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*Counsel for Plaintiff Sean McGinity
and the Proposed Class*

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

SEAN MCGINITY, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

THE PROCTER & GAMBLE COMPANY,

Defendant.

Case No. 20-cv-8164

CLASS ACTION COMPLAINT FOR:

1. Violation of the California Consumers Legal Remedies Act
2. Violation of the California False Advertising Law
3. Violation of the California Unfair Competition Law

JURY TRIAL DEMANDED

1 Plaintiff SEAN MCGINITY (“Plaintiff”) brings this Class Action Complaint, on behalf of
2 himself and all others similarly situated, against Defendant THE PROCTER & GAMBLE
3 COMPANY (“Defendant”), demanding a trial by jury, and alleges as follows:

4 **JURISDICTION & VENUE**

5 1. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28
6 U.S.C. § 1332(d) in that: (1) this is a class action involving more than 100 class members; (2)
7 Plaintiff is a citizen of the State of California and the class he seeks to represent are also citizens
8 of California and Defendant is a citizen of the State of Ohio; and (3) the amount in controversy
9 exceeds the sum of \$5,000,000, exclusive of interest and costs.

10 2. Pursuant to 28 U.S.C. § 1391(d), venue is proper in this District because a
11 substantial part of the events, omissions, acts and transactions giving rise to the claims herein
12 occurred in Sonoma County, California.

13 **SUMMARY OF THE ACTION**

14 3. This is a proposed class action complaint brought on behalf of a Class, as defined
15 below, of California consumers who purchased personal care products (“PCPs”) manufactured,
16 marketed, advertised, sold and labeled by Defendant as: “PANTENE PRO-V NATUREFUSION”
17 shampoos and conditioners.

18 4. Defendant represents that the Products are natural, when, in fact, they contain non-
19 natural and synthetic ingredients, harsh and potentially harmful ingredients, and are substantially
20 unnatural. Defendant’s claims pertaining to the natural qualities of the Products are false,
21 misleading, designed to deceive consumers into paying a price premium for the Products, and
22 designed to mislead reasonable consumers into selecting Defendant’s Products over other
23 competing PCPs. Indeed, a recent consumer survey of more than 400 consumers conducted by an
24 independent third party evidences that more than 77% of consumers were deceived to believe the
25 product contained more natural ingredients than artificial ingredients, when in fact that was not
26 true. This lawsuit seeks to enjoin Defendant’s false and misleading practices and to recover
27 damages and restitution on behalf of the class under applicable state laws.

PARTIES

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2 5. Plaintiff Sean McGinity is, and at all times relevant to this action has been, a citizen
3 of California residing in the City of Santa Rosa, County of Sonoma, State of California.

4 6. Plaintiff purchased Defendant's Products — Pantene Pro-V NatureFusion
5 Smoothing Shampoo and Pantene Pro-V NatureFusion Smoothing Conditioner — on or about June
6 19, 2019 at a Safeway grocery store in Santa Rosa, California.

7 7. Plaintiff purchased the Products, for which he paid a price premium, because he
8 wanted to use personal care products that were natural. Plaintiff purchased Defendant's
9 NATUREFUSION Products based on claims on the Product's label that the Products were of, by
10 and from "NATURE".

11 8. Plaintiff relied on Defendant's false and misleading labels in making his purchases,
12 having been misled and deceived into thinking that Defendant's Products were from nature or
13 otherwise natural. Had Plaintiff known at the time that the Products were not, in fact natural but
14 were instead made with unnatural, synthetic ingredients, he would not have purchased the Products
15 or paid a price premium to purchase them.

16 9. If Plaintiff knew the Product labels were truthful and non-misleading, he would
17 continue to purchase the Products in the future. At present, however, Plaintiff cannot be confident
18 that the labeling of the Products is, and will be, truthful and non-misleading.

19 10. Defendant THE PROCTER & GAMBLE COMPANY is incorporated in the State
20 of Ohio, with its principal place of business at 1 Procter & Gamble Plaza, Cincinnati, Ohio 45202.

21 11. Defendant manufactures, markets, advertises and sells personal care products, also
22 known as PCPs, including the NATUREFUSION Products, one or more of which were purchased
23 by Plaintiff and members of the proposed Class. Defendant manufactured, marketed, advertised,
24 distributed and sold its NATUREFUSION Products widely throughout the State of California and
25 the Northern District of California during the class period.

