

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

STEPHEN ARPAIA, Individually and
On Behalf of All Others Similarly Situated,

Plaintiff,

v.

EVIG LLC DBA BALANCE OF NATURE,

Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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Plaintiff Stephen Arpaia (“Arpaia” or “Plaintiff”), on behalf of himself and all others similarly situated, files this Class Action Complaint (the “Complaint”) against Defendant against Evig LLC dba Balance of Nature (“Balance of Nature”). For his Class Action Complaint, Arpaia alleges as follows:¹

INTRODUCTION

Balance of Nature sells, distributes and promotes three different “Dietary Supplements” under the brand name of Balance of Nature: (1) Whole Food Fiber & Spice, a powder, (2) Whole Produce Fruits, capsules, and (3) Whole Produce Veggies, capsules (the “Adulterated Products”).

Balance of Nature manufactures, prepares, processes, packs, holds, and/or distributes Balance of Nature’s Adulterated Products.

On October 11, 2023, the United States of America acting under the authority of the Food and Drug Administration (“FDA”) filed a complaint against Balance of Nature seeking a permanent injunction to stop the sale of the Defendant’s Adulterated Products. The Permanent Injunction was entered by the Court on November 15, 2023. Contemporaneously, Balance of Nature entered into a Consent Decree with the FDA where Balance of Nature along with the manufacturing company, Premium Productions, LLC, under whose direction and control packaged and produced the Adulterated Product, stipulated to certain affirmative actions Defendant needed to take before operations could resume, including the recall of any products and the destruction of any products, including the Adulterated Products. On November 21, 2023, the FDA provided a letter to Defendant that Balance of Nature could “resume” manufacturing and sales of the Adulterated Products.

During September 2023 through November 2023, Arpaia viewed numerous television commercials promoting Defendant’s Adulterated Products. The positive messaging and testimonials regarding the quality of the Adulterated Products in the commercials resonated with Arpaia who, like members of the Class, believed that Balance of Nature products were high quality dietary supplements which would increase the amount of fruits, vegetables and fiber in his diet which were scientifically

¹Allegations concerning Arpaia are based upon Arpaia’s personal knowledge.

produced with “Real Science” under rigorous advanced process using scientific standards and inspections.

The Defendant’s commercials directed consumers to BalanceofNature.com, the website of the Defendant, where Arpaia and members of the Class could order the Adulterated Products.

On Defendant’s website, BalanceOfNature.com, Defendant displays a picture of the Adulterated Product bottles and explicitly states that the manufacturing date of each bottle is placed on the bottom of the bottle as seen in the image below:

BALANCE OF NATURE FRUITS & VEGGIES

A Proprietary Blend Of 16 Whole Fruits & 15 Whole Vegetables



In addition to the “Manufacture date” image, Arpaia and the Class saw the following pervasive and prominently displayed statements displayed on the homepage:

- Defendant’s products are produced using an “advanced...process”;
- A picture of the product bottles with the statement on the bottle itself that Defendants products are produced as a product of “Real Science”;

- “We strive to provide the highest quality products available.”
- “Balance of Nature contains the highest quality ingredients you can find.”
- “We have very stringent standards”;

Based on these statements, Arpaia opened an account at BalanceofNature.com and purchased the Balance of Nature “Fruits” and Balance of Nature “Veggies.” The purchase of Defendant’s Adulterated Products is governed by the Defendant’s Terms of Service (the “Agreement”).

Defendant’s Terms of Service are governed by Utah law.²

Defendant’s Terms of Service apply to Arpaia and the Class who purchased Adulterated Products through Defendant’s website.

Defendant’s Terms of Service expressly state: “The Service and all products and services delivered to you through the Service are **(except as expressly stated by us)** provided 'as is' and 'as available' for your use, without any representation, warranties or conditions of any kind, either express or implied, including all implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, durability, title, and non-infringement.” (Emphasis added).

