

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ARNOLD FISHON, LILLY PEREZ, and TANA
PARKER on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

MARS PETCARE US, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

Demand for Jury Trial

Plaintiffs Arnold Fishon, Lilly Perez, and Tana Parker (collectively, “Plaintiffs”), acting on behalf of themselves and all others similarly situated (“Class Members”), bring this action for damages and equitable relief against Mars Petcare US, Inc. (“Defendant”).

NATURE OF THE CASE

1. Defendant designed, manufactured, distributed, marketed, and sold IAMS Proactive Health Sensitive Skin & Stomach Grain-Free Recipe with Chicken & Peas (“IAMS Food”) to Plaintiffs and Class Members.

2. Dogs can—and often do—have allergic reactions to certain foods, including those that contain grains, such as corn, wheat, or soy. Accordingly, an important consideration for consumers, including Plaintiffs and Class Members, when purchasing pet foods is that certain ingredients are omitted from their pet’s food.

3. Consumers are willingly pay a premium for the IAMS Food because they rely on Defendant’s representations that IAMS Food is specifically formulated for the particular health needs of dogs, that the IAMS food meets certain ingredient promises, and that IAMS adheres to quality and manufacturing standards.

PARTIES

4. Plaintiff Arnold Fishon is a citizen of New York and resides in Hauppauge (Suffolk County).

5. Plaintiff Lilly Perez is a citizen of Tennessee and resides in Middleton Loop (Hardeman County).

6. Plaintiff Tana Parker is a citizen of Virginia and resides in Accomac (Accomack County).

7. Defendant Mars Petcare US, Inc. is a for-profit corporation, organized and existing under the laws of the State of Delaware. Defendant has its National Headquarters in Franklin (Williamson County), Tennessee. Defendant also designs, manufactures, markets, and sells IAMS Food online and through third-party retailers throughout the United States.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the aggregated claims of the individual class members exceed the sum or value of \$5,000,000.00 exclusive of interest and costs, and some of the members of the proposed class are citizens of states different from Defendant.

9. This Court may exercise jurisdiction over Defendant Mars Petcare US, Inc. because its headquarters is located in Tennessee and it is registered to conduct business in Tennessee.

10. Defendant has sufficient minimum contacts in Tennessee. Defendant intentionally avails itself of the markets within Tennessee through the promotion, sale, marketing, and distribution of the IAMS Food, which renders this Court’s exercise of jurisdiction necessary and proper.

11. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant is headquartered here.

FACTUAL ALLEGATIONS

The “Grain Free” and “Soy Free” Misrepresentations

12. Defendant proudly declares the benefits of IAMS Food on its website, on which it claims: “Our quality, easily digestible ingredients provide your dog with healthy skin, a healthy coat, and strong bones.”¹

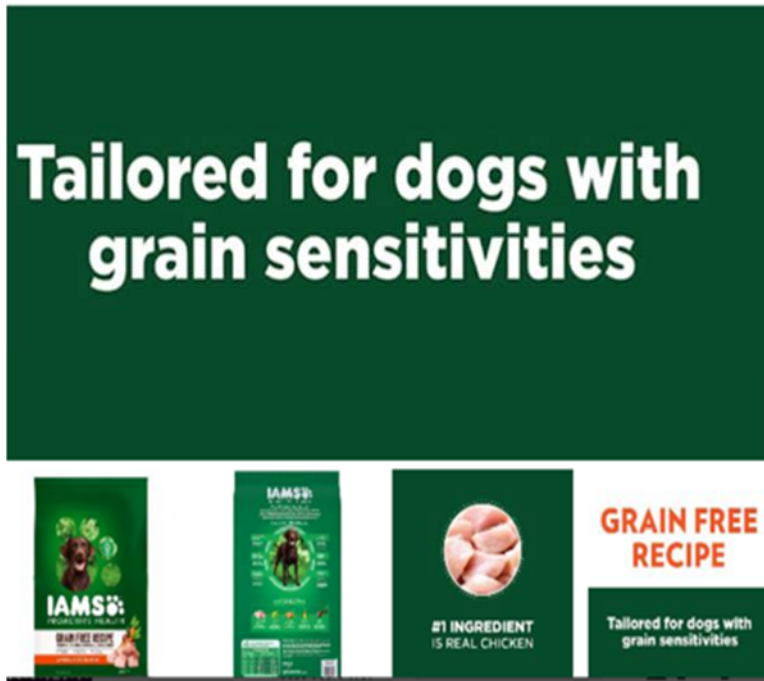
13. Defendant highlights as IAMS Food’s primary selling point that it contains “No Wheat, No Soy, No Artificial Preservatives” and claims the product has a “Grain Free Recipe.”²



14. As a selling point, Defendant also touts that IAMS Food is “[t]ailored for dogs with grain sensitivities.”

¹ *Iams Proactive Health Grain Free Dry Dog Food Recipe with Real Chicken and Peas*, IAMS, <https://www.iams.com/dog-food/proactive-health-dry-dog-food-grain-free-chicken-peas> (last visited July 18, 2019).

