

1 LEXINGTON LAW GROUP  
Mark N. Todzo, State Bar No. 168389  
2 Meredyth Merrow, State Bar No. 328337  
503 Divisadero Street  
3 San Francisco, CA 94117  
Telephone: (415) 913-7800  
4 Facsimile: (415) 759-4112  
mtodzo@lexlawgroup.com  
5 mmerrow@lexlawgroup.com

6 Attorneys for Plaintiff  
JOSEPH DIGIACINTO  
7

8  
9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN FRANCISCO DIVISION**  
12

13  
14 JOSEPH DIGIACINTO, on behalf of himself and  
all others similarly situated,

15  
16 Plaintiff,

17 v.

18 ALBERTSONS COMPANIES, INC.,  
19 SAFEWAY, INC. and LUCERNE FOODS, INC.

20 Defendants.  
21

Case No.

**CLASS ACTION COMPLAINT**

1 Plaintiff Joseph DiGiacinto (“Plaintiff”), on behalf of himself and those similarly  
2 situated, based on information, belief and investigation of his counsel, except for information  
3 based on personal knowledge, hereby alleges:

4 **INTRODUCTION**

5 1. Defendants Albertsons Companies, Inc., Safeway, Inc., and Lucerne Foods, Inc.  
6 (“Defendants”) advertise, market and sell disposable plates and bowls as compostable (the  
7 “Products”). A compostable product is one that will entirely break down into usable compost.  
8 The Products, however, contain significant amounts of perfluoroalkyl and polyfluoroalkyl  
9 substances (“PFAS”), which do not break down and never become part of usable compost.

10 2. PFAS are known as forever chemicals because they do not break down over time.  
11 When PFAS are introduced into the environment, they seep into and contaminate both land and  
12 water and then never leave. PFAS introduced into soil contaminates crops grown in the soil and  
13 meat farmed from animals that graze there. Compost is used as soil-conditioning material or  
14 fertilizer, so when compost is contaminated with PFAS, the PFAS then contaminates the soil  
15 treated or fertilized with that compost and whatever grows or grazes on that soil.

16 3. Many consumers concerned with the environmental problems associated with the  
17 proliferation of trash and waste actively seek to purchase products that are compostable so such  
18 products can be introduced into the soil rather than landfills. These consumers are willing to pay  
19 more for such products, which often cost significantly more than non-compostable alternative  
20 products. Indeed, the Products cost significantly more than non-compostable disposable plates  
21 and bowls.

22 4. This Complaint seeks to remedy Defendants’ unlawful, unfair and deceptive  
23 business practices with respect to the advertising, marketing and sales of the Products as  
24 compostable, when, in fact, they are not.

25 5. Plaintiff purchased the Products in reliance on Defendants’ false representations  
26 that the Products are compostable. Plaintiff viewed Defendants’ false representations on the  
27 labels of the Products. If Plaintiff had known that the Products were not compostable, Plaintiff  
28 would not have purchased the Products and/or would not have paid the premium price for

1 compostable plates. Defendants have thus breached its express warranty under the California  
2 Commercial Code § 2313; violated the California Consumers Legal Remedies Act (“CLRA”) by  
3 making representations that the Products have characteristics, benefits and qualities which they do  
4 not have and by advertising the Products without the intent to sell them as advertised; and  
5 violated the Business and Profession Code § 17200 based on fraudulent, unlawful and unfair acts  
6 and practices.

7 6. Plaintiff and the Class seek an order enjoining Defendants’ acts of unfair  
8 competition and other unlawful conduct, an award of damages to compensate them for  
9 Defendant’s acts of unfair competition, false and misleading advertising, and breaches of  
10 warranty, and restitution to the individual victims of Defendants’ fraudulent, unlawful and unfair  
11 acts and practices.

#### 12 **PARTIES**

13 7. Plaintiff Joseph DiGiacinto is a resident of Cotati, California. When given the  
14 choice, Plaintiff buys products that are compostable, recyclable or reusable so that he can  
15 minimize his impact on the environment. Plaintiff purchased the Products approximately ten (10)  
16 times during 2019 and 2020 from Safeway stores in Rohnert Park, California and Petaluma,  
17 California. Plaintiff purchased the Products for large family gatherings as an environmentally  
18 friendly alternative to traditional single-use foodware. Plaintiff specifically selected the Products  
19 in reliance on Defendants’ representations that the Products are compostable. The false  
20 representations are located on the labels and other marketing materials for the Products. Had  
21 Plaintiff known that the Products contained PFAs chemicals, and thus could not break down in an  
22 industrial composting facility, he would not have purchased the Products. Instead, he paid  
23 considerably more for the Products than he would have for similar products that are not  
24 advertised as compostable.

25 8. Defendant Albertsons Companies, Inc. is a Delaware corporation with its principal  
26 place of business in Boise, Idaho. Defendant Albertsons Companies, Inc. manufactures,  
27 distributes and sells the Products in California.

28

1 9. Defendant Safeway, Inc. is a Delaware corporation with its principal place of  
2 business in Pleasanton, California. Defendant Safeway, Inc. manufactures, distributes and sells  
3 the Products in California.

4 10. Defendant Lucerne Foods, Inc. is a Delaware corporation with its principal place  
5 of business in Pleasanton, California. Defendant Lucerne Foods, Inc. manufactures, distributes  
6 and sells the Products in California.

