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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 Jesika Vado, Individually and on Behalf
of All Others Similarly Situated,

11 Plaintiff,

12 v.

13 Frito-Lay Inc., a Delaware corporation,

14 Defendants.

Case No.: '20CV2055 MMABLM

CLASS ACTION COMPLAINT FOR:

- 15 **(1) Unlawful Business Practices (Cal. Bus. & Prof. Code §§17200, et seq.)**
- 16 **(2) Unfair Business Practices (Cal. Bus. & Prof. Code §§17200, et seq.)**
- 17 **(3) Misleading Advertising (Cal. Bus. & Prof. Code §§17500, et seq.)**
- 18 **(4) Untrue Advertising (Cal. Bus. & Prof. Code §§17500, et seq.)**
- 19 **(5) Violation of the Consumer Legal Remedies Act, Cal. Civ. Code §§1750. et seq.**

20 **(6) Restitution Based on Quasi-Contract/ Unjust Enrichment**

21 **DEMAND FOR JURY TRIAL**

1 Plaintiff alleges, upon information and belief except for allegations pertaining to
2 plaintiff which are based on personal knowledge, against Defendant Frito-Lay, Inc.:

3 **INTRODUCTION**

4 1. Frito-Lay, Inc. (“Defendant”) is a subsidiary of multinational food
5 conglomerate PepsiCo that manufactures, distributes, markets, labels and sells a
6 variety of snacks, crackers, dips, and other products for the wholesale and retail
7 markets. Among the products it offers, Defendant markets, distributes, and sells
8 potato crisps under its “Ruffles” brand labeled as “Baked Lays Cheddar & Sour
9 Cream Flavor” potato crisps (hereinafter the “Mislabeled Product”).

10 2. The Mislabeled Product purports to be “Cheddar and Sour Cream
11 Flavored” and contains numerous representations regarding that fact, including both
12 words and images included on the front label of the package. On information and
13 belief, Defendant earns millions of dollars each year within this jurisdiction selling
14 the Mislabeled Product.

15 3. Under the applicable laws and regulations, labeling a food product as
16 containing a particular “flavor” represents that the product is the result of natural
17 flavor compounds. In the instant case, “Cheddar and Sour Cream Flavor,” without
18 more, represents that the flavor components included therein are the result of natural
19 flavors.

20 4. Customer demand and the resulting market pressures have caused
21 manufacturers of consumer goods to increasingly remove artificial flavors and dyes
22 as a way to appeal to consumers who prefer to purchase “natural” products; this
23 includes consumers of snack products like those manufactured, marketed, distributed,
24 and sold by Defendant, such as the Mislabeled Product.

25 5. However, the “Sour Cream” flavor within the Mislabeled Product is
26 produced and/or affected by artificial diacetyl, an artificial flavoring compound.
27 Accordingly, the “Sour Cream” flavor in the Mislabeled Product is not “natural.”
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1 6. Defendant produces and distributes other “Cheddar and Sour Cream”
2 flavored potato crisps that are labeled in the same way as the Mislabeled Product; on
3 information and belief, the aforementioned products are flavored with a natural sour
4 cream flavor compound, indicating that Defendant is and was or should have been
5 aware of the misrepresentations contained on the packaging of the Mislabeled
6 Product.

7 7. As a result of this mislabeling and the misrepresentations contained
8 therein, Plaintiff and California consumers were convinced to and did pay a premium
9 to purchase what they believed is and was a naturally flavored product, to the benefit
10 and profit of Defendant, and as a result are entitled to any remedies available under
11 any and all applicable laws and regulations.

12 **GENERAL ALLEGATIONS**

13 8. Frito-Lay, Inc., a subsidiary of multinational food conglomerate PepsiCo,
14 manufactures, distributes, markets, labels and sells potato crisps under its “Ruffles”
15 brand labeled as “Baked Lays Cheddar & Sour Cream Flavor” potato crisps.

16 9. In spite of the product’s misrepresentation to the contrary, Defendant’s
17 “Ruffles” brand “Baked Lays Cheddar & Sour Cream Flavor” potato crisps does not
18 derive its principal flavor components from natural sources; instead the product’s
19 “Sour Cream” flavor is the result of an artificial compound resulting in the mislabeling
20 of the “Baked Lays Cheddar & Sour Cream Flavor” potato crisps (“Mislabeled
21 Product”).

22 10. The Mislabeled Product is available to consumers from retail and online
23 stores of third-parties and is sold in various sizes.

24 11. The relevant front label representations include “Cheddar & Sour
25 Cream,” “Flavored,” “Baked,” “65% Less Fat Than Regular Potato Chips,” a wedge
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1 of cheddar cheese, a bowl of sour cream and an orange and white color pattern
2 reflective of the colors associated with cheddar cheese and sour cream.



