

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

TAMARA BULLOCK, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

OCEAN SPRAY CRANBERRIES, INC.,

Defendant.

Civil Action No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Tamara Bullock (“Plaintiff”) brings this action on behalf of herself and all others similarly situated against Defendant Ocean Spray Cranberries, Inc. (“Defendant” or “Ocean Spray”). Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to the allegations specifically pertaining to herself, which are based on her personal knowledge.

**NATURE OF THE ACTION**

1. This is a class action on behalf of purchasers of Defendant’s cranberry juice products (the “Products”)<sup>1</sup> that claim to have “NO ARTIFICIAL FLAVORS OR PRESERVATIVES.” This representation is false and/or misleading because the Products contain ascorbic acid—a known preservative commonly used in food products.

2. Defendant’s “NO ARTIFICIAL FLAVORS OR PRESERVATIVES” representation is featured on the Products’ labeling in order to induce health-conscious consumers to purchase foods that are free from preservatives. Defendant markets its Products in

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<sup>1</sup> The Products encompass all of Defendant’s canned and bottled juices that are advertised as containing “NO ARTIFICIAL FLAVORS OR PRESERVATIVES” but contain ascorbic acid.

a systematically misleading manner by misrepresenting that the Products do not contain preservatives.

3. Defendant has profited unjustly as a result of its deceptive conduct. Plaintiff therefore asserts claims on behalf of herself and similarly situated purchasers for violation of Massachusetts General Laws Ch. 93A, *et seq.*, New York General Business Law §§ 349 and 350, breach of express warranty, and unjust enrichment.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(a) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00 exclusive of interest and costs, there are over 100 members of the putative class, and at least one class member is a citizen of a state different than Defendant.

5. This Court has personal jurisdiction over Defendant Ocean Spray Cranberries, Inc. (“Defendant”) because Defendant maintains its principal place of business in Massachusetts.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because Ocean Spray Cranberries, Inc. resides in this District.

### **PARTIES**

7. Plaintiff Tamara Bullock is a citizen of New York who resides in New York, New York. In or around January 2023, Ms. Bullock purchased an Ocean Spray Original Cranberry Juice Cocktail from a local Key Foods grocery store located in New York, New York for approximately \$5. In purchasing the Product, Ms. Bullock relied on Defendant’s false, misleading, and deceptive marketing of the Product containing “NO ARTIFICIAL FLAVORS OR PRESERVATIVES.” Ms. Bullock understood that “NO ARTIFICIAL FLAVORS OR

PRESERVATIVES” meant the Product did not contain any preservatives. However, the Product she purchased contained ascorbic acid, a preservative. Had Ms. Bullock known the “NO ARTIFICIAL FLAVORS OR PRESERVATIVES” representation was false and misleading, she would not have purchased the Product or at the very least, would have only been willing to purchase the Product at a lesser price.

8. Defendant Ocean Spray Cranberries, Inc. is a corporation organized under the laws of Massachusetts with its headquarters at 1 Ocean Spray Drive, Lakeville-Middleboro, Massachusetts 02349. Defendant formulates, advertises, manufactures, and/or sells the Products throughout New York and the United States.

#### **GENERAL ALLEGATIONS**

9. **Defendant misrepresents that the Products contain “NO ARTIFICIAL FLAVORS OR PRESERVATIVES.”** Defendant advertises on the labels of the Products that they contains “NO ARTIFICIAL FLAVORS OR PRESERVATIVES.” Thus, reasonable consumers are led to believe the Products are free from preservatives. However, the Products contain ascorbic acid, a well-known preservative. Examples of the Products’ labeling, along with their ingredient panels, are depicted below:

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**INGREDIENTS:** Filtered Water, Cranberry Juice (water, cranberry juice concentrate), Sugar, Ascorbic Acid (vitamin C), Vegetable Concentrate for Color.

10. **Ascorbic acid is a preservative.** The FDA defines a chemical preservative as

“any chemical that, when added to food, tends to prevent or retard deterioration thereof, but does not include common salt, sugars, vinegars, spices, or oils extracted from spices, substances added to food by direct exposure thereof to wood smoke, or chemicals applied for their insecticidal or herbicidal properties.” 21 C.F.R. §101.22(a)(5).

11. Ascorbic acid is a chemically modified form of vitamin C, which, pursuant to FDA regulations, is commonly used in foods as a preservative. 21 C.F.R. § 182.3013.

12. Ascorbic acid functions as an antioxidant that helps prevent microbial growth and oxidation in food products, thereby preserving their color and freshness. Although Defendant identifies ascorbic acid as a source of vitamin C, Defendant adds it for its preservative qualities as well.