7 **JURISDICTION AND VENUE**

8 11. This Court has jurisdiction over Defendants because Defendants are corporations  
9 or other entities that have sufficient minimum contacts in California, are citizens of California, or  
10 otherwise intentionally avail themselves of the California market either through the distribution,  
11 sale or marketing of the Products in the State of California or by having facilities located in  
12 California so as to render the exercise of jurisdiction over it by the California courts consistent  
13 with traditional notions of fair play and substantial justice.

14 12. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the  
15 events or omissions giving rise to the claim occurred in this District.

16 13. **Intradistrict Assignment (L.R. 3-2(c) and (d) and 3.5(b))**: This action arises in  
17 Sonoma County, in that a substantial part of the events which give rise to the claims asserted  
18 herein occurred in Sonoma County. Pursuant to L.R. 3-2(c), all civil actions which arise in xxx  
19 County shall be assigned to the San Francisco Division or the Oakland Division.

20 **BACKGROUND FACTS**

21 14. Due to the overwhelming amount of landfilled waste accumulating in the  
22 environment, biodegradable and compostable foodware options have become increasingly  
23 popular. As people look to invest in sustainable alternatives to single-use plastics and packaging,  
24 consumers, including the Plaintiff, actively seek out products that are compostable, recyclable, or  
25 reusable, to prevent the increase in global waste and to minimize their environmental footprints.

26 15. The California Business and Professions Code § 17580.5 makes it “unlawful for  
27 any person to make any untruthful, deceptive, or misleading environmental marketing claim,  
28 whether explicit or implied.” Pursuant to that section, the term “environmental marketing claim”

1 includes any claim contained in the Guides for use of Environmental Marketing Claims published  
2 by the Federal Trade Commission (the “Green Guides”). *Ibid*; *see also* 16 C.F.R. § 260.1, *et seq.*  
3 Under the Green Guides, “[i]t is deceptive to misrepresent, directly or by implication, that a  
4 product or package is compostable.” 16 C.F.R. § 260.7(a). “A marketer claiming that an item is  
5 compostable should have competent and reliable scientific evidence that all the materials in the  
6 item will break down into, or otherwise become part of, usable compost...in a safe and timely  
7 manner...in an appropriate composting facility...” 16 C.F.R. § 260.7(b).

8         16. The Green Guides’ definition of “compostable” is consistent with reasonable  
9 consumer expectations. For instance, the dictionary defines the verb “compost” as: to convert (a  
10 material such as plant debris) to compost. The dictionary defines the noun “compost” as a  
11 mixture that consists largely of decayed organic matter and is used for fertilizing and conditioning  
12 the land.” Merriam-Webster Dictionary (2020).<sup>1</sup> Accordingly, reasonable consumers expect that  
13 products advertised, marketed, sold, labeled, and/or represented as compostable will be converted  
14 into usable organic matter that decomposes into fertilizer to condition the land, and that such  
15 products will not introduce toxic chemicals into the fertilizer or land.

16         17. The Green Guides specifically prohibit marketers from labeling products  
17 compostable if those products release toxins into the compost as they break down, noting that “a  
18 claim is deceptive if the presence of...toxins prevents the compost from being usable.” 16 C.F.R.  
19 § 260.7(d), Example 2.

20         18. Defendants advertise, market and sell their Products as compostable, yet the  
21 Products contain PFAS, highly persistent synthetic fluorinated chemicals which have been  
22 associated with cancer, developmental toxicity, immunotoxicity and other health effects.<sup>2</sup>

25 <sup>1</sup> Merriam-Webster Dictionary (2020); accessible at: [https://www.merriam-](https://www.merriam-webster.com/dictionary/compost)  
26 [webster.com/dictionary/compost](https://www.merriam-webster.com/dictionary/compost); last accessed on: May 16, 2020.

27 <sup>2</sup> Schaidler, L., et al., “Fluorinated Compounds in U.S. Fast Food Packaging” *Environ Sci Technol*  
28 *Lett.* 2017 ; 4(3): 105–111. doi:10.1021/acs.estlett.6b00435, (August 22, 2018), accessible at:  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6104644/pdf/nihms983267.pdf>, last accessed on  
May 13, 2020.

1 19. PFAS' characteristic carbon-fluorine bonds make them extremely resistant to  
2 degradation, even at high temperatures. And, the most commonly used PFAS have been detected  
3 globally in water, soil, sediment, wildlife, and human blood samples.<sup>3</sup> The strength of the bond  
4 between carbon and fluorine means that these chemicals do not degrade in the environment. In  
5 fact, according to the National Institute of Environmental Health Sciences, scientists are unable to  
6 estimate an environmental half-life for PFAS.<sup>4</sup> Due to the highly persistent nature of these  
7 chemicals they break down very slowly, if at all, in the environment and in human bodies.<sup>5</sup>

8 20. Because PFAS do not break down, they accumulate in air, soil, water and in the  
9 human body. One report by the Centers for Disease Control and Prevention National Health and  
10 Nutrition Examination Survey found PFAS in the blood of 97 percent of Americans.<sup>6</sup>

11 21. PFAS were created to be resistant to grease, oil, water, and heat, for use in non-  
12 stick cookware.<sup>7</sup> Due to the grease and water-resistant properties of fluorinated compounds,  
13 PFAS are often added to paper plates, bowls, food storage and packaging products (together,  
14 "foodware"). This leads to increased PFAS exposure in humans and in the environment. For  
15 products sold as compostable containing PFAS, there is the added concern that PFAS will seep  
16 into the ground and soil, contaminating otherwise-usable compost streams. According to experts,  
17 fluorinated food contact materials are a source of PFAS in the environment, and because of their  
18  
19  
20  
21

---

22 <sup>3</sup> *Id.* at p. 2.