26 12. Defendant is a top manufacturer and distributor of PCPs, with multi-outlet retail
27 sales in the regular shampoo category alone of nearly \$600 million USD annually during the Class
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1 Period.¹

2 13. At all time periods relevant to the allegations, claims and causes of action herein,
3 Defendant acted through its officers, directors, employees, agents, intermediaries, representatives
4 and vendors, all of whom were acting on Defendant’s behalf and at Defendant’s behest, with actual
5 or apparent authority, in committing the acts and omissions described herein.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 14. Recently, the regular shampoo category in the U.S. has had overall growth of less
8 than one percent; during the same period, however, Defendant saw average gains of 21%.²

9 15. In or about the year 2016, in order to maintain and increase market share, and to
10 capitalize on consumers’ growing interest in and demand for natural and healthy PCPs, Defendant
11 revised, reformulated and rebranded its “Pro-V” line of PCPs to place an emphasis on NATURE
12 in its “NATUREFUSION” line of Products purchased by Plaintiff and the proposed Class.

13 16. Defendant markets, advertises and sells its present formulations of NatureFusion
14 PCPs—the Products purchased by Plaintiff and members of the proposed Class—in packaging
15 which bears on its front the labels and inscriptions “NATUREFUSION” and an avocado on a green
16 leaf as depicted below:

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¹ *Top shampoo players clean up*, Drug Store News, Vol. 38, No. 4 (April 2016) at pp. 24; drugstorenews.com.

² *Id.*

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17. The Products purchased by Plaintiff and the proposed Class are deceptive and misleading because the Products contain and are substantially comprised of non-natural ingredients.

18. “Nature” is commonly and reasonably understood as “*natural* condition” by reasonable consumers.³ Natural is commonly and reasonably understood by reasonable consumers to mean “as found in *nature* and *not* involving anything made or done by people” such as, for example, “a natural substance.”⁴

19. ‘Natural’ is commonly and reasonably understood by reasonable consumers in both

³ Merriam-Webster, <https://www.merriam-webster.com/dictionary/nature> (last accessed May 22, 2020) (emphasis added).

⁴ Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/natural> (last accessed May 22, 2020) (emphasis added).

1 the affirmative: “existing in or produced by nature” and “having a form or appearance found in
2 nature”; and the negative: “*not* artificial” and “*not* cultivated.”⁵

3 20. To the average and reasonable consumer, “**NATURE**” is reasonably understood to
4 mean ‘natural’ and ‘not artificial.’

5 21. To the detriment of consumers, inclusive of Plaintiff and the proposed class,
6 Defendant’s Products are not natural.

7 22. All of Defendant’s Products contain, *inter alia*, several of the following ingredients
8 that are not natural:

- 9 • sodium laureth sulfate
- 10 • cocamidopropyl betaine
- 11 • cocamide MEA
- 12 • sodium citrate
- 13 • sodium xylenesulfonate
- 14 • fragrance
- 15 • dimethiconol
- 16 • citric acid,
- 17 • sodium benzoate
- 18 • guar hydroxypropyltrimonium chloride
- 19 • disodium EDTA
- 20 • panthenyl ethyl ether
- 21 • methylchloroisothiazolinone
- 22 • Yellow 5
- 23 • methylisothiazolinone
- 24 • Blue 1
- 25 • Red 33
- 26 • behentrimonium methosulfate,
- 27 • bis-aminopropyl dimethicone,
- 28 • benzyl alcohol

27 ⁵ Merriam-Webster, <https://www.merriam-webster.com/dictionary/natural> (last accessed May 22,
28 2020) (emphasis added).

- dicetyldimodonium chloride

1 23. Sodium laureth sulfate, cocamidopropyl betaine, cocamide MEA, sodium citrate,
2 sodium xylenesulfonate, fragrance, dimethiconol, citric acid, sodium benzoate, guar
3 hydroxypropyltrimonium chloride, disodium EDTA, panthenyl ethyl ether,
4 methylchloroisothiazolinone, Yellow 5, methylisothiazolinone, Blue 1, Red 33, behentrimonium
5 methosulfate, bis-aminopropyl dimethicone, benzyl alcohol, and dicetyldimodonium chloride are
6 not ‘natural’ ingredients, nor are they found in “NATURE.”

