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13 **UNITED STATES DISTRICT COURT**
 14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 FRANK LEPIANE and JAMILLAH
 16 DUNN, individually, on behalf of all others
 17 similarly situated, and the general public,

18 Plaintiff,

19 v.

20 UTZ QUALITY FOODS, LLC, a
 21 California limited liability company,

22 Defendant.

23 Case No. '18CV2659 LAB MDD

24 **CLASS ACTION**

25 **COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

26 **JURY TRIAL DEMAND**

1 Plaintiffs Frank Lepiane and Jamillah Dunn (“Plaintiffs”), on behalf of themselves
2 and all others similarly situated, by and through their undersigned counsel, hereby
3 bring this Action against Defendant UTZ Quality Foods, LLC (“Defendant”), alleging
4 that its Dirty’s Salt & Vinegar Potato Chip Product manufactured, packaged, labeled,
5 advertised, distributed and sold by Defendant is misbranded and falsely advertised in
6 California and otherwise violate California law, and upon information and belief and
7 investigation of counsel alleges as follows:

8 **JURISDICTION AND VENUE**

9 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332,
10 because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a member
11 of the putative class is a citizen of a different state than Defendant, and the amount in
12 controversy exceeds the sum or value of \$5,000,000, excluding interest and costs. See 28
13 U.S.C. § 1332(d)(2).

14 2. The Court has jurisdiction over the state law claims because they form part
15 of the same case or controversy under Article III of the United States Constitution.

16 3. The Court has personal jurisdiction over Defendant because its Dirty Salt &
17 Vinegar Potato Chips Product is advertised, marketed, distributed and sold through the
18 State of California; Defendant engaged in the wrongdoing alleged in this Complaint
19 throughout the United States, including in the State of California; Defendant is authorized
20 to do business in the State of California; and Defendant has sufficient minimum contacts
21 with the State of California, rendering the exercise of jurisdiction by the Court
22 permissible under traditional notions of fair play and substantial justice. Moreover,
23 Defendant’s business is incorporated in California and Defendant is engaged in
24 substantial activity with the State of California.

25 4. Venue is proper in the United States District Court for the Southern District
26 of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events
27 giving rise to the claims occurred within this judicial district, Defendant has marketed
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1 and sold Dirty Salt & Vinegar Potato Chips Product (the “Product”) at issue in this action
2 in this judicial district, and it conducts business within this judicial district.

3 **NATURE OF THE ACTION**

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

7 6. Defendant manufactures, distributes, advertises, markets and sells the
8 purportedly natural Dirty Salt & Vinegar Potato Chips Product (the “Product”). The front
9 of the Product contains the statement “Salt & Vinegar” while the back of the label
10 contains the statement “No Artificial Flavors.”

11 7. The labeling of the Product is false and misleading and the Product thus is
12 misbranded under California consumer protection laws. Specifically, the Product is
13 labeled as if it is flavored only with natural ingredients when in fact it contains an
14 undisclosed artificial flavor, malic acid, in violation of state and federal law.

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

19 9. Plaintiffs, who were deceived by Defendant’s unlawful conduct and
20 purchased Dirty Salt & Vinegar Product in California, bring this action on their own
21 behalf and on behalf of California consumers to remedy Defendant’s unlawful actions.

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

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PARTIES

11. Plaintiff Frank Lepiane is a citizen of the State of California and resides in San Diego, California. Plaintiff purchased the Dirty Salt & Vinegar Potato Chips Product for personal consumption since 2017 in California.

12. Plaintiff Jamillah Dunn is a citizen of the State of California and resides in Los Angeles, California. Plaintiff purchased the Dirty Salt & Vinegar Potato Chips Product for personal consumption since 2012 in Los Angeles, California.

13. Plaintiffs are informed and believe, and upon such information and belief allege, that Defendant UTZ Quality Foods, LLC is a California limited liability company with its principal place of business located in Hanover, Pennsylvania. Plaintiffs are informed and believe, and upon such information and belief allege, that Defendant, at all times relevant, conducted business in the State of California and within the Southern District of California.

FACTUAL BACKGROUND

Defendant Does Not Disclose That The Product Is Artificially Flavored.

14. Defendant’s labeling and advertising scheme is deliberately intended to give consumers the false impression that the Product is composed only of natural flavors.

15. The image below is a true and accurate reproduction of the front and back label of the Dirty Salt & Vinegar Potato Chips Product purchased by Plaintiffs.