23 <sup>4</sup> National Institute of Environmental Health Sciences, accessible at:  
<https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm>, last accessed on May 5, 2020.

24 <sup>5</sup> U.S. Environmental Protection Agency, "PFOA, PFOS and Other PFASs", accessible at:  
<https://www.epa.gov/pfas/basic-information-pfas>, last accessed on May 5, 2020. See also  
25 Center for Environmental Health, "Avoiding Hidden Hazards" January 2018 (revised April  
26 2018), at p. 3.

26 <sup>6</sup> *Id.*

27 <sup>7</sup> U.S. Food & Drug Administration "Per and Polyfluoroalkyl Substances (PFAS)", accessible at:  
<https://www.fda.gov/food/chemicals-and-polyfluoroalkyl-substances-pfas>, last accessed on May  
28 5, 2020.

1 environmental persistence “PFASs should be considered incompatible with compostable food  
2 packaging.”<sup>8</sup>

3 22. A recent study of sixteen replacement fluorinated compounds used in foodware,  
4 conducted by the Center for Environmental Health, showed that some PFAS can act like the  
5 hormone estrogen, while others cause liver damage in animal studies.<sup>9</sup> These fluorinated  
6 compounds can move from foodware into water and other liquids.<sup>10</sup> Foodware containing PFAS  
7 can also contaminate food items. Worse yet, for contaminated foodware products that are  
8 compostable, PFAS can leach from the product into the compost stream, contaminating the  
9 compost itself and organic matter grown using that composted material.

10 23. There is evidence that exposure to PFAS can lead to a number of adverse health  
11 effects, including, but not limited to reproductive and developmental, liver and kidney and  
12 immunological effects in laboratory animals.<sup>11</sup> The most consistent findings from human  
13 epidemiology studies are related to infant birth weights, effects on the immune system, cancer  
14 and thyroid hormone disruption.<sup>12</sup>

15 24. Over the past two decades, PFAS have come under increasing scrutiny from  
16 toxicologists, ecologists and regulators given their persistence and connection to serious potential  
17 health effects.<sup>13</sup>

18 25. Humans are exposed to PFAS by consuming PFAS-contaminated water and food  
19 as well as through the use of products that contain PFAS.

22 <sup>8</sup> Schaider, L., et al., “Fluorinated Compounds in U.S. Fast Food Packaging” *Environ Sci Technol*  
23 *Lett.* 2017 ; 4(3): 105–111. doi:10.1021/acs.estlett.6b00435, (August 22, 2018), accessible at:  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6104644/pdf/nihms983267.pdf>, last accessed on  
24 May 13, 2020 at p. 8.

25 <sup>9</sup> Center for Environmental Health, “Avoiding Hidden Hazards” January 2018 (revised April  
2018) at p. 7.

26 <sup>10</sup> *Id.*

27 <sup>11</sup> *Id.*

28 <sup>12</sup> *Id.*

<sup>13</sup> *Id.* at p. 3.

1 26. Compostable and biodegradable foodware options have become increasingly  
2 popular with consumers as a means to eliminate waste and divert usable products from landfills.<sup>14</sup>  
3 For products that claim to be compostable and/or biodegradable, private certification schemes  
4 have arisen in the last two decades.

5 27. Defendants' Products bear a certification by the Biodegradable Products Institute  
6 (BPI). However, as of the date of filing, they are not certified. Nevertheless, Defendants  
7 continue to sell the Products as BPI certified.

8 See the Product label below:



9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24 28. California has not adopted any certification standard for compostable foodware.  
25 The Products, however, bear a compostability certification from a private organization, BPI. BPI  
26

27  
28 <sup>14</sup> Biodegradable Products Institute, The History of “Biodegradation”, accessible at:  
<https://bpiworld.org/page-343343>, last accessed on May 5, 2020.



1 is a small organization that performs no testing on products seeking certification. Instead, it relies  
2 on testing performed at third-party laboratories. Certification with BPI costs approximately  
3 \$4,500, not including laboratory testing.<sup>15</sup> BPI certification lasts three years.

4 29. BPI failed to address the incompatibility of PFAS and compostability until 2017  
5 when it hired a technical advisor to assist in its understanding of the impact of fluorinated  
6 chemicals in compostable products.<sup>16</sup> BPI's Board voted to adopt a standard of 100 ppm total  
7 fluorine in 2019 and to add a statement of "no intentionally added fluorinated chemicals" to  
8 compostable products which would take effect on January 1, 2020.<sup>17</sup> However, BPI did not  
9 perform or require any fluorine testing for previously certified products or products until 2020.  
10 To the extent any fluorine testing was required in 2019, BPI relied on testing provided by the  
11 companies seeking certification as none of its approved labs perform fluorine testing.

