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1 2 3 4 5 6 7 8 9 10	SMITH KRIVOSHEY, PLLC Yeremey O. Krivoshey (State Bar No. 295032) 166 Geary Street, Ste. 1500-1507 San Francisco, CA 94108 Phone: 415-839-7000 E-Mail: yeremey@skclassactions.com SMITH KRIVOSHEY, PLLC Joel D. Smith (State Bar No. 244902) 867 Boylston Street, 5 th Floor, Ste. 1520 Boston, MA 02116 Phone: 617-377-7404 E-Mail: joel@skclassactions.com Attorneys for Plaintiffs UNITED STATES E	
10	NORTHERN DISTRIC	CT OF CALIFORNIA
11 12 13 14 15 16	ELIZABETH OLDAKOWSKI and JOHN MELACKRINOS, individually and on behalf of all others similarly situated, Plaintiffs, v.	Case No. CLASS ACTION COMPLAINT JURY TRIAL DEMANDED
17 18 19	CENTRAL GARDEN & PET COMPANY, Defendant.	
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	CLASS ACTION COMPLAINT – JURY TRIAL DEMANE	DED

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NATURE OF THE ACTION

1. Birdseed for wild birds is a multibillion-dollar industry. Wild bird food was already a \$4 billion industry in the United States before the COVID-19 pandemic, and then birdwatching exploded in popularity as people connected with nature in their own backyards during COVID-19 lockdowns. Sales went through the roof for seed suppliers, birdhouse builders, and similar businesses.

2. Defendant Central Garden & Pet Company ("CG&P") is one of the largest birdseed manufacturers and distributors in the United States. CG&P markets and sells wild bird seed under several brands, including Pennington and Kaytee, which are sold at the largest online and brick-and-mortar retailers in the United States, like Walmart and Amazon.

3. The packaging for Pennington and Kaytee birdseed states that the they have been specially formulated to attract wild birds. There are pictures of wild birds on the front panel presumably the kinds of birds whom the seeds will attract. The back panels also contain information about the birdseeds and the types of popular wild birds each type of seed supposedly attracts, like cardinals and gold finches.

4. However, CG&P deceives its customers by loading up the packaging of
Pennington and Kaytee birdseed with a filler ingredient that CG&P knows most birds won't eat:
milo, also known as sorghum.

5. In its backyard bird feeding guide, for instance, the U.S. Fish & Wildlife Service warns that no birds appear to like it. Cornell University's Project FeederWatch, which recruits backyard birdwatchers to assist in annual bird population counts, *recommends that feeders avoid "mixtures that have a high percentage of less-appealing 'filler' seeds such as red milo*." Even the Wild Bird Feeding Industry (WBFI), a trade group for birdseed manufacturers, cautions against the use of milo.

6. And yet, milo makes up well over half of the mix by volume of Pennington andKaytee brand birdseed. The practical result is that consumers get half of the bird seed they payfor.

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7. CG&P has made damaging admissions showing that it intentionally deceives consumers. In contrast to the economy-priced Kaytee and Pennington brands, CG&P also markets higher-priced brands of bird seed called "Wild Delight" and "Better Bird." For those products, CG&P emphasizes as a selling point that they contain "no milo" or other "fillers." When hawking that product, CG&P warns that milo attracts "pesky" and "undesirable" birds like crows, and that consumers should avoid birdseed with milo because "desirable birds don't prefer them."

8. So, CG&P knows that milo is a mere filler ingredient that consumers should avoid when buying birdseed blends because it doesn't attract the kinds of birds that consumers want to attract to their bird feeders. But that's not what CG&P says about its milo-containing Kaytee and Pennington economy blends. Instead, it says the opposite: that those blends are formulated to attract a wide array of desirable birds. In short, CG&P *knows* that blends containing milo should be avoided by consumers, but it lies to consumers to sell them cheap birdseed.

9. Accordingly, Plaintiffs bring this false advertising action on behalf of themselvesand other purchasers of Kaytee and Pennington brand birdseed.

PARTIES

10. Plaintiff Elizebeth Oldakowski is domiciled in West Boylston, Massachusetts. Plaintiff has purchased the products at issue several times over the last few years, with the last purchase being from a Walmart store in Massachusetts in approximately March 2024. Plaintiff purchased the product for approximately \$15. Plaintiff reviewed and relied on the product packaging before making these purchases and believed that they were suitable for consumption by wild birds. If Plaintiff had known the products were falsely labeled, Plaintiff would not have bought them, or would have paid less.

11. Plaintiff John Melackrinos is domiciled in Chester, New York. Plaintiff has
purchased the products at issue several times over the last few years, with the last purchase
being from a Walmart store in New York in late 2023. Plaintiff purchased the product for
approximately \$15. Plaintiff reviewed and relied on the product packaging before making these

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purchases and believed that they were suitable for consumption by wild birds. If Plaintiff hadknown the products were falsely labeled, Plaintiff would not have bought them, or would havepaid less.