17 12. According to reports, and in response to consumer demands for naturally
18 sourced foods, “Food companies are dropping artificial flavors, coloring,
19 preservatives and other additives with scary names and focusing more on natural,
20 wholesome and fresh ingredients.”¹

21 13. Consumers are increasingly seeking products that obtain their flavor from
22 their characterizing food ingredients, i.e., strawberry shortcake with strawberries or
23 natural strawberry flavor from strawberries as opposed to strawberry flavor
24 synthesized from cherries.²

25 14. Indeed, Nielsen has reported that 62% of consumers say they try to avoid
26

27 ¹ Jeff Daniels, [Why your favorite foods may be getting new recipes](#), CNBC, September 19, 2016

28 ² David Andrews, [Synthetic ingredients in Natural Flavors and Natural Flavors in Artificial flavors](#), Environmental Working Group (EWG).

1 artificial flavors.³

2 15. New Hope Network, a market research group, concluded that “71% of
3 consumers today are avoiding artificial flavors.”⁴

4 16. Label Insight determined that 76% of consumers avoid artificial flavors.⁵

5 17. Consumer preference for avoiding artificial flavors applies to dairy
6 products and foods that contain dairy products or dairy flavors, because consumers
7 expect dairy products and flavors to contain the minimally necessary ingredients and
8 to be free from synthetic ingredients and harsh processing due to their association
9 with cows and milk rather than chemistry labs.

10 18. Sour cream is a cultured dairy product used as a condiment, as an
11 ingredient in various foods, such as sauces, and in baking.

12 19. Sour cream “results from the souring, by lactic acid producing bacteria,
13 of pasteurized cream.”

14 20. The lactic acid bacteria in sour cream produces its “primary desirable
15 aroma compound...diacetyl (2,3 di-butanone).”⁶

16 21. Diacetyl is known as the main flavor compound in butter and is used in its
17 synthetic form as an artificial flavor in food.⁷

18 22. The flavor of sour cream relies on a balance between “proper culture
19 selection, close control of the lactic acid development, along with the proper
20 composition of the cream.”⁸

21 23. The lactic acid bacteria which “produce diacetyl are often described
22 as citrate fermenters, or in shorthand, cit+.”⁹

24 ³ Nielsen, [Reaching For Real Ingredients: Avoiding The Artificial](#), Sept. 6, 2016.

25 ⁴ Alex Smolokoff, [Natural color and flavor trends in food and beverage](#), Natural Products Insider, Oct. 11, 2019.

26 ⁵ Thea Bourianne, [Exploring today's top ingredient trends and how they fit into our health-conscious world](#), March
26-28, 2018.

27 ⁶ M.J. Costello, Sour Cream and Related Products, p. 406 in Bodyfelt (ed.) *The Sensory Evaluation of Dairy Products*,
Spring

28 ⁷ Artificial Butter Flavorings (ABF) Components, National Toxicology Program.

⁸ *Id.*

⁹ *Id.*

1 24. This “buttery note in sour cream derives from diacetyl production via
2 citrate metabolism by citrate fermenting (cit+) lactic acid bacteria.”

3 25. Scholars and evaluators of dairy products recognize that the “characteristic
4 flavor of a quality sour cream should include a subtle to moderate acid note *and a*
5 *buttery (diacetyl) aroma.*”¹⁰ See M.J. Costello, Sour Cream and Related Products, M.
6 Bodyfelt (ed.), *The Sensory Evaluation of Dairy Products*, Springer (2008) (emphasis
7 added).

8 26. According to Costello, “The primary desirable aroma compound in sour
9 cream (and likewise cultured buttermilk) is diacetyl (2,3 di-butanone).”¹¹

10 27. Sour cream that lacks this butter flavor is described by most consumers
11 as “flat” and “lack[ing] cultured flavor” by professional dairy flavor evaluators.¹²

12 28. In the chapter entitled “Sour Cream and Crème Fraîche” in the Handbook
13 of Animal- Based Fermented Food and Beverage Technology, sour cream is described
14 as having a “balanced, pleasant, buttery-like (diacetyl) aroma.”¹³

15 29. In the Encyclopedia of Food Microbiology’s chapter on Fermented Milks,
16 the author states that diacetyl is recognized “as the major flavor compound” in sour
17 cream.¹⁴

18 30. According to a consumer survey, a “sour cream that would appeal to most
19 consumers is characterized by moderate to high levels of diacetyl.” L. Shepard, et al.
20 “*Relating sensory and chemical properties of sour cream to consumer acceptance,*”
21 *Journal of Dairy Science*, 96.9 (2013): 5435-5454.

22 31. To produce sour cream with high levels of diacetyl requires adequate
23 citrate in the cream prior to fermentation, which is based upon the diet of the cows.
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25 ¹⁰ *Id.*

26 ¹¹ Costello at 406 (emphasis added).

27 ¹² *Id.*

28 ¹³ Lisbeth Meunier-Goddik, Sour Cream and Crème Fraîche in Yiu H. Hui (ed.), *Handbook of Animal-Based Fermented Food and Beverage Technology Vol. 2*. CRC Press (2012).

¹⁴ J.A. Narvhus, Fermented Milks in Richard K. Robinson (ed.), *Encyclopedia of food microbiology*, Academic Press, (2014).

1 32. In other words, cows which can graze freely on pasture – instead of in
2 feedlots – will provide the base for a sour cream which is naturally higher in diacetyl.