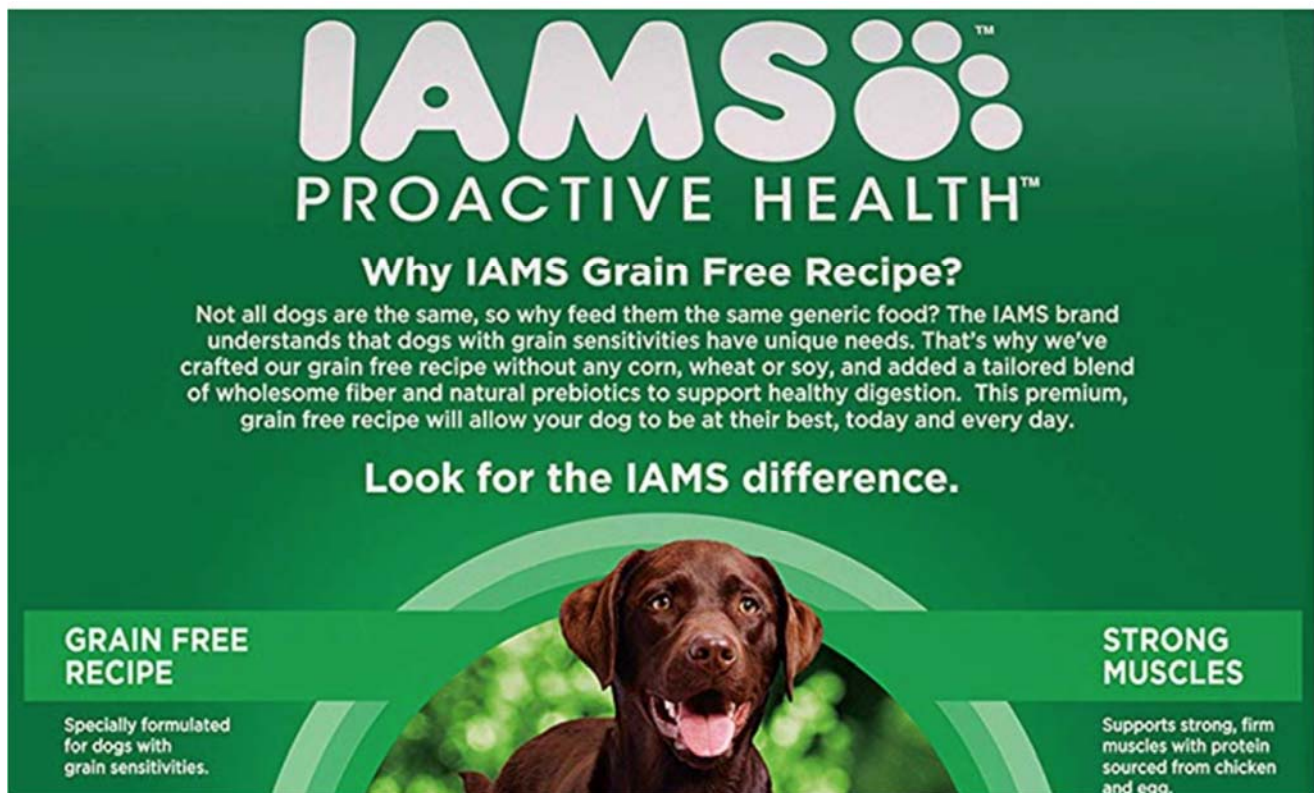
² *See Id.*



15. Defendant's product has "Grain Free" and "Tailored for Dogs with Grain Sensitivities" prominently displayed on the front of each bag.



16. On the back of each bag, IAMS Food packaging states “Why IAMS Grain Free Recipe? Not all dogs are the same, so why feed them the same generic food? The IAMS brand understands that dogs with grain sensitivities have unique needs. That’s why we’ve crafted our grain free recipe without any corn, wheat or soy, and added a tailored blend of wholesome fiber and natural prebiotics to support healthy digestion. This premium, grain free recipe will allow your dog to be at their best, today and every day.”