The phrase “except as stated by us” is unambiguous in its meaning and incorporates the following express statements by Defendant to Arpaia and the Class prominently made on Defendant’s website to Arpaia and the Class:

- "We guarantee to provide the highest quality whole food supplements available."
- In addition, under a section entitled "Balance of Nature Guarantee", Defendant unequivocally repeats this "Guarantee" stating: "We guarantee to provide the highest quality whole food supplements available[.]"

Arpaia and the Class have since learned that Defendant breached the Agreement by selling Arpaia and the Class adulterated products as outlined in a Complaint by the United States of America and The Food and Drug Administration against the Defendant. By definition, adulterated products which cannot be sold, should have been recalled and destroyed according to the Consent Decree

² “SECTION 23 - GOVERNING LAW” of the Terms states: “These Terms of Service and any separate agreements whereby we provide you Services shall be governed by and construed in accordance with the laws of Utah, United States.” There is no venue specified.

Defendant entered into with the FDA for violating federal laws and regulations regarding the safe manufacture, production and distribution of dietary supplements. Therefore, any of Defendant's Adulterated Products – including those purchased by the Arpaia and the Class which have a manufacturing date before November 21, 2023 - cannot be “the highest quality whole food supplements available.”

As a result of Defendant's breach, Arpaia was overcharged by Defendant \$94.90.

SUMMARY OF ACTION

In short, Defendants distributed and sold Adulterated Products to Arpaia and the Class despite agreeing to a Consent Decree which dictated that Defendants recall and destroy any Adulterated Products. Defendant was not authorized to sell any of its dietary supplements until November 21, 2023. Any products sold by Defendant with a manufacture date prior to November 21, 2023 are Adulterated Products.

This conduct constitutes a breach of Defendant's Agreement with Arpaia and a breach of the implied covenant of good faith and fair dealing.

Arpaia brings this action seeking relief for Balance of Nature's misconduct on behalf of himself and a class consisting of:

All persons or entities located within the United States who purchased Defendant's Products and received a Product with a manufacture date prior to November 21, 2023 at any time until the day the Court certifies this action as a class action (the “Class”). Excluded from the Class are Evig, and its affiliates, officers, and directors. Also excluded from the Class are the members of the judiciary and their staff to whom this action is assigned.

For himself and the Class, Arpaia seeks (a) a declaration that Balance of Nature breached its contractual obligations to Class Members, (b) actual damages to fully compensate for losses sustained as a direct, proximate, and/or producing cause of Balance of Nature's breaches and unlawful conduct, (c) restitution and disgorgement of all monies Balance of Nature derived from Class members through the misconduct described herein, (d) pre-judgment and post-judgment interest, (e) attorneys' fees, (f)

injunctive relief to ensure that the misconduct described herein finally ends, without the threat of it reoccurring in the future, and (g) any such other and further relief as the Court deems just and proper.

PARTIES

Plaintiff Arpaia is an individual who resides in Boca Raton, Palm Beach County, Florida. Arpaia opened a Balance of Nature account on or about November 19, 2023 for the purpose purchasing Defendant's products "Fruits" and "Veggies." Arpaia did purchase such products and Defendant collected payment for such products. Arpaia incurred losses and has been injured by the actions of Balance of Nature described herein.

Defendant Evig LLC dba Balance of Nature is a limited liability company incorporated in Nevada and in Utah as a foreign limited liability company with its principal place of business at 1568 S River Rd., St.200, St. George, UT 84790 ("Defendants' Establishment"). Defendant can be served with process through its registered agent, LEX HOWARD, who is located at 1568 SOUTH RIVER ROAD, ST. GEORGE, UT 84790.

JURISDICTION AND VENUE

The Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d)(2). If a class is certified in this action, the amount in controversy will exceed \$5,000,000.00, exclusive of interest and costs, and this is a class action in which at least one member of the Class is a citizen of a state different from any defendant. Although Balance of Nature is located in Utah, the principal injuries resulting from Defendant's conduct have been incurred throughout the United States where Class members are located. On information and belief, greater than two-thirds of the members of the proposed Class are citizens of states other than Utah.

