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Attorneys for Plaintiff and the Proposed Classes
[Additional Counsel on Signature Page]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ERIN SMID,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

CAMPBELL SOUP COMPANY, AND
PLUM, PBC,

Defendants.

CASE NO.: _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Erin Smid, on behalf of herself and all others similarly situated, by her undersigned attorneys, against Defendants, Campbell Soup Company (hereafter “Campbell”) and Plum, PBC (hereafter “Plum”), alleges the following based upon personal knowledge as to herself and her own action, and, as to all other matters, allege, upon information and belief and investigation of her counsel, as follows:

INTRODUCTION

1. This is a consumer class action brought individually by Plaintiff and on behalf of all persons in the below-defined proposed Classes, all of whom purchased one or more baby foods manufactured by Defendants.¹

2. Campbell purchased Plum in 2013 for \$249 million. At the time, Campbell touted Plum as the “No. 2 brand of organic baby food in the United States.”² Plum represents its food philosophy as “Little ones deserve the very best food from the very first bite.”³ Plum prides itself for being on “Team Parent,” noting on its website and advertisements, “Parenting is hard. That’s why Plum is easy.”⁴

3. Defendants do not list heavy metals as an ingredient on the Products’ label nor do they warn of the potential presence of heavy metals in their Products.

¹ The purchased products include, but are not limited to: Plum Organics Stage 1 Just Peaches, Plum Organics Stage 1 Just Prunes, Plum Organics Stage 1 Just Sweet Potato, Plum Organics Stage 1 Just Mango, Plum Organics Super Puffs Variety Pack, Plum Organics Stage 2 Pear Purple Carrot & Blueberry, Plum Organics Stage 2 Pear Spinach and Pea, Plum Organics Stage 2 Banana Pumpkin, Plum Organics Stage 2 Grow Well DHA, Plum Organics Stage 2 Sweet Potato Apple & Corn, Plum Organics Stage 2 Banana Zucchini & Amaranth, Plum Organics Stage 2 Mango Sweet Potato Apple & Millet, Plum Organics Stage 2 Pumpkin Chickpea Spinach & Broccoli, Plum Organics Stage 2 Butternut Squash Carrot Chickpea & Corn, Plum Organics Stage 2 Apple Plum Berry Barley, Plum Organics Stage 2 Pear & Mango, Plum Organics Stage 2 Peach Pumpkin Carrot & Cinnamon, Plum Organics Stage 2 Mango Yellow Zucchini Corn & Turmeric, Plum Organics Mighty 4 Guava Banana Black Bean Carrot Oat, Plum Organics Mighty 4 Pear Cherry Blackberry Strawberry Black Bean Spinach Oat, Plum Organics Mighty Veggie Zucchini Apple Watermelon Barley, Plum Organics Mighty Veggie Spinach Grape Apple Amaranth, Plum Organics Mighty Veggie Carrot Pear Pomegranate Oat, Plum Organics Mighty Morning Banana Blueberry Oat Quinoa, Plum Organics Mighty Protein & Fiber Pear White Bean Blueberry Date & Chia, Plum Organics Mighty Protein & Fiber Mango Banana White Bean Sunflower Seed Butter & Chia, and Plum Organics Mighty Protein & Fiber Banana White Bean Strawberry Chia (the “Products”).

² See <https://www.campbellsoupcompany.com/newsroom/press-releases/campbell-completes-acquisition-of-plum-organics/> (last accessed February 10, 2021).

³ See <https://www.plumorganics.com/food-philosophy/> (last accessed February 10, 2021).

⁴ See <https://www.plumorganics.com/video-category/parenting-is-hard/#videos> (last accessed February 10, 2021).

4. Unbeknownst to Plaintiff and members of the proposed Classes, and contrary to the representations on the Products' label, the Products contain toxic heavy metals, which, if disclosed to Plaintiff and members of the proposed Classes prior to purchase, would have caused Plaintiff and members of the proposed Classes not to purchase or consume the Products.

5. As a result, the Products' labeling is deceptive and misleading.

6. Plaintiff and the members of the proposed Classes, as defined below, thus bring claims for consumer fraud and seek damages, injunctive and declaratory relief, interest, costs, and attorneys' fees.

THE PARTIES

7. Plaintiff Erin Smid is a citizen of the State of Illinois and is a member of the proposed Classes defined herein. She purchased all of the listed Products from Amazon between December 29, 2017 and January 13, 2021.

8. Defendant, Campbell Soup Company, is a New Jersey corporation with its headquarters located in Camden, New Jersey.

9. Defendant, Plum, PBC, is a Delaware corporation with its headquarters located in San Francisco, California.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under the Class Action Fairness Act of 2005 (hereinafter referred to as "CAFA") codified as 28 U.S.C. § 1332(d)(2) because the claims of the members of the proposed Classes exceed \$5,000,000 and because Defendants are citizens of a different state than most members of the proposed Classes.