7 24. As further guidance as to what a reasonable consumer likely thinks is ‘natural’, the
8 Natural Products Association (“NPA”), a respected industry trade group, refuses to certify as
9 “natural” any products that contain:

- cocamide MEA
- behentrimonium methosulfate
- cocamidopropyl betaine
- dimethicone (“dimethiconol” in Defendant’s PCPs)
- disodium EDTA
- methylisothiazolinone
- sodium laureth sulfate

10 25. All these ingredients all found in Defendant’s “NATUREFUSION” Products.⁶

11 26. The NPA Standard and Certification for PCPs also prohibits “Synthetic
12 Fragrances.”⁷

13 27. Upon information and belief, the “fragrance” in Defendant’s Products is synthetic
14 and thus prohibited by the NPA Standard and Certification for PCPs.

15 28. The “fragrance” found in Defendant’s Products is not natural nor is it associated
16 with “NATURE”.

17 29. The NPA Standard’s definition of “natural” ingredients prohibits those that
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25 ⁶ Natural Products Association, *NPA Standard and Certification for Personal Care Products*, The
26 Natural Standard (04/20/17), Prohibited ingredients, available at <https://www.npanational.org/wp-content/uploads/2017/03/The-Natural-Standard-042717.pdf> (last accessed May 22, 2020).

27 ⁷ *NPA Standard and Certification for Personal Care Products*, fn. 11, *supra*.

1 incorporate or are derived from “petroleum compounds.”⁸

2 30. Yellow 5, or FD&C Yellow 5, is a synthetic dye produced from petroleum;⁹ this
3 synthetic dye is present in Defendant’s Products.

4 31. Blue 1, or FD&C Blue 1, is a synthetic dye produced from petroleum;¹⁰ this
5 synthetic dye is present in Defendant’s Products.

6 32. Red 33, or D&C Red 33, is a synthetic dye produced from petroleum or coal tar
7 sources;¹¹ this synthetic dye is present in Defendant’s Products.

8 33. Upon information and belief, Yellow 5, Blue 1 and Red 33—ingredients present in
9 Defendant’s Products—are synthetic compounds which incorporate and/or are derived from
10 petroleum compounds, and are thus prohibited by the NPA Standard and Certification for PCPs.

11 34. Yellow 5, Blue 1 and Red 33—ingredients present in Defendant’s Products—are
12 not ‘natural’ nor are they associated with “NATURE”.

13 35. Defendant’s misrepresentations about the Products as set forth herein were uniform
14 and were communicated to Plaintiff, and to every other member of the Class, at every point of
15 purchase and consumption.

16 36. By labelling the Products “NATURE” or ‘natural’, Defendant deceives and
17 misleads reasonable consumers. A reasonable consumer purchases the Products believing they are
18 natural based on the Products’ labeling. However, a reasonable consumer would not deem the
19 Products natural if that consumer knew that the ingredients contained in the Products are
20 artificial/synthetic, highly processed and/or non-natural. Defendant’s scheme to mislead and
21 deceive consumers about the natural qualities of the Products is particularly egregious with respect
22 to Defendant’s use of synthetic dyes in the Products. Specifically, Defendant knowingly and
23 intentionally manipulates the colors with unnatural synthetic dyes to make them appear more
24 natural, while omitting these synthetic dyes from other sibling brands or sub-brands in the Pro-V
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26 ⁸ *Id* at pp. 1.

27 ⁹ EWG Skin Deep Guide, available at <https://www.ewg.org/skindeep/ingredients/702442-fd-c-yellow-5/> (last accessed May 22, 2020).

28 ¹⁰ EWG Skin Deep Guide, available at <https://www.ewg.org/skindeep/ingredients/702408-fd-c-blue-1/> (last accessed May 22, 2020).

¹¹ EWG Skin Deep Guide, available at <https://www.ewg.org/skindeep/ingredients/701803-d-c-red-33/> (last accessed May 22, 2020).

1 line. For example, Pro-V Daily Moisture Renewal and Pro-V Classic Clean shampoos have an
2 opaque, milky color and creamy appearance, and are packaged in white or cream-colored bottles
3 and the Pro-V Sheer Volume shampoo is completely clear and packaged in a clear bottle; none of
4 these three brands or sub-brands list Yellow 5, Blue 1 and Red 33, nor does Defendant explicitly
5 identify or list any similar synthetic dyes among the ingredients for the aforementioned Pro-V
6 sibling brands or sub-brands. By contrast, Defendant's NATUREFUSION shampoo Product is
7 clear, but packaged in a white/cream-colored bottle, reinforcing the deception that it is more natural
8 by being color-free. Furthermore, this result is achieved by using the aforementioned dyes to
9 counteract the colors that would result from the reaction and interaction of the many synthetic,
10 artificial, non-natural chemicals and ingredients in Defendant's shampoo Products. Similarly,
11 Defendant manipulates the color of its conditioner Products by adding synthetic dyes Yellow 5,
12 Blue 1 and Red 33 to achieve a light green hue, evocative of the natural halved avocado depicted
13 on the front of the Products' packaging, thus reinforcing the deception that it is more natural than
14 similar and competing conditioner PCPs with a milky or creamy white hue. Furthermore, this
15 result is achieved by using the aforementioned dyes to counteract the colors that would result from
16 the reaction and interaction of the many synthetic, artificial, non-natural chemicals and ingredients
17 in Defendant's conditioner Products.