This Court has general jurisdiction over Balance of Nature. Balance of Nature engages in continuous and systematic business activities within the State of Florida.

Venue is proper in this District pursuant to 28 U.S.C. §1391. Specifically, as provided by 28 U.S.C. §1391(c), Defendant is a corporation that is deemed to reside in this District. Moreover, a substantial part of the events and omissions giving rise to the claims alleged herein occurred in this District.

FACTUAL BACKGROUND

Balance of Nature makes the following unambiguous “Guarantee” to customers who purchase “Balance of Natures” products: "We guarantee to provide the highest quality whole food supplements available"; in addition, under a section entitles "Balance of Nature Guarantee", Defendants unequivocally repeat his "Guarantee" stating: "We guarantee to provide the highest quality whole food supplements available[.]"

These statements - “explicitly stated” by Defendant - are an unambiguous guarantee to provide the highest quality supplements available which at a minimum would mean not manufacturing, selling or distributing Adulterated Products which violate federal law and should never have been introduced into the stream of commerce.

However, according to a Complaint filed by the Food and Drug Administration which resulted in a Consent Decree, Defendant not only does not provide “the highest quality whole food supplements available,” Defendant was selling and distributing “Adulterated Dietary Supplements” - the very same supplements that Arpaia and the Class purchased – to the public through its website BalanceofNature.com.

According to the FDA, FDA investigators “established that the dietary supplements Defendants distribute are adulterated within the meaning of 21 U.S.C. § 342(g)(1), in that they are prepared, packed, and/or held in a manner that does not conform to Dietary Supplement CGMP.” In addition, the FDA noted that the Defendant had “significant deviations from Dietary Supplement CGMP” which rendered their dietary supplements adulterated.

The FDA also stated that “Defendants primarily sell their products through their website, www.balanceofnature.com. Defendants distribute approximately 85% of their finished product to customers out of state, including Florida, where Arpaia lives. Such shipments constitute the introduction or delivery for introduction into interstate commerce, of adulterated dietary supplements[.]”

The FDA also stated that “Defendants have a long history of failing to comply with the Act. FDA has documented a pattern of continued violative conduct during multiple inspections of Defendants’ Establishment and have repeatedly warned Defendants” against “such conduct.” See Id.

As a result of the Defendant’s conduct, the FDA filed a complaint against the Defendant for selling adulterated dietary supplements, and the Court granted the FDA request for a permanent injunction to stop the Defendant from distributing the adulterated dietary supplements.

On November 15, 2023, Defendant and the company that manufactures the adulterated products for Defendant were both permanently enjoined from selling any more products until certain conditions were met so that the Defendant was no longer improperly selling adulterated dietary supplements, including adulterated versions of Fruits and Veggies. In addition, Defendant and its manufacturer agreed to recall all dietary supplements, even those in transit to customers.

However, Defendant did not recall or stop selling the Adulterated Products to consumers.

Arpaia and members of the class were bombarded with advertisements from Defendant to purchase the Balance of Nature Adulterated Products. On November 27, 2023, Arpaia set up an account at BalaneofNature.com and purchased one bottle each of “Fruits” and “Veggies.”

Arpaia’s receipt from Balance of Nature contained the following two statements – which are stored in the BalanceofNature.com account of Arpaia:

- "We guarantee to provide the highest quality whole food supplements available."
- In addition, under a section entitled "Balance of Nature Guarantee", Defendants unequivocally repeats this "guarantee" stating: "We guarantee to provide the highest quality whole food supplements available[.]"

Arpaia did not expect to receive from Defendant Adulterated Products.

Arpaia could tell these were “adulterated products” by the manufactured by date on each bottle. The “Fruits” bottle had a manufacture date of “10/18/2023” and the “Veggies” bottle had a manufacture date of “11/20/2023.”