12 30. The claims made by Defendants that the Products are compostable are uniform,  
13 consistent, and material. Because the claims are false and misleading, ordinary consumers,  
14 including members of the Class, are likely to be deceived by such representations.

15 31. By encouraging consumers to place the Products in their compost collection bins,  
16 Defendants are contaminating entire compost streams with toxic materials that will not break  
17 down over time—contaminating otherwise-usable and sustainable compost streams. These  
18 Products are then mixed with other composted materials in an industrial composting facility and  
19 turned into soil fertilizer for crops and other foods. However, the PFAS will remain, thus  
20 contaminating the crops grown in that soil. Environmentally motivated consumers who purchase  
21 the Products in the belief that they are compostable are thus unwittingly hindering sustainable  
22 composting efforts.

23  
24 <sup>15</sup> "Purchasing Recommendations for Sustainable Food Service Ware," Sustainable Purchasing  
25 Leadership Council, Center for Environmental Health (February 6, 2020), accessible at:  
26 [http://www.ceh.org/wp-](http://www.ceh.org/wp-content/uploads/2020/03/2020_Purchasing_Recommendations_Sustainable_FSW.pdf)  
27 [content/uploads/2020/03/2020\\_Purchasing\\_Recommendations\\_Sustainable\\_FSW.pdf](http://www.ceh.org/wp-content/uploads/2020/03/2020_Purchasing_Recommendations_Sustainable_FSW.pdf), last  
28 accessed: May 13, 2020, at p. 13.

<sup>16</sup> Biodegradable Products Institute, "Fluorinated Chemicals", accessible at:  
<https://bpiworld.org/Fluorinated-Chemicals>, last accessed on May 11, 2020.

<sup>17</sup> *Id.*

1 32. Most consumers believe that if their Products are accepted into an industrial  
2 composting program, then those Products are compostable. Defendants' representations that the  
3 Products are compostable are therefore likely to deceive ordinary consumers.

4 33. The Green Guides are clear: "[a] marketer claiming that an item is compostable  
5 should have competent and reliable scientific evidence that all the materials in the item will break  
6 down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch)  
7 in a safe and timely manner (i.e., in approximately the same time as the materials with which it is  
8 composted) in an appropriate composting facility, or in a home compost pile or device." 16  
9 C.F.R. § 260.7(b). Here, the Products are not compostable because they are made with PFAS,  
10 which cannot break down over time. Defendants' marketing of the Products as compostable is  
11 thus a direct violation of the Green Guides. Because the Products are not compostable,  
12 Defendants' representations are thus per se deceptive under the Green Guides and under  
13 California law.

14 34. Because the Products are not compostable, Defendant cannot make any  
15 compostable claims as to the Products.

16 **CLASS ACTION ALLEGATIONS**

17 35. Plaintiff brings this suit individually and as a class action pursuant to Federal Rule  
18 of Civil Procedure Rule 23, on behalf of himself and the following Class of similarly situated  
19 individuals:

20 All persons who purchased the Products for personal, family or  
21 household purposes in California (either directly or through an  
22 agent) during the applicable statute of limitations period (the  
23 "Class"). Specifically excluded from the Class are Defendants; the  
24 officers, directors or employees of Defendants; any entity in which  
25 Defendants have a controlling interest; and any affiliate, legal  
26 representative, heir or assign of Defendants. Also excluded are any  
27 judicial officer presiding over this action and the members of  
28

1 his/her immediate family and judicial staff, and any juror assigned  
2 to this action.

3 36. Plaintiff is unable to state the precise number of potential members of the proposed  
4 Class because that information is in the possession of Defendants. However, the number of Class  
5 members is so numerous that joinder would be impracticable for purposes of Rule 23(a)(1). The  
6 exact size of the proposed Class and the identity of its members will be readily ascertainable from  
7 the business records of Defendants and Defendants' retailers as well as Class members' own  
8 records and evidence. The disposition of the claims of the members of the Class in this class  
9 action will substantially benefit both the parties and the Court.

10 37. There is a community of interest among the members of the proposed Class in that  
11 there are questions of law and fact common to the proposed Class for purposes of Rule 23(a)(2),  
12 including whether Defendants' labels, advertisements and packaging include uniform  
13 misrepresentations that misled Plaintiff and the other members of the Class to believe the  
14 Products are compostable when they are not. Proof of a common set of facts will establish the  
15 liability of Defendants and the right of each member of the Class to relief.

16 38. Plaintiff asserts claims that are typical of the claims of the entire Class for  
17 purposes of Rule 23(a)(3). Plaintiff and all members of the Class have been subjected to the same  
18 wrongful conduct because they have purchased the Products that are labeled and sold as plates  
19 and bowls that are compostable, when they are not in fact compostable.

20 39. Plaintiff will fairly and adequately represent and protect the interests of the other  
21 members of the Class for purposes of Rule 23(a)(4). Plaintiff has no interests antagonistic to  
22 those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this  
23 action and has retained counsel experienced in complex litigation of this nature to represent him.  
24 Plaintiff anticipates no difficulty in the management of this litigation as a class action.

