

NATHAN & ASSOCIATES, APC

Reuben D. Nathan (State Bar No. 208436)
2901 W. Coast Highway, Suite 200
Newport Beach, CA 92663
Tel. No.: (949) 270-2798
Fax No.: (949) 209-0303
E-Mail: rnathan@nathanlawpractice.com

Matthew Righetti, Esq. State Bar No. 121012

John Glugoski, Esq. State Bar No. 191551

RIGHETTI GLUGOSKI, P.C.

456 Montgomery Street, Suite 1400
San Francisco, CA 94101
Telephone: (415) 983-0900
Facsimile: (415) 397-9005
Email: matt@righettilaw.com
Email: jglugoski@righettilaw.com

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

RUBEN HARPER, on behalf of herself
and all others similarly situated,

Case No.

Plaintiffs,

CLASS ACTION COMPLAINT

VS

JURY TRIAL DEMANDED

MONDELÉZ INTERNATIONAL, INC.;
MONDELÉZ GLOBAL LLC; and DOES
1 through 10, Inclusive.

Defendants.

1 Plaintiff, RUBEN HARPER (“Plaintiff”) brings this action on behalf of himself
 2 and all others similarly situated against MONDELÉZ INTERNATIONAL, INC. and
 3 MONDELÉZ GLOBAL LLC (“MONDELÉZ” or “Defendants”). Plaintiff makes the
 4 following allegations based upon information and belief, except as to the allegations
 5 specifically pertaining to himself, which are based on personal knowledge.

6 INTRODUCTION

7 1. Mondelēz International, Inc. and Mondelēz Global
 8 LLC (“MONDELÉZ”) is an American multinational food and beverage company
 9 based in Deerfield, Illinois. MONDELÉZ employs approximately 80,000 individuals
 10 worldwide. It consists of the global snack and food brands of Kraft Foods, Inc., which
 11 occurred after October 2012. MONDELÉZ manufactures, distributes, and packages
 12 several brands, including, but not limited to Oreo, Cadbury, Chips Ahoy, and Trident.
 13 On its website, MONDELÉZ states that “people don't want to have to choose between
 14 snacking and eating right” and its products are “made the right way,” indicating that it
 15 exudes transparency in representations on its labeling and statements it makes on its
 16 packaging to its consumers¹.

17 2. Oreo’s can be found in homes across America and can be found at almost
 18 any retail store in America such Safeway, Walmart, Costco, Target, and even gas
 19 stations. According to MONDELÉZ website, Oreo’s were first made in March 6,
 20 1912, “when two decoratively embossed chocolate-flavored wafers met up with a rich
 21 crème filling” and “[t]oday, *Oreo* is the world’s top selling cookie.”²

22 3. MONDELÉZ manufactures, distributes, advertises and sells Oreo
 23 products with specific representations “ALWAYS MADE WITH REAL COCOA” and
 24 “REAL COCOA.” Among these MONDELÉZ Oreo products that are purportedly
 25 “ALWAYS MADE WITH REAL COCOA” and “REAL COCOA,” include the following:
 26

27 ¹ <https://www.mondelezinternational.com/about-us/our-purpose-strategy>

28 ² <https://www.mondelezinternational.com/newsroom/our-stories/oreo-little-known-facts>

- a. Oreo (original);
- b. Chocolate;
- c. Mint;
- d. Mega stuff;
- e. Birthday cake;
- f. Peanut butter;
- g. Reduced fat;
- h. Hot & spicy cinnamon;
- i. Rocky road trip;
- j. Peppermint bark;
- k. Dark chocolate;
- l. Red velvet;
- m. Double stuff;
- n. Thins – mint;
- o. Thins – coconut crème;
- p. Thins – latte;
- q. Thins - pistachio;
- r. And any other MONDELĒZ products that claim that its Oreo products are “ALWAYS MADE WITH REAL COCOA” and “REAL COCOA” (hereinafter collectively referred to as the “Products”).

4. Consistent with Defendants’ self-promotion as a leader in snack foods, the front of the packaging of the Products state in prominent, lettering that contains “ALWAYS MADE WITH REAL COCOA” and “REAL COCOA.” To reinforce the message that the Products contain ‘REAL COCOA.’ MONDELĒZ uses imagery and coloring on the front packaging, including the use of smaller font for other words³,

³ MONDELĒZ uses similar words in smaller font such as “Delicious” to promote the representations re: “REAL COCOA.”

1 “MADE WITH” to ensure its consumers know Oreo’s are made with “REAL COCOA.”
2 This is further supported by the fact that some of Defendants’ Products only have the
3 representations “REAL COCOA.” Defendants’ representations that the Oreo Products
4 are made with “REAL COCOA” are false, misleading, and deceptive. This labeling
5 deceives consumers into believing that they are eating products with “REAL
6 COCOA,” but Defendants’ Products do not live up to these claims.

