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Proposed Class

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

JESSICA AUGUSTINE and TERRI
GARFINKEL, individually and on behalf
of all others similarly situated, and the
general public,

Plaintiffs,

v.

TALKING RAIN BEVERAGE
COMPANY, INC., a Washington
corporation;

Defendant.

Case No: '18CV2576 CAB BGS

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Jessica Augustine and Terri Garfinkel (“Plaintiffs”), hereby bring this
2 Action against Defendant Talking Rain Beverage Company, Inc. (“Defendant”), alleging
3 that certain products manufactured, packaged, labeled, advertised, distributed and sold
4 by Defendant are misbranded and falsely advertised and otherwise violates consumer
5 protection laws, and upon information and belief and investigation of counsel alleges as
6 follows:

7 **JURISDICTION AND VENUE**

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

13 2. This Court has both general and specific personal jurisdiction over the
14 Defendant because Defendant has conducted and continues to conduct substantial
15 business in the State of California and County of San Diego. Talking Rain Beverage
16 Company is registered with the California Secretary of State under entity number
17 C2157728.

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

23 4. Venue is proper in the United States District Court for the Southern District
24 of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events
25 giving rise to the claims occurred within this judicial district, Defendant has marketed
26 and sold the Sparkling Ice Products at issue in this action in this judicial district, and it
27 conducts business within this judicial district.

NATURE OF THE ACTION

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

5 6. Defendant manufactures, distributes, advertises, markets and sells a variety
6 of purportedly natural fruit flavored products known as Sparkling Ice beverage products,
7 including, without limitation, the Sparkling Ice Black Raspberry, Sparkling Ice Peach
8 Nectarine, and Sparkling Ice Crisp Apple products (collectively, the “Products”).

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

13 8. Defendant’s packaging, labeling, and advertising scheme is intended to give
14 consumers the impression that they are buying premium, all-natural products with only
15 natural flavoring ingredients instead of products that contain artificial chemicals and that
16 are artificially flavored.

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

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

PARTIES

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2 11. Plaintiff Jessica Augustine is a citizen of the State of California and resides
3 in San Diego, California.

4 12. Plaintiff Augustine purchased the Sparkling Ice products for personal
5 consumption since 2017 in the State of California.

6 13. Plaintiff Terri Garfinkel is a citizen of the State of California and resides in
7 Los Angeles, California.

8 14. Plaintiff Garfinkel purchased the Sparkling Ice products for personal
9 consumption since 2016 in the State of California.

10 15. Plaintiffs are informed and believe, and upon such information and belief
11 allege, that Defendant Talking Rain is a Washington corporation with its principal place
12 of business located in Preston, Washington. Plaintiffs are informed and believe, and upon
13 such information and belief allege, that Defendant, at all times relevant, conducted
14 business in the State of California and in the County of San Diego.

FACTUAL BACKGROUND

Defendant Does Not Disclose That The Products Are Artificially Flavored.

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17 16. Defendant’s labeling and advertising scheme is deliberately intended to give
18 consumers the false impression that the Products are composed only of natural flavors
19 and contain no artificial colors or flavors.

20 17. The image below is a true and accurate reproduction of the Sparkling Ice
21 Black Raspberry product.
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18. As depicted, the Product’s front label prominently displays a “naturally
19 flavored” designation. Defendant painstakingly and intentionally designed this Product
20 label and the other labels for its Products to deceive consumers into believing that there
21 are no artificial ingredients, including artificial flavoring agents or artificial chemicals
22 contained in the Products.

23
24 19. All of the Products, however, contain a synthetic chemical flavoring
25 compound identified as “malic acid.” Specifically, the Black Raspberry Product’s back
26 label states that the ingredients include: “Carbonated water, natural flavors, **malic acid**,
27 vegetable juice, blackberry juice concentrate, potassium benzoate, sucralose, gum arabic,
28 green tea extra.”

1 20. This “malic acid” is an inexpensive synthetic chemical used in processed
2 food products to make the taste like tangy fresh fruits – like blueberries, lemons, mangos,
3 or cherries, and in the Products Plaintiff purchased, like the “black raspberry” flavor
4 advertised.