3 33. However, pasture raised cows are more costly because they require more
4 space per cow and have longer life spans than cows who lack this benefit.

5 34. To produce sour cream with its essential diacetyl flavor from cows
6 who are not provided a pasture diet requires the addition of artificial diacetyl flavor.

7 35. Defendant’s Mislabeled Product makes direct representations on the
8 Mislabeled Product’s label with respect to one of its “primary recognizable flavor(s),”
9 sour cream, through images and photos contained therein, including but not limited to:
10 the image of a dollop of sour cream; the image of the block of cheddar cheese; the
11 word “Sour Cream”; and the white background of half the front label, contrasted with
12 the orange of the bottom half of the label, corresponding to the orange-colored
13 cheddar cheese. *See* 21 C.F.R. § 101.22(i).

14 36. Sour cream is the Mislabeled Product’s “characterizing flavor.” *See* 21
15 C.F.R. § 101.22(i).

16 37. Consumers are misled by the Mislabeled Product’s representation as
17 “Flavored” because this gives them the impression that actual sour cream is the
18 principal source of the flavor.

19 38. Natural sour cream flavor is “the essential oil, oleoresin, essence or
20 extractive, protein hydrolysate, distillate, or any product of roasting, heating or
21 enzymolysis, which contains the flavoring constituents derived from...dairy products,
22 or fermentation products thereof, whose significant function in food is flavoring rather
23 than nutritional.” *See* 21 C.F.R. § 101.22(a)(3).

24 39. However, the Mislabeled Product’s sour cream flavor is provided by
25 artificial flavor, in the form of synthetic diacetyl.

26 40. The artificial diacetyl is present in significant amounts such that it could
27 not be the result of butter or butter flavor. *See* M. W. Rigler et al., *Emission of*
28 *Diacetyl (2,3 butanedione) from Natural Butter, Microwave Popcorn Butter Flavor*

1 *Powder, Paste, and Liquid Products*, International Journal of Occupational and
2 Environmental Health, (2010) 16(3), p. 301.

3 41. Natural butter is commonly recognized to contain “up to 7500 times less
4 diacetyl” than artificial diacetyl.¹⁵

5 42. The Mislabeled Product’s back label ingredient list shows the
6 Mislabeled Product contains “Artificial Flavors.”

7 **INGREDIENTS:** DRIED POTATOES, CORN STARCH,
8 **INGREDIENTS:** DRIED POTATOES, CORN STARCH, CORN OIL, SUGAR,
9 MALTODEXTRIN (MADE FROM CORN), SALT, SOY LECITHIN, DEXTROSE, WHEY,
10 WHEY PROTEIN CONCENTRATE, ONION POWDER, CHEDDAR CHEESE (MILK,
11 CHEESE CULTURES, SALT, ENZYMES), MONOSODIUM GLUTAMATE, BLUE
12 CHEESE (MILK, CHEESE CULTURES, SALT, ENZYMES), CITRIC ACID, ARTIFICIAL
13 COLOR (YELLOW 6 LAKE, YELLOW 5 LAKE, YELLOW 5, YELLOW 6), SKIM
14 MILK, NATURAL AND ARTIFICIAL FLAVORS, GARLIC POWDER, LACTIC ACID,
15 DISODIUM INOSINATE, AND DISODIUM GUANYLATE.

16 CORN OIL, SUGAR, MALTODEXTRIN (MADE FROM
17 CORN), SALT, SOY LECITHIN, DEXTROSE, WHEY, WHEY
18 PROTEIN CONCENTRATE, CHEDDAR CHEESE (MILK,
19 CHEESE CULTURE, SALT, ENZYMES), MONOSODIUM
20 GLUTAMATE, ONION POWDER, BLUE CHEESE (MILK,
21 CHEESE CULTURES, SALT, ENZYMES), CITRIC ACID,
22 ARTIFICIAL COLOR (INCLUDING YELLOW 6 LAKE,
23 YELLOW 5 LAKE, YELLOW 5, YELLOW 6), SKIM MILK,
24 NATURAL AND **ARTIFICIAL FLAVORS**, GARLIC
25 POWDER, LACTIC ACID, DISODIUM INOSINATE, AND
26 DISODIUM GUANYLATE.

27 43. Because the Mislabeled Product has artificial diacetyl, which is the
28 main flavor compound in sour cream, the front label is deceptive and misleading

¹⁵ M. W. Rigler et al., *Emission of Diacetyl (2,3 butanedione) from Natural Butter, Microwave Popcorn Butter Flavor Powder, Paste, and Liquid Products*, International Journal of Occupational and Environmental Health (2010) 16(3).

1 because it fails to disclose the presence of this artificial flavor.

2 44. Federal regulations, mirrored by those of California State, require that
3 consumers be informed whenever a food “contains any artificial flavor which
4 simulates, resembles or reinforces the characterizing flavor.” 21 C.F.R. §
5 101.22(i)(2).

