misrepresentations. If this action is not brought as a class action, Defendant can continue to  
10 deceive consumers and violate California law with impunity.

11 69. The proposed Class representative satisfies adequacy of representation. Plaintiffs are an  
12 adequate representative of the Class as they seek relief for the Class, their interests do not conflict with  
13 the interests of the Class members, and they have no interests antagonistic to those of other Class  
14 members. Plaintiffs have retained counsel competent in the prosecution of consumer fraud and class  
15 action litigation.

16 70. The proposed Classes satisfy commonality and predominance. There is a well-defined  
17 community of interest in questions of law and fact common to the Class, and these predominate over  
18 any individual questions affecting individual Class members in this action.

19 71. Questions of law and fact common to Plaintiffs and the Class include:

20 a. Whether Defendant failed to disclose the presence of the artificial flavoring ingredient  
21 d-l malic acid in the Product;

22 b. Whether Defendant's labeling omissions and representations constituted false  
23 advertising under California law;

24 c. Whether Defendant's conduct constituted a violation of California's Unfair Competition  
25 Law;

26 d. Whether Defendant's conduct constituted a violation of California's Consumer Legal  
27 Remedies Act;

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1 e. Whether Defendant's label statements claiming solely natural flavorings was an  
2 affirmative representation of the Product's composition and conveyed an express warranty;

3 f. Whether Defendant's conduct constitutes a breach of implied warranties under  
4 California's Commercial Code;

5 g. Whether the statute of limitations should be tolled on behalf of the Class;

6 h. Whether the Class is entitled to restitution, rescission, actual damages, punitive damages,  
7 attorney fees and costs of suit, and injunctive relief; and

8 i. Whether members of the Class are entitled to any such further relief as the Court deems  
9 appropriate.

10 72. Plaintiffs will fairly and adequately protect the interests of the Class, have no interests  
11 that are incompatible with the interests of the Class, and have retained counsel competent and  
12 experienced in class litigation.

13 73. Defendant has acted on grounds applicable to the entire Class, making final injunctive  
14 relief or declaratory relief appropriate for the Class as a whole.

15 74. Class treatment is therefore appropriate under Federal Rule of Civil Procedure 23.

16 75. Class damages will be adduced at trial through expert testimony and other competent  
17 evidence.

18 76. California law holds that the price-premium consumers paid for the falsely-advertised  
19 Products, as a percentage of the Products' retail prices, is a proper measure of Class damages.

20 77. Food-industry consumer research is consistent and readily supports such estimates of  
21 that price-premium, as consumers quantitatively report that they seek out, value, and are willing to pay  
22 a premium for food products with no artificial flavors.

23 78. On information and belief, based on publicly-available information, Plaintiffs allege that  
24 the total amount in controversy exclusive of fees, costs, and interest, based on the estimated price  
25 premium and Product revenues for sales to the Class in California during the proposed Class Period,  
26 exceeds \$5 million.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**FRAUD BY OMISSION**

**CAL. CIV. CODE §§ 1709-1710**

**and the common law of all states**

**(on behalf of the Nationwide Class and the California Class)**

79. Plaintiffs re-allege and incorporate by reference the allegations made elsewhere in the Complaint as if set forth in full herein.

80. Plaintiffs bring this claim for fraud by omission pursuant to California Civil Code §§ 1709-1710, *et seq.* and the common law of all states. The elements of fraud are substantially similar from state to state, thus making nationwide class certification appropriate.

81. Defendant actively concealed material facts, in whole or in part, with the intent to induce Plaintiffs and members of the Class to purchase the Products. Specifically, Defendant actively concealed the truth about the Products by not disclosing the existence of artificial flavoring ingredients on the front label of the Products as is required by California and federal law.

82. Plaintiffs and the Class were unaware of these omitted material facts and would not have purchased the Products, or would have paid less for the Products, if they had known of the concealed facts.

83. Plaintiffs and the Class suffered injuries that were proximately caused by Defendant's active concealments and omissions of material facts.

84. Defendant's fraudulent concealments and omissions were a substantial factor in causing the harm suffered by Plaintiffs and the Class members as they would not have purchased the products at all if all material facts were properly disclosed.

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**SECOND CAUSE OF ACTION**

**NEGLIGENT MISREPRESENTATION**

**CAL. CIV. CODE §§ 1709-1710**

**and the common law of all states**

**(on behalf of the Nationwide Class and the California Class)**

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6 85. Plaintiffs re-allege and incorporate by reference the allegations made elsewhere in the  
7 Complaint as if set forth in full herein.