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1 16. As depicted, the Dirty Salt & Vinegar Potato Chips Product’s front label
2 prominently displays “Salt & Vinegar” while the back label states “No Artificial Flavors”
3 as a description of the Product. Defendant intentionally designed this Product label to
4 deceive consumers into believing that there are no artificial ingredients, including
5 artificial flavoring agents or artificial chemicals contained in the Product.

6 17. The Product, however, contains a synthetic chemical flavoring compound
7 identified as “malic acid.” This “malic acid” is an inexpensive synthetic chemical used
8 in processed food products to make the taste, for example, like vinegar.

9 18. Under these circumstances, the label of the Product violates California and
10 federal statutes and state common law in multiple respects.

11 19. First, because the Product contains additional flavoring ingredients that
12 simulate and reinforce the characterizing flavor, the front label is required by law to
13 disclose those additional flavors rather than misleadingly suggest that the product is
14 flavored only by natural salt and vinegar. (California Health & Safety Code § 109875 *et*
15 *seq.*, (Sherman Law), incorporating 21 C.F.R. § 101.22.)¹

16 20. Second, the Product’s ingredients list violates federal and state law because
17 it identifies, misleadingly, the malic acid flavoring only as the general “malic acid”
18 instead of using the specific, non-generic name of the ingredient. (*See* 21 C.F.R. §
19 101.4(a)(1).)

20 21. Even more deceptive, however, is the fact that the Product, rather than being
21 flavored only with natural salt and vinegar as the label suggests, contain an undisclosed
22 artificial flavor made from petrochemicals. Defendant conceals this from consumers.

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¹ California’s Sherman Food, Drug and Cosmetic Act, California Health & Safety Code § 109875 *et seq.*, incorporates into California law all regulations enacted pursuant to the U.S. Food Drug and 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 22. There is a different, naturally-occurring form of malic acid found in some
2 fruits and vegetables. Defendant does not use this type of malic acid; it instead adds a
3 synthetic industrial chemical called d-l malic acid,² in the form of a racemic mixture of
4 d- and l-isomers, to flavor the Product and make it taste like vinegar.

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

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

13 25. Defendant uses this artificial petrochemical, d-l malic acid, in its Product
14 but pretends otherwise, conflating the natural and artificial flavorings and deceiving
15 consumers.

16 26. Because they contain artificial flavor, both federal and state law require the
17 Product to display both front- and back-label disclosures to inform consumer that it is
18 artificially flavored. (21 C.F.R. § 101.22.)

19 27. The Product has neither front-label nor back-label disclosures. Defendant
20 intentionally designed the Product label without the required disclosure of “Artificial
21 Flavoring” on the front or back of the label for the purpose of deceiving consumers into
22 believing that there are no artificial ingredients, artificial flavoring agents or artificial
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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 foods
27 out of health concerns if consumed by infants.

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

1 chemicals contained in the Product. It is currently unknown whether the Product is also
2 contaminated with precursor chemicals used in the manufacture of d-1 malic acid.

3 28. 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 29. 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 30. 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 31. Vinegar is named and labeled as, and is a primary recognizable flavor
15 identified on, the Product’s front label. This is a characterizing flavor under California
16 and federal regulations.

17 32. 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 33. 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 34. The synthetic d-l malic acid in the Product simulate, resemble, and reinforce
4 the characterizing vinegar flavor for the Product. Under these regulations, Defendant was
5 required to place prominently on the Product's front label a notice sufficient to allow
6 California consumers to understand that the Product contained artificial flavoring.

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

9 36. Accordingly, Plaintiffs and the Class were unaware that the Product
10 contained artificial flavoring when they purchased it.

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

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

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23 ⁵ *Consumers Want Healthy Foods - And Will Pay More For Them*"; Forbes Magazine,
24 February 15, 2015.

25 <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).

26 ⁶ The Nielsen Company, Global Health and Wellness Survey, "Healthy Eating Habits
27 Around the World," 2015; <https://www.nielsen.com/content/dam/niensenglobal/eu/nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%200-%20January%202015.pdf>; (last visited March 22, 2018)

1 39. 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.” Defendant’s labeling and advertising
5 reflect these consumer preferences – not by making the Product solely with natural
6 ingredients, but instead by concealing the fact that the Product is artificially flavored.

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

10 41. California law requires Defendant to include sufficient notice on the
11 Product’s label to alert California consumers that the Product is artificially flavored.
12 Defendant failed to do so. Accordingly, Defendant’s Product was misbranded and illegal
13 to distribute or sell in California. (California Health & Safety Code, §§ 110740, 110760,
14 110765.)