6 45. Artificial diacetyl flavor simulates, resembles and reinforces the
7 characterizing flavor of sour cream, and is required to be disclosed on the front label,
8 i.e., “Cheddar and ‘Artificial Sour Cream Flavored’” or in a similar way. 21 C.F.R. §
9 101.22(i)(2) (“the name of the characterizing flavor shall be accompanied by the
10 word(s) ‘artificial’ or ‘artificially flavored’, in letters not less than one-half the
11 height of the letters in the name of the characterizing flavor, e.g., ‘artificial vanilla’,
12 ‘artificially flavored strawberry’, or ‘grape artificially flavored’.”).

13 46. Reasonable consumers do not expect a product which only uses the term
14 “flavored” to contain artificial flavors, because they would expect the company to tell
15 the whole truth, instead of a half-truth.

16 47. Reasonable consumers are not capable of determining that the
17 Mislabeled Product’s artificial diacetyl flavor is what produces and/or contributes to
18 the product’s characterizing flavor of sour cream.

19 48. Consumers are forced to rely upon the full disclosure of companies who
20 use artificial flavor, because the presence of artificial flavor which affects a food’s
21 characterizing flavor has a material bearing on price and consumer acceptance of a
22 food.

23 49. Other brands of cheddar and sour cream ridged potato chips contain
24 cheddar and sour cream flavoring with artificial flavor and identify their products as
25 “Artificially Flavored” because the artificial flavor affects the characterizing flavor,
26 on their front label.

27 50. These competitor products have the same flavor composition as the
28 Mislabeled Product here, but do not hide their artificial flavor on the ingredient list.

1 51. Defendant Frito-Lay Inc. also sells another variety of Cheddar and Sour
2 Cream flavored potato crisps under its Ruffles brand that contains the same
3 representations as the Mislabeled Product’s flavor on the front label (i.e. Cheddar and
4 Sour Cream Flavored) and also shows a chunk of cheddar cheese and a dollop of
5 sour cream to demonstrate its representative flavors. However, this product is
6 distinguishable from the Mislabeled Product because it actually contains sour cream
7 and unlike the Mislabeled Product, real sour cream is listed as an ingredient on the
8 back-label ingredient list.

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INGREDIENTS



Potatoes, Vegetable Oil (Sunflower, Corn, and/or Canola Oil), Cheddar & Sour Cream Seasoning (Maltodextrin [Made from Corn], Salt, Whey, Cheddar Cheese [Milk, Cheese Cultures, Salt, Enzymes], Onion Powder, Corn Oil, Monosodium Glutamate, Natural and Artificial Flavors, Buttermilk, Canola Oil, Sour Cream [Cultured Cream, Skim Milk], Lactose, Butter [Cream, Salt], Sodium Caseinate, Yeast Extract, Citric Acid, Skim Milk, Blue Cheese [Milk, Cheese Cultures, Salt, Enzymes], Lactic Acid, Garlic Powder, Artificial Color [Including Yellow 6, Yellow 5], Whey Protein Isolate, Sunflower Oil, and Milk Protein Concentrate). CONTAINS MILK INGREDIENTS.

52. Defendant knows consumers will pay a premium for the Mislabeled Product because the label does not state “artificially flavored sour cream” or

1 “artificial flavor.”

2 53. Defendant’s branding and packaging of the Mislabeled Product is
3 designed to – and does – deceive, mislead, and defraud plaintiff and consumers.

4 54. Defendant sold more of the Mislabeled Product and at higher prices than
5 it would have in the absence of this misconduct, resulting in additional profits at
6 the expense of consumers like Plaintiff.

7 55. The value of the Mislabeled Product that plaintiff purchased and
8 consumed was materially less than its value as represented by Defendant.

9 56. Had Plaintiff and class members known the true qualities and
10 characteristics of the Mislabeled Products, they would not have bought them or
11 would have paid less for them.

12 57. As a result of the false and misleading labeling, the Mislabeled Product is
13 sold at a premium price, compared to other similar products represented in a non-
14 misleading way, and higher than the price of the Mislabeled Product if it were
15 represented in a non-misleading way.

16 **Jurisdiction and Venue**

17 58. Jurisdiction is proper pursuant to Class Action Fairness Act of 2005
18 (“CAFA”). 28 U.S.C. § 1332(d)(2).

19 59. Under CAFA, district courts have original federal jurisdiction over
20 class actions involving (1) an aggregate amount in controversy of at least
21 \$5,000,000; and (2) minimal diversity.

22 60. Plaintiff Jesika Vado is a citizen of California.

23 61. Defendant Frito-Lay, Inc., is a Delaware corporation with a principal
24 place of business in Plano, Collin County, Texas and is a citizen of Texas.

25 62. “Minimal diversity” exists because plaintiff and defendant are citizens
26 of different states.

27 63. Upon information and belief, sales of the Mislabeled Product in
28 California exceed \$5 million per year, exclusive of interest and costs.

1 64. Venue is proper in this judicial district because a substantial part of
2 the events or omissions giving rise to the claim occurred in this District, *viz*, the
3 decision of plaintiff to purchase the Product and the misleading representations
4 and/or their recognition as such.