25 40. Class certification is appropriate under Rule 23(b)(2) because Defendants have  
26 acted on grounds that apply generally to the Class, so that final injunctive relief or corresponding  
27 declaratory relief, is appropriate respecting the Class as a whole. Defendants utilize advertising  
28

1 campaigns that include uniform misrepresentations that misled Plaintiff and the other members of  
2 the Class.

3 41. Class certification is appropriate under Rule 23(b)(3) because common questions  
4 of law and fact substantially predominate over any questions that may affect only individual  
5 members of the Class. These common legal and factual questions, which do not vary among  
6 Class members and which may be determined without reference to the individual circumstances  
7 of any Class member include, but are not limited to the following:

- 8 a. whether Defendants advertise and market the Products by representing that the  
9 Products are compostable;
- 10 b. whether the Products contain PFAS;
- 11 c. whether the Products are compostable as advertised and labeled by  
12 Defendants;
- 13 d. whether Defendants' marketing, advertising and labeling claims regarding the  
14 compostability of the Products are likely to deceive a reasonable consumer;
- 15 e. whether Defendants' representations regarding the compostability of the  
16 Products are likely to be read and understood by a reasonable consumer;
- 17 f. whether Defendants' representations regarding the compostability of the  
18 Products are in compliance with the Green Guides;
- 19 g. whether Defendants' claims regarding the compostability of the Products  
20 would be material to a reasonable consumer of the Products;
- 21 h. whether Defendants' conduct in advertising, marketing and labeling of the  
22 Products constitutes a violation of California consumer protection laws;
- 23 i. whether Defendants' representations concerning the Products constitute  
24 express warranties with regard to the Products;
- 25 j. whether Defendants breached the express warranties they made with regard to  
26 the Products;
- 27 k. whether Defendants' representations regarding compostability constitute  
28 representations that the Products have characteristics, benefits or qualities

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

which they do not have;

- l. whether Defendants advertised their Products without an intent to sell them as advertised;
- m. whether Defendants have been unjustly enriched from the sale of the Products;
- n. whether punitive damages are warranted for Defendants' conduct and, if so, an appropriate amount of such damages; and
- o. whether Plaintiff and the Class members are entitled to injunctive, equitable and monetary relief.

42. Defendants utilize marketing, advertisements and labeling that include uniform misrepresentations that misled Plaintiff and the other members of the Class. Defendants' claims regarding the compostability of the Products are one of the most prominent features of Defendants' marketing, advertising and labeling of the Products. Nonetheless, the Products are not in fact compostable. Thus, there is a well-defined community of interest in the questions of law and fact involved in this action and affecting the parties.

43. Proceeding as a class action provides substantial benefits to both the parties and the Court because this is the most efficient method for the fair and efficient adjudication of the controversy. Class members have suffered and will suffer irreparable harm and damages as a result of Defendants' wrongful conduct. Because of the nature of the individual Class members' claims, few, if any, could or would otherwise afford to seek legal redress against Defendants for the wrongs complained of herein, and a representative class action is therefore appropriate, the superior method of proceeding, and essential to the interests of justice insofar as the resolution of Class members' claims are concerned. Absent a representative class action, members of the Class would continue to suffer losses for which they would have no remedy, and Defendants would unjustly retain the proceeds of its ill-gotten gains. Even if separate actions could be brought by individual members of the Class, the resulting multiplicity of lawsuits would cause undue hardship, burden and expense for the Court and the litigants, as well as create a risk of inconsistent rulings which might be dispositive of the interests of the other members of the Class

1 who are not parties to the adjudications or may substantially impede their ability to protect their  
2 interests.

3 **FIRST CAUSE OF ACTION**

4 **(Plaintiff, on Behalf of Himself, the Class and the General Public,**  
5 **Alleges Violations of California Business & Professions Code § 17200, et seq.**  
6 **Based on Commission of Unlawful Acts)**

7 44. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 45 of  
8 this Complaint.

9 45. The violation of any law constitutes an unlawful business practice under Business  
10 & Professions Code § 17200.

11 46. Defendants' conduct violates California Business & Professions Code § 7580.5,  
12 which makes it unlawful for any person to make any untruthful, deceptive or misleading  
13 environmental marketing claim. Pursuant to § 17580.5, the term "environmental marketing  
14 claim" includes any claim contained in the Green Guides. 16 C.F.R. § 260.1, *et seq.* Under the  
15 Green Guides, "[i]t is deceptive to misrepresent, directly or by implication, that a product or  
16 package is compostable. A marketer claiming that an item is compostable should have competent  
17 and reliable scientific evidence that all the materials in the item will break down into, or  
18 otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and  
19 timely manner (i.e., in approximately the same time as the materials with which it is composted)  
20 in an appropriate composting facility, or in a home compost pile or device. A marketer should  
21 clearly and prominently qualify compostable claims to the extent necessary to avoid deception if:  
22 (1) the item cannot be composted safely or in a timely manner in a home compost pile or device;  
23 or (2) the claim misleads reasonable consumers about the environmental benefit provided when  
24 the item is disposed of in a landfill." 16 C.F.R. § 260.7(a)-(c). By misrepresenting that the  
25 Products are compostable as described above, Defendants are violating Business & Professions  
26 Code § 17580.5.

27 47. As detailed more fully in the paragraphs below, the acts and practices alleged  
28 herein were intended to or did result in the sale of the Products in violation of the CLRA,

1 California Civil Code §1750, *et seq.*, and specifically California Civil Code § 1770(a)(5),  
2 § 1770(a)(7) and § 1770(a)(9).