8 86. Plaintiffs bring this claim for negligent misrepresentation pursuant to California Civil  
9 Code §§ 1709-1710, *et seq.* and the common law of all states. The elements of negligent  
10 misrepresentation are substantially similar from state to state, thus making nationwide class  
11 certification appropriate.

12 87. Defendant had a duty to disclose to Plaintiffs and the Class members the existence of  
13 artificial flavoring ingredients on the front labels of the Products pursuant to California and federal  
14 law. Defendant was in a superior position than Plaintiffs and the Class members such that reliance by  
15 Plaintiffs and the Class members was justified. Defendant possessed the skills and expertise to know  
16 the type of information that would influence a consumer's purchasing decision.

17 88. During the applicable Class period, Defendant negligently or carelessly misrepresented,  
18 omitted, and concealed from consumers material facts regarding the products, including the existence  
19 of artificial flavoring ingredients.

20 89. Defendant was careless in ascertaining the truth of their representations in that it knew  
21 or should have known that Plaintiffs and the Class members would not have realized the true existence  
22 of artificial flavoring ingredients in the Products.

23 90. Plaintiffs and the Class members were unaware of the falsity of Defendant's  
24 misrepresentations and omissions and, as a result, justifiably relied on them when making the decision  
25 to purchase the Products.

26 91. Plaintiffs and the Class members would not have purchased the Products, or would have  
27 paid less for the Products, if the true facts had been known.

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**THIRD CAUSE OF ACTION**

**VIOLATION OF CALIFORNIA’S CONSUMERS LEGAL REMEDIES ACT**

**CAL. CIV. CODE §§ 1750, *et seq.***

**(on behalf of the California Class)**

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6 92. Plaintiffs re-allege and incorporate herein by reference the allegations contained in all  
7 preceding paragraphs, and further allege as follows:

8 93. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.*  
9 (“CLRA”) prohibits any unfair, deceptive and unlawful practices, and unconscionable commercial  
10 practices in connection with the sale of any goods or services to consumers.

11 94. Plaintiffs and the Class are “consumers” as defined by Cal. Civ. Code § 1761(d). The  
12 Products are a “good” as defined by Cal. Civ. Code § 1761.

13 95. Defendant’s failure to label the Products in compliance with federal and state labeling  
14 regulations, was an unfair, deceptive, unlawful, and unconscionable commercial practice.

15 96. Defendant’s conduct violates the CLRA, including but not limited to, the following  
16 provisions:

17 § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not  
18 have.

19 § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of  
20 another.

21 § 1770(a)(9): advertising goods with intent not to sell them as advertised.

22 § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a  
23 previous representation when it has not.

24 97. As a result of Defendant’s violations, Plaintiffs and the Class suffered ascertainable  
25 losses in the form of the price premiums they paid for the deceptively labeled and marketed Products,  
26 which they would not have paid had these Products been labeled truthfully, and in the form of the  
27 reduced value of the Products purchased compared to the Products as labeled and advertised.  
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1 98. On or about September 25, 2018, prior to filing this action, Plaintiffs sent a CLRA notice  
2 letter to Defendant which complies with California Civil Code § 1782(a). Plaintiffs sent Defendant,  
3 individually and on behalf of the proposed Class, a letter via Certified Mail, advising Defendant that it  
4 is in violation of the CLRA and demanding that it cease and desist from such violations and make full  
5 restitution by refunding the monies received therefrom.

6 99. Wherefore, Plaintiffs seeks injunctive relief for Defendant’s violations of the CLRA. If  
7 Defendant fails to take the corrective action detailed in Plaintiffs’ CLRA letter within thirty days of the  
8 date of the letter, then Plaintiffs will seek leave to amend their complaint to add a claim for damages  
9 under the CLRA.

10 **FOURTH CAUSE OF ACTION**

11 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW, (UNLAWFUL PRONG)**

12 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

13 **(on behalf of the California Class)**

14 100. Plaintiffs re-allege and incorporate by reference each and every allegation contained  
15 elsewhere in this Complaint as if fully set forth herein.

16 101. Section 17200 of the California Business & Professions Code (“Unfair Competition  
17 Law” or “UCL”) prohibits any “unlawful,” “unfair” and “fraudulent” business practice. Section 17200  
18 specifically prohibits any “unlawful . . . business act or practice.”

19 102. The UCL borrows violations of other laws and statutes and considers those violations  
20 also to constitute violations of California law.