5 65. This court has personal jurisdiction over defendant because it conducts
6 and transacts business, and contracts to supply and supplies and distributes goods
7 within California.

8 Parties

9 66. Plaintiff Jesika Vado is a citizen of San Diego, California.

10 67. Defendant Frito-Lay, Inc. is a Delaware corporation with a principal
11 place of business in Plano, Texas, Collin County and is a citizen of Texas.

12 68. During the relevant statutes of limitations, Plaintiff purchased the
13 Mislabeled Product within this district and State for personal and household
14 consumption and/or use in reliance on the representations of the Mislabeled
15 Product.

16 69. Plaintiff purchased the Mislabeled Product on one or more occasions,
17 during the relevant period, at corner stores, convenience stores, and supermarkets
18 between 2018 and 2020.

19 70. Plaintiff purchased the Mislabeled Product on occasions including but not
20 necessarily limited to April, 2020, at stores including Vons located at 3645 Midway
21 Drive, San Diego, CA and various other Von locations in California and 7-11
22 locations in San Diego, County and California.

23 71. Plaintiff bought the Mislabeled Product at or exceeding the above-
24 referenced prices because she liked the product for its intended use and expected it to
25 not contain artificial flavors that affected the flavors identified by the front label, *viz*,
26 sour cream.

27 72. Plaintiff was deceived by and relied upon the Mislabeled Product's
28 deceptive labeling.

1 73. The Mislabeled Product was worth less than what Plaintiff paid for it and
2 she would not have purchased it or would not have paid as much absent Defendant's false
3 and misleading statements and omissions

4 74. Plaintiff intends to, seeks to, and will purchase the Mislabeled Product
5 again when he can do so with the assurance that Product's labels are consistent with
6 the Mislabeled Product's components.

7 Class Allegations

8 75. The class consists of all purchasers of the Mislabeled Product who are or
9 were residents of California during the applicable statutes of limitations.

10 76. Plaintiff seeks class-wide injunctive relief pursuant to Rule 23(b) in
11 addition to a monetary relief class.

12 77. Common questions of law or fact predominate and include whether
13 defendant's representations were and are misleading and if Plaintiff and class
14 members are entitled to damages.

15 78. Plaintiff's claims and basis for relief are typical to other members of the
16 class because all were subjected to the same unfair and deceptive representations
17 and actions.

18 79. Plaintiff is an adequate representative because Plaintiff's interests do not
19 conflict with other members.

20 80. No individual inquiry is necessary since the focus is only on
21 Defendant's practices and the class is definable and ascertainable.

22 81. Individual actions would risk inconsistent results and be repetitive and
23 are impractical to justify, as the claims are modest relative to the scope of the harm.

24 82. Plaintiff's counsel is competent and experienced in complex class
25 action litigation and intends to protect class members' interests adequately and
26 fairly.

27 83. Plaintiff seeks class-wide injunctive relief because the practices continue
28 and are not reasonably avoided by consumers.

1 **CLAIMS FOR RELIEF**

2 **FIRST CAUSE OF ACTION**
3 **Unlawful Business Practices in Violation of**
4 **Business and Professions Code §§17200, *et seq.***

5 84. Plaintiff incorporates by reference each allegation set forth above.

6 85. Defendant’s conduct constitutes unlawful business acts and practices
7 under Cal. Business & Professions Code §§17200, *et seq.*

8 86. Defendant sold Mislabeled Products in California during the class period.

9 87. Defendant Frito-Lay is a corporation and, therefore, is a “person” within
10 the meaning of the Sherman Food Drug & Cosmetic Law Act, California Health &
11 Safety Code §§109875, *et seq.* (the “Sherman Act”). The Sherman Act adopts,
12 incorporates and is identical to the federal Food, Drug & Cosmetic Act, 21 U.S.C.
13 §§301, *et seq.* (“FDCA”).

14 88. Defendant’s business practices are unlawful under the UCL, §§17200, *et*
15 *seq.*, by virtue of Defendant’s violations of the advertising provisions of Article 3 of the
16 Sherman Act and the misbranded food provisions of Article 6 of the Sherman Act.

17 89. Defendant’s business practices are also unlawful under Business &
18 Professions Code §§17200, *et seq.* by virtue of Defendant’s violations of §§17500, *et*
19 *seq.*, which forbids untrue and misleading advertising.

20 90. Defendant’s business practices are additionally unlawful under Business
21 & Professions Code §§17200, *et seq.* by virtue of Defendant’s violations of the
22 Consumers Legal Remedies Act, Cal. Civ. Code §§1750, *et seq.*

23 91. Under California law, a food product that is misbranded cannot legally be
24 manufactured, advertised, distributed, held or sold. Mislabeled Products cannot be
25 legally sold, possessed, have no economic value, and are legally worthless. Indeed, the
26 sale, purchase or possession of misbranded food is a criminal act in California and the
27 FDA even threatens food companies with seizure of Mislabeled Products.

28 92. Plaintiff and the members of the putative class who purchased Defendant’s

1 Mislabeled Products had no way of reasonably knowing that the products were
2 misbranded and were not properly marketed, advertised, packaged and labeled, and thus
3 could not have reasonably avoided the injury each of them suffered.