18 37. Reasonable consumers, including Plaintiff, purchased the Products based upon
19 their belief that they are natural. However, a reasonable consumer would not deem the Products
20 natural if he/she knew that they contained synthetic, highly processed and/or non-natural
21 ingredients.

22 38. Hence, Defendant's claims that the Products are "natural" are false and misleading.

23 39. Defendant has profited enormously from its false and misleading marketing of the
24 Products. Consumers either would not have purchased the Products had they known they were not
25 natural or would have purchased a less expensive product.
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CLASS ALLEGATIONS

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2 40. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
3 Procedure 23. Plaintiff seeks to represent the following class (“Class” or “California Class”)
4 defined as follows:

5 All consumers within the State of California who purchased the Products
6 from June 5, 2016 to time of trial for their personal use, rather than for resale
7 or distribution. Excluded from the Class are Defendant’s current or former
8 officers, directors, and employees; counsel for Plaintiff and Defendant; and
9 the judicial officer to whom this lawsuit is assigned.

10 The requirements of Federal Rule of Civil Procedure 23 are satisfied because:

11 A. Numerosity: The members of the class are so numerous that joinder of all
12 members is impracticable. While the exact number of class members is presently unknown to
13 Plaintiff, based on Defendant’s volume of sales, Plaintiff estimates that it is in the thousands.

14 B. Commonality: There are questions of law and fact that are common to the
15 class members and that predominate over individual questions. These include the following:

- 16 i. Whether Defendant materially misrepresented to the class members
17 that the Products are from “nature” (*i.e.* are ‘natural’);
- 18 ii. Whether Defendant’s misrepresentations and omissions were
19 material to reasonable consumers;
- 20 iii. Whether Defendant’s labeling, marketing, and sale of the Products
21 constitutes an unfair, unlawful, or fraudulent business practice;
- 22 iv. Whether Defendant’s labeling, marketing, and sale of the Products
23 constitutes false advertising;
- 24 v. Whether Defendant’s conduct injured consumers and, if so, the
25 extent of the injury; and
- 26 vi. The appropriate remedies for Defendant’s conduct.

27 C. Typicality: Plaintiff’s claims are typical of the claims of the class members
28 because Plaintiff suffered the same injury as the class members—*i.e.*, Plaintiff purchased the

1 Products based on Defendant’s misleading representations that the Products are natural.

2 D. Adequacy: Plaintiff will fairly and adequately represent and protect the
3 interests of the members of each class. Plaintiff does not have any interests that are adverse to
4 those of the class members. Plaintiff has retained competent counsel experienced in class action
5 litigation and intends to prosecute this action vigorously.

6 E. Superiority: A class action is superior to other available methods for the fair
7 and efficient adjudication of this controversy. Class action treatment will permit a large number
8 of similarly situated persons to prosecute their common claims in a single forum simultaneously,
9 efficiently, and without the unnecessary duplication of effort and expense that numerous individual
10 actions would engender. Since the damages suffered by individual class members are relatively
11 small, the expense and burden of individual litigation make it virtually impossible for the class
12 members to seek redress for the wrongful conduct alleged, while an important public interest will
13 be served by addressing the matter as a class action.

14 41. The prerequisites for maintaining a class action for injunctive or equitable relief
15 under Federal Rule of Civil Procedure 23(b)(2) are met because Defendant had acted or refused to
16 act on grounds generally applicable to each class, thereby making appropriate final injunctive or
17 equitable relief with respect to each class as a whole.

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of the California Consumers Legal Remedies Act – By the California Class)**

3 42. Plaintiff incorporates by reference the allegations set forth above.

4 43. Plaintiff and the California Class members are “consumers” under the California
5 Consumers Legal Remedies Act (“CLRA”), California Civil Code section 1761(d).

6 44. The Products are “goods” under California Civil Code section 1761(a).

7 45. The purchases by Plaintiff and the California Class members of the Products are
8 “transactions” under California Civil Code section 1761(e).