5 21. Under these circumstances, the labels of the Sparkling Ice Products violate
6 California and federal statutes and state common law in multiple respects.

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

12 23. Second, the Products’ ingredient lists violate federal and state law because
13 they identify, misleadingly, the malic acid flavoring only as the general “malic acid”
14 instead of using the specific, non-generic name of the ingredient. (*See* 21 C.F.R. §
15 101.4(a)(1).)

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

20 25. There is a different, naturally-occurring form of malic acid found in some
21 fruits and vegetables. Defendant does not use this type of malic acid; it instead adds a
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24 ¹ California’s Sherman Food, Drug and Cosmetic Act, California Health & Safety Code
25 § 109875 *et seq.*, incorporates into California law all regulations enacted pursuant to the
26 U.S. Food Drug and Cosmetic Act. An act or omission that would violate an FDCA
27 regulation necessarily violates California’s Sherman Law. (Health & Safety Code, §
28 110100.) Regulatory citations in the text are to California’s Sherman Law and reference
the corresponding federal regulation for convenience.

1 synthetic industrial chemical called d-l malic acid,² in the form of a racemic mixture of
2 d- and l-isomers, to flavor the Products and make them taste like fresh fruit.

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

7 27. Both the natural and unnatural forms of malic acid are considered “GRAS”
8 (generally recognized as safe) for use as flavorings in foods marketed to adults³; the d-
9 malic acid form, however, has never been extensively studied for its health effects in
10 human beings. Both forms confer a “tart, fruity” flavor to food products.⁴

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

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

17 30. These Products have neither front-label nor back-label disclosures.
18 Defendant intentionally designed these Product labels without the required disclosure of
19 “Artificial Flavoring” on the front or back of the label for the purpose of deceiving
20 consumers into believing that there are no artificial ingredients, artificial flavoring agents
21 or artificial chemicals contained in the Products. It is currently unknown whether the
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24 ² D-malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic
25 acid.

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

28 ⁴ <https://thechemco.com/chemical/malic-acid/> (last visited April 30, 2018).

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

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

6 32. Under FDA regulations, a recognizable primary flavor identified on the
7 front label of a food product is referred to as a “characterizing flavor.” (21 C.F.R. §
8 101.22.)

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

14 34. “Pomegranate”, “Strawberry Watermelon”, “Peach Nectarine” are primary
15 recognizable flavors identified on the Sparkling Ice beverage Products’ front labels.
16 These are characterizing flavors under California and federal regulations.

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

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

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

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

10 39. Accordingly, Plaintiff and the Class were unaware that the Products
11 contained artificial flavoring when they purchased them.

12 40. When purchasing the Products, Plaintiff and Class Members were seeking
13 products of particular qualities that were flavored only with the natural ingredients
14 claimed on the label and which did not contain artificial flavoring.

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

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24 _____
25 ⁵ *Consumers Want Healthy Foods - And Will Pay More For Them*"; Forbes Magazine,
26 [https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-
27 foods-and-will-pay-more-for-them/#4b8a6b4b75c5](https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#4b8a6b4b75c5); (last visited March 22, 2018).

28 ⁶ The Nielsen Company, Global Health and Wellness Survey, "Healthy Eating Habits
Around the World," 2015; <https://www.nielsen.com/content/dam/niensenglobal/eu/>

1 42. John Compton, the CEO of a beverage manufacturer, spoke to investors at
 2 the Morgan Stanley Consumer & Retail Conference, stating: “We have talked extensively
 3 to consumers about this idea, and they come back and tell us the number one motivation
 4 for purchase is products that claim to be natural.”

5 43. Defendant’s labeling and advertising reflect these consumer preferences –
 6 not by making the Products solely with natural ingredients, but instead by concealing the
 7 fact that the Products are artificially flavored.

8 44. Table 1, below, lists the Products included in this Action.