4 93. Defendant sold Plaintiff and members of the putative class Mislabeled
5 Products that were not properly being sold or legally held and which had no economic
6 value and were legally worthless. Plaintiff and each putative class member relied on
7 Defendant’s misrepresentations and omissions when deciding whether to purchase the
8 Mislabeled Products and paid a premium price as a result.

9 94. As a result of Defendant’s illegal business practices, Plaintiff and the
10 members of the putative class are entitled to an order enjoining such future conduct and
11 such other orders and judgments which may be necessary to disgorge Defendant’s ill-
12 gotten gains and to restore to any putative class member the money paid for the
13 Mislabeled Products.

14 95. Defendant’s unlawful business acts present a threat and reasonable
15 continued likelihood of injury to Plaintiff and each member of the putative class.

16 **SECOND CAUSE OF ACTION**
17 **Unfair Business Practices in Violation of**
18 **Business & Professions Code §§17200, et seq.**

19 96. Plaintiff incorporates by reference each allegation set forth above.

20 97. The UCL defines unfair business competition to include any “unlawful,
21 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
22 misleading” advertising. Cal. Bus. & Prof. Code §17200.

23 98. A business act or practice is “unfair” under the UCL if the reasons,
24 justifications, and motives of the alleged wrongdoer are outweighed by the gravity of
25 the harm to the alleged victims.

26 99. Defendant’s conduct as set forth herein constitutes unfair business acts and
27 practices.

28 100. Defendant sold Mislabeled Products in California during the class period.

101. Plaintiff and the members of the putative class suffered substantial injury

1 by virtue of buying Defendant's Mislabeled Products, which they would not have
2 purchased absent Defendant's illegal conduct, misrepresentations, and omissions.

3 102. Defendant's deceptive marketing, advertising, packaging and labeling of
4 their Mislabeled Products and their sale of unsalable Mislabeled Products that were
5 illegal to possess were of no benefit to consumers, and the harm to consumers and
6 competition is substantial and outweighed by any benefits.

7 103. Defendant sold Plaintiff and the members of the putative class Mislabeled
8 Products that were not capable of being legally sold or held and that had no economic
9 value and were legally worthless. Plaintiff and the members of the putative class paid a
10 premium price for the Mislabeled Products.

11 104. Plaintiff and the members of the putative class purchasing Defendant's
12 Mislabeled Products had no way of reasonably knowing that the products were
13 misbranded and were not properly marketed, advertised, packaged, and labeled, and
14 thus could not have reasonably avoided the injury each of them suffered.

15 105. The consequences of Defendant's conduct as set forth herein outweigh any
16 justification, motive or reason therefor. Defendant's conduct is and continues to be
17 unlawful, unscrupulous and contrary to public policy, and is substantially injurious to
18 Plaintiff and the members of the putative class, or otherwise.

19 106. As a result of Defendant's conduct, Plaintiff and the members of the
20 putative class, pursuant to Business and Professions Code §17203, are entitled to an
21 order enjoining such future conduct by Defendant, and such other orders and judgments
22 which may be necessary to disgorge Defendant's ill-gotten gains and restore any money
23 paid for Defendant's Mislabeled Products by Plaintiff and the members of the putative
24 class.

25 **THIRD CAUSE OF ACTION**
26 **False Advertising/Violation of**
Business and Professions Code §§17500, *et seq.*

27 107. Plaintiff incorporates by reference each allegation set forth above.

28 108. Plaintiff asserts this cause of action for violations of California Business

1 and Professions Code §§17500, *et seq.*, for misleading and deceptive advertising by
2 Defendant.

3 109. Defendant sold Mislabeled Products in California during the class period.
4 Defendant engaged in a scheme of offering the Mislabeled Products for sale to Plaintiff
5 and the members of the putative class by way of, *inter alia*, improper product packaging
6 and labeling, and other promotional materials. These materials misrepresented and/or
7 omitted the true contents and nature of Defendant’s Mislabeled Products.

8 110. Defendant’s advertisements and inducements were made within California
9 and come within the definition of advertising as contained in Business and Professions
10 Code §§17500, *et seq.*, in that such product packaging and labeling, and promotional
11 materials were intended as inducements to purchase Defendant’s Misbranded Food
12 Products and are statements disseminated by Defendant to Plaintiff and the members of
13 the putative class that were intended to reach the members of the putative class.
14 Defendant knew, or in the exercise of reasonable care should have known, that these
15 statements were misleading and deceptive as set forth herein.

16 111. In furtherance of its plan and scheme, Defendant prepared and distributed
17 within California via product packaging and labeling, and other promotional materials,
18 statements that misleadingly and deceptively represented the composition and the
19 nature of Defendant’s Mislabeled Products. Plaintiff and members of the putative class
20 necessarily and reasonably relied on Defendant’s material representations and
21 omissions and were the intended targets of such misrepresentations.