17. In addition, the back of the IAMS Food bag prominently states: “GRAIN FREE RECIPE” and “NO GRAINS[.]”

22. Defendant emphasizes IAMS Food's alleged absence of soy and grain and the benefits that this formulation provides for dogs that consume its food. When pet owners buy grain free and soy free dog food, they usually do so to prevent a health issue or address nutritional deficiency that their dog may be experiencing. And consumers generally must pay a premium price for specialized pet food formulations.

23. Accordingly, Plaintiffs and Class Members purchased Defendant's IAMS Food instead of cheaper dog food alternatives that admit they contain corn, grain, and soy.

24. Defendant's misrepresentations about the formulation of IAMS Food drive consumers' purchases.

25. When products, such as IAMS Food, contain non conforming ingredients such as corn and soy in levels above trace amounts, it defeats the purpose of the "grain free" and "soy free" representations and the reasons why the Plaintiffs and Class Members purchased the products.

Academic Research Confirms Pet Food Manufacturers Sell Non-Conforming Products

26. Before December 2014, little or no peer-reviewed academic research was published concerning the accuracy of label claims with respect to ingredients present in canine foods.

27. In December 2014, a group of researchers found that only 18% of the pet food samples they tested completely matched the label claims with respect to the content of animal by-products. Thus, 82% of the products analyzed by the researchers contained non-conforming ingredients when compared to their label claims. The December 2014 study hypothesized that raw materials used in the preparation of the canned food products contained multiple protein types and may have contributed to contamination.³

³ See Detection of undeclared animal by-products in commercial canine canned foods: Comparative analyses by ELISA and PCR-RFLP coupled with slab gel electrophoresis or capillary gel electrophoresis by Ming-Kun Hsieh, Pei-Yin Shih, Chia-Fong Wei, Thomas W Vickroy and Chi-Chung Chou completed on December 31, 2014.

28. In 2016, another study looked into the issue of whether vegan pet food contained non-conforming mammalian ingredients.⁴ Vegan pet foods should contain no mammalian proteins or ingredients. The study found that half of the products tested contained non-conforming mammalian DNA in the products, and suggested that manufacturers are ultimately responsible for maintaining adequate end product quality control to prevent such discrepancies between their ingredients and label claims.

29. By 2018, research into pet food products' label claims and the presence of non-conforming ingredients intensified. Out of the 40 products analyzed in one study, the ingredients of only 10 products correctly matched their label.⁵ Of the remaining 30 products, 5 did not contain the declared animal species ingredients and 23 others revealed the presence of undeclared animal species. Two of the products' labels were vague and their accuracy was indeterminable. This 2018 study found that mislabeling was an especially widespread problem in pet foods used for "elimination diets" (i.e. used to investigate food allergies). In this 2018 study, researchers suggested that manufacturers should pay particular attention to both the selection of raw material suppliers and the production processes for pet food due to the high risk of contamination.

30. A second 2018 study (conducted in Europe) tested 11 canine and feline limited ingredient wet food products and found the presence of non-conforming ingredients in 54% of the products.⁶ This study further suggested other peer-reviewed studies found that 80% of the dry foods analyzed contained non-conforming products. This study suggested that the high rate of cross-contamination in dietetic limited-antigen wet canine and feline foods may be due to inadequate quality-control practices in the pet food industry, and opined that the pet food

⁴ See Determination of mammalian deoxyribonucleic acid (DNA) in commercial vegetarian and vegan diets for dogs and cats by K. Kanakubo, A.J. Fascetti and J.A. Larsen completed on March 3, 2016.

⁵ See Undeclared animal species in dry and wet novel and hydrolyzed protein diets for dogs and cats detected by microarray analysis by Rebecca Ricci, Daniele Conificoni, Giada Morelli, Carmen Losasso, Leonardo Alberghini, Valerio Giaccone, Antonia Ricci, and Igino Andrighetto completed on June 18, 2018.

⁶ See Cross-contamination in canine and feline dietetic limited-antigen wet diets by Elena Pagani, Maria de los Dolores Soto del Rio, Alessandra Dalmasso, Maria Teresa Bottero, Achille Schiavone and Liviana Prola. Published on September 12, 2018.

industry has a legal obligation to produce safe food for consumers. The researchers hypothesized that pet food contamination occurs at two different points during manufacturing: 1) in the production of the feed materials (sometimes attributable to suppliers), and 2) during the actual production of the pet food via cross-contamination during manufacturing production lines, improper equipment cleaning, or other production deficiencies.