13. The FDA regulates the use of ascorbic acid in the formulation of wine and juice “to prevent oxidation of color and flavor components of juice,” and it “may be added to grapes, other fruit (including berries), and other primary wine making materials or to the juice of such materials.” 27 C.F.R. § 24.246.

14. All of Defendant’s Products that contain ascorbic acid are made from cranberries. Based on industry standards, therefore, Defendant added ascorbic acid to the Products to prevent their “oxidation of color and flavor”—something which happens so often to these juice products, that it prompted the FDA to promulgate the pertinent preservatives regulations set forth above.  
*Id.*

15. The FDA also classifies and identifies ascorbic acid as preservatives in its Overview of Food Ingredients, Additives, and Colors, on the FDA’s website and provides examples of how ascorbic acid are used as preservatives in beverages.<sup>2</sup>

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<sup>2</sup> <https://www.fda.gov/food/food-ingredients-packaging/overview-food-ingredients-additives->

16. The FDA’s view of this matter is further bolstered by a Warning Letter that it sent to Chiquita Brands International, Inc., indicating that Chiquita’s “Pineapple Bites” products were misbranded within the meaning of section 403(k) of the Food, Drug, and Cosmetic Act, 21 U.S.C. § 343(k), because “they contain the chemical preservatives ascorbic acid and citric acid but their labels fail to declare these preservatives with a description of their functions.”<sup>3</sup>

17. The USDA has also recognized that “[a]scorbic acid is most commonly used as a preservative to prevent enzymatic browning reactions that occur during processing and post-processing storage.”<sup>4</sup> Moreover, the USDA found that “all commercial ascorbic acid [is] synthetically derived” and thus artificial.<sup>5</sup>

18. Based on the foregoing, Defendant’s use of ascorbic acid in their Products renders their “NO ARTIFICIAL FLAVORS OR PRESERVATIVES” representation false and misleading. This is true even if Defendant’s subjective intention was to add ascorbic acid to impart taste/tartness or vitamin supplement to the Products. This conclusion is buttressed by the fact that ascorbic acid can function as a preservative even when it is used only in trace amounts.<sup>6</sup>

19. **Subjective intent of use is immaterial.** Even if the Products’ ascorbic acids do

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colors (last accessed November 30, 2022).

<sup>3</sup> FDA, Warning Letter to Chiquita Brands International, Inc. and Fresh Express Incorporated (Oct. 6, 2010), available at <http://web.archive.org/web/20101109083452/http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm228663.htm> (last accessed February 23, 2023).

<sup>4</sup> U.S. Dep’t of Agric., USDA National Organic Program, *Ascorbic Acid* 3 (2019), <https://www.ams.usda.gov/sites/default/files/media/AscorbicAcidTRFinal7172019.pdf>.

<sup>5</sup> *Id.* at 10.

<sup>6</sup> See Taylor & Francis, *Antimicrobials In Food* 108, 113 (P. Michael Davidson et al. eds., 3d ed. 2005), <http://base.dnsgb.com.ua/files/book/Agriculture/Foods/Antimicrobials-in-Food.pdf> (last accessed February 2, 2023).

not, in fact, function as a preservative in the Products, they nonetheless qualify as preservatives given that they have the capacity or tendency to do so. *See* 21 C.F.R. §101.22(a)(5) (defining preservatives as “any chemical that, when added to food, *tends* to prevent or retard deterioration”) (emphasis added); *see also* Merriam-Webster’s Dictionary (defining “preservative” as “something that preserves or has the power of preserving.”);<sup>7</sup> Oxford English Dictionary (defining “preservative” as “[t]ending to preserve or *capable* of preserving”) (emphasis added).<sup>8</sup>

20. **Defendant exploits consumer demand for preservative-free food.** By representing the Products have “NO ARTIFICIAL FLAVORS OR PRESERVATIVES,” Defendant seeks to capitalize on consumers’ preference for products with no preservatives. Indeed, “foods bearing ‘free-from’ claims are increasingly relevant to Americans, as they perceive the products as closely tied to health ... 84 percent of American consumers buy free-from foods because they are seeking out more natural or less processed foods. In fact, 43 percent of consumers agree that free-from foods are healthier than foods without a free-from claim, while another three in five believe the fewer ingredients a product has, the healthier it is (59 percent). Among the top claims free-from consumers deem most important are trans-fat-free (78 percent) and preservative-free (71 percent).”<sup>9</sup>

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<sup>7</sup> *Preservative*, Merriam-Webster Dictionary, [https://www.merriam-webster.com/dictionary/preservative?utm\\_campaign=sd&utm\\_medium=serp&utm\\_source=jsonld](https://www.merriam-webster.com/dictionary/preservative?utm_campaign=sd&utm_medium=serp&utm_source=jsonld) (last accessed November 30, 2022).