22 112. Defendant’s conduct in disseminating misleading and deceptive
23 statements in California and nationwide to Plaintiff and the members of the putative
24 class was and is likely to deceive reasonable consumers by obfuscating the true
25 composition and nature of Defendant’s Mislabeled Products, in violation of the
26 “misleading prong” of California Business and Professions Code §§17500, *et seq.*

27 113. As a result of Defendant’s violations of the “misleading prong” of
28 California Business and Professions Code §§17500, *et seq.*, Defendant has been

1 unjustly enriched at the expense of Plaintiff and the members of the putative class.
2 Mislabeled Products cannot be legally sold or held and have no economic value and are
3 legally worthless. Plaintiff and the members of each Class paid a premium price for the
4 Mislabeled Products.

5 114. Plaintiff and the members of the putative class, pursuant to Business and
6 Professions Code §17535, are entitled to an order enjoining such future conduct by
7 Defendant, and such other orders and judgments which may be necessary to disgorge
8 Defendant's ill-gotten gains and restore money paid for Defendant's Misbranded Food
9 Products by Plaintiff and the members of the putative class.

10 **FOURTH CAUSE OF ACTION**
11 **Untrue Advertising in Violation of**
12 **Business and Professions Code §§17500, *et seq.***

13 115. Plaintiff incorporates by reference each allegation set forth above.

14 116. Plaintiff asserts this cause of action against Defendant for violations of
15 California Business and Professions Code §§17500, *et seq.*, regarding untrue
16 advertising. Defendant sold Mislabeled Products in California during the class period.

17 117. Defendant engaged in a scheme of offering Defendant's Mislabeled
18 Products for sale to Plaintiff and the members of the putative class by way of product
19 packaging and labeling, and other promotional materials. These materials
20 misrepresented and/or omitted the true contents and nature of Defendant's Mislabeled
21 Products. Defendant's advertisements and inducements were made in California and
22 come within the definition of advertising as contained in Business and Professions Code
23 §§17500, *et seq.*, in that the product packaging, labeling, and promotional materials
24 were intended as inducements to purchase Defendant's Mislabeled Product and are
25 statements disseminated by Defendant to Plaintiff and the members of the putative class.
26 Defendant knew, or in the exercise of reasonable care should have known, that these
27 statements were untrue.

28 118. In furtherance of its plan and scheme, Defendant prepared and distributed
in California and nationwide via product packaging and labeling, and other promotional

1 materials, statements that falsely advertise the composition of Defendant’s Mislabeled
2 Products, and falsely misrepresented the nature of those products. Plaintiff and the
3 members of the putative class were the intended targets of such representations and
4 would be, and were, reasonably deceived by Defendant’s acts and omissions.

5 119. Defendant’s conduct in disseminating untrue advertising throughout
6 California deceived Plaintiff and the members of the putative class by obfuscating the
7 contents, nature, and quality of Defendant’s Mislabeled Products, in violation of the
8 “untrue prong” of California Business and Professions Code §17500.

9 120. As a result of Defendant’s violations of the “untrue prong” of California
10 Business and Professions Code §§17500, *et seq.*, Defendant has been unjustly enriched
11 at the expense of Plaintiff and the members of the putative class. Mislabeled Products
12 cannot be legally sold or held and have no economic value and are legally worthless.
13 Plaintiff and the members of the putative class paid a premium price for the Mislabeled
14 Products.

15 121. Plaintiff and the members of the putative class, pursuant to Business and
16 Professions Code §§17535, are entitled to an order enjoining such future conduct by
17 Defendant, and such other orders and judgments which may be necessary to disgorge
18 Defendant’s ill-gotten gains and restore any money paid for Defendant’s Misbranded
19 Food Products by Plaintiff and the members of the putative class.

20 **FIFTH CAUSE OF ACTION**
21 **Violation of the Consumers Legal Remedies Act,**
22 **California Civil Code §§1750, *et seq.***

22 122. Plaintiff incorporates by reference each allegation set forth above.

23 123. This cause of action is brought pursuant to the Consumers Legal Remedies
24 Act, California Civil Code §§1750, *et seq.* (the “CLRA”).

25 124. Plaintiff and each member of the putative class are “consumers” within the
26 meaning of Civil Code §1761(d).

27 125. The purchases of the Defendant’s Mislabeled Products by consumers
28 constitute “transactions” within the meaning of Civil Code §1761 (e), and the

1 Mislabeled Products offered by Defendant constitute “goods” within the meaning of
2 Civil Code §1761(a).

3 126. Defendant has violated, and continues to violate, the CLRA in at least the
4 following respects:

- 5 a. In violation of Civil Code §1770(a)(5), Defendant represented that the
6 Mislabeled Products had characteristics which they did not have;
- 7 b. In violation of Civil Code §1770(a)(7), Defendant represented that the
8 Mislabeled Products were of a particular standard, quality, or grade, of
9 which they were not; and
- 10 c. In violation of Civil Code §1770(a)(9), Defendant advertised the
11 Mislabeled Products with the intent not to provide what it advertised.