As relevant to this action, those two dates were before the date the FDA had approved of Balance of Nature's resumption of manufacturing and sales of the Adulterated Products.

This clearly demonstrates that Defendant did not destroy, recall or otherwise stop selling or distributing Adulterated Products.

Despite Defendant's statements that it would "guarantee to provide the highest quality whole food supplements available," Defendant was selling adulterated products that should have been recalled and destroyed.

Arpaia was injured as a result.

Arpaia paid \$94.90 for both bottles of Fruits and Veggies.

COUNT I – Breach of Contract

Arpaia hereby incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

Arpaia brings this cause of action on behalf of himself and the Class.

Balance of Nature and all Class Members are or were parties to an Agreement that governs their relationship with Balance of Nature.

The Agreement was drafted by Defendant and is uniform as to every Class Member.

In Section 18 of the Agreement, Balance of Nature expressly agrees that " The Service and all products and services delivered to you through the Service are *(except as expressly stated by us)* provided 'as is' and 'as available' for your use, without any representation, warranties or conditions of any kind, either express or implied, including all implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, durability, title, and non-infringement." (Emphasis added).

Based on statements "explicitly stated" by Defendant, Defendant promised that Arpaia and the Class Members would be buying "the highest quality whole food supplements available."

Thus, pursuant to the Agreement, Defendant represented and promised that it would, *inter alia*, only sell “the highest quality whole food supplements available.” This is a material term of the Agreement.

When Defendant sells adulterated products, Defendant ignores its “guarantee to provide the highest quality whole food supplements available.” This constitutes a breach of contract.

Arpaia and the Class performed all conditions, covenants, and promises required to be performed by Arpaia and the Class in accordance with the terms of the Agreement.

As set forth in above, Defendant breached the Agreement by not providing the highest quality whole food supplements available and instead selling adulterated products which should have been destroyed or otherwise not entered into the stream of commerce and been available to Arpaia and the Class.

Defendant’s breach is the direct, proximate, and producing cause of damages to Arpaia and the Class.

Because of Defendant’s breach of contract alleged herein, Arpaia and the Class should be made whole for all amounts Balance of Nature overcharged them by selling them adulterated products rather than the contracted for “highest quality whole food supplements available.”

CLASS ALLEGATIONS

Arpaia seeks to recover on behalf of himself and the Class *all* amounts Defendant charged for adulterated products that were subject to the Agreement.

Finally, Arpaia seeks an injunction to ensure that the misconduct described above finally ends, without the threat of it reoccurring in the future.

Arpaia brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a proposed class consisting of the following:

All persons or entities located within the United States who purchased Defendant’s Products and received a Product with a manufacture date prior to November 21, 2023 at any time until the day the Court certifies this action as a class action (the “Class”). Excluded from the Class are Evig, and its affiliates, officers, and directors. Also excluded from the Class are the members of the judiciary and their staff to whom this action is assigned.

Arpaia reserves the right to amend this class definition and, if deemed appropriate, to subdivide the Class into subclasses.

The members of the Class are so numerous that joinder of all members is impracticable. Arpaia believes that hundreds of thousands of people geographically dispersed throughout the United States have been damaged by Defendant's misconduct. The names and addresses of the members of the Class are identifiable through documents maintained by Defendant. Members of the Class may be notified of the pendency of this action by published, mailed, and/or electronic notice.

Arpaia's claims are typical of the claims of all Class members, as all Class members are similarly affected by Defendant's uniform wrongful conduct and their claims are based on such conduct. Further, Arpaia's claims are typical of the claims of all Class members because his claims arise from the same underlying facts and are based on the same factual and legal theories as the claims of all Class members. Arpaia is no different in any relevant respect from any other member of the Class.