21 103. Defendant’s practices as described herein were at all times during the Class Period and  
22 continue to be unlawful under, *inter alia*, FDA regulations and California’s Sherman Law.

23 104. Among other violations, Defendant’s conduct in unlawfully packaging and labeling and  
24 distributing the Product in commerce in California violated U.S. FDA and California packaging and  
25 labeling regulations.

26 105. The Products’ front labels fail to disclose that they contain synthetic artificial flavoring  
27 and are not flavored with and do not contain any or all of the natural fruits named on the labels, in  
28 violation of 21 C.F.R. § 101.22 and California’s Sherman Law.

1 106. The “neuroPROTEIN watermelon mint” Product, for example, contains the synthetic  
2 dl-malic acid flavoring ingredient and does not contain any watermelon juice.

3 107. The dl-malic acid is a synthetic flavoring material which creates, simulates, or reinforces  
4 the characterizing “Watermelon” flavor of the Product.

5 108. The dl-malic acid in the neurobrand Products are not derived from any natural material  
6 as defined in the applicable state regulations and is therefore, by law, an artificial flavoring.

7 109. Defendant fails to inform consumers of the presence of artificial flavors in the Products  
8 on the front label as required by law.

9 110. Defendant’s packaging, labeling, advertising, and marketing of high-sugar juice  
10 beverages are intentionally designed to give consumers the impression that they are buying an all-  
11 natural product instead of a product that contains artificial flavors and large amounts of added sugar,  
12 and are therefore likely to deceive reasonable consumers.

13 111. Defendant’s conduct further violates other applicable California and federal regulations  
14 as alleged herein.

15 112. Defendant’s practices are therefore unlawful under Section 17200 *et seq.* of the  
16 California Civil Code.

17 **FIFTH CAUSE OF ACTION**

18 **VIOLATION OF THE UNFAIR COMPETITION LAW (UNFAIR PRONG)**

19 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

20 **(on behalf of the California Class)**

21 113. Plaintiffs re-allege and incorporate by reference each and every allegation contained  
22 elsewhere in this Complaint as if fully set forth herein.

23 114. Section 17200 of the California Business & Professions Code (“Unfair Competition  
24 Law” or “UCL”) prohibits any “unfair . . . business act or practice.” Defendant’s practices violate the  
25 Unfair Competition Law “unfair” prong as well.

26 115. Defendant’s practices as described herein are “unfair” within the meaning of the  
27 California Unfair Competition Law because the conduct is unethical and injurious to California  
28 residents and the utility of the conduct to Defendant does not outweigh the gravity of the harm to

1 consumers.

2 116. While Defendant's decision to label the Products deceptively and in violation of  
3 California law may have some utility to Defendant in that it allows Defendant to sell the Products to  
4 consumers who otherwise would not purchase an artificially-flavored food product at the premium  
5 retail price, or at all, if it were labeled correctly, and to realize higher profit margins than if they  
6 formulated or labeled the Products lawfully, this utility is small and far outweighed by the gravity of  
7 the harm inflicted on California consumers.

8 117. Defendant's conduct with respect to the labeling, advertising, and sale of Defendant's  
9 high-sugar juice beverages was also unfair to consumers because it allows Defendant to sell the  
10 Products to consumers who otherwise would not purchase a product high in added sugars that  
11 contributes to excessive sugar consumption. The consumer injury was substantial, not outweighed by  
12 benefits to consumers or competition, and not one that consumers themselves could reasonably have  
13 avoided.

14 118. Defendant's conduct also injures competing food product manufacturers, distributors,  
15 and sellers, that do not engage in the same unfair and unethical behavior.

16 119. Moreover, Defendant's practices violate public policy expressed by specific  
17 constitutional, statutory, or regulatory provisions, including the Sherman Law, the False Advertising  
18 Law, and the FDA regulations cited herein.

19 120. Plaintiffs' purchases and all Class members' purchases of the Products all took place in  
20 California.

21 121. Defendant labeled the Products in violation of federal regulations and California law  
22 requiring truth in labeling.

23 122. Defendant consciously failed to disclose material facts to Plaintiffs and the Class in  
24 Defendant's advertising and marketing of the Products.

25 123. Defendant's conduct is unconscionable because, among other reasons, it violates 21  
26 C.F.R. § 101.22(c), which requires all foods containing artificial flavoring to include:

27 A statement of artificial flavoring . . . [which] shall be placed on the food or on its  
28 container or wrapper, or on any two or all three of these, as may be necessary to render

1 such a statement likely to be read by the ordinary person under customary conditions of  
2 purchase and use of such food.