7 5. Contrary to the labeling, however, it is alleged that each of the Products
8 is not made with ‘REAL COCOA,’ but instead is processed with alkali.

9 6. Defendants’ representations are false, misleading, unfair, unlawful, and
10 are likely to deceive members of the public, and continues to do so. Defendants’
11 practices violate California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750
12 *et seq.* (“CLRA”), California’s Unfair Competition Law, Cal. Bus. & Prof. Code
13 § 17200 *et seq.* (“UCL”), California’s False Advertising Law, and Cal. Bus. & Prof.
14 Code § 17500 *et seq.* (“FAL”). In addition, Defendants’ representations also give rise
15 to Plaintiff nationwide class claims for fraud, unjust enrichment and breach of express
16 warranty.

17 JURISDICTION AND VENUE

18 7. This Court has personal jurisdiction over Defendants. Defendants
19 purposefully avails itself of the California consumer market and distributes the
20 Products to hundreds of locations within this County and thousands of retail locations
21 throughout California, where the Products are purchased by thousands of consumers
22 every day.

23 8. This Court has original subject-matter jurisdiction over this proposed
24 class action pursuant to 28 U.S.C. § 1332(d), which, under the provisions of the Class
25 Action Fairness Act (“CAFA”), explicitly provides for the original jurisdiction of the
26 federal courts in any class action in which at least one hundred (100) members are in
27 the proposed plaintiff class, any member of the plaintiff class is a citizen of a State
28 different from any defendant, and the matter in controversy exceeds the sum of

1 \$5,000,000.00, exclusive of interest and costs. Plaintiff alleges that the total claims of
2 individual members of the proposed Class (as defined herein) are well in excess of
3 \$5,000,000.00 in the aggregate, exclusive of interest and costs.

4 9. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial
5 acts in furtherance of the alleged improper conduct, including the dissemination of
6 false and misleading information regarding the nature, quality, and/or ingredients of
7 the Products, occurred within this District.

8 PARTIES

9 10. Plaintiff Ruben Harper is a citizen of California. Within the last three (3)
10 years, Mr. Harper made several purchases of the Products from various stores in and
11 near San Francisco County and San Joaquin County, California. Prior to purchasing,
12 Mr. Harper also saw, read and relied on the representation and warranty on the front
13 label that the Products are “ALWAYS MADE WITH REAL COCOA.” Mr. Harper
14 understood these representations to mean that the Products contained no preservatives.
15 Mr. Harper purchased the Products at a substantial price premium, and would not have
16 bought the Products had he known that the labeling he relied on was false, misleading,
17 deceptive and unfair. Mr. Harper would purchase the Products again in the future if
18 Defendants changed the composition of the Products so that they conformed to their
19 labeling and marketing.

20 11. Defendant MONDELÉZ INTERNATIONAL, INC. and MONDELÉZ
21 GLOBAL LLC (“MONDELÉZ” or “Defendants”) are corporations and limited
22 liability company organized under the laws of Delaware with its headquarters and
23 principal place of business at Deerfield, Illinois. Defendants produce, market and
24 distribute a variety of brands (including the Oreo Products) across the United States.
25 Defendants knew that the labeling of the Products is false and misleading to a
26 reasonable consumer, because the Products are not made with real cocoa.

27 12. Does 1 through 10 are fictitious names. That the true names and
28 capacities, whether individual, corporate, associate or otherwise of each of the

Defendants designated herein as a DOE are unknown to Plaintiffs at this time, who therefore, sue said Defendants by fictitious names, and will ask leave of this Court for permission to amend this Complaint to show their names and capacities when the same have been ascertained. Plaintiffs are informed and believe and thereon allege that each of the Defendants designated as a DOE is legally responsible in some manner for the events and happenings herein referred to, and caused injuries and damages thereby to these Plaintiffs as alleged herein.

FACTUAL ALLEGATIONS

13. According to MONDELÉZ, it sells the top selling cookie in the world, Oreo cookies. The front label of the Products states, “ALWAYS MADE WITH REAL COCOA” or “REAL COCOA.” According to Merriam-Webster, the “real” is defined as not artificial, fraudulent, or illusory⁴. Defendants’ claims of “ALWAYS MADE WITH REAL COCOA” or “REAL COCOA”⁵ is intended to differentiate the cocoa in the Products from cocoa that has been processed, such as cocoa powder “processed with alkali.” Examples of Defendants representations on the front label of their packaging set forth below:



⁴ <https://www.merriam-webster.com/dictionary/real>

⁵ There are variations of the “REAL COCOA” representations, some of which are supported by different modifiers before and after the “REAL COCOA” statements.