9 Sparkling Ice Pomegranate Blueberry	Sparkling Ice Strawberry Watermelon
10 Sparkling Ice Strawberry Lemonade	Sparkling Ice Pink Grapefruit
11 Sparkling Ice Peach Nectarine	Sparkling Ice Orange Mango
12 Sparkling Ice Crisp Apple	Sparkling Ice Coconut Pineapple
13 Sparkling Ice Ginger Lime	Sparkling Ice Classic Lemonade
14 Sparkling Ice Lemon Lime	Sparkling Ice Grape Raspberry
15 Sparkling Ice Black Cherry	Sparkling Ice Pomegranate Blueberry
16 Sparkling Ice Cherry Limeade	Sparkling Ice Kiwi Strawberry

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 18 45. California’s Health & Safety Code states that “[a]ny food is misbranded if
 19 it bears or contains any artificial flavoring, artificial coloring, or chemical preservative,
 20 unless its labelling states that fact.” (California Health & Safety Code, § 110740.)

21 46. California law requires Defendant to include sufficient notice on the
 22 Products’ labels to alert California consumers that the Products are artificially flavored.
 23 Defendant failed to do so. Accordingly, Defendant’s Products were misbranded and
 24 illegal to distribute or sell in California. (California Health & Safety Code, §§ 110740,
 25 110760, 110765.)

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 28 [nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%200-%20January%202015.pdf](https://www.nielseninsights.com/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%200-%20January%202015.pdf); (last visited March 22, 2018)

1 47. Because the Products violated California law, they were misbranded when
2 offered for sale in California.

3 48. Plaintiff and the Class lost money as a result of Defendant's conduct because
4 they purchased Products that contained undisclosed artificial flavors and were illegal to
5 sell.

6 **Plaintiff's Purchase Of The Sparkling Ice Products**

7 49. Plaintiff Terri Garfinkel purchased the Sparkling Ice Products several times
8 since 2016 in Los Angeles, California during the Class Period defined herein.

9 50. Plaintiff Garfinkel's most recent purchase was in 2018 at Ralph's located on
10 1233 N. La Brea Avenue, Los Angeles, CA.

11 51. Plaintiff Jessica Augustine purchased the Sparkling Ice Products several
12 times since 2017 in San Diego, California during the Class Period defined herein.

13 52. Plaintiff Augustine's most recent purchase was in 2018 at Ralph's located
14 on 1020 University Avenue, San Diego, CA, 92103

15 53. Plaintiffs subsequently discovered Defendant's unlawful acts as described
16 herein, when they learned that the Sparkling beverage Products' characterizing flavors
17 were deceptively created or reinforced using artificial flavoring even though Defendant
18 failed to disclose that fact on the Sparkling Ice labels.

19 54. Plaintiffs were deceived by and relied upon the Products' deceptive labeling,
20 and specifically the omission of the legally-required notice that it contained artificial
21 flavorings. Plaintiffs purchased the Sparkling Ice Products believing it was naturally
22 flavored, based on the Products' deceptive labelling and failure to disclose that it was
23 artificially flavored.

24 55. Plaintiffs, as a reasonable consumers, are not required to subject consumer
25 food products to laboratory analysis, to scrutinize the back of the label to discover that
26 the products' front label are false and misleading, or to search the label for information
27 that federal regulations require be displayed prominently on the front – and, in fact, under
28 state law are entitled to rely on statements that Defendant deliberately places on the

1 Sparkling Ice Products' labelling. Defendant, but not Plaintiffs, knew or should have
2 known that this labelling was in violation of federal regulations and state law.

3 56. Because Plaintiffs reasonably assumed that the Sparkling Ice Products
4 would be free of artificial flavoring, based on the Products' labels, when it was not, they
5 did not receive the benefit of their purchase. Instead of receiving the benefit of products
6 free of artificial flavoring, she received Products that were unlawfully labeled to deceive
7 the consumer into believing that they were exclusively naturally flavored and contained
8 no artificial flavoring, in violation of federal and state labelling regulations.