3 48. Defendants' conduct also violates Section 5 of the Federal Trade Commission Act  
4 ("FTC Act"), 15 U.S.C. § 45, which prohibits unfair methods of competition and unfair or  
5 deceptive acts or practices in or effecting commerce. By misrepresenting that the Products are  
6 compostable, Defendants are violating Section 5 of the FTC Act.

7 49. Defendants' conduct also violates California Business & Professions Code  
8 § 17500, which prohibits knowingly making, by means of any advertising device or otherwise,  
9 any untrue or misleading statement with the intent to sell a product or to induce the public to  
10 purchase a product. By misrepresenting that the Products are compostable, Defendants are  
11 violating Business & Professions Code § 17500.

12 50. Defendants' conduct is also a breach of warranty. Defendants' representations that  
13 the Products are compostable constitute affirmations of fact made with regard to the Products, as  
14 well as descriptions of the Products, that are part of the basis of the bargain between Defendants  
15 and purchasers of the Products. Because those representations are material, false and misleading,  
16 Defendants have breached their express warranties as to the Products and have violated California  
17 Commercial Code § 2313.

18 51. By violating the CLRA, the FTC Act, Business & Professions Code §§ 17500 and  
19 17580.5, and California Commercial Code § 2313, Defendants have engaged in unlawful business  
20 acts and practices which constitute unfair competition within the meaning of Business &  
21 Professions Code § 17200. Plaintiff would not have purchased the Products, or would not have  
22 paid as much for Products, but for Defendants' unlawful business practices. Plaintiff has thus  
23 suffered injury in fact and lost money or property as a direct result of Defendants'  
24 misrepresentations and material omissions.

25 52. An action for injunctive relief and restitution is specifically authorized under  
26 Business & Professions Code § 17203.

27 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.  
28

**SECOND CAUSE OF ACTION**

**(Plaintiff, on Behalf of Himself, the Class and the General Public,  
Alleges Violations of California Business & Professions Code § 17200,  
*et seq.* Based on Fraudulent Acts and Practices)**

1  
2  
3  
4 53. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 54 of  
5 this Complaint.

6 54. Under Business & Professions Code § 17200, any business act or practice that is  
7 likely to deceive members of the public constitutes a fraudulent business act or practice.

8 55. Defendants have engaged and continues to engage in conduct that is likely to  
9 deceive members of the public. This conduct includes, but is not limited to, representing that the  
10 Products are compostable.

11 56. Plaintiff purchased the Products in reliance on Defendants' representations that the  
12 Products are compostable. Defendants' claims that the Products are compostable are material,  
13 untrue and misleading. These compostable claims are prominent on all of Defendants' marketing,  
14 advertising and labeling materials, even though Defendants are aware that the claims are false and  
15 misleading. Also, because Defendants' compostable claims violate Business & Professions Code  
16 § 17580.5, such claims are deceptive *per se*. Defendants' claims are thus likely to deceive both  
17 Plaintiff and a reasonable consumer. Plaintiff would not have purchased the Products, or would  
18 not have paid as much for the Products, but for Defendants' false representations that the  
19 Products are compostable. Plaintiff has thus suffered injury in fact and lost money or property as  
20 a direct result of Defendants' misrepresentations and material omissions.

21 57. By committing the acts alleged above, Defendants have engaged in fraudulent  
22 business acts and practices, which constitute unfair competition within the meaning of Business  
23 & Professions Code § 17200.

24 58. An action for injunctive relief and restitution is specifically authorized under  
25 Business & Professions Code § 17203.

26 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.  
27  
28



**THIRD CAUSE OF ACTION**

**(Plaintiff, on Behalf of Himself, the Class and the General Public,  
Alleges Violations of California Business & Professions Code § 17200, et seq.  
Based on Unfair Acts and Practices)**

1  
2  
3  
4 59. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 60 of  
5 this Complaint.

6 60. Under California Business & Professions Code § 17200, any business act or  
7 practice that is unethical, oppressive, unscrupulous or substantially injurious to consumers, or that  
8 violates a legislatively declared policy, constitutes an unfair business act or practice.

9 61. Defendants have engaged and continue to engage in conduct which is immoral,  
10 unethical, oppressive, unscrupulous and substantially injurious to consumers. This conduct  
11 includes, but is not limited to, advertising and marketing the Products as compostable when they  
12 are not. By taking advantage of consumers concerned about the environmental impact of non-  
13 sustainable waste, Defendants’ conduct, as described herein, far outweighs the utility, if any, of  
14 such conduct.

15 62. Defendants have engaged and continue to engage in conduct that violates the  
16 legislatively declared policy of the CLRA against misrepresenting the characteristics, uses,  
17 benefits and quality of goods for sale.

18 63. Defendants’ conduct also violates the policy of the Green Guides. The Green  
19 Guides mandate that “it is deceptive to misrepresent, directly or by implication, that a product or  
20 package is compostable.” 16 C.F.R. § 260.7(a). It further states that “[a] marketer claiming that  
21 an item is compostable should have competent and reliable scientific evidence that all the  
22 materials in the item will break down into, or otherwise become part of usable compost...in a safe  
23 and timely manner.” 16 C.F.R. § 260.7(b). As explained above, the Products are not  
24 compostable and the PFAS contained within the Products do break down into useable compost  
25 over time. Moreover, the PFAS contaminate the compost, thereby contaminating the soil treated  
26 with the compost.