14. Cocoa powder is an unsweetened powder produced by grinding the seeds of the fruit of a tropical evergreen tree called the cacao, or cocoa tree⁶. The cacao tree produces fruit, which contains a cocoa pod. Each cocoa pod contains approximately 30-50 beans. The beans are removed from the pod, fermented, and dried. The cocoa beans are cracked and the shells are separated from nibs. The nibs are roasted to a rich brown color and ground into chocolate liquid called cocoa liquor. The liquid solidifies after cooling and cocoa butter is extracted. The solid blocks that remain are pressed to produce cocoa powder. Natural cocoa powder is astringent, by its bitter taste and has a light brown color.

15. The health benefits associated with cocoa are widely accepted⁷. Natural

⁶ <https://www.thespruceeats.com/what-is-cocoa-powder-520351>

⁷ Cocoa and dark chocolate increasingly have been associated with cardiovascular health benefits. These include increasing vasodilation (12) and coronary arterial output (13) as well as decreasing blood pressure (14, 15) and platelet aggregation (16). These combined effects, along with epidemiological studies that show lowering of blood pressure (17) and decreases in mortality due to cardiovascular disease (17, 18), suggest that cocoa powder and dark chocolate are associated with heart and circulatory benefits. These benefits are thought to be conferred, in part, by the flavanol antioxidants found in cocoa. Impact of Alkalization on the Antioxidant and Flavanol Content of Commercial Cocoa Powders, Kenneth B. Miller, et al. J. Agric. Food Chem. 2008, 56, 8527–8533 8527.

cocoa powder's health benefits include a high amount of flavanols and fiber. Cocoa is a food ingredient that is important for the contribution of flavor to foods and it clearly has associated with health benefits. Flavanol (flavan-3-ol) antioxidants⁸ are responsible for cardiovascular health benefits. It is a well-known fact that natural cocoas are high in flavanols. Flavonoids are a class of antioxidants that are abundant in both cacao and cocoa powder. Flavonoids inhibit pro-inflammatory enzymes in the body, meaning that they have a widespread anti-inflammatory effect. Additionally, flavonoids have been associated with higher levels of "healthy" HDL cholesterol and better overall cardiovascular health. In a study, the results showed that natural cocoas tend to group with the highest total flavanols ranging from 22.86 to 40.25 mg/g. The lightly alkali processed cocoa powders ranged from 8.76 to 24.65 mg/g total flavanols, the medium alkali treated powders from 3.93 to 14.00 mg/g, and the heavily alkali treated powders from 1.33 to 6.05 mg/g total flavanols. Natural cocoas showed the highest levels of ORAC and TP. Both antioxidant capacity and TP were highly negatively correlated with pH⁹. Natural (nonalkalized powders) have the highest ORAC, total polyphenols ("TP")¹⁰ and flavanols (including procyanidins). When cocoa is processed with alkali, also known as Dutch processing or Dutching, the flavanols and TP's are substantially reduced.¹¹

16. A study conducted by Label Insight surveyed more than 1,500 consumers to determine what they expect from brands when it comes to product

⁸ Gu, L.; House, S. S.; Wu, X.; Ou, B.; Prior, R. L. Procyanidin and catechin contents and antioxidant capacity of cocoa and chocolate product. *J. Agric. Food Chem.* 2006, 54, 4057–4061.

⁹ <https://life-enhancement.com/pages/effect-of-treating-cocoa-with-alkali-the-dutching-process>

¹⁰ Singleton, V.; Rossi J. Colorimetry of total polyphenols with phosphomolybdic-phosphotungstic acid reagents. *Am. J. Enol. Vitic.* 1965, 16, 144-58.

¹¹ Gu, L.; Kelm, M.; Hammerstone, J. F.; Beecher, G.; Cunningham, D.; Vannozzi, D.; Prior, R. Fractionation of polymeric procyanidins from low-bush blueberry and quantification of procyanidins in selected foods with an optimized normal phase HPLC-MS fluorescence detection method. *J. Agric. Food Chem.* 2002, 50, 4852–4860; Kolbe, F. X. A study of natural and alkali process cocoa powders *Manuf. Confect.* 1964, May, 31-34.

1 information. The survey results indicate that the vast majority of consumers value
 2 product transparency and consider a wide array of information about a particular
 3 product before making purchase decisions. Sixty-seven percent (67%) of consumers
 4 believe it is the brand or manufacturer responsibility to provide them with complete
 5 product information. Consumers expect brands to provide complete and accurate
 6 information about the product. Ninety-four percent (94%) of consumers say that they
 7 want manufacturers to be transparent about the actual ingredients in food and how it is
 8 made. The study found that consumers lack access to the complete set of information
 9 they're looking for in order to make informed purchase decisions when shopping for
 10 groceries. Even when the information is provided, they don't fully understand what it
 11 means due to inconsistency, information overload and misinformation¹².