3 124. Defendant's conduct is also "unconscionable" because it violates, *inter alia*, 21 C.F.R.  
4 § 101.22, which requires all food products for which artificial flavoring provides a characterizing flavor  
5 to disclose this fact prominently on the product's front label.

6 125. Defendant intended that Plaintiffs and the Class rely on Defendant's acts and omissions  
7 to induce them to purchase the Products.

8 126. Had Defendant disclosed all material information regarding the Products, Plaintiffs and  
9 the Class would not have purchased the Products or would only have been willing to pay less for the  
10 Products than they did.

11 127. Plaintiffs suffered injury in fact and lost money or property as a result of Defendant's  
12 deceptive advertising: they were denied the benefit of the bargain when they purchased the Products  
13 based on Defendant's violation of the applicable laws and regulations, and purchased the Products in  
14 favor of competitors' products, which are less expensive, contain no artificial flavoring, or are lawfully  
15 labeled.

16 128. The acts, omissions, and practices of Defendant detailed herein proximately caused  
17 Plaintiffs and other members of the Class to suffer an ascertainable loss in the form of, *inter alia*, the  
18 price premium of monies spent to purchase the Products they otherwise would not have, and they are  
19 entitled to recover such damages, together with appropriate penalties, including restitution, damages,  
20 attorneys' fees and costs of suit.

21 129. Section 17200 also prohibits any "unfair, deceptive, untrue or misleading advertising."  
22 For the reasons set forth above, Defendant engaged in unfair, deceptive, untrue and misleading  
23 advertising in violation of California Business & Professions Code § 17200.

24 130. Pursuant to California Business & Professions Code § 17203, Plaintiffs seek an order  
25 requiring Defendant to immediately cease such acts of unlawful, unfair, and fraudulent business  
26 practices and requiring Defendant to return to the Class the amount of money improperly collected.

**SIXTH CAUSE OF ACTION**

**VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW**

**CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

**(on behalf of the California Class)**

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2  
3  
4  
5 131. Plaintiffs re-allege and incorporate by reference each and every allegation contained  
6 elsewhere in this Complaint as if fully set forth herein.

7 132. Defendant made and distributed, in California and in interstate commerce, Products that  
8 unlawfully fail to disclose the presence of artificial flavoring as required by federal and state food  
9 labeling regulations.

10 133. The Products’ labeling and advertising in California presents the Products as if they  
11 were solely naturally-flavored and contain the natural fruit(s) shown on the labels.

12 134. Under California’s False Advertising Law (“FAL”), Business and Professions Code §  
13 17500 *et seq.*,

14 “It is unlawful for any person, firm, corporation or association, or any employee thereof with  
15 intent directly or indirectly to dispose of real or personal property . . . to make or disseminate  
16 or cause to be made or disseminated before the public in this state, or to make or disseminate  
17 or cause to be made or disseminated from this state before the public in any state, in any  
18 newspaper or other publication, or any advertising device . . . any statement, concerning that  
19 real or personal property . . . which is untrue or misleading, and which is known, or which by  
20 the exercise of reasonable care should be known, to be untrue or misleading. . . .” Cal. Bus. &  
21 Prof. Code § 17500.

22 135. Defendant’s labeling and advertising statements on the Products’ labels and in  
23 advertising and marketing materials are “advertising device[s]” under the FAL.

24 136. Defendant’s labeling and advertising statements, which communicated to consumers  
25 that the Products contain the identified natural fruit(s) and concealed the fact that they contain synthetic  
26 artificial flavor, were untrue and misleading, and Defendant at a minimum by the exercise of reasonable  
27 care should have known those actions were false or misleading.

28 137. Defendant’s labeling and advertising for Products as natural fruit juice beverages which

1 actually contain substantial amounts of added sugar is deceptive in light of the strong evidence that  
2 excessive sugar consumption greatly increases risk of chronic disease.

3 138. Defendant's conduct violated California's False Advertising Law.

4 **SEVENTH CAUSE OF ACTION**

5 **BREACH OF EXPRESS WARRANTIES**

6 **CAL. COMM. CODE § 2313**

7 **(on behalf of the California Class and all states with substantially similar laws)**

8 139. Plaintiffs re-allege and incorporate by reference each and every allegation contained  
9 elsewhere in this Complaint as if fully set forth herein.

10 140. The Products' front label representations misleadingly suggest that the Products are  
11 flavored only with natural fruits such as watermelon or raspberries and contain no artificial flavors.