11. This Court has personal jurisdiction over Defendants because Defendants regularly sell and market products and conduct business in this District and/or under the stream of commerce doctrine by allowing products to be sold in this District, including the Products.

12. Venue is proper in this Court because a substantial portion of the events complained of herein took place in this District, and this Court has jurisdiction over the Defendants. Furthermore, Defendant, Campbell, is incorporated and headquartered in this District.

FACTUAL ALLEGATIONS

13. Defendants manufacture, distribute, promote, offer for sale, and sell the Products, both in the past and currently. Defendants have advertised and continue to advertise the Products through television commercials, print advertisements, point-of-sale displays, product packaging, Internet advertisements, and other promotional materials.

14. An investigation by the U.S. House of Representatives Subcommittee on Economic and Consumer Policy (hereafter the “Subcommittee”) revealed that baby foods manufactured by Defendants are “tainted with significant levels of toxic heavy metals, including arsenic, lead, cadmium, and mercury.”⁵

15. Exposure to heavy metals causes permanent decreases in IQ, diminished future economic productivity, and increased risk of future criminal and antisocial behavior in children. Toxic heavy metals endanger infant neurological development and long-term brain function. Lead and arsenic are heavy metals known to cause a wide spectrum of adverse outcomes in pregnancy

⁵ U.S. House of Representatives Subcommittee on Economic and Consumer Policy, Staff Report, “Baby Foods are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium and Mercury (Feb. 4, 2021).

such as abortions, retarded growth at the intrauterine cavity, skeletal deformities, malformations and retarded development especially of the nervous system.⁶

16. Defendants refused invitations to cooperate with the Subcommittee, leading the Subcommittee to state it is “greatly concerned that [Defendants’] lack of cooperation might be obscuring the presence of even higher levels of toxic heavy metals in their baby food products than their competitors’ products.” Defendants additionally refused to produce to the Subcommittee their testing standards or any specific test results regarding the presence of toxic heavy metals. Rather, Defendants provided a spreadsheet “self-declaring” that their baby food meets unspecified criteria for toxic heavy metals.⁷

17. Defendants’ produced a spreadsheet, which declares that their baby food met the criteria for mercury, which notes with asterisks that for mercury: “[n]o specific threshold established because no high-risk ingredients are used.” The Subcommittee found this note disturbing, stating “[t]his misleading framing—of meeting criteria that do not exist—raises questions about what [Defendants’] other thresholds actually are, and whether they exist.”⁸

18. The Subcommittee notes that Defendants’ “evasion is concerning, as even limited independent testing has revealed the presence of toxic heavy metals in their baby food.”

19. Young children are particularly vulnerable to lead because the physical and behavioral effects of lead occur at lower exposure levels in children than in adults. A dose of lead that would have little effect on an adult can have a significant effect on a child. In children, low levels of

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

exposure have been linked to damage to the central and peripheral nervous system, learning disabilities, shorter stature, impaired hearing, and impaired formation and function of blood cells.⁹

20. EPA has set the maximum contaminant level goal for lead in drinking water at zero because lead is a toxic metal that can be harmful to human health even at low exposure levels. Lead is persistent, and it can bioaccumulate in the body over time.¹⁰

21. The Agency for Toxic Substances and Disease Registry states that there may be no threshold for lead with regards to developmental impact on children. “In other words there are no safe limits for [lead].”¹¹

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action individually and on behalf of all other persons similarly situated pursuant to Federal Rule of Civil Procedure 23. The class definition(s) may depend on the information obtained throughout discovery. Notwithstanding, at this time, Plaintiff brings this action and seeks certification of the following proposed Class: All persons within the United States who purchased and consumed the Products from the beginning of any applicable limitations period through the date of class certification (the “National Class” or the “Class”).

23. Plaintiff also seeks certification of the following subclass (the “Illinois Sub-Class”): All persons in the State of Illinois who purchased and consumed the Products from the beginning of any applicable limitations period through the date of class certification.

24. Excluded from the proposed Classes are the Defendants, and any entities in which the Defendants have controlling interest, the Defendants’ agents, employees and their legal

⁹ See <https://www.cdc.gov/ncch/lead/prevention/pregnant.htm>.

¹⁰ See <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water>.

¹¹ G. Schwalfenberg, I. Rodushkinb, S.J. Genuis, “Heavy metal contamination of prenatal vitamins,” *Toxicology Reports* 5 at 392 (2018).

representatives, any Judge to whom this action is assigned and any member of such Judge's staff and immediate family, and Plaintiff's counsel, their staff members, and their immediate family.

25. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of her claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

26. Numerosity – Federal Rule of Civil Procedure 23(a)(1). The members of the Classes are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Classes number in the thousands to tens of thousands. The number of members in the Classes is presently unknown to Plaintiff but may be verified by Defendants' records. Members of the Classes may be notified of the pendency of this action by mail, email, Internet postings, and/or publication.

27. Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3). Common questions of law and fact exist as to all members of the Classes and predominate over questions affecting only individual members of the Classes. Such common questions of law or fact include, but are not limited to, the following:

- a. Whether the Products contain dangerous levels of heavy metals;
- b. Whether the marketing, advertising, packaging, labeling, and other promotional materials for the Products are deceptive;
- c. Whether Defendants' actions violate the state consumer fraud statutes invoked below;
- d. Whether Defendants' actions constitute common law fraud;
- e. Whether Plaintiff and Members of the Classes were damaged by Defendants' conduct;

f. Whether Defendants were unjustly enriched at the expense of Plaintiff and Class Members; and

g. Whether Plaintiff and Class Members are entitled to injunctive relief.

28. Typicality – Federal Rule of Civil Procedure 23(a)(3). The claims of the named Plaintiff are typical of the claims of other Members of the Classes. All Members of the Classes were comparably injured by Defendants’ conduct described above, and there are no defenses available to Defendants that are unique to Plaintiff or any particular members of the Classes.

29. Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4). Plaintiff is an adequate Class representative because her interests do not conflict with the interests of other Members of the Classes; she has retained class counsel competent to prosecute class actions and financially able to represent the Classes.

30. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2). Defendants have acted or refused to act on grounds generally applicable to Plaintiff and the other Members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the Members of the Classes as a whole. In particular, Plaintiff seeks to certify the Classes to enjoin Defendants from selling or otherwise distributing baby foods until such time that Defendants can demonstrate to the Court’s satisfaction that their baby foods are accurately labeled.

31. Superiority – Federal Rule of Civil Procedure 23(b)(3). A class action is superior to any other means of adjudication for this controversy. It would be impracticable for Members of the Classes to individually litigate their own claims against Defendants because the damages suffered by Plaintiff and the Members of the Classes are relatively small compared to the cost of individually litigating their claims. Individual litigation would create the potential for inconsistent

judgments and delay and expenses to the court system. A class action provides an efficient means for adjudication with fewer management difficulties and comprehensive supervision by a single court.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF ILLINOIS CONSUMER FRUAD AND DECEPTIVE BUSINESS PRACTICES ACT, 815 Ill. Comp. Stat. §§ 505, et seq. (On behalf of the Illinois Sub-Class)

32. The Plaintiff, individually and on behalf of the Illinois Class, repeats and re-alleges all previously alleged paragraphs, as if fully alleged herein.

33. Defendants are “persons” as defined by 815 Ill. Comp. Stat. § 505/1(c).

34. The Illinois Plaintiff and Illinois Class Members are “consumers” as defined by 815 Ill. Comp. Stat. § 505/1(e).

35. Defendants’ conduct as described herein was in the conduct of “trade” or “commerce” as defined by 815 Ill. Comp. Stat. § 505/1(f). Defendants’ conduct is described in full detail above.

36. Defendants’ conduct constitutes deceptive, unfair, and unlawful trade acts or practices, in violation of 815 Ill. Comp. Stat. § 505/2.

37. Defendants’ representations and omissions were material because they were likely to deceive reasonable consumers.

38. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury that these consumers could not have reasonably avoided; this substantial injury outweighed any benefit to consumers or to competition.

39. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff and the Illinois Class Members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Products.

40. The Plaintiff and the Illinois Class Members seek all monetary and non-monetary relief allowed by law, including damages, restitution, punitive damages, injunctive relief, and reasonable attorneys' fees and costs.

COUNT II

VIOLATIONS OF ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT, **815 Ill. Comp. Stat. §§ 505, et seq.** **(On behalf of the Illinois Sub-Class)**

41. The Plaintiff, individually and on behalf of the Illinois Class, repeats and re-alleges all previously alleged paragraphs, as if fully alleged herein.

42. Defendants are "persons" as defined by 815 Ill. Comp. Stat. § 510/1(5).

43. Defendants engaged in deceptive trade practices in the conduct of their businesses, in violation of 815 Ill. Comp. Stat. § 510/2(a) by making misrepresentations and false statements concerning the presence of heavy metals in their Products.

44. Defendants' representations and omissions were material because they were likely to deceive reasonable consumers.

45. The above unfair and deceptive practices and acts by Defendants were immoral, unethical, oppressive, and unscrupulous. These acts caused substantial injury to Plaintiff and the Illinois Class Members that they could not have reasonably avoided; this substantial injury outweighed any benefits to consumers or to competition.

46. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff and the Illinois Class members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing the Products.