Arpaia and his counsel will fairly and adequately protect the interests of the members of the Class. Arpaia's interests do not conflict with the interests of the Class he seeks to represent. Arpaia has retained counsel competent and experienced in class and complex litigation. Arpaia and his counsel will prosecute this action vigorously.

Class certification is warranted because common questions of law and fact exist as to all Class members and predominate over any questions affecting only individual Class members. The questions of law and fact common to the Class include, without limitation:

- Whether Defendant's Agreement with Class members expressly requires Defendant (i) guarantee to provide the highest quality whole food supplements available, and (ii) to apply rigorous "advanced" scientific processes to all dietary supplements sold by Defendant.
- Whether, through the acts, omissions, and conduct alleged above, Balance of Nature violated its express obligations to Class members.
- Whether Arpaia and the Class have been damaged by the wrongs alleged herein, and if so, the measure of those damages and the nature and extent of other relief that should be afforded.
- Whether Defendant should be enjoined from engaging in the misconduct and unlawful practices alleged above.

A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable. Even if individual Class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all Class members' claims in a single forum. The conduct of the action as a class action conserves resources of the parties and of the judicial system, and protects the rights of the Class members. Furthermore, for many, if not most Class members, a class action is the only feasible mechanism that allows them an opportunity for legal redress and justice. There will be no difficulty in the management of this action as a class action.

JURY DEMAND

Arpaia demands a trial by jury as to all issues so triable.

PRAYER

FOR THE FOREGOING REASONS, Arpaia, individually and on behalf of the Class, respectfully requests that the Court certify this action as a class action, with Arpaia as class representative and the undersigned counsel as class counsel, and enter an order of judgment against Balance of Nature in favor of the Class that, *inter alia*:

- a) declares that Balance of Nature has breached its contractual obligations to Class members;
- b) awards actual damages to Class members to fully compensate them for losses sustained as a direct, proximate, and/or producing cause of Balance of Nature's breaches and unlawful conduct;
- c) awards pre-judgment and post-judgment interest at the maximum allowable rates;
- d) awards reasonable attorneys' fees and costs;
- e) temporarily and permanently enjoins Balance of Nature from engaging in the unlawful practices alleged herein; and

- f) orders any such other and further relief as the Court deems just and proper to correct the wrongs done unto the Class.

Dated: December 22, 2023

Respectfully submitted,

The Law Office of Stephen Barker
901-A Clint Moore Road
Boca Raton, FL 33487
561-886-8352
slb@stephenbarkerlaw.com

BY: /s/ Stephen L. Barker
STEPHEN L. BARKER, ESQ.
Florida Bar No: 55357

CERTIFICATE OF SERVICE

I hereby certify that on December, 22, 2023September 9, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December, 22, 2023.

/s/ Stephen Barker

JS 44 (Rev. 04/21)

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.)

<p>I. (a) PLAINTIFFS</p> <p>STEPHEN ARPAIA, Individually and On Behalf of All Others Similarly Situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>Palm Beach</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Stephen L Barker, Esq -901-A Clint Moore Rd., Boca Raton, FL 33487 - 561-886-8352</p>	<p>DEFENDANTS</p> <p>EVIG LLC DBA BALANCE OF NATURE</p> <p>County of Residence of First Listed Defendant <u>Foreign (Utah)</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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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 checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <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	<p>PERSONAL INJURY</p> <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 <p>PERSONAL PROPERTY</p> <input 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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">INTELLECTUAL PROPERTY RIGHTS</p> <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 <p style="text-align: center;">SOCIAL SECURITY</p> <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)) <p style="text-align: center;">FEDERAL TAX SUITS</p> <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
<p>REAL PROPERTY</p> <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	<p>CIVIL RIGHTS</p> <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	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <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 <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 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	<p style="text-align: center;">IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

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)(2)

Brief description of cause:
 Class Action based upon sale of adulterated product.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ In excess of \$75,000 ir CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

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

DATE: 12/22/2023 SIGNATURE OF ATTORNEY OF RECORD: 

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.