<sup>8</sup> *Preservative*, American Heritage Dictionary, <https://ahdictionary.com/word/search.html?q=preservative> (last accessed November 30, 2022).

<sup>9</sup> *See, Free-From Food Trends-US-May 2015*, MINTEL <https://www.mintel.com/press-%20centre/food-and-drink/84-of-americans-buy-free-from-foods-because-they-believe-them-to-be-more-natural-or-less-processed> (last accessed November 30, 2022).

21. According to another study, when consumers were asked to choose a product that was the closest to their understanding of what “natural” means on product labels, they often chose products with “No Preservatives” labels.<sup>10</sup>

22. The global sale of healthy food products is estimated to be \$4 trillion dollars and is forecasted to reach \$7 trillion by 2025.<sup>11</sup> Based on the foregoing, consumers are willing to purchase and pay a premium for healthy non-preservative food items like the Products.

23. Defendant’s misleading and deceptive practices proximately caused harm to Plaintiff and the proposed class members who suffered an injury in fact and lost money or property as a result of Defendant’s deceptive conduct.

### **CLASS ACTION ALLEGATIONS**

24. Plaintiff seeks to represent a class defined as all persons in the United States who, during the applicable statute of limitations period, purchased Defendant’s Products (the “Class”).

25. Plaintiff also seeks to represent a subclass defined as all Class members who reside in New York who purchased the Products (the “New York Subclass”) (collectively with the Class, the “Classes”).

26. 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 hundreds of thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the

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<sup>10</sup> Sajida Rahman, et al., Assessing consumers’ understanding of the term “Natural” on food labeling, *Journal of Food Science*, Vol. 85, No. 6, 1891-1896. (2020).

<sup>11</sup> Global Wellness Institute, *The Global Wellness Economy Stands at \$4.4 Trillion Amidst the Disruptions of COVID-19; Is Forecast to Reach \$7 Trillion by 2025*, <https://www.hospitalitynet.org/news/4108643.html> (last accessed November 30, 2022).



pendency of this action by mail and/or publication through the distribution records of Defendant and third-party retailers and vendors.

27. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to, the true nature and presence of preservatives in the Products; whether the marketing, advertising, packaging, labeling, and other promotional materials for the Products are deceptive; whether Plaintiff and the members of the Classes have suffered damages as a result of Defendant's actions and the amount thereof; whether Plaintiff and the members of the Classes are entitled to statutory damages; and whether Plaintiff and the members of the Classes are entitled to attorneys' fees and costs.

28. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff was exposed to Defendant's false and misleading marketing, purchased Defendant's Products, and suffered a loss as a result of those purchases.

29. Plaintiff is an adequate representative of the Classes because her interests do not conflict with the interests of the Class members she seeks to represent, she has retained competent counsel experienced in prosecuting class actions, and she intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

30. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system

presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **Violation of the New York General Business Law ("G.B.L.") § 349 (On Behalf of the New York Subclass)**

31. Plaintiff incorporates by reference each of the allegations set forth in the preceding paragraphs.
32. Plaintiff brings this claim on behalf of the New York Subclass.
33. New York's General Business Law § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce.
34. In its sale of Products throughout the state of New York, at all relevant times herein, Defendant conducted business and trade within the meaning and intendment of New York's General Business Law § 349.
35. Plaintiff and the New York Subclass members are consumers who purchased the Products from Defendant for their personal use.
36. By the acts and conduct alleged herein, Defendant engaged in deceptive, unfair, and misleading acts and practices by conspicuously representing on the packaging of the Products that it contains "NO ARTIFICIAL FLAVORS OR PRESERVATIVES." Despite that representation, however, the Products contain ascorbic acid, a known preservative.
37. The foregoing deceptive acts and practices were directed at consumers.

38. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the nature and value of the Products.

39. As a result of Defendant's deceptive practices, Plaintiff and the New York Subclass members suffered an economic injury because they would not have purchased or would have paid less for the Products had they known the veracity of Defendant's misrepresentations.

40. On behalf of herself and the New York Subclass members, Plaintiff seeks to recover their actual damages or fifty dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees and costs.