15 42. Because the Product violated California law, it was misbranded when
16 offered for sale in California.

17 43. Plaintiffs and the Class lost money as a result of Defendant’s conduct
18 because they purchased a Product that contained undisclosed artificial flavors and were
19 illegal to sell.

20 **Plaintiffs’ Purchases Of Dirty’s Salt & Vinegar Potato Chips Product**

21 44. Plaintiff Frank Lepiane has purchased Dirty’s Salt & Vinegar Potato Chips
22 Product in California during the Class Period defined herein. Specifically, during 2017
23 and 2018, Plaintiff purchased several packages of the Product in San Diego, California.

24 45. Plaintiff Lepiane’s most recent purchase was in January 2018 at the Sprouts
25 located on 1260 Garnet Avenue., San Diego, CA, 92109.

26 46. Plaintiff Jamillah Dunn purchased Dirty’s Salt & Vinegar Potato Chips
27 Product in California during the Class Period defined herein. Specifically, since 2012
28 Plaintiff purchased several packages of the Product in Los Angeles, California.

1 47. Plaintiff Dunn's most recent purchase was in 2018 at Mike's Deli located
2 on 4859 W. Slauson Avenue, Los Angeles, CA, 90056.

3 48. Plaintiffs subsequently discovered Defendant's unlawful acts as described
4 herein, when they learned that the Dirty's Salt & Vinegar Potato Chips Product's
5 characterizing flavors were deceptively created or reinforced using artificial flavoring
6 even though Defendant failed to disclose that fact on the Product's front label.

7 49. Plaintiffs were deceived by and relied upon the Product's deceptive labeling,
8 and specifically the omission of the legally-required notice that it contained artificial
9 flavorings. Plaintiffs purchased the Dirty's Potato Chips – Salt & Vinegar Product
10 believing it was naturally flavored, based on the Product's deceptive labelling and failure
11 to disclose that it was artificially flavored.

12 50. Plaintiffs, as a reasonable consumers, are not required to subject consumer
13 food products to laboratory analysis, to scrutinize the back of the label to discover that
14 the Product's front labels are false and misleading, or to search the labels for information
15 that federal regulations require be displayed prominently on the front – and, in fact, under
16 state law is entitled to rely on statements that Defendant deliberately places on the
17 Product's labelling. Defendant, but not Plaintiffs, knew or should have known that this
18 labelling was in violation of federal regulations and state law.

19 51. Because Plaintiffs reasonably assumed that the Product would be free of
20 artificial flavoring, based on the Product's label, when it was not, they did not receive the
21 benefit of their purchase. Instead of receiving the benefit of a Product free of artificial
22 flavoring, they received a Product that was unlawfully labelled to deceive the consumer
23 into believing that it was exclusively naturally flavored and contained no artificial
24 flavoring, in violation of federal and state labelling regulations.

25 52. Plaintiffs would not have purchased the Product in the absence of
26 Defendant's misrepresentations and omissions. Had Defendant not violated California
27 law, Plaintiffs would not have been injured.

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1 53. The Product was worth less than what Plaintiffs paid for them and Class
2 members would not have paid as much as they have for the Product absent Defendant's
3 false and misleading statements and omissions.

4 54. Plaintiffs and the Class therefore lost money as a result of Defendant's
5 unlawful behavior. Plaintiffs and the Class altered their position to their detriment and
6 suffered loss in an amount equal to the amounts they paid for the Product.

7 55. Plaintiffs intend to, seek to, and will purchase the Product again when they
8 can do so with the assurance that the Product's label, which indicate that the Product is
9 naturally flavored, is lawful and consistent with the Product's ingredients.

10 **CLASS ACTION ALLEGATIONS**

11 56. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated (the "Class") pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and
13 23(b)(3).

14 57. The nationwide Class is defined as follows:

15 All U.S. citizens who purchased the Product in their respective state of
16 citizenship on or after January 1, 2012 and until the Class is certified, for
17 personal use and not for resale, excluding Defendant and Defendant's
18 officers, directors, employees, agents and affiliates, and the Court and its
19 staff.

20 58. The California Class is defined as follows:

21 All California citizens who made retail purchases of the Product in
22 California on or after January 1, 2012 and until the Class is certified, for
23 personal use and not for resale, excluding Defendant and Defendant's
24 officers, directors, employees, agents and affiliates, and the Court and its
25 staff.