12 17. Defendants' representations "ALWAYS MADE WITH REAL COCOA"
 13 and "REAL COCOA" is false, misleading and deceptive to consumers. Defendants'
 14 representations are misleading because the front-label claims¹³ the Products contain
 15 "REAL COCOA" representing to consumers that the 'cocoa' in the Products are in an
 16 unadulterated, non-artificial form. In the United States, food-labeling regulations
 17 require that alkalized cocoa powder or liquor must be declared as 'cocoa (liquor)
 18 treated with alkali' or 'cocoa processed with alkali.'¹⁴ The two basic types of cocoa
 19 powder are natural process and the Dutch (or alkalized) process, which manufacturers
 20

21 _____
 22 ¹² https://www.labelinsight.com/hubfs/Label_Insight-Food-Revolution-Study.pdf?hsCtaTracking=fc71fa82-7e0b-4b05-b2b4-de1ade992d33%7C95a8befc-d0cc-4b8b-8102-529d937eb427

23 ¹³ NMI highlighted consumers' attitudes and behaviors toward a wide array of issues related to trends in foods and
 24 beverage usage. These insights, gleaned from an annual, nationally representative sample of more than 3,000 adults,
 25 provided an understanding of the attitudes, motivations and behaviors. The survey revealed that transparency in labeling
 26 is equally or more important than the contents themselves. Consumers increasingly monitor their food labels and base
 27 purchase decisions on them. More than three-quarters of consumers report package labels influence their purchases.
 28 <https://www.nmisolutions.com/research-reports/health-a-wellness-reports/17th-annual-consumer-report-2016-health-and-wellness-trends-in-america>

¹⁴ 21 C.F.R. 163.112 (Code of Federal Regulations); Kolbe, F. X. A study of natural and alkali process cocoa powders *Manuf. Confect.* 1964, May, 31-34.

1 label in one of these two formats. The pH level for pure ground cocoa powder is
2 between 5.3 and 5.8, which is to say that it is acidic and it is edible. However, the
3 acidity does have an impact by affecting its flavor, the way it interacts with other
4 ingredients and its solubility. The Dutch process is a technique that washes the cocoa
5 beans in an alkaline solution (prior to roasting or grounding), which produces a cocoa
6 powder that is not only darker brown, but less acidic with a pH of between 6.8 and 8.1.
7 Under this process cocoa powder dissolves more easily, which makes it easier to
8 disperse when working with recipes for products such as the Oreo Products. One
9 problem is that it detracts from the non-artificial cocoa taste providing for a milder
10 flavor. The treatment of cocoa with alkali has a detrimental impact by reducing
11 flavanols, which is approximately 40% of the natural level of flavanols is retained on
12 average for lightly Dutched powders and an average of about 22% is retained in
13 medium alkali treated powders. Alkali treatment substantially reduces the level of
14 flavanols in cocoa powders, negatively impacts the health benefits, which represents
15 an important processing step during which losses can occur.”¹⁵

16 18. Defendants’ misrepresentations are further enunciated by the fact, it
17 ensures that consumers focus on the “ALWAYS” and “REAL COCOA,” which is
18 contained in larger font than the “MADE WITH” representations. Additionally, the
19 “ALWAYS MADE WITH REAL COCOA” is contained in a light blue highlighted square
20 that stands out to consumers against the dark blue packaging. Consumers have certain
21 expectations based on experience when it comes to how “cocoa” is declared on a
22 label, because cocoa is a commonly used and valued product.

23 19. No reasonable consumer would expect the cocoa in the Products to have
24 been processed with alkalis, because “real” represents the cocoa powder is included in
25
26

27
28 ¹⁵ Miller et al., Impact of alkalization on the antioxidant and the flavanol content of commercial cocoa powders. J Agric Food Chem 56:8527-33 (2008).

1 its most unadulterated, non-artificial form¹⁶.

2 20. It is false, deceptive and misleading to conspicuously promote “real
3 cocoa” without any reference to the presence and use of alkalis either preceding or
4 following because “real cocoa” without any modifying terms implies the absence of
5 artificial ingredients in the cocoa.

6 21. By representing that the Products are “ALWAYS MADE WITH REAL
7 COCOA” or “REAL COCOA,” Defendants have taken advantage of consumers’
8 preferences for foods with particular labeling or that have not undergone a certain
9 process. Consumers pay more for these foods, such as cocoa, as a result of labeling
10 that provides for perceived benefits.