47. The Plaintiff and the Illinois Class Members seek all monetary and non-monetary relief allowed by law, including injunctive relief and reasonable attorneys' fees.

COUNT III

UNJUST ENRICHMENT **(On Behalf of the National Class)**

48. Plaintiff, individually and on behalf of the National Class, repeats and realleges all previously alleged paragraphs, as if fully alleged herein.

49. Plaintiff and the putative Class Members conferred a benefit on Defendants when they purchased the Products, of which Defendants had knowledge. By their wrongful acts and omissions described herein, including selling the Products, which contain heavy metals, including arsenic, mercury, cadmium, and lead at levels above what is considered safe for babies, Defendants were unjustly enriched at the expense of Plaintiff and the putative Class Members. Plaintiff's detriment and Defendants' enrichment were related to and flowed from the wrongful conduct challenged in this Complaint.

50. Defendants have profited from their unlawful, unfair, misleading, and deceptive practices at the expense of Plaintiff and the putative Class Members under circumstances in which it would be unjust for Defendants to be permitted to retain the benefit. It would be inequitable for Defendants to retain the profits, benefits, and other compensation obtained from their wrongful conduct as described herein in connection with selling the Products.

51. Defendants have been unjustly enriched in retaining the revenues derived from the proposed Class Members' purchases of the Products, which retention of such revenues under these circumstances is unjust and inequitable because Defendants manufactured defective Products, and misrepresented the nature of the Products, misrepresented their ingredients, and knowingly marketed and promoted dangerous and defective Products, which caused injuries to Plaintiff and Members of the proposed Class because they would not have purchased the Products based on the same representations if the true facts concerning the Products had been known.

52. Plaintiff and the putative Class Members have been damaged as a direct and proximate result of Defendants' unjust enrichment because they would not have purchased the Products on the same terms or for the same price had they known the true nature of the Products and the misstatements regarding what the Products were and what they contained.

53. Defendants either knew or should have known that payments rendered by Plaintiff and the putative Class Members were given and received with the expectation that the Products were produced in accordance with the stated food philosophy, "Little ones deserve the very best food from the very first bite," as represented by Defendants. It is inequitable for Defendants to retain the benefit of payments under these circumstances.

54. Plaintiff and the putative Class Members are entitled to recover from Defendants all amounts wrongfully collected and improperly retained by Defendants.

55. When required, Plaintiff and the putative Class Members are in privity with Defendants because Defendants' sale of the Products was either direct or through authorized sellers. Purchasing through authorized sellers is sufficient to create such privity because such authorized sellers are Defendants' agents for the purpose of the sale of the Products.

56. As a direct and proximate result of Defendants' wrongful conduct and unjust enrichment, Plaintiff and the putative Class Members are entitled to restitution of, disgorgement of, and/or imposition of a constructive trust upon all profits, benefits, and other compensation obtained by Defendants for their inequitable and unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the other members of the Classes proposed in this Complaint, respectfully requests that the Court enter judgment as follows:

- A. Declaring that this action is a proper class action, certifying the Classes as requested herein, designating Plaintiff as Class Representative, and appointing the undersigned counsel as Class Counsel for the Classes;
- B. Ordering Defendants to pay actual damages to Plaintiff and the other members of the Classes;
- C. Ordering Defendants to pay restitution to Plaintiff and the other members of the Classes;
- D. Ordering Defendants to pay punitive damages, as allowable by law, to Plaintiff and the other members of the Classes;
- E. Ordering Defendants to pay statutory damages, as provided by the applicable state consumer protection statutes invoked herein, to Plaintiff and the other members of the Classes;
- F. Ordering Defendants to pay reasonable attorneys' fees and litigation costs to Plaintiff and the other members of the Classes, as allowable by law;
- G. Ordering Defendants to pay both pre- and post-judgment interest, as allowable by law, on any amounts awarded; and

H. Ordering such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all claims in this Complaint so triable. Plaintiff also respectfully requests leave to amend this Complaint to conform to the evidence, if such amendment is needed for trial.

Dated: February 11, 2021

Respectfully submitted,

/s/ Jonathan Shub

Jonathan Shub

Kevin Laukaitis*

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**pro hac vice to be filed*

Attorneys for the Plaintiff and the Putative Classes

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

ERIN SMID,
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)

Jonathan Shub, SHUB LAW FIRM LLC, (856) 772-7200
134 Kings Hwy. E., 2nd Floor, Haddonfield, NJ 08033

DEFENDANTS

CAMPBELL SOUP COMPANY, AND PLUM, PBC

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

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

Attorneys (If Known)

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

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

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

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

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:
False advertising

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$
5,000,000

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

February 11, 2021

SIGNATURE OF ATTORNEY OF RECORD

Jonathan Shub

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.
- 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.