12 141. Defendant's front label statement of contents, for example, "Watermelon Mint", was an  
13 affirmative representation of the Product's composition creating an express warranty.

14 142. These promises became part of the basis of the bargain between the parties and thus  
15 constituted an express warranty, which Defendant breached: The Products are artificially flavored.

16 143. Defendant sold the goods to Plaintiffs and the other Class members who bought the  
17 goods from Defendant.

18 144. Plaintiffs and the Class did not receive goods as warranted by Defendant.

19 145. Within a reasonable amount of time after Plaintiffs discovered that the Products  
20 contained synthetic flavorings, Plaintiffs notified Defendant of such breach.

21 146. As a proximate result of this breach of warranty by Defendant, Plaintiffs and the Class  
22 have been damaged in an amount to be determined at trial.

23 **EIGHT CAUSE OF ACTION**

24 **BREACH OF IMPLIED WARRANTIES**

25 **CAL. COMM. CODE § 2314**

26 **(on behalf of the California Class and all states with substantially similar laws)**

27 147. Plaintiffs re-allege and incorporate the allegations made elsewhere in the Complaint as  
28 if set forth in full herein.

1 148. Defendant's label representations also created implied warranties that the product was  
2 suitable for a particular purpose, specifically as an exclusively naturally-flavored food product  
3 containing the advertised fruit juice(s). Defendant breached this warranty.

4 149. The Products' front labels misleadingly imply that they are flavored only with the  
5 natural ingredients comprising the characterizing flavors.

6 150. The Products also made representations that the products are natural and healthy and  
7 not filled with added sugars.

8 151. As alleged in detail above, at the time of purchase Defendant had reason to know that  
9 Plaintiffs, as well as all members of the Class, intended to use the Products as naturally-flavored food  
10 products.

11 152. This became part of the basis of the bargain between the parties.

12 153. Based on that implied warranty, Defendant sold the goods to Plaintiffs and other Class  
13 members who bought the goods from Defendant.

14 154. At the time of purchase, Defendant knew or had reason to know that Plaintiffs and the  
15 Class members were relying on Defendant's skill and judgment to select or furnish a product that was  
16 suitable for this particular purpose, and Plaintiffs and the Class justifiably relied on Defendant's skill  
17 and judgment.

18 155. The Products were not suitable for this purpose.

19 156. Plaintiffs purchased the Products believing they had the qualities Plaintiffs sought,  
20 based on the deceptive advertising and labeling, but the Products were actually unsatisfactory to  
21 Plaintiffs for the reasons described herein.

22 157. The Products were not merchantable in California, as they were not of the same quality  
23 as other products in the category generally acceptable in the trade.

24 158. The Products would not pass without objection in the trade when packaged with the  
25 existing labels, because the Products were misbranded and illegal to sell in California. Cal. Comm.  
26 Code 2314(2)(a).

27 159. The Products also were not acceptable commercially and breached the implied warranty  
28 because they were not adequately packaged and labeled as required. Cal. Comm. Code 2314(2)(e).

1 160. The Products also were not acceptable commercially and breached the implied warranty  
2 because they did not conform to the promises or affirmations of fact made on the container or label,  
3 Cal. Comm. Code 2314(2)(f), and other grounds as set forth in Commercial Code section 2314(2).

4 161. By offering the Products for sale and distributing the Products in California, Defendant  
5 also warranted that the Products were not misbranded and were legal to purchase in California. Because  
6 the Products were misbranded in several regards and were therefore illegal to sell or offer for sale in  
7 California, Defendant breached this warranty as well.

8 162. As a result of this breach, Plaintiffs and the other California consumers in the Class did  
9 not receive goods as impliedly warranted by Defendant.

10 163. Within a reasonable amount of time after the Plaintiffs discovered that the Products  
11 breached these warranties, Plaintiffs notified Defendant of such breach.

12 164. As a proximate result of this breach of warranty, Plaintiffs and other California  
13 consumers have been damaged in an amount to be determined at trial.