11 22. Plaintiff and the Class Members reasonably relied on Defendants’ false
12 and/or misleading representations that the Products are “ALWAYS MADE WITH REAL
13 COCOA” or “REAL COCOA”. Plaintiff and Class Members did not know and had
14 no reason to know, that the Products were misbranded, false, and misleading and
15 would not have bought the Products had they known the truth about them.
16 Defendant’s representations that the Products are “ALWAYS MADE WITH REAL
17 COCOA” or “REAL COCOA” is material to a reasonable consumer, including
18 Plaintiff and Class Members when deciding to purchase it and in fact was material to
19 the purchase of the Products.

20 CLASS ACTION ALLEGATIONS

21 23. Plaintiff seeks to represent a class defined as all persons in the United
22 States who purchased the Products during the class period (the “Class”). Excluded
23 from the Class is Defendants, its affiliates, employees, officers and directors, persons
24
25

26 ¹⁶ A majority of consumers “say that when it comes to ingredient trends, a back-to-basics mind-set, focused on simple
27 ingredients and fewer artificial or processed foods, is a priority.” Nielsen Marketing Research, Reaching for Real
28 Ingredients: Avoiding the Artificial, Nielsen, CPG, FMCG & Retail, Sept. 6, 2016
<https://nielsen.com/us/en/insights/news/2016/reaching-for-real-ingredients-avoiding-the-artificial.html>

1 or entities that purchased the Products for resale, and the Judge(s) assigned to this
2 case.

3 24. Plaintiff also seeks to represent a Subclass of all persons in California
4 who purchased the Products during the class period (the “California Subclass”).
5 Excluded from the California Subclass are Defendants, its affiliates, employees,
6 officers and directors, persons or entities that purchased the Products for resale, and
7 the Judge(s) assigned to this case.

8 25. There is a well-defined community of interest in the questions of law and
9 fact involved in this case. Questions of law and fact common to the members of the
10 putative classes that predominate over questions that may affect individual Class
11 Members include, but are not limited to the following:

- 12 a. whether Defendants misrepresented material facts concerning the
13 Products on the label of every product;
- 14 b. whether Defendants’ conduct was unfair and/or deceptive;
- 15 c. whether Defendants have been unjustly enriched as a
16 result of the unlawful, fraudulent, and unfair conduct
17 alleged in this Complaint such that it would be
18 inequitable for Defendants to retain the benefits
19 conferred upon them by Plaintiff and the Class and
20 California Sub-Class;
- 21 d. whether Defendants breached express warranties to Plaintiff and
22 the classes;
- 23 e. whether Plaintiff and the classes have sustained damages
24 with respect to the common-law claims asserted, and if so,
25 the proper measure of their damages.

26 26. Plaintiff’s claims are typical of those of other Class Members because
27 Plaintiff, like all members of the classes, purchased Defendants’ Products bearing the
28

1 “ALWAYS MADE WITH REAL COCOA” and “REAL COCOA” representations and
 2 Plaintiff sustained damages from Defendants’ wrongful conduct.

3 27. Plaintiff will fairly and adequately protect the interests of the classes and
 4 have retained counsel that is experienced in litigating complex class actions. Plaintiff
 5 has no interests which conflict with those of the classes.

6 28. A class action is superior to other available methods for the fair and
 7 efficient adjudication of this controversy.

8 29. The prerequisites to maintaining a class action for equitable relief are met
 9 as Defendants have acted or refused to act on grounds generally applicable to the
 10 classes, thereby making appropriate equitable relief with respect to the classes as a
 11 whole.

12 30. The prosecution of separate actions by members of the classes would
 13 create a risk of establishing inconsistent rulings and/or incompatible standards of
 14 conduct for Defendants. For example, one court might enjoin Defendants from
 15 performing the challenged acts, whereas another might not. Additionally, individual
 16 actions could be dispositive of the interests of the classes even where certain Class
 17 Members are not parties to such actions.

18 **COUNT I**

19 **Violation Of California’s Consumers Legal Remedies Act (“CLRA”),** 20 **California Civil Code §§ 1750, *et seq.*** 21 ***(Injunctive Relief Only)***

22 31. Plaintiff hereby incorporates by reference the allegations contained in all
 23 preceding paragraphs of this complaint.

24 32. Plaintiff Harper brings this claim individually and on behalf of the
 25 members of the proposed California Subclass against Defendants.

26 33. This cause of action is brought pursuant to California’s Consumers Legal
 27 Remedies Act, Cal. Civ. Code §§ 1750-1785 (the “CLRA”).
 28

34. Plaintiff Harper and the other members of the California Subclass are “consumers,” as the term is defined by California Civil Code § 1761(d), because they bought the Products for personal, family, or household purposes.