1           64. Defendants' conduct, including failing to disclose that the Products contain PFAS  
2 which cannot break down into usable compost, is substantially injurious to consumers. Such  
3 conduct has caused and continues to cause substantial injury to consumers because consumers  
4 would not have purchased the Products but for Defendants' representations that the Products are  
5 compostable. Consumers are concerned about environmental issues in general and PFAS  
6 contamination in particular. Defendants' representations are therefore material to such  
7 consumers. Misleading causes injury to such consumers that is not outweighed by any  
8 countervailing benefits to consumers or competition. Indeed, no benefit to consumers or  
9 competition results from Defendants' conduct. Defendants gain an unfair advantage over their  
10 competitors, whose advertising must comply with the CLRA, the FTC Act, Cal. Business &  
11 Professions Code § 17580.5, and the Green Guides. Since consumers reasonably rely on  
12 Defendants' representations of the Products and injury results from ordinary use of the Products,  
13 consumers could not have reasonably avoided such injury.

14           65. Although Defendants know that the Products are not compostable, Defendants  
15 failed to disclose that fact to Plaintiff and the Class.

16           66. By committing the acts alleged above, Defendants have engaged in unfair business  
17 acts and practices which constitute unfair competition within the meaning of California Business  
18 & Professions Code § 17200.

19           67. An action for injunctive relief and restitution is specifically authorized under  
20 California Business & Professions Code § 17203.

21           68. Plaintiff would not have purchased the Products, or would not have paid as much  
22 for Products, but for Defendants' unfair business practices. Plaintiff has thus suffered injury in  
23 fact and lost money or property as a direct result of Defendants' misrepresentations and material  
24 omissions.

25           Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.  
26  
27  
28

**FOURTH CAUSE OF ACTION**

**(Plaintiff, on Behalf of Himself and the Class, Alleges Violations of the California Consumers Legal Remedies Act – Injunctive Relief and Damages)**

69. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 70 of this Complaint.

70. Plaintiff and the Class members purchased the Products for personal, family or household purposes.

71. The acts and practices of Defendants as described above were intended to deceive Plaintiff and the Class members as described herein and have resulted and will result in damages to Plaintiff and the Class members. These actions violated and continue to violate the CLRA in at least the following respects:

- a. In violation of Section 1770(a)(5) of the CLRA, Defendants’ acts and practices constitute representations that the Products have characteristics, uses or benefits which they do not;
- b. In violation of Section 1770(a)(7) of the CLRA, Defendants’ acts and practices constitute representations that the Products are of a particular quality, which they are not; and
- c. In violation of Section 1770(a)(9) of the CLRA, Defendants’ acts and practices constitute the advertisement of the Products without the intent to sell them as advertised.

72. By reason of the foregoing, Plaintiff and the Class members have suffered damages.

73. By committing the acts alleged above, Defendants violated the CLRA.

74. In compliance with the provisions of California Civil Code § 1782, on April 16, 2020, Plaintiff provided written notice to Defendants of his intention to seek damages under California Civil Code § 1750, *et seq.*, and requested that Defendants offer an appropriate consideration or other remedy to all affected consumers. As of the date of this complaint,

1 Defendants have not done so. Accordingly, Plaintiff seeks damages pursuant to California Civil  
2 Code §§ 1780(a)(1) and 1781(a).

3 75. Pursuant to California Civil Code § 1780(a)(2) Plaintiff and the Class members are  
4 entitled to an order enjoining the above-described wrongful acts and practices of Defendants,  
5 providing actual and punitive damages and restitution to Plaintiff and the Class members, and  
6 ordering the payment of costs and attorneys' fees and any other relief deemed appropriate and  
7 proper by the Court under California Civil Code § 1780.

8 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

9 **FIFTH CAUSE OF ACTION**

10 **(Plaintiff, on Behalf of Himself and the Class, Alleges Breach of Express Warranty)**

11 76. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 77 of  
12 this Complaint.

13 77. The Uniform Commercial Code § 2-313 provides that an affirmation of fact or  
14 promise made by the seller to the buyer which relates to the goods and becomes part of the basis  
15 of the bargain creates an express warranty that the goods shall conform to the promise.

16 78. As detailed above, Defendants marketed and sold the Products as compostable.  
17 Defendants' representations that the Products are compostable constitute affirmations of fact  
18 made with regard to the Products as well as descriptions of the Products.

19 79. Defendants' representations regarding the compostability of the Products are  
20 uniformly made in the Products' advertising, internet sites and other marketing materials, and on  
21 the Products' labeling and packaging materials, and are thus part of the basis of the bargain  
22 between Defendants and purchasers of the Products.

23 80. California has codified and adopted the provisions of the Uniform Commercial  
24 Code governing express warranties (Cal. Com. Code § 2313).

25 81. At the time that Defendants designed, manufactured, sold and distributed the  
26 Products, Defendants knew that the Products were not compostable.

27  
28

1 82. As set forth in the paragraphs above, the Products are not compostable and thus do  
2 not conform to Defendants' express representations to the contrary. Defendants have thus  
3 breached their express warranties concerning the Products.