31. In 2018, a third study summarized 18 studies, articles, and an abstract published between July 2017 and January 2018 related to pet food ingredient testing.⁷ The authors concluded that the mislabeling of pet food appears rather “common” in the limited ingredient diet products that are proposed for elimination diets. They also found that unexpected added ingredients are more frequently detected than those missing from the label.

32. Since 2014, virtually all scholarly researchers have found that pet food sold to consumers frequently contains non-conforming ingredients, and significant discrepancies between pet food products’ labeling and their actual ingredients appears to be commonplace among pet food manufacturers.

Plaintiffs’ Experiences

33. Plaintiff Arnold Fishon is a citizen of New York who purchased IAMS Food on numerous occasions from Amazon and Target on a bi-weekly basis over the last few years. Prior to purchasing IAMS Food, Plaintiff read Defendant’s representations that IAMS Food was “Grain Free” and “Soy Free” on the product packaging and online and specifically relied on those representations in deciding to purchase the product.

34. Plaintiff Lilly Perez is a citizen of Tennessee who purchased IAMS Food on numerous occasions from PetsMart over the last couple of years on a bi-monthly basis. Prior to purchasing IAMS Food, Plaintiff read Defendant’s representations that IAMS Food was “Grain Free” and “Soy Free” on the product packaging and online and specifically relied on those

⁷ See Critically Appraised topic on adverse food reactions of companion animals (5): discrepancies between ingredients and labeling in commercial pet foods by Thierry Olivry and Ralf S. Mueller. Published on January 22, 2018.

representations in deciding to purchase the product. Plaintiff Perez has a PHD in animal husbandry and did extensive research online regarding the benefits of the IAMS Food prior to purchasing the product for her dog.

35. Plaintiff Tana Parker is a citizen of Virginia who purchased IAMS Food on numerous occasions from Walmart on a bi-monthly basis over the last two and a half years. Prior to purchasing IAMS Food, Plaintiff read Defendant's representations that IAMS Food was "Grain Free" and "Soy Free" on the product packaging and online and specifically relied on those representations in deciding to purchase the product.

CLASS ACTION ALLEGATIONS

Class Definitions⁸

36. Plaintiffs bring this action on behalf of themselves and a class ("Nationwide Class" or "Class") defined as follows:

All persons residing in the United States and its territories who, during the maximum period of time permitted by law, purchased IAMS Food primarily for personal, family or household purposes, and not for resale.

37. Alternatively, Plaintiff Arnold Fishon brings this action on behalf of himself and the members of the following subclass ("New York Subclass"):

All persons residing in New York who, during the maximum period of time permitted by law, purchased IAMS Food primarily for personal, family or household purposes, and not for resale.

38. Alternatively, Plaintiff Lilly Perez brings this action on behalf of herself and the members of the following subclass ("Tennessee Subclass"):

All persons residing in Tennessee who, during the maximum period of time permitted by law, purchased IAMS Food primarily for personal, family or household purposes, and not for resale.

⁸ Plaintiffs reserve the right to amend their class and subclass definitions as necessary to conform to facts learned through discovery.

39. Alternatively, Plaintiff Tana Parker brings this action on behalf of herself and the members of the following subclass (“Virginia Subclass”):

All persons residing in Virginia who, during the maximum period of time permitted by law, purchased IAMS Food primarily for personal, family or household purposes, and not for resale.

40. Specifically excluded from these definitions are (1) Defendant, any entity in which Defendant has a controlling interest, and its legal representatives, officers, directors, employees, assigns and successors; (2) the Judge to whom this case is assigned and any member of the Judge’s staff or immediate family; and (3) Class Counsel.

41. As used herein, “Class Members” shall mean and refer to the members of the Nationwide Class and any of the Subclasses, including Plaintiffs.

42. Plaintiffs seek only damages and equitable relief on behalf of themselves and the Class Members. Plaintiffs disclaim any intent or right to seek any recovery in this action for personal injuries, wrongful death, or emotional distress suffered by Plaintiffs and/or the Class Members.

43. Numerosity: Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court.

44. Typicality: The claims of the representative plaintiffs are typical in that Plaintiffs, like all Class Members, purchased IAMS Food that was manufactured and distributed by Defendant. Plaintiffs, like all Class Members, have been damaged by Defendant’s misconduct in that, *inter alia*, they have incurred or will continue to incur damage due to purchasing a product that contained ingredients (corn, soy, and grain) that Defendant represented were absent from the product. Furthermore, the factual bases of Defendant’s misconduct are common to all Class Members and represent a common thread of fraudulent, deliberate, and negligent misconduct resulting in injury to all Class Members.