9 57. Plaintiffs would not have purchased the Products in the absence of
10 Defendant's misrepresentations and omissions. Had Defendant not violated California
11 law, Plaintiffs would not have been injured.

12 58. The Sparkling Ice Products were worth less than what Plaintiffs paid for and
13 Class members would not have paid as much as they have for the Products absent
14 Defendant's false and misleading statements and omissions.

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

18 60. Plaintiffs intend to, seek to, and will purchase the Sparkling Ice Products
19 again when they can do so with the assurance that the Products' labels, which indicates
20 that the Products are naturally flavored, is lawful and consistent with the Products'
21 ingredients.

22 **CLASS ACTION ALLEGATIONS**

23 61. Plaintiffs bring this action on behalf of themselves and all others similarly
24 situated (the "Class") pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and
25 23(b)(3).

26 62. The nationwide Class is defined as follows:

27 All U.S. citizens who purchased the Products in their respective state of
28 citizenship on or after January 1, 2012 and until the Class is certified, for

1 personal use and not for resale, excluding Defendant and Defendant's
2 officers, directors, employees, agents and affiliates, and the Court and its
3 staff.

4 63. The California Class is defined as follows:

5 All California citizens who made retail purchases of the Products in
6 California on or after January 1, 2012 and until the Class is certified, for
7 personal use and not for resale, excluding Defendant and Defendant's
8 officers, directors, employees, agents and affiliates, and the Court and its
9 staff.

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

13 65. During the Class Period, Class members purchased the misbranded
14 Products, paying a price premium for those Products compared to similar products
15 lawfully labeled.

16 66. The proposed Class meets all criteria for a class action, including
17 numerosity, commonality, typicality, predominance, superiority, and adequacy of
18 representation.

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

25 68. The proposed Class satisfies typicality. Plaintiffs' claims are typical of and
26 are not antagonistic to the claims of other Class members. Plaintiffs and the Class
27 members all purchased the Products, were deceived by the false and deceptive labeling,
28 and lost money as a result, purchasing Products that were illegal to sell in California.

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

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

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

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

19 73. 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
21 ingredient d-l malic acid in the Products;

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

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

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

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

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

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

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

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

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

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

16 76. Class treatment is therefore appropriate under California law.

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

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

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

25 80. On information and belief, based on publicly-available information,
26 Plaintiffs allege that the total amount in controversy exclusive of fees, costs, and interest,
27 based on the estimated price premium and Product revenues for sales to the Class in
28 California during the proposed Class Period, 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)

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

82. 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.

83. 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.

84. 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.

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

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

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

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

90. During the applicable Class period, Defendant negligently or carelessly misrepresented, omitted, and concealed from consumers material facts regarding the Products, including the existence of artificial flavoring ingredients.

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

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

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

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

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

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

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

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

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

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

22 § 1770(a)(9): advertising goods with intent not to sell them as advertised.

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

25 99. As a result of Defendant’s violations, Plaintiffs and the Class suffered
26 ascertainable losses in the form of the price premiums they paid for the deceptively
27 labeled and marketed Products, which they would not have paid had these Products been
28 labeled truthfully, and in the form of the reduced value of the Products purchased
compared to the Products as labeled and advertised.

1 100. On or about November 1, 2018, prior to filing this action, Plaintiffs sent a
2 CLRA notice letter to Defendant which complies with California Civil Code § 1782(a).
3 Plaintiffs sent Defendant, individually and on behalf of the proposed Class, a letter via
4 Certified Mail, advising Defendant that it is in violation of the CLRA and demanding
5 that it cease and desist from such violations and make full restitution by refunding the
6 monies received therefrom.

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

11 **FOURTH CAUSE OF ACTION**

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

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

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

16 102. Plaintiffs re-allege and incorporate by reference each and every allegation
17 contained elsewhere in this Complaint as if fully set forth herein.

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

22 104. The UCL borrows violations of other laws and statutes and considers those
23 violations also to constitute violations of California law.

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

27 106. Among other violations, Defendant’s conduct in unlawfully packaging and
28 labeling and distributing the Products in commerce in California violated U.S. FDA and
California packaging and labeling regulations.