**COUNT II**  
**Violation of New York G.B.L. §350**  
**(On Behalf of the New York Subclass)**

41. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

42. Plaintiff brings this claim on behalf of the New York Subclass.

43. New York's General Business Law § 350 prohibits false advertising in the conduct of any business, trade, or commerce.

44. Defendant violated New York General Business Law § 350 by representing on the packaging of the Products that it contains "NO ARTIFICIAL FLAVORS OR PRESERVATIVES." Despite that representation, however, the Products contain ascorbic acid, a known preservative.

45. The foregoing advertising was directed at consumers and was likely to mislead a reasonable consumer acting reasonably under the circumstances.

46. Defendant's misrepresentations have resulted in consumer injury or harm to the public interest.

47. As a result of Defendant's false advertising, Plaintiff and the New York Subclass

members suffered an economic injury because they would not have purchased or would have paid less for the Products had they known the veracity of Defendant's misrepresentations.

48. On behalf of herself and the New York Subclass members, Plaintiff seeks to recover their actual damages or five hundred dollars, whichever is greater, three times actual damages, and reasonable attorneys' fees and costs.

**COUNT III**  
**Breach of Express Warranty**  
**(On behalf of the Class and the New York Subclass)**

49. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

50. Plaintiff brings this claim individually and on behalf of the members of the Class and New York Subclass against Defendant.

51. Defendant, as the producer, marketer, distributor, and/or seller, expressly warranted that the Products contain "NO ARTIFICIAL FLAVORS OR PRESERVATIVES."

52. Defendant's representations and warranties were part of the description of the goods and the bargain upon which the Products were offered for sale and purchased by Plaintiff and members of the Class and New York Subclass.

53. In fact, the Products do not conform to Defendant's representations and warranties because the Products contain ascorbic acid, a known preservative. By falsely representing the Products in this way, Defendant breached its express warranty.

54. As a direct and proximate cause of Defendant's breach of express warranty, Plaintiff and members of the Classes have been injured and harmed in an amount to be proven at trial because they would not have purchased the Products, or would have paid substantially less for them, had they known they contained a preservative.

55. On February 14, 2023, Plaintiff sent Defendant, via certified mail, a pre-suit

notice letter on behalf of Plaintiff that complied in all respects with U.C.C. §§ 2-313 and 2-607. Plaintiff's counsel sent Defendant a letter advising that Defendant breached an express warranty and demanded that Defendant make full restitution by refunding the monies received therefrom.

**COUNT IV**  
**Unjust Enrichment**  
**(In the Alternative)**

56. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

57. Plaintiff brings this claim individually and on behalf of members of the Classes against Defendant.

58. Plaintiff and Class members conferred benefits on Defendant by paying money to Defendant for the purchase of the Products.

59. Defendant has knowledge of such benefits.

60. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff's and Class members' purchase of the Products. Retention of those moneys under these circumstances is unjust and inequitable because Defendant misrepresented that the Products contains "NO ARTIFICIAL FLAVORS OR PRESERVATIVES" when in fact they contains ascorbic acid, a known preservative.

61. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiff and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiff and the Class members as ordered by the Court.

**COUNT V**  
**Violation of the Massachusetts Unfair and Deceptive Business Practices Act,**  
**Mass. Gen. Laws Ch. 93A, *et seq.***  
**(On behalf of the Class)**

62. Plaintiff incorporates by reference and re-allege each and every allegation set

forth above as though fully set forth herein.

63. Plaintiff brings this claim individually and on behalf of the members of the Classes against Defendant.

64. Section 2 of Chapter 93—the Massachusetts Unfair and Deceptive Business Practices Act (“MUDBPA”)—prevents the use of “unfair or deceptive acts or practices in the conduct of any trade or commerce.” An act is “deceptive” under Chapter 93A “if it could reasonably be found to have caused a person to act differently from the way he otherwise would have acted.” *Tagliente v. Himmer*, 949 F.2d 1, 7 (1st Cir. 1991).

65. Section 9 provides: “Any person ... who has been injured by another person’s use or employment of any method, act or practice declared to be unlawful by section two ... may bring an action in the superior court ... for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper ... Any persons entitled to bring such action may, if the use or employment of the unfair or deceptive act or practice has caused similar injury to numerous other persons similarly situated and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the action on behalf of himself and such other similarly injured and situated persons.”

66. Pursuant to the definitions codified at Chapter 93A § 1, Defendant is a “person,” and Defendant is engaged in “trade” and “commerce” in Massachusetts by offering for sale Products that directly or indirectly affect the people of Massachusetts. Additionally, Defendant’s principal place of business is in Massachusetts.