4 83. On April 16, 2020, Plaintiff sent a pre-suit demand letter to Defendants notifying  
5 Defendants that the Products are not compostable. Defendants therefore have actual and  
6 constructive knowledge that the Products are not compostable and were thus not sold as marketed  
7 and advertised.

8 84. As a direct and proximate result of Defendants' breach of express warranties,  
9 Plaintiff and Class members have suffered damages.

10 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

11 **SIXTH CAUSE OF ACTION**

12 **(Plaintiff, on Behalf of Himself and the Class, Alleges Unjust Enrichment)**

13 85. Plaintiff realleges and incorporates herein by reference Paragraphs 1 through 86 of  
14 this Complaint.

15 86. Plaintiff and the Class members conferred benefits on Defendants by purchasing  
16 the Products.

17 87. Defendants have knowledge of such benefits.

18 88. Defendants voluntarily accepted and retained the benefits conferred.

19 89. Defendants have been unjustly enriched in retaining the revenues derived from  
20 Plaintiff's and the Class members' purchases of the Products.

21 90. Retention of that money under these circumstances is unjust and inequitable  
22 because Defendants falsely and misleadingly represented through their labeling, advertising and  
23 marketing materials that the Products are compostable when the Products are not in fact  
24 compostable.

25 91. These misrepresentations and omissions caused injuries to Plaintiff and the Class  
26 members because they would not have purchased the Products, or would not have paid as much  
27

28

1 for the Products, had they known that the Products are not compostable, and instead, contaminate  
2 the compost stream.

3 92. Because Defendants' retention of the non-gratuitous benefits conferred to them by  
4 Plaintiff and the Class members is unjust and inequitable, Defendants ought to pay restitution to  
5 Plaintiff and the Class members for their unjust enrichment.

6 93. As a direct and proximate result of Defendants' unjust enrichment, Plaintiff and  
7 the Class members are entitled to restitution or disgorgement in an amount to be proved at trial.

8 Wherefore, Plaintiff prays for judgment against Defendants, as set forth hereafter.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment and relief against Defendants as follows:

11 A. That the Court declare this a class action;

12 B. That the Court preliminarily and permanently enjoin Defendants from conducting  
13 their businesses through the unlawful, unfair or fraudulent business acts or practices, untrue and  
14 misleading advertising, and other violations of law described in this Complaint;

15 C. That the Court order Defendants to cease and refrain from marketing and  
16 promotion of the Products that state or imply that the Products are compostable;

17 D. That the Court order Defendants to implement whatever measures are necessary to  
18 remedy the unlawful, unfair or fraudulent business acts or practices, untrue and misleading  
19 advertising and other violations of law described in this Complaint;

20 E. That the Court order Defendants to notify each and every Class member of the  
21 pendency of the claims in this action in order to give such individuals an opportunity to obtain  
22 restitution and damages from Defendants;

23 F. That the Court order Defendants to pay restitution to restore all Class members all  
24 funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair or  
25 fraudulent business act or practice, untrue or misleading advertising, plus pre- and post-judgment  
26 interest thereon;

27 G. That the Court order Defendants to disgorge all money wrongfully obtained and all  
28 revenues and profits derived by Defendants as a result of their acts or practices as alleged in this

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Complaint;

H. That the Court award damages to Plaintiff and the Class to compensate them for the conduct alleged in this Complaint;

I. That the Court award punitive damages pursuant to California Civil Code § 1780(a)(4);

J. That the Court grant Plaintiff her reasonable attorneys' fees and costs of suit pursuant to California Code of Civil Procedure § 1021.5, California Civil Code § 1780(d), the common fund doctrine, or any other appropriate legal theory; and

K. That the Court grant such other and further relief as may be just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: May 18, 2020

Respectfully submitted,

LEXINGTON LAW GROUP

/s/ Mark Todzo

Mark N. Todzo, (State Bar No. 168389)  
Meredyth Merrow, (State Bar No. 328337)  
LEXINGTON LAW GROUP  
503 Divisadero Street  
San Francisco, CA 94117  
Telephone: (415) 913-7800  
Facsimile: (415) 759-4112  
mtodzo@lexlawgroup.com  
mmerrow@lexlawgroup.com

Attorneys for Plaintiff  
JOSEPH DIGIACINTO

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
JOSEPH DIGIACINTO, on behalf of himself and all others similarly situated
(b) County of Residence of First Listed Plaintiff Sonoma County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Mark N. Todzo, LEXINGTON LAW GROUP, 503 Divisadero Street, San Francisco, CA 94117, Telephone: 415-913-7800

DEFENDANTS
ALBERTSONS COMPANIES, INC., SAFEWAY, INC. and LUCERNE FOODS, INC.
County of Residence of First Listed Defendant Ada County
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
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d)(2)(A) Class Action Fairness Act, member of a class of plaintiffs is a citizen of a State different from Defendants
Brief description of cause:
Plaintiff asserts putative class action against Defendant for alleged violation of various California state consumer protection laws

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

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

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(San Francisco/Oakland, San Jose, Eureka-Mckinleyville)

DATE 05/18/2020 SIGNATURE OF ATTORNEY OF RECORD /s Mark N. Todzo



## 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.