1 107. The Products' front labels fail to disclose that they contain synthetic
2 artificial flavoring and are not flavored with and do not contain any or all of the natural
3 fruits named on the labels, in violation of 21 C.F.R. § 101.22 and California's Sherman
4 Law.

5 108. The "Sparkling Ice Black Raspberry" Product, for example, contains the
6 synthetic dl-malic acid flavoring ingredient.

7 109. The dl-malic acid is a synthetic flavoring material which creates, simulates,
8 or reinforces the characterizing "Black Raspberry" flavor of the Product.

9 110. The dl-malic acid in the Sparkling Ice Products are not derived from any
10 natural material as defined in the applicable state regulations and is therefore, by law, an
11 artificial flavoring.

12 111. Defendant fails to inform consumers of the presence of artificial flavors in
13 the Products on the front label as required by law.

14 112. Defendant's packaging, labeling, advertising, and marketing of high-sugar
15 juice beverages are intentionally designed to give consumers the impression that they
16 are buying an all-natural product instead of a product that contains artificial flavors and
17 large amounts of added sugar, and are therefore likely to deceive reasonable consumers.

18 113. Defendant's conduct further violates other applicable California and federal
19 regulations as alleged herein.

20 114. Defendant's practices are therefore unlawful under Section 17200 *et seq.*
21 of the California Civil Code.

22 **FIFTH CAUSE OF ACTION**

23 **VIOLATION OF THE UNFAIR COMPETITION LAW (UNFAIR PRONG),**

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

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

26 115. Plaintiffs re-allege and incorporate by reference each and every allegation
27 contained elsewhere in this Complaint as if fully set forth herein.

28 116. Section 17200 of the California Business & Professions Code ("Unfair
Competition Law" or "UCL") prohibits any "unfair . . . business act or practice."

1 Defendant's practices violate the Unfair Competition Law "unfair" prong as well.

2 117. Defendant's practices as described herein are "unfair" within the meaning
3 of the California Unfair Competition Law because the conduct is unethical and injurious
4 to California residents and the utility of the conduct to Defendant does not outweigh the
5 gravity of the harm to consumers.

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

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

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

21 121. Moreover, Defendant's practices violate public policy expressed by
22 specific constitutional, statutory, or regulatory provisions, including the Sherman Law,
23 the False Advertising Law, and the FDA regulations cited herein.

24 122. Plaintiffs' purchases and all Class members' purchases of the Products all
25 took place in California.

26 123. Defendant labeled the Products in violation of federal regulations and
27 California law requiring truth in labeling.

28 124. Defendant consciously failed to disclose material facts to Plaintiffs and the
Class in Defendant's advertising and marketing of the Products.

1 125. Defendant’s conduct is unconscionable because, among other reasons, it
2 violates 21 C.F.R. § 101.22(c), which requires all foods containing artificial flavoring to
3 include:

4 A statement of artificial flavoring . . . [which] shall be placed on the food or
5 on its container or wrapper, or on any two or all three of these, as may be
6 necessary to render such a statement likely to be read by the ordinary person
7 under customary conditions of purchase and use of such food.

8 126. Defendant’s conduct is also “unconscionable” because it violates, *inter*
9 *alia*, 21 C.F.R. § 101.22, which requires all food products for which artificial flavoring
10 provides a characterizing flavor to disclose this fact prominently on the product’s front
11 label.

12 127. Defendant intended that Plaintiffs and the Class rely on Defendant’s acts
13 and omissions to induce them to purchase the Products.

14 128. Had Defendant disclosed all material information regarding the Products,
15 Plaintiffs and the Class would not have purchased the Products or would only have been
16 willing to pay less for the Products than they did.

17 129. Plaintiffs suffered injury in fact and lost money or property as a result of
18 Defendant’s deceptive advertising: she was denied the benefit of the bargain when she
19 purchased the Products based on Defendant’s violation of the applicable laws and
20 regulations, and purchased the Products in favor of competitors’ products, which are less
21 expensive, contain no artificial flavoring, or are lawfully labeled.