9 46. As alleged above, Defendant has violated California Civil Code sections
10 1770(a)(5), (a)(7), and (a)(9) by making false representations on the Product packaging and in
11 marketing (as detailed herein) that the Products are natural when in fact they contain synthetic
12 and/or highly processed ingredients, which are not natural.

13 47. Plaintiff and the California Class members relied on the representations by
14 Defendant. Plaintiff and the California Class members would not have purchased the Products at
15 the price offered if they had known that, contrary to Defendant’s representations, the Products are
16 not, in fact, natural. Plaintiff and the California Class members suffered damages equal to the
17 purchase price of the Products.

18 48. Plaintiff seeks injunctive relief.

19 49. Plaintiff also seeks damages. Pursuant to California Civil Code 1782(a), Defendant
20 was sent a pre-suit demand letter on June 5, 2020 that demanded that Defendant correct, repair,
21 replace, or otherwise rectify the goods at issue here. Defendant refused to comply with the demand.

22 **SECOND CAUSE OF ACTION**

23 **(Violation of the California False Advertising Law – By the California Class)**

24 50. Plaintiff incorporates by reference the allegations set forth above.

25 51. The California False Advertising Law (“FAL”), California Business and
26 Professions Code section 17500 *et seq.*, makes it unlawful for a person, firm, corporation, or
27 association to induce the public to buy its products by knowingly disseminating untrue or
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1 misleading statements about the products.

2 52. Defendant's labeling and advertisings includes untrue and misleading statements
3 that the Products are natural. These representations were and continue to be likely to deceive a
4 reasonable consumer. If consumers knew the true facts regarding the Products, as detailed above,
5 they would not have purchased the Products. Defendant knew, or reasonably should have known,
6 that its representations concerning the Products were and are untrue and misleading, since they
7 know how the Products and their ingredients are manufactured. Defendant made the
8 representations at issue with the intent to induce Plaintiff and the California Class members to
9 purchase the Products. Plaintiff and the California Class members purchased the Products in
10 reliance on the untrue and misleading representations by Defendant.

11 53. Pursuant to California Business & Professions Code section 17535, Plaintiff and
12 the California Class members seek restitution of the purchase price paid for the Products and an
13 injunction barring Defendant from continuing its deceptive advertising practices.

14 **THIRD CAUSE OF ACTION**

15 **(Violation of the California Unfair Competition Law – By the California Class)**

16 54. Plaintiff incorporates by reference the allegations set forth above.

17 55. The California Unfair Competition Law, California Business and Professions Code
18 section 17200 *et seq.*, prohibits any unlawful, unfair, or fraudulent business act or practice.

19 56. Defendant's conduct is unlawful because it violates the CLRA and the FAL as
20 alleged below.

21 57. Defendant's conduct is fraudulent because, as alleged above, Defendant's
22 representations concerning the Products were false and misleading, and Plaintiff and the California
23 Class members relied on those representations in purchasing the Products.

24 58. Plaintiff and the California Class members have suffered injury in fact and lost
25 money as a result of Defendant's conduct, since they purchased the Products in reliance on
26 Defendant's misrepresentations and would not have purchased the Products if they had known the
27 true facts about the Products.

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1 59. Pursuant to California Business and Professions Code § 17203, Plaintiff and the
2 California Class members seek restitution of the purchase price paid for the Products, as well as
3 an injunction barring Defendant from continuing its deceptive advertising practices.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
6 judgment against Defendant as follows:

7 A. For an order enjoining Defendant from continuing the unlawful practices set forth
8 above;

9 B. For an order requiring Defendant to disgorge and make restitution of all monies
10 Defendant acquired by means of the unlawful practices set forth above;

11 C. For compensatory damages according to proof;

12 D. For punitive damages according to proof;

13 E. For reasonable attorneys' fees and costs of suit;

14 F. For pre-judgment interest; and

15 G. For such other relief as the Court deems proper.

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DEMAND FOR JURY TRIAL

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

Date: November 19, 2020

Respectfully submitted,

REESE LLP

/s/ Michael R. Reese

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Counsel for Plaintiff and the Proposed Class

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

Sean McGinty

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

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

Michael R. Reese (212) 643-0500 REESE LLP, 100 West 93rd Street, 16th Floor NY, NY 10025

DEFENDANTS

The Proctor & Gamble Company

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

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

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, 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 (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(d)

Brief description of cause: false advertising

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00

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

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

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 11/19/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Michael R. Reese

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.