14 165. As a result, Plaintiffs, the Class, and the general public are entitled to injunctive and  
15 equitable relief, restitution, and an order for the disgorgement of the funds by which Defendant was  
16 unjustly enriched.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated, and the general  
19 public, pray for judgment against Defendant as follows:

- 20 A. An order confirming that this action is properly maintainable as a class action as defined  
21 above;
- 22 B. An order appointing Plaintiffs as class representatives and The Law Office of Ronald  
23 A. Marron as counsel for the Class;
- 24 C. An order requiring Defendant to bear the cost of Class notice;
- 25 D. An order declaring that the conduct complained of herein violates the CLRA;
- 26 E. An order declaring that the conduct complained of herein violates the UCL;
- 27 F. An order declaring that the conduct complained of herein violates the FAL;
- 28 G. An order declaring that the conduct complained of herein breached express warranties,



1 implied warranties, or both;

- 2 H. An order requiring Defendant to disgorge any benefits received from Plaintiffs and any  
3 unjust enrichment realized as a result of the improper and misleading labeling,  
4 advertising, and marketing of the Products;
- 5 I. An order requiring Defendant to pay restitution and damages to Plaintiffs and Class  
6 members so that they may be restored any money which was acquired by means of any  
7 unfair, deceptive, unconscionable or negligent acts;
- 8 J. An award of punitive damages in an amount to be proven at trial;
- 9 K. An order enjoining Defendant's deceptive and unfair practices;
- 10 L. An order requiring Defendant to conduct corrective advertising;
- 11 M. An award of pre-judgment and post-judgment interest;
- 12 N. An award of attorney fees and costs; and
- 13 O. Such other and further relief as this Court may deem just, equitable, or proper.

14 **JURY DEMAND**

15 Plaintiffs demands a trial by jury on all claims for damages. Plaintiffs do not seek a jury trial for  
16 claims sounding in equity.

17 DATED: September 26, 2018

Respectfully Submitted,

18  
19 /s/ Ronald A. Marron

20 Ronald A. Marron

21 **LAW OFFICES OF RONALD A. MARRON**

22 Ronald A. Marron

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27 **PACIFIC TRIAL ATTORNEYS**

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***Counsel for Plaintiffs and the Proposed  
Class***

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JS-CAND 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b> Renee Young and Joycette Goodwin</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff Sonoma <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Ronald A. Marron 651 Arroyo Drive, San Diego, CA 92103 (619) 696-9006</p>	<p><b>DEFENDANTS</b> Neurobrands, LLC</p> <p>County of Residence of First Listed Defendant Los Angeles <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	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 checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b>	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability			400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	710 Fair Labor Standards Act	820 Copyrights	430 Banks and Banking
151 Medicare Act	340 Marine	720 Labor/Management Relations	830 Patent	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	751 Family and Medical Leave Act	840 Trademark	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	790 Other Labor Litigation	<b>SOCIAL SECURITY</b>	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	791 Employee Retirement Income Security Act	861 HIA (1395ff)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury -Medical Malpractice	<b>IMMIGRATION</b>	862 Black Lung (923)	850 Securities/Commodities/Exchange
196 Franchise	<b>CIVIL RIGHTS</b>	462 Naturalization Application	863 DIWC/DIWW (405(g))	890 Other Statutory Actions
<b>REAL PROPERTY</b>	440 Other Civil Rights	465 Other Immigration Actions	864 SSID Title XVI	891 Agricultural Acts
210 Land Condemnation	441 Voting		865 RSI (405(g))	893 Environmental Matters
220 Foreclosure	442 Employment		<b>FEDERAL TAX SUITS</b>	895 Freedom of Information Act
230 Rent Lease & Ejectment	443 Housing/Accommodations		870 Taxes (U.S. Plaintiff or Defendant)	896 Arbitration
240 Torts to Land	445 Amer. w/Disabilities—Employment		871 IRS—Third Party 26 USC § 7609	899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	446 Amer. w/Disabilities—Other			950 Constitutionality of State Statutes
290 All Other Real Property	448 Education			
	<b>PRISONER PETITIONS</b>			
	463 Alien Detainee			
	510 Motions to Vacate Sentence			
	530 General			
	535 Death Penalty			
	<b>OTHER</b>			
	540 Mandamus & Other			
	550 Civil Rights			
	555 Prison Condition			
	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—Transfer  8 Multidistrict Litigation—Direct File

**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. sec. 1332(d)  
Brief description of cause:  
Diversity case brought under the Class Action Fairness Act

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 500,000.00 CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S), IF ANY** *(See instructions):* JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**  
*(Place an "X" in One Box Only)*  SAN FRANCISCO/OAKLAND  SAN JOSE  EUREKA-MCKINLEYVILLE

DATE 09/26/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Ronald A. Marron

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - (3) Federal question. This refers to suits under 28 USC § 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.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 Federal Rule of Civil Procedure 23.
- 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."
- Date and Attorney Signature.** Date and sign the civil cover sheet.