45. Commonality: There are numerous questions of law and fact common to Plaintiffs and Class Members that predominate over any individual questions. These common legal and factual issues include the following:

- a) Whether IAMS Food contains corn, soy, or grain;
- b) Whether Defendant's "GRAIN FREE" and "SOY FREE" representations are false;
- c) Whether Defendant's "GRAIN FREE" and "SOY FREE" representations are misleading;
- d) Whether Defendant expressly warranted that the IAMS Food would conform to its "GRAIN FREE" and "SOY FREE" representations;
- e) Whether Defendant impliedly warranted that the IAMS Food would conform to its "GRAIN FREE" and "SOY FREE" representations;
- f) Whether Defendant breached its warranties by making the representations above;
- g) Whether Defendant was unjustly enriched by making the representations and omissions above;
- h) Whether Defendant's actions as described above violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.*;
- i) Whether Defendant's actions as described above violated state consumer protection laws as alleged herein;
- j) Whether Defendant should be required to make restitution, disgorge profits, reimburse losses, pay damages, and pay treble damages as a result of the above described practices.

46. Adequate Representation: Plaintiffs will fairly and adequately protect the interests of Class Members. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including consumer and product defect class actions, and Plaintiffs intend to prosecute this action vigorously.

47. Predominance and Superiority: Plaintiffs and Class Members have all suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of Class Members' individual claims, it is likely that few Class Members could afford to seek legal redress for Defendant's misconduct. Absent a class action, Class Members will continue to incur damages, and Defendant's misconduct will continue without remedy. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the courts and the litigants and will promote consistency and efficiency of adjudication.

48. Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

COUNT 1
VIOLATION OF MAGNUSON-MOSS WARRANTY ACT
(15 U.S.C. § 2301, *et seq.*)
(On Behalf of The Class)

49. Plaintiffs bring this count on behalf of themselves and the Class and repeat and re-allege all previous paragraphs, as if fully included herein.

50. As alleged above, this Court has original jurisdiction over this matter based upon the requirements of CAFA; therefore, the Court has alternate jurisdiction over the Magnuson-Moss claims.

51. IAMS Food is a consumer product as defined in 15 U.S.C. § 2301(1).

52. Plaintiffs and Class members are consumers as defined in 15 U.S.C. § 2301(3).

53. Plaintiffs purchased IAMS Food costing more than \$5 and their individual claims are greater than \$25 as required by 15 U.S.C. §§ 2302(e) and 2310(d)(3)(A).

54. Defendant is a supplier and warrantor as defined in 15 U.S.C. §§ 2301(4) and (5).

55. In connection with the sale of IAMS Food, Defendant issued written warranties as defined in 15 U.S.C. § 2301(6), which warranted that the Product conformed to its representations that IAMS Food did not contain corn, grain, or soy.

56. Defendant breached these written warranties because IAMS Food did in fact contain corn, grain, and/or soy.

57. By reason of Defendant's breach of the written warranties stating that IAMS Food did not contain corn, grain, or soy, Defendant violated the statutory rights of Plaintiffs and Class Members pursuant to the Magnuson-Moss Warranty Act thereby damaging Plaintiffs and Class Members.

58. On June 31, 2019, Plaintiffs sent a demand letter to Defendant which outlined how its conduct in misrepresenting the contents of IAMS Food regarding grain, soy and corn constituted a breach of Magnuson-Moss Warranty Act.

59. On August 2, 2019, Defense counsel called Plaintiffs' counsel in response to the letter sent by Plaintiffs and introduced himself.

60. On August 14, 2019, both sides agreed to exchange testing data and maintain a dialogue.

61. On September 3, 2019, Plaintiffs sent their testing documents to Defense counsel regarding the IAMS Food that indicated the product contained corn and soy. Defense counsel never sent IAMS testing results. As a result of the clearly stalled discussion, Plaintiffs filed this lawsuit.

COUNT 2
BREACH OF EXPRESS WARRANTY
(On Behalf of The Class)

62. Plaintiffs bring this count on behalf of themselves and the Class and repeat and re-allege all previous paragraphs, as if fully included herein.