26 59. The proposed Class excludes current and former officers and directors of
27 Defendant, Members of the immediate families of the officers and directors of Defendant,
28 Defendant's legal representatives, heirs, successors, assigns, and any entity in which it

1 has or has had a controlling interest, and the judicial officer to whom this lawsuit is
2 assigned.

3 60. Plaintiffs reserve the right to revise the Class definition based on facts
4 learned in the course of litigating this matter.

5 61. The Product sold by Defendant suffer from illegal product labelling as
6 described herein.

7 62. Numerosity: This action has been brought and may properly be maintained
8 as a class action against Defendant under Rules 23(b)(1)(B) and 23(b)(3) of the Federal
9 Rules of Civil Procedure. While the exact number and identities of other Class Members
10 are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are
11 hundreds of thousands of Members in the Class. Based on sales of the Product it is
12 estimated that the Class is composed of more than 10,000 persons. Furthermore, even if
13 subclasses need to be created for these consumers, it is estimated that each subclass would
14 have thousands of Members. The Members of the Class are so numerous that joinder of
15 all Members is impracticable and the disposition of their claims in a class action rather
16 than in individual actions will benefit the parties and the courts.

17 63. Typicality: Plaintiffs' claims are typical of the claims of the Members of the
18 Class as all Members of the Class are similarly affected by Defendant's wrongful
19 conduct, as detailed herein.

20 64. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
21 Members of the Class in that she has no interests antagonistic to those of the other
22 Members of the Class. Plaintiffs have retained experienced and competent counsel.

23 65. Superiority: A class action is superior to other available methods for the fair
24 and efficient adjudication of this controversy. Since the damages sustained by individual
25 Class Members may be relatively small, the expense and burden of individual litigation
26 makes it impracticable for the Members of the Class to individually seek redress for the
27 wrongful conduct alleged herein. Furthermore, the adjudication of this controversy
28 through a class action will avoid the potentially inconsistent and conflicting adjudications

1 of the claims asserted herein. There will be no difficulty in the management of this action
2 as a class action. If Class treatment of these claims were not available, Defendant would
3 likely unfairly receive thousands of dollars or more in improper revenue.

4 66. Common Questions Predominate: Common questions of law and fact exist
5 as to all Members of the Class and predominate over any questions solely affecting
6 individual Members of the Class. Among the common questions of law and fact
7 applicable to the Class are:

8 i. Whether Defendant failed to disclose the presence of the artificial
9 flavoring ingredient d-1-malic acid in the Product;

10 ii. Whether Defendant's labelling omissions and representations
11 constituted false advertising under California law;

12 iii. Whether Defendant's conduct constituted a violation of California's
13 Unfair Competition Law;

14 iv. Whether Defendant's conduct constituted a violation of California's
15 Consumer Legal Remedies Act;

16 v. Whether Defendant's conduct constituted a breach of express
17 warranties, or implied warranties under California's Commercial Code;

18 vi. Whether Defendant's conduct constituted a breach of express
19 warranties, or implied warranties under state common law;

20 vii. Whether Defendant's conduct violates U.S. Food and Drug
21 Administration labelling regulations;

22 viii. Whether the Class is entitled to restitution, rescission, actual
23 damages, punitive damages, attorneys' fees and costs of suit, and injunctive relief;

24 ix. Whether the valuations of the Product contain the proper measure of
25 restitution, rescission, actual damages, punitive damages, and attorneys' fees the
26 Class is entitled to; and

27 x. Whether members of the Class are entitled to any such further relief
28 as the Court deems proper.

1 67. The class is readily definable, and prosecution of this action as a Class action
2 will reduce the possibility of repetitious litigation. Plaintiffs know of no difficulty which
3 will be encountered in the management of this litigation which would preclude their
4 maintenance of this matter as a Class action.

5 68. The prerequisites to maintaining a class action for injunctive relief or
6 equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to
7 act on grounds generally applicable to the Class, thereby making appropriate final
8 injunctive or equitable relief with respect to the Class as a whole.

9 69. The prerequisites to maintaining a class action for injunctive relief or
10 equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to
11 the Class predominate over any questions affecting only individual Members; and a class
12 action is superior to other available methods for fairly and efficiently adjudicating the
13 controversy.

14 70. The prosecution of separate actions by Members of the Class would create
15 a risk of establishing inconsistent rulings and/or incompatible standards of conduct for
16 Defendant. Additionally, individual actions may be dispositive of the interest of all
17 Members of the Class, although certain Class Members are not parties to such actions.