35. Plaintiff Harper, the other members of the California Subclass, and Defendants have engaged in “transactions,” as that term is defined by California Civil Code § 1761(e).

36. The conduct alleged in this Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for the purpose of the CLRA, and Defendant's conduct was undertaken in transactions intended to result in, and which did result in, the sale of goods to consumers.

37. As alleged more fully above, Defendants have violated the CLRA by falsely representing to Plaintiff Harper and the other members of the California Subclass that the Products are not adulterated or artificial and made with “REAL COCOA” instead of being processed with alkali.

38. As a result of engaging in such conduct, Defendants have violated California Civil Code § 1770(a)(5), (a)(7) and (a)(9).

39. On May 17, 2019, Plaintiff Harper mailed a notice letter to Defendants consistent with California Civil Code § 1782(a). The letter was sent on behalf of Harper and all other persons similarly situated.

40. Accordingly, pursuant to California Civil Code § 1780(a)(3), Plaintiff Harper, on behalf of himself and all other members of the California Subclass, seeks injunctive relief due to Defendants' acts and practices.

COUNT II

**Violation Of California’s Unfair Competition Law (“UCL”),
California Business & Professions Code §§ 17200, *et seq.***

41. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

1 42. Plaintiff Harper brings this claim individually and on behalf of the
2 members of the proposed California Subclass against Defendants.

3 43. Defendants are subject to California's Unfair Competition Law, Cal. Bus.
4 & Prof. Code §§ 17200, *et seq.* The UCL provides, in pertinent part: "Unfair
5 competition shall mean and include unlawful, unfair or fraudulent business practices
6 and unfair, deceptive, untrue or misleading advertising"

7 44. Defendant violates statutes enacted in California and in each of the fifty
8 states and the District of Columbia that are designed to protect consumers against
9 unfair, deceptive, fraudulent, unconscionable trade and business practices, and false
10 advertising. These statutes include:

- 11 a) Alabama Deceptive Trade Practices Act, Ala. Statutes Ann. § 8-19-1, *et seq.*;
- 12 b) Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code §
13 45.50.471, *et seq.*;
- 14 c) Arizona Consumer Fraud Act, Arizona Revised Statutes, § 44-1521, *et seq.*;
- 15 d) Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- 16 e) Colorado Consumer Protection Act, Colo. Rev. Stat. § 6 -1-101, *et seq.*;
- 17 f) Wyoming Consumer Protection Act, Wyoming Stat. Ann. §40-12-101, *et seq.*
- 18 g) Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- 19 h) Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- 20 i) District of Columbia Consumer Protection Procedures Act, D.C. Code § 28
21 3901, *et seq.*;
- 22 j) Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. §501.201,
23 *et seq.*;
- 24 k) Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
- 25 l) Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1,
26 *et seq.*,
- 27 and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes
28 § 481A-1, *et seq.*;

- 1 m) Idaho Consumer Protection Act, Idaho Code § 48-601, et seq.;
- 2 n) Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §
- 3 505/1, et seq.;
- 4 o) Indiana Deceptive Consumer Sales Act, Indiana Code Ann. § 24-5-0.5-0.1, et
- 5 seq.;
- 6 p) Iowa Consumer Fraud Act, Iowa Code § 714.16, et seq.;
- 7 q) Kansas Consumer Protection Act, Kan. Stat. Ann § 50 626, et seq.;
- 8 r) Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, et seq.,
- 9 and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann § 365.020,
- 10 et seq.;
- 11 s) Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev.
- 12 Stat. Ann. §51:1401, et seq.;
- 13 t) Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, et seq., and
- 14 Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, §
- 15 1211, et seq.;
- 16 u) Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, et seq.;
- 17 v) Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch.
- 18 93A;
- 19 w) Michigan Consumer Protection Act, § 445.901, et seq.;
- 20 x) Minnesota Prevention of Consumer Fraud Act, Minn. Stat § 325F.68, et seq.,
- 21 and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. §
- 22 325D.43,
- 23 et seq.;
- 24 y) Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-1, et seq.;
- 25 z) Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, et seq.;
- 26 aa) Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code
- 27 § 30-14-101, et seq.;
- 28 bb) Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601,

et seq., and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, et seq.;

cc) Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. § 598.0903, et seq.;

dd) New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, et seq.;

ee) New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8 1, et seq.;

ff) New Mexico Unfair Practices Act, N.M. Stat. Ann. § 57 12 1, et seq.;

gg) New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law § 349, et seq.;

hh) North Dakota Consumer Fraud Act, N.D. Cent. Code § 51 15 01, et seq.;

ii) North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §75-1, et seq.;

jj) Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. § 4165.01. et seq.;

kk) Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, et seq.;

ll) Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, et seq.;

mm) Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. §201-1, et seq.;

nn) Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws §6-13.1-1, et seq.;

oo) South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, et seq.;

pp) South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws § 37 24 1, et seq.;

qq) Tennessee Trade Practices Act, Tennessee Code Annotated § 47-25-101, et seq.;