22 130. The acts, omissions, and practices of Defendant detailed herein proximately
23 caused Plaintiffs and other members of the Class to suffer an ascertainable loss in the
24 form of, *inter alia*, the price premium of monies spent to purchase the Products they
25 otherwise would not have, and she is entitled to recover such damages, together with
26 appropriate penalties, including restitution, damages, attorneys’ fees and costs of suit.

27 131. Section 17200 also prohibits any “unfair, deceptive, untrue or misleading
28 advertising.” For the reasons set forth above, Defendant engaged in unfair, deceptive,
untrue and misleading advertising in violation of California Business & Professions

1 Code § 17200.

2 132. Pursuant to California Business & Professions Code § 17203, Plaintiffs
3 seek an order requiring Defendant to immediately cease such acts of unlawful, unfair,
4 and fraudulent business practices and requiring Defendant to return to the Class the
5 amount of money improperly collected.

6 **SIXTH CAUSE OF ACTION**

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

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

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

10 133. Plaintiffs re-allege and incorporates by reference each and every allegation
11 contained elsewhere in this Complaint as if fully set forth herein.

12 134. Defendant made and distributed, in California and in interstate commerce,
13 Products that unlawfully fail to disclose the presence of artificial flavoring as required
14 by federal and state food labeling regulations.

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

18 136. Under California’s False Advertising Law (“FAL”), Business and
19 Professions Code § 17500 *et seq.*,

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

137. Defendant’s labeling and advertising statements on the Products’ labels and

1 in advertising and marketing materials are “advertising device[s]” under the FAL.

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

7 139. Defendant’s labeling and advertising for Products as natural fruit juice
8 beverages which actually contain substantial amounts of added sugar is deceptive in
9 light of the strong evidence that excessive sugar consumption greatly increases risk of
10 chronic disease.

11 140. Defendant’s conduct violated California’s False Advertising Law.

12 **SEVENTH CAUSE OF ACTION**

13 **BREACH OF EXPRESS WARRANTIES,**

14 **CAL. COMM. CODE § 2313**

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

16 141. Plaintiffs re-allege and incorporate by reference each and every allegation
17 contained elsewhere in this Complaint as if fully set forth herein.

18 142. The Products’ front label representations misleadingly suggest that the
19 Products are flavored only with natural fruits such as watermelon or peaches and contain
20 no artificial flavors.

21 143. Defendant’s front label statement of contents, for example, “Strawberry
22 Watermelon”, was an affirmative representation of the Product’s composition creating
23 an express warranty.

24 144. These promises became part of the basis of the bargain between the parties
25 and thus constituted an express warranty, which Defendant breached: The Products are
26 artificially flavored.

27 145. Defendant sold the goods to Plaintiffs and the other Class members who
28 bought the goods from Defendant.

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

1 147. Within a reasonable amount of time after Plaintiffs discovered that the
2 Products contained synthetic flavorings, Plaintiffs notified Defendant of such breach.

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

5 **EIGHT CAUSE OF ACTION**

6 **BREACH OF IMPLIED WARRANTIES,**

7 **CAL. COMM. CODE § 2314**

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

9 149. Plaintiffs re-allege and incorporate the allegations made elsewhere in the
10 Complaint as if set forth in full herein.

11 150. Defendant's label representations also created implied warranties that the
12 Products were suitable for a particular purpose, specifically as an exclusively naturally-
13 flavored food product containing the advertised fruit juice(s). Defendant breached this
14 warranty.

15 151. The Products' front labels misleadingly imply that they are flavored only
16 with the natural ingredients comprising the characterizing flavors.

17 152. The Products also made representations that the products are natural and
18 healthy and not filled with added sugars.

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

22 154. This became part of the basis of the bargain between the parties.

23 155. Based on that implied warranty, Defendant sold the goods to Plaintiffs and
24 other Class members who bought the goods from Defendant.