63. Defendant sold and Plaintiffs purchased IAMS Food.

64. Defendant represented in its marketing, advertising, and promotion of IAMS Food that its product was “grain free[,]” “corn free[,]” and “soy free[,]”

65. Defendant made these representations to induce Plaintiffs to purchase IAMS Food.

66. Accordingly, Defendant’s representations that IAMS Food was “grain free[,]” “soy free[,]” and “corn free” became part of the basis of the bargain between Defendant and Plaintiffs.

67. Defendant’s IAMS Food did not conform to Defendant’s representations and warranties regarding grain, soy, and corn because at all relevant times IAMS Food contained corn, grain, and soy.

68. On June 31, 2019, Plaintiffs sent a demand letter to Defendant which outlined how its conduct in misrepresenting the contents of IAMS Food regarding grain, soy and corn constituted a breach of Express Warranty.

69. On August 2, 2019, Defense counsel called Plaintiffs’ counsel in response to the letter sent by Plaintiffs and introduced himself.

70. On August 14, 2019, both sides agreed to exchange testing data and maintain a dialogue.

71. On September 3, 2019, Plaintiffs sent their testing documents to Defense counsel regarding the IAMS Food that indicated the product contained corn and soy. Defense counsel never sent IAMS testing results and Plaintiffs were forced to file this lawsuit.

72. As a direct and proximate result of Defendant's breaches of its express warranties and IAMS Food's failure to conform to its express representations, Plaintiffs and members of the Class have been damaged. Plaintiffs and Class Members have suffered damages in that they did not receive the product they specifically paid for and that Defendant warranted it to be. In addition, Plaintiffs and Class Members paid a premium for a product that did not conform to the Defendant's warranties.

COUNT 3
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(On Behalf of The Class)

73. Plaintiffs bring this count on behalf of themselves and the Class and repeat and re-allege all previous paragraphs, as if fully included herein.

74. Defendant sold and Plaintiffs purchased IAMS Food.

75. When sold by Defendant, IAMS Food was not merchantable, did not pass without objection in the trade under the label description, was not of adequate quality within that description, was not fit for the ordinary purposes for which such goods are used, and did not conform to the promises or affirmations of fact made on the container or label.

76. Within a reasonable time after Plaintiffs knew or should have known that the product was not fit for such purpose and/or was not otherwise merchantable as set forth above, Plaintiffs gave Defendant notice thereof.

77. As a direct result of IAMS Food being unfit for such purpose and/or otherwise not merchantable, Plaintiffs were damaged.

COUNT 4
UNJUST ENRICHMENT
(On Behalf of The Class)

78. Plaintiffs bring this count on behalf of themselves and the Class and repeat and re-allege all previous paragraphs, as if fully included herein.

79. Plaintiffs conferred benefits on Defendant by purchasing IAMS Food at a premium price.

80. Defendant has knowledge of such benefits.

81. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiffs and Class Members' purchases of IAMS Food. Defendant retaining these moneys under these circumstances is unjust and inequitable because Defendant falsely and misleadingly represented that its IAMS Food contained no corn, grain, or soy, when, in fact, IAMS Food did contain corn, grain, and/or soy.

82. Defendant's misrepresentations have injured Plaintiffs and Class Members because they would not have purchased (or paid a price premium) for IAMS Food had they known the true facts regarding IAMS Food's ingredients.

83. Because it is unjust and inequitable for Defendant to retain such non-gratuitous benefits conferred on it by Plaintiffs and Class Members, Defendant must pay restitution to Plaintiffs and Class Members, as ordered by the Court.

COUNT 5
VIOLATION OF THE NEW YORK DECEPTIVE TRADE PRACTICES ACT ("GBL")
(New York Gen. Bus. Law § 349)
(On Behalf of The New York Subclass)

84. Plaintiff Fishon asserts this Count on behalf of himself and the New York Subclass and repeats and re-alleges all previous paragraphs, as if fully included herein.

85. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts and practices by misrepresenting that IAMS Food did not contain corn, grain, or soy, when, in fact, IAMS Food contained corn, grain, and/or soy.

86. Defendant's business practice of marketing, advertising, and promoting its IAMS Food in a misleading, inaccurate, and deceptive manner constitutes unconscionable commercial practice, deception, and misrepresentation and, accordingly, constitutes multiple, separate violations of Section 349 of the New York General Business Law.

87. In marketing, advertising, and promoting IAMS Food to consumers, including Plaintiff Rahbar and members of the New York Subclass, Defendant materially misrepresented and omitted key aspects regarding IAMS Food throughout the United States, including the State of New York.