1 rr) Texas Stat. Ann. § 17.41, et seq., Texas Deceptive Trade Practices Act;
 2 ss) Utah Unfair Practices Act, Utah Code Ann. § 13-5-1, et seq.;
 3 tt) Vermont Consumer Fraud Act, Vt. Stat. Ann. tit.9, § 2451,
 4 et seq.;
 5 uu) Virginia Consumer Protection Act, Virginia Code Ann. §59.1-196,
 6 et seq.;
 7 vv) Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, et seq.;
 8 ww) West Virginia Consumer Credit and Protection Act, West Virginia Code §
 9 46A-6 -101, et seq.;

10 xx) Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100. 18, et seq.;

11 45. Defendant violated the “unlawful” prong of the UCL by violating the
 12 CLRA and the FAL, and the above referenced statutes in Paragraph 91, as alleged
 13 herein, as well as Cal. Health & Safety Code § 110660 (“Any food is misbranded if its
 14 labeling is false or misleading in any particular”).

15 46. Defendants violated the “unlawful” prong of the UCL by violating the
 16 CLRA and the FAL, as alleged herein.

17 47. Defendants’ misrepresentations and other conduct, described herein,
 18 violated the “unfair” prong of the UCL in that their conduct is substantially injurious
 19 to consumers, offends public policy, and is immoral, unethical, oppressive, and
 20 unscrupulous, as the gravity of the conduct outweighs any alleged benefits.

21 48. Defendants violated the “fraudulent” prong of the UCL by
 22 misrepresenting that the Products are “ALWAYS MADE WITH REAL COCOA” and
 23 “REAL COCOA,” when, in fact, they are processed with alkali.

24 49. Plaintiff Harper and the California Subclass lost money or property as a
 25 result of Defendants’ UCL violations because: (a) they would not have purchased the
 26 Products on the same terms if they knew that the Products’ cocoa were processed with
 27 alkali (b) they paid a substantial price premium compared to other food products due
 28

1 to Defendant's misrepresentations; and (c) the Products do not have the
2 characteristics, uses, or benefits as promised.

3 **COUNT III**

4 **Violation Of California's False Advertising Law ("FAL"),** 5 **California Business & Professions Code §§ 17500, *et seq.***

6 50. Plaintiff hereby incorporates by reference the allegations contained in all
7 preceding paragraphs of this complaint.

8 51. Plaintiff Harper brings this claim individually and on behalf of the
9 members of the proposed California Subclass against Defendants.

10 52. California's False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et*
11 *seq.*, makes it "unlawful for any person to make or disseminate or cause to be made or
12 disseminated before the public in this state, ... in any advertising device ... or in any
13 other manner or means whatever, including over the Internet, any statement,
14 concerning ... personal property or services, professional or otherwise, or performance
15 or disposition thereof, which is untrue or misleading and which is known, or which by
16 the exercise of reasonable care should be known, to be untrue or misleading."

17 53. Defendants committed acts of false advertising, as defined by §§17500,
18 *et seq.*, by misrepresenting that the Products are "ALWAYS MADE WITH REAL
19 COCOA" and "REAL COCOA," when they in fact the cocoa is processed with alkali.

20 54. Defendants knew or should have known through the exercise of
21 reasonable care that their representations about the Products were untrue and
22 misleading.

23 55. Defendants' actions in violation of §§ 17500, *et seq.* were false and
24 misleading such that the general public is and was likely to be deceived. Plaintiff
25 Harper and the California Subclass lost money or property as a result of Defendants'
26 FAL violations because: (a) they would not have purchased the Products on the same
27 terms if they knew that the Products cocoa were processed with alkali; (b) they paid a
28 substantial price premium compared food products due to Defendants'

1 misrepresentations; and (c) the Products do not have the characteristics, uses, or
2 benefits as promised.

3 COUNT IV

4 **Breach of Express Warranty**

5 56. Plaintiff hereby incorporates by reference the allegations contained in all
6 preceding paragraphs of this complaint.

7 57. Plaintiff brings this claim individually and on behalf of the proposed
8 Class, and California Subclass against Defendants.

9 58. Defendants, as the designer, manufacturer, marketer, distributor, and/or
10 seller, expressly warranted that the Products “ALWAYS MADE WITH REAL COCOA”
11 and “REAL COCOA,” meaning that the cocoa is not artificial or processed with
12 alkali.