25 156. At the time of purchase, Defendant knew or had reason to know that
26 Plaintiffs and the Class members were relying on Defendant's skill and judgment to
27 select or furnish a product that was suitable for this particular purpose, and Plaintiffs and
28 the Class justifiably relied on Defendant's skill and judgment.

157. The Products were not suitable for this purpose.

1 158. Plaintiffs purchased the Products believing they had the qualities Plaintiffs
2 sought, based on the deceptive advertising and labeling, but the Products were actually
3 unsatisfactory to Plaintiffs for the reasons described herein.

4 159. The Products were not merchantable in California, as they were not of the
5 same quality as other products in the category generally acceptable in the trade.

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

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

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

16 163. By offering the Products for sale and distributing the Products in California,
17 Defendant also warranted that the Products were not misbranded and were legal to
18 purchase in California. Because the Products were misbranded in several regards and
19 were therefore illegal to sell or offer for sale in California, Defendant breached this
20 warranty as well.

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

23 165. Within a reasonable amount of time after the Plaintiffs discovered that the
24 Products breached these warranties, Plaintiffs notified Defendant of such breach.

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

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

PRAYER FOR RELIEF

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

- A. An order confirming that this action is properly maintainable as a class action as defined above;
- B. An order appointing Plaintiffs as class representatives and The Law Office of Ronald A. Marron as counsel for the Class;
- C. An order requiring Defendant to bear the cost of Class notice;
- D. An order declaring that the conduct complained of herein violates the CLRA;
- E. An order declaring that the conduct complained of herein violates the UCL;
- F. An order declaring that the conduct complained of herein violates the FAL;
- G. An order declaring that the conduct complained of herein breached express warranties, implied warranties, or both;
- H. An order requiring Defendant to disgorge any benefits received from Plaintiffs and any unjust enrichment realized as a result of the improper and misleading labeling, advertising, and marketing of the Products;
- I. An order requiring Defendant to pay restitution and damages to Plaintiffs and Class members so that they may be restored any money which was acquired by means of any unfair, deceptive, unconscionable or negligent acts;
- J. An award of punitive damages in an amount to be proven at trial;
- K. An order enjoining Defendant's deceptive and unfair practices;
- L. An order requiring Defendant to conduct corrective advertising;
- M. An award of pre-judgment and post-judgment interest;
- N. An award of attorney fees and costs; and
- O. Such other and further relief as this Court may deem just, equitable, or proper.

JURY DEMAND

1 Plaintiffs demand a trial by jury on all claims for damages. Plaintiffs do not seek a
2 jury trial for claims sounding in equity.
3

4
5 DATED: November 9, 2018

Respectfully Submitted,

6
7 /s/ Ronald A. Marron

8 Ronald A. Marron

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

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12 Michael T. Houchin

13 *mike@consumersadvocates.com*

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16 651 Arroyo Drive

17 San Diego, CA 92103

18 Telephone: (619) 696-9006

19 Fax: (619) 564-6665

20 ***Counsel for Plaintiffs and the***
21 ***Proposed Class***
22
23
24
25
26
27
28

JS 44 (Rev. 06/17)

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.)

<p>I. (a) PLAINTIFFS</p> <p>Jessica Augustine and Terri Garfinkel</p> <p>(b) County of Residence of First Listed Plaintiff <u>San Diego</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> The Law Offices of Ronald A. Marron 651 Arroyo Drive San Diego, CA 92103</p>	<p>DEFENDANTS</p> <p>Talking Rain Beverage Company, Inc.</p> <p>County of Residence of First Listed Defendant <u>King County, WA</u> <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> <p style="text-align: center; font-size: 1.2em;">'18CV2576 CAB BGS</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <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:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</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 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 checked="" 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>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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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)* Click here for: Nature of Suit Code Descriptions.

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	<p>PERSONAL INJURY</p> <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	<p>PERSONAL INJURY</p> <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 <p>PERSONAL PROPERTY</p> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS	
<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	<p>Habeas Corpus:</p> <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 <p>Other:</p> <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	<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	<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))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

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, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

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

DATE 11/09/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Ronald A. Marron

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN 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 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.