18 71. Defendant's conduct is generally applicable to the Class as a whole and
19 Plaintiffs seek, inter alia, equitable remedies with respect to the Class as a whole. As
20 such, Defendant's systematic policies and practices make declaratory relief with respect
21 to the Class as a whole appropriate.

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

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

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

18 75. Plaintiffs and the Class were unaware of these omitted material facts and
19 would not have purchased the Product, or would have paid less for the Product, if they
20 had known of the concealed facts.

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

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

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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 Nationwide Class and the California Class)

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

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

87. Plaintiffs and the Class are “consumers” as defined by Cal. Civ. Code § 1761(d). The Product is a “good” as defined by Cal. Civ. Code § 1761.

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

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

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

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

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

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

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

1 91. On or about November 9, 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 92. Wherefore, Plaintiffs seek 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 Nationwide Class and the California Class)**

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

18 94. 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 95. The UCL borrows violations of other laws and statutes and considers those
23 violations also to constitute violations of California law.

24 96. 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 97. Among other violations, Defendant’s conduct in unlawfully packaging and
28 labeling and distributing the Product in commerce in California violated U.S. FDA and
California packaging and labeling regulations.

1 98. The Product’s front labels fail to disclose that they contain synthetic
2 artificial flavoring in violation of 21 C.F.R. § 101.22 and California’s Sherman Law.

3 99. The Product contain the synthetic dl-malic acid flavoring ingredient.

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

6 101. The dl-malic acid in Dirty’s Salt and Vinegar Chip Product is not derived
7 from any natural material as defined in the applicable state regulations and is therefore,
8 by law, an artificial flavoring.

9 102. Defendant fails to inform consumers of the presence of artificial flavors in
10 the Product on the front label as required by law.

11 103. Defendant’s packaging, labeling, advertising, and marketing is
12 intentionally designed to give consumers the impression that they are buying an all-
13 natural product instead of a product that contains artificial flavors, and are therefore
14 likely to deceive reasonable consumers.

15 104. Defendant’s conduct further violates other applicable California and federal
16 regulations as alleged herein.

17 105. Defendant’s practices are therefore unlawful under Section 17200 *et seq.*
18 of the California Civil Code.

19 **FIFTH CAUSE OF ACTION**

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

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

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

23 106. Plaintiffs re-allege and incorporate by reference each and every allegation
24 contained elsewhere in this Complaint as if fully set forth herein.

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

28 108. Defendant’s practices as described herein are “unfair” within the meaning
of the California Unfair Competition Law because the conduct is unethical and injurious

1 to California residents and the utility of the conduct to Defendant does not outweigh the
2 gravity of the harm to consumers.

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

10 110. Defendant's conduct with respect to the labeling, advertising, and sale of
11 Defendant's Product was also unfair to consumers because it allows Defendant to sell
12 the Product to consumers who otherwise would not purchase a product that is artificially
13 flavored. The consumer injury was substantial, not outweighed by benefits to consumers
14 or competition, and not one that consumers themselves could reasonably have avoided.

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

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

20 113. Plaintiffs' purchases and all Class members' purchases of the Product all
21 took place in California.

22 114. Defendant labeled the Product in violation of federal regulations and
23 California law requiring truth in labeling.

24 115. Defendant consciously failed to disclose material facts to Plaintiffs and the
25 Class in Defendant's advertising and marketing of the Product.

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

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

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

9 117. Defendant intended that Plaintiffs and the Class rely on Defendant's acts
10 and omissions to induce them to purchase the Product.

11 118. Had Defendant disclosed all material information regarding the Product,
12 Plaintiffs and the Class would not have purchased the Product or would only have been
13 willing to pay less for the Product than they did.

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

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

24 121. Section 17200 also prohibits any "unfair, deceptive, untrue or misleading
25 advertising." For the reasons set forth above, Defendant engaged in unfair, deceptive,
26 untrue and misleading advertising in violation of California Business & Professions
27 Code § 17200.

28 122. Pursuant to California Business & Professions Code § 17203, Plaintiff
seeks an order requiring Defendant to immediately cease such acts of unlawful, unfair,

1 and fraudulent business practices and requiring Defendant to return to the Class the
2 amount of money improperly collected.

3 **SIXTH CAUSE OF ACTION**

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

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

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

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

9 124. Defendant made and distributed, in California and in interstate commerce,
10 a Product that unlawfully fail to disclose the presence of artificial flavoring as required
11 by federal and state food labeling regulations.

12 125. The Product’s labeling and advertising in California presents the Product
13 as if it is solely naturally-flavored.