67. By engaging in the acts and omissions alleged above and incorporated herein, Defendant has engaged and continues to engage in unfair or deceptive acts or practices in the conduct of trade or commerce.

68. Defendant's misrepresentations deceive and have a tendency to deceive a reasonable consumer and the general public.

69. Defendant's acts and omissions are material, in that a reasonable person would attach importance to the information and would be induced to act on the information in making purchase decisions.

70. Defendant's conduct is also misleading in a material way by representing on the packaging of the Products that it contains "NO ARTIFICIAL FLAVORS OR PRESERVATIVES." Despite that representation, however, the Products contain ascorbic acid, a known preservative.

71. Plaintiff and members of the Classes suffered an economic injury because they would not have purchased or would have paid less for the Products had they known the veracity of Defendant's misrepresentations.

72. Mass. Gen. Laws Ch. 93A, *et seq.* represents a fundamental public policy of the Commonwealth of Massachusetts.

73. For each loss, Plaintiff and each member of the Classes may recover an award of actual damages or twenty-five dollars, whichever is greater. Ch. 93A § 9(3).

74. Because Defendant acted willfully or knowingly, Plaintiff and each member of the Classes may recover up to three but not less than two times this amount. In addition, Plaintiff may recover attorneys' fees and costs.

75. Plaintiff and the members of the Classes may also pray for the imposition of injunctive relief which limits and polices Defendant's representations within or reaching Massachusetts. The balance of the equities favors the entry of permanent injunctive relief against Defendant. Plaintiff, members of the Classes, and the general public will be irreparably harmed

absent the entry of permanent injunctive relief against Defendant. Plaintiff, members of the Classes, and the general public lack an adequate remedy at law. A permanent injunction against Defendant is in the public interest. Defendant's unlawful behavior is capable of repetition or re-occurrence absent the entry of a permanent injunction.

76. In accordance with Mass. Gen. Laws Ch. 93A, § 9(3), Plaintiff's counsel served Defendant with written notice of their violation of Ch. 93A and a demand for relief on February 14, 2023.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Tamara Bullock, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- (a) For an order certifying the Class and New York Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representatives of the Class and New York Subclass and Plaintiff's attorneys as Class Counsel to represent the Class and the New York Subclass members;
- (b) For an order finding in favor of Plaintiff and the Classes on all counts asserted herein;
- (c) For an order finding in favor of Plaintiff, the Class, and the New York Subclass on all counts asserted herein;
- (d) For compensatory and statutory damages in amounts to be determined by the Court and/or jury;
- (e) For prejudgment interest on all amounts awarded;
- (f) For an order of restitution and all other forms of equitable monetary relief;
- (g) For an order enjoining Defendant from continuing the illegal practices detailed



herein and compelling Defendant to undertake a corrective advertising campaign;  
and

(h) For an order awarding reasonable attorneys' fees and expenses and costs of suit.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any  
and all issues in this action so triable as of right.

Dated: October 27, 2023

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By: /s/ Joel D. Smith  
Joel Smith

Joel D. Smith (BBO No. 712418)  
1990 North California Blvd., Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
Email: jsmith@bursor.com

**BURSOR & FISHER, P.A.**

Alec M. Leslie (*pro hac vice* forthcoming)  
Julian C. Diamond (*pro hac vice* forthcoming)  
1330 Avenue of the Americas, 32<sup>nd</sup> Floor  
New York, NY 10019  
Telephone: (646) 837-7150  
Facsimile: (212) 989-9163  
Email: aleslie@bursor.com  
jdiamond@bursor.com

*Attorneys for Plaintiff*

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

TAMARA BULLOCK, individually and on behalf of all others similarly situated,

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

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

Bursor & Fisher, P.A., 1990 North California Blvd. Suite 940 Walnut Creek, CA 94596, 925-300-4455

DEFENDANTS

OCEAN SPRAY CRANBERRIES, INC.

County of Residence of First Listed Defendant Plymouth 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like Insurance, Personal Injury, Real Estate, etc.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)(2)(A) Brief description of cause: False Claims

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 SIGNATURE OF ATTORNEY OF RECORD

10/27/2023

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.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Bullock v. Ocean Spray Cranberries, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 535, 830\*, 835\*, 850, 880, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
  - II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820\*, 840\*, 895, 896, 899.
  - III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 485, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.
- \*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Joel D. Smith

ADDRESS 1990 North California Blvd., Suite 940, Walnut Creek, California 94596

TELEPHONE NO. (925) 300-4455