88. The foregoing deceptive acts and practices were directed at consumers.

89. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics, ingredients, benefits, quality, and nature of IAMS Food to induce consumers to purchase the same, and/or to pay a premium for the product.

90. Defendant's unconscionable commercial practices, false promises, misrepresentations, and omissions set forth in this Complaint are material in that they relate to matters which reasonable persons, including Plaintiff Fishon and members of the New York Subclass, would attach importance to in making their purchasing decisions or conducting themselves regarding the purchase of IAMS Food.

91. Plaintiff Fishon and members of the New York Subclass were injured because: (a) they would not have purchased IAMS Food, or would not have purchased IAMS Food on the same terms, had they known that IAMS Food in fact contained corn, grain, or soy; (b) they paid a price premium for IAMS Food based on Defendant's false and misleading statements; and (c) IAMS Food did not have the characteristics and benefits promised because it contained corn, grain, and soy. As a result, Plaintiff Fishon and the New York Subclass have been damaged in an amount to be proven at trial, but not less than either the purchase price of IAMS Food or the difference in value between IAMS Food as advertised and IAMS Food as actually sold.

92. On June 31, 2019, Plaintiffs sent a demand letter to Defendant which outlined how its conduct in misrepresenting the contents of IAMS Food regarding grain, soy and corn constituted a breach of New York Gen. Bus. Law § 349.

93. On August 2, 2019, Defense counsel called Plaintiffs' counsel in response to the letter sent by Plaintiffs and introduced himself.

94. On August 14, 2019, both sides agreed to exchange testing data and maintain a dialogue.

95. On September 3, 2019, Plaintiffs sent their testing documents to Defense counsel regarding the IAMS Food that indicated the product contained corn and soy. Defense counsel never sent IAMS testing results and Plaintiffs were forced to file this lawsuit.

96. On behalf of Himself and other members of the New York Subclass, Plaintiff Fishon seeks to enjoin the unlawful acts and practices described herein, to recover his actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

COUNT 6
FALSE ADVERTISING
(New York Gen. Bus. Law § 350)
(On Behalf of The New York Subclass)

97. Plaintiff Fishon brings this Count individually and on behalf of the members of the New York Subclass against Defendant and repeats and re-alleges all previous paragraphs, as if fully included herein.

98. Based on the foregoing, Defendant has engaged in consumer-oriented conduct that is deceptive or misleading in a material way and which constitutes false advertising in violation of Section 350 of the New York General Business Law.

99. Defendant's false, misleading, and deceptive statements and representations of fact include but are not limited to the representations that IAMS Food was "grain free" and "Soy Free[.]" Defendant also directed these representations to consumers.

100. Defendant's false, misleading, and deceptive statements and representations of fact, including but not limited to the representations that IAMS Food was "grain free" and "soy free" were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

101. Defendant's false, misleading, and deceptive statements and representations of fact, including but not limited to the representations that IAMS Food was "grain free" and "Soy Free" have resulted in consumer injury or harm to the public interest.

102. Plaintiff Fishon and members of the New York Subclass have been injured because: (a) they would not have purchased IAMS Food had they known that the product contained corn, grain, or soy; (b) they paid a price premium for IAMS Food based on Defendant's false and misleading statements; and (c) IAMS Food did not have the characteristics and benefits promised because it contained corn, grain, and/or soy. As a result, Plaintiff Fishon and the New York Subclass have been damaged in an amount to be proven at trial, but not less than either the full purchase price of IAMS Food, or the difference in value between IAMS Food as advertised and IAMS Food as actually sold.

103. As a result of Defendant's false, misleading, and deceptive statements and representations of fact, including but not limited to the representations that IAMS Food was "grain free" and "soy free," Plaintiff Fishon and members of the New York Subclass have suffered and continue to suffer economic injury.

104. Plaintiff Fishon and members of the New York Subclass suffered an ascertainable loss caused by Defendant's misrepresentations because they paid more for IAMS Food than they would have had they known the truth about the product.

105. On June 31, 2019, Plaintiffs sent a demand letter to Defendant which outlined how its conduct in misrepresenting the contents of IAMS Food regarding grain, soy and corn constituted a breach of New York Gen. Bus. Law § 350.

106. On August 2, 2019, Defense counsel called Plaintiffs' counsel in response to the letter sent by Plaintiffs and introduced himself.

107. On August 14, 2019, both sides agreed to exchange testing data and maintain a dialogue.

108. On September 3, 2019, Plaintiffs sent their testing documents to Defense counsel regarding the IAMS Food that indicated the product contained corn and soy. Defense counsel never sent IAMS testing results and Plaintiffs were forced to file this lawsuit.