13 59. Defendants’ express warranties, and its affirmations of fact and promises
14 made to Plaintiff and the Class regarding the Products, became part of the basis of the
15 bargain between Defendants and Plaintiff and the Class, thereby creating an express
16 warranty that the Products would conform to those affirmations of fact,
17 representations, promises, and descriptions.

18 60. The Products do not conform to the express warranty because the cocoa
19 is processed with alkali.

20 61. As a direct and proximate cause of Defendants’ breach of express
21 warranty, Plaintiff and Class Members have been injured and harmed because: (a)
22 they would not have purchased the Products on the same terms if they knew the truth
23 about the Products’ ingredients; (b) they paid a substantial price premium based on
24 Defendants’ express warranties; and (c) the Products do not have the characteristics,
25 uses, or benefits as promised because the cocoa is processed with alkali.
26
27
28

COUNT V

Unjust Enrichment

62. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

63. Plaintiff brings this claim individually and on behalf of the proposed Class, and California Subclass against Defendants.

64. Plaintiff and Class Members conferred benefits on Defendants by purchasing the Products.

65. Defendants have been unjustly enriched in retaining the revenues derived from Plaintiff and Class Members' purchases of the Products. Retention of those monies under these circumstances is unjust and inequitable because of Defendants' misrepresentations about the Products, which caused injuries to Plaintiff and members of the classes because they would not have purchased the Products if the true facts had been known i.e. that the cocoa was processed with alkali.

66. Because Defendants' retention of the non-gratuitous benefits conferred on it by Plaintiff and Class Members is unjust and inequitable, Defendants must pay restitution to Plaintiff and Class Members for their unjust enrichment, as ordered by the Court.

COUNT VI

Fraud

67. Plaintiff hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

68. Plaintiff brings this claim individually and on behalf of the proposed Class, and California Subclass against Defendants.

69. As discussed above, Defendants provided Plaintiff and Class Members with false or misleading material information about the Products by representing that

1 “ALWAYS MADE WITH REAL COCOA” and “REAL COCOA.” Defendants made that
2 misrepresentation knowing it was false because the cocoa is processed with alkali.

3 70. Defendants’ misrepresentations, upon which Plaintiff and Class Members
4 reasonably and justifiably relied, were intended to induce and actually induced
5 Plaintiff and Class Members to purchase the Products.

6 71. Defendants’ fraudulent actions harmed Plaintiff and Class Members, who
7 are entitled to damages and other legal and equitable relief as a result.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff demands judgment on behalf of himself and members
10 of the Class, and California Subclass, as follows:

- 11 A. For an order certifying the nationwide Class, and California Subclass
12 under Rule 23 of the Federal Rules of Civil Procedure; naming Plaintiff
13 as Class and Subclass representatives; and naming Plaintiff’s attorneys as
14 Class Counsel representing the Class and Sub-Class Members;
- 15 B. For an order finding in favor of Plaintiff, the nationwide Class, and the
16 California Subclass on all counts asserted herein;
- 17 C. For an order awarding statutory, compensatory, treble, and punitive
18 damages in amounts to be determined by the Court and/or jury;
- 19 D. For injunctive relief enjoining the illegal acts detailed herein;
- 20 E. For prejudgment interest on all amounts awarded;
- 21 F. For an order of restitution and all other forms of equitable monetary
22 relief; and
- 23 G. For an order awarding Plaintiff his reasonable attorneys’ fees and
24 expenses and costs of suit.
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- 26
- 27
- 28

JURY TRIAL DEMANDED

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

Dated: May 20, 2019

Respectfully submitted,

NATHAN & ASSOCIATES, APC.

By: /s/ Reuben D. Nathan

Reuben D. Nathan

NATHAN & ASSOCIATES, APC

Reuben D. Nathan (State Bar No. 208436)

2901 W. Coast Highway, Suite 200

Newport Beach, CA 92663

Tel. No.: (949) 270-2798

Fax No.: (949) 209-0303

E-Mail: rnathan@nathanlawpractice.com

Matthew Righetti, Esq. State Bar No. 121012

John Glugoski, Esq. State Bar No. 191551

RIGHETTI GLUGOSKI, P.C.

456 Montgomery Street, Suite 1400

San Francisco, CA 94101

Telephone: (415) 983-0900

Facsimile: (415) 397-9005

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

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

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

DEFENDANTS

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)*

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

1 U.S. Government Plaintiff 3 Federal Question
(U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities-- Employment 446 Amer. w/Disabilities--Other 448 Education	PERSONAL INJURY 365 Personal Injury -- Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty OTHER 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-- Conditions of Confinement	625 Drug Related Seizure of Property 21 USC § 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent--Abbreviated New Drug Application 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS--Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation--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):*

Brief description of cause:

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

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

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

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

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

Date and Attorney Signature. Date and sign the civil cover sheet.