12 127. As a direct and proximate cause of Defendant’s violation of the CLRA as
13 alleged herein, Plaintiff and members of the putative class have suffered harm by
14 Defendant’s efforts to induce them to purchase the Mislabeled Products and to pay a
15 premium price thereon when such products did not conform to either Defendant’s
16 representations or consumer expectations. As a result, Plaintiff, at this time, seeks
17 injunctive relief against Defendant requiring them to cease and desist from further
18 instances of advertising and selling the Mislabeled Products in California.

19 128. In addition, concurrent and in conjunction with the filing of this Complaint,
20 pursuant to §1782(a) of the CLRA, Plaintiff will separately notify Defendant by
21 certified mail, return receipt requested, of the particular violations of §1770 of the
22 CLRA and demands that Defendant remedy the actions described above and give notice
23 to all similarly affected California consumers of its intention to do so.

24 129. If Defendant fails to respond to Plaintiff’s demand within 30 days of this
25 notice, pursuant to §1782(d) of the CLRA, Plaintiff will amend this Complaint to
26 request actual damages, plus punitive damages, interest and attorneys’ fees.
27 Additionally, Plaintiff will seek to recover up to \$5,000 per eligible Class members as
28 provided for under §1780(b) of the CLRA. Accordingly, at the present time (and

1 without prejudice to Plaintiff's right to further amendment), pursuant to §1782(d) of the
2 CLRA, Plaintiff seeks an order enjoining the above-described wrongful acts and
3 practices of Defendant, plus costs and attorneys' fees, and any other relief which the
4 Court deems appropriate.

5 **SIXTH CAUSE OF ACTION**
6 **Restitution (Quasi-Contract)/Unjust Enrichment**

7 130. Plaintiff incorporates by reference each allegation set forth above.

8 131. Defendant's conduct in enticing Plaintiff and putative class members to
9 purchase the Mislabeled Products through their false and misleading advertising and
10 packaging as described throughout this Complaint is unlawful because the statements
11 contained on Defendant's product labels were untrue.

12 132. Defendant took monies from Plaintiff and members of the putative class
13 for products that purported to comply with the representations set forth above, even
14 though the Mislabeled Products did not conform to their representations.

15 133. Defendant has been unjustly enriched at the expense of Plaintiff and the
16 putative class as result of Defendant's unlawful conduct alleged herein, thereby creating
17 a quasi-contractual obligation on Defendant to restore these ill-gotten gains to Plaintiff
18 and putative class members.

19 134. As a direct and proximate result of Defendant's unjust enrichment,
20 Plaintiff and putative class members are entitled to restitution or restitutionary
21 disgorgement, in an amount to be proved at trial.

22 **JURY TRIAL DEMAND**

23 135. Plaintiff demands a trial by jury for all of the claims asserted in this
24 Complaint so triable.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on behalf of herself and on behalf of the other members
27 of the putative class, pray as follows:

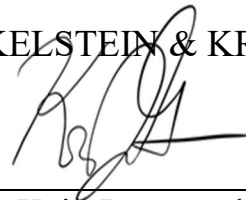
28 A. For an order certifying that this action is properly brought and may be maintained

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- as a class action, that Plaintiff be appointed the Class Representative, and that Plaintiff’s counsel be appointed counsel for the class;
- B. For restitution in such amount that Plaintiff and all putative class members paid to purchase the Mislabeled Product, or the premiums paid therefor on account of the misrepresentation as alleged above, or restitutionary disgorgement of the profits Defendant have obtained from those transactions;
 - C. For compensatory damages for causes of action for which they are available;
 - D. For injunctive relief allowable under Civil Code §1780;
 - E. For punitive damages for causes of action for which they are available;
 - F. For a declaration and order enjoining Defendant from advertising their products misleadingly in violation of California’s Sherman Food, Drug, and Cosmetic Law, and other applicable laws and regulations as specified in this Complaint;
 - G. For an order awarding reasonable attorneys’ fees and the costs of suit herein;
 - H. For an award of pre- and post-judgment interest;
 - I. For an order requiring an accounting for, and imposition of, a constructive trust upon all monies received by Defendant’s as a result of the unfair, misleading, fraudulent and unlawful conduct alleged herein; and
 - J. Such other and further relief as may be deemed necessary or appropriate.

Respectfully submitted,

FINKELSTEIN & KRINSK LLP



By: _____
Keia James Atkinson, Esq.
John J. Nelson, Esq.

Dated: October 16, 2020

Attorneys for Plaintiff and the Putative Class

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

Jesika Vado, Individually and on Behalf of All Others Similarly Situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
John J. Nelson, Esq. (SBN 317598)
Keia J. Atkinson (SBN 316649)
501 West Broadway, Ste. 1260, San Diego, CA 92101 (619) 238-1333

DEFENDANTS

Frito-Lay Inc., a Delaware corporation

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

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

Attorneys (If Known)

'20CV2055 MMABLM

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

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 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 checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <hr/> PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <hr/> 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))	<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 Constitutional of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	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	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		<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		

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

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 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)
 Brief description of cause:
Cal Bus. & Prof. Code §§17200, 17500 and Cal Civ. Code §§1750

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: 10/19/2020 SIGNATURE OF ATTORNEY OF RECORD: /s/ John J. Nelson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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