14 126. Under California’s False Advertising Law (“FAL”), Business and
15 Professions Code § 17500 *et seq.*,

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

25 127. Defendant’s labeling and advertising statements on the Product’s label and
26 in advertising and marketing materials are “advertising device[s]” under the FAL.

27 128. Defendant’s labeling and advertising statements, which communicated to
28 consumers that the Product contains “all natural” ingredients and concealed the fact that
they contain synthetic artificial flavor, were untrue and misleading, and Defendant at a

1 minimum by the exercise of reasonable care should have known those actions were false
2 or misleading.

3 129. 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)**

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

10 131. The Product's front label representations misleadingly suggest that the
11 Product is flavored only with natural ingredients such as vinegar and contains no
12 artificial flavors.

13 132. Defendant's front label statement of contents, for example, "Vinegar", was
14 an affirmative representation of the Product's composition creating an express warranty.

15 133. These promises became part of the basis of the bargain between the parties
16 and thus constituted an express warranty, which Defendant breached: The Product is
17 artificially flavored.

18 134. Defendant sold the goods to Plaintiffs and the other Class members who
19 bought the goods from Defendant.

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

21 136. Within a reasonable amount of time after Plaintiffs discovered that the
22 Product contained synthetic flavorings, Plaintiffs notified Defendant of such breach.

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

25 **EIGHT CAUSE OF ACTION**

26 **BREACH OF IMPLIED WARRANTIES,**

27 **CAL. COMM. CODE § 2314**

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

138. Plaintiffs re-allege and incorporate the allegations made elsewhere in the

1 Complaint as if set forth in full herein.

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

6 140. The Product's front label misleadingly imply that the Product is flavored
7 only with the natural ingredients comprising the characterizing flavors.

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

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

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

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

18 145. The Product was not suitable for this purpose.

19 146. Plaintiffs purchased the Product believing it had the qualities Plaintiffs
20 sought, based on the deceptive advertising and labeling, but the Product was actually
21 unsatisfactory to Plaintiffs for the reasons described herein.

22 147. The Product was not merchantable in California, as it was not of the same
23 quality as other products in the category generally acceptable in the trade.

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

27 149. The Product also was not acceptable commercially and breached the
28 implied warranty because it was not adequately packaged and labeled as required. Cal.
Comm. Code 2314(2)(e).

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

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

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

11 153. Within a reasonable amount of time after the Plaintiffs discovered that the
12 Product breached these warranties, Plaintiffs notified Defendant of such breach.

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

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

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for relief and judgment against Defendant as
20 follows:

21 (A) For an Order certifying the Class pursuant to Federal Rule of Civil
22 Procedure 23, appointing Plaintiffs as class representatives, and designating
23 Plaintiffs' counsel as counsel for the Class;

24 (B) For an Order declaring that Defendant's conduct violated the CLRA,
25 Cal. Civ. Code § 1750, et seq.;

26 (C) For an Order declaring that Defendant's conduct violated the UCL, Cal.
27 Business & Professions Code § 17200, et seq.;

28 (D) For an Order declaring that Defendant's conduct violated the FAL, Cal.
Business & Professions Code § 17500, et seq.;

1 (E) For an Order declaring that Defendant's conduct violated express
2 warranties, implied warranties, or both;

3 (F) For injunctive relief as pleaded or as the Court may deem proper;

4 (G) For an order of restitution and all other forms of equitable monetary
5 relief, as pleaded;

6 (H) For compensatory damages in amounts to be determined by the Court
7 and/or jury;

8 (I) For punitive damages;

9 (J) For prejudgment interest on all amounts awarded;

10 (K) For an Order awarding Plaintiffs and the Class their reasonable
11 attorneys' fees and expenses and costs of suit, and

12 (L) For such other and further relief as the Court deems just and proper.

13
14 **JURY DEMAND**

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

17
18 DATED: November 20, 2018

Respectfully Submitted,

19
20 /s/ Ronald A. Marron

21 Ronald A. Marron

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

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Counsel for Plaintiffs and the Proposed Class

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Frank Lepiane and Jamillah Dunn

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

(c) Attorneys (Firm Name, Address, and Telephone Number) The Law Offices of Ronald A. Marron 651 Arroyo Drive, San Diego, CA 92103 619-696-9006

DEFENDANTS

UTZ Quality Foods, LLC

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

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

Attorneys (If Known)

'18CV2659 LAB MDD

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and codes.

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 11/20/2018 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.