109. On behalf of himself and other members of the New York Subclass, Plaintiff Fishon seeks to enjoin Defendant's unlawful acts and practices described herein, to recover their actual damages or five hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

COUNT 7
VIOLATIONS OF VIRGINIA CONSUMER PROTECTION ACT,
Va. Code Ann. § 59.1-196, et seq.

110. Plaintiff Tana Parker brings this Count on behalf of herself and the Virginia Subclass against Defendant and repeats and re-alleges all previous paragraphs, as if fully included herein.

111. The Virginia Consumer Protection Act prohibits “[u]sing any . . . deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction.” Va. Code Ann. § 59.1-200(14).

112. By the acts and conduct alleged herein, Defendant committed unfair or deceptive acts and practices by misrepresenting that IAMS Food did not contain corn, grain, or soy, when, in fact, IAMS Food did contain corn, grain, and/or soy.

113. Defendant's business practices of marketing, advertising, and promoting IAMS Food in a misleading, inaccurate, and deceptive manner by misrepresenting IAMS Food conforms to Defendant's representations that it does not contain corn, grain and soy, constitutes unconscionable commercial practices, deception, misrepresentations, and, thus, results in multiple, separate violations of Va. Code Ann. § 59.1-200(A).

114. In marketing, advertising, and promoting IAMS Food to consumers, including Plaintiff Parker and members of the Virginia Subclass, Defendant made the material

misrepresentations and omissions set forth in this Complaint throughout the United States, including in the State of Virginia.

115. Defendant's false, misleading, and deceptive statements and representations of fact were and are directed at consumers.

116. Defendant's false, misleading, and deceptive statements and representations of fact were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

117. Defendant's false, misleading, and deceptive statements and representations of fact have resulted in consumer injury or harm to the public interest.

118. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics, ingredients, benefits, quality, and nature of IAMS Food to induce consumers to purchase the same, and/or to pay a premium for the same.

119. Defendant's unconscionable commercial practices, false promises, misrepresentations, and omissions set forth in this Complaint are material in that they relate to matters which reasonable persons, including Plaintiff Parker and members of the Virginia Subclass, would attach importance to in their purchasing decisions or conduct regarding purchasing IAMS Food.

120. Plaintiff Parker and members of the Virginia Subclass were injured because: (a) they would not have purchased IAMS Food, or would not have purchased IAMS Food on the same terms, had they known that the products in fact contained corn, grain, or soy; (b) they paid a price premium for IAMS Food based on Defendant's false and misleading statements; and (c) IAMS Food did not have the characteristics and benefits promised because it contained corn, grain, and soy. As a result, Plaintiff Parker and the Virginia Subclass have been damaged in an amount to be proven at trial, but not less than either the purchase price of IAMS Food or the difference in value between IAMS Food as advertised and IAMS Food as actually sold.

121. On behalf of herself and other members of Virginia Subclass, Plaintiff Parker seeks to enjoin the unlawful acts and practices described herein, to recover her actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees.

RELIEF DEMANDED

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek a judgment against Defendant, as follows:

- a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as Class representatives and Plaintiffs' attorneys as Class Counsel;
- b. For an order declaring that Defendant's conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiffs and the Classes on all counts asserted herein;
- d. For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For injunctive relief as pleaded or as the Court may deem proper; and
- h. For an order awarding Plaintiffs and the Classes their reasonable attorneys' fees, expenses and costs of suit.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all claims so triable.

Dated: September 16, 2019

Respectfully submitted,

s/Lisa A. White

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** pro hac vice to be filed*

Attorneys for Plaintiffs

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

ARNOLD FISHON, LILLY PEREZ, and TANA PARKER, et al.

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

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

Lisa A. White, GREG COLEMAN LAW PC, 800 S. Gay Street, Suite 1100, Knoxville, TN 37929; T: 865-247-0080; E: lisa@gregcolemanlaw.co

DEFENDANTS

MARS PETCARE US, INC.

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

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

Attorneys (If Known)

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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - 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):
15 U.S.C. Sections 2301, et seq.

Brief description of cause:

Magnuson-Moss Warranty Act, Unjust Enrichment, State Statutes for misrepresentation of ingredients in pet food

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/16/2019

SIGNATURE OF ATTORNEY OF RECORD

s/Lisa A. White

FOR OFFICE USE ONLY

RECEIPT #

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the 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.