12. Plaintiffs remain interested in purchasing the products at issue. However, they cannot know for certain whether the false labeling has been or will be corrected. The composition of the products may change over time, but if CG&P continues to make the representations at issue here, then, when presented with false or misleading information while shopping, Plaintiffs will be unable to make informed decisions about whether to purchase CG&P's products. Plaintiffs are further likely to be repeatedly misled by CG&P's conduct, unless and until CG&P is compelled to ensure that the product's marketing is accurate and no longer has the tendency or capacity to deceive or confuse reasonable consumers.

13. Defendant CG&P is a publicly traded Delaware corporation based in Walnut
 Creek, California. The final decisions and approvals regarding representations made on product
 labels were made in California. The final decisions and approvals regarding the formulation of
 the products at issue were made in California.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction 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, and at least one member of the proposed class is citizen of state different from Defendant.

15. This Court has personal jurisdiction over Defendant because it conducts substantial business and is headquartered in California. A substantial portion of the events giving rise to the claims alleged here occurred in this state.

16. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events, omissions, and acts giving rise to the claims herein occurred in this District.

FACTUAL ALLEGATIONS

I.

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Defendant's Conduct Has The Tendency Or Capacity To Deceive Or Confuse Reasonable Consumers

17. *Product at Issue:* Defendant manufactures, distributes, advertises, and sells Pennington Classic Wild Bird Feed and Kaytee Wild Bird Food. These products are sold at major U.S. retailers like Walmart, Petco, and Amazon. The front packaging of the two products looks like this:



18. *Relevant Time Period:* The deceptive packaging at issue here was consistent during the last four years, at least. There have been no material changes to the product packaging during the relevant period.

19. *Misrepresentations at Issue:* The names "Wild Bird Feed" and "Wild Bird Food" are misleading because most of the product is milo, which is used as filler that most wild

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birds will not eat. Milo may be "food" or "feed" in the general sense, but not to most of the wild birds that the product is intended to attract. So, describing the products as "food" or "feed" is *itself* misleading.

20. The overall packaging also misleadingly conveys the impression that the products consist of birdseed that was specially formulated to attract a wide variety of popular birds, when in fact, most of the product is filler that most wild birds will not eat.

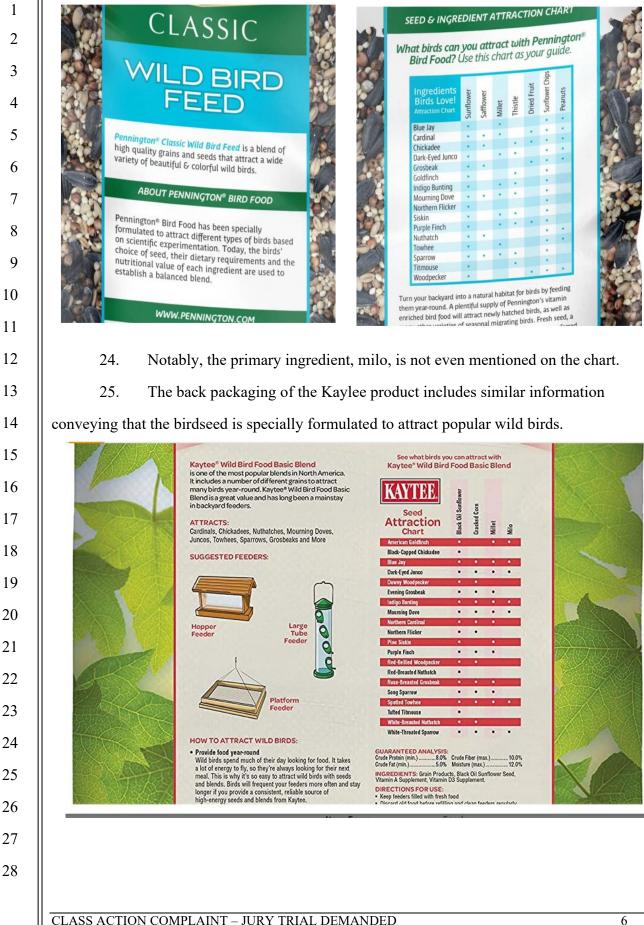
21. The product packaging states that the products "attract[] a wide variety of birds" (Pennington) or "attract[s] a great variety of birds" (Kaytee), and depicts birds that the birdseed is presumably intended to attract, like cardinals, chickadees, and gold finches. But, in fact, the majority ingredient in these products is a filler (milo) that does *not* "attract a great [or wide] variety of birds."

22. The back panels of the packaging contain further information about the seeds inside the packaging, and the types of birds they are supposed to attract. The back panels further reinforce the false impression that the seeds are specially formulated to attract popular wild birds, while not disclosing that the products primarily consist of a filler that those same birds do not eat.

23. The back panel of the Pennington product states that it is a "blend of **highquality grains and seeds** that attract a wide variety of beautiful & colorful wild birds." It then goes on to say that "Pennington® Bird Food has been specially formulated to attract different types of birds based on scientific experimentation. Today, **the birds' choice of seed**, their dietary requirements and the nutritional value of each ingredient are used to establish a balanced blend." The packaging also includes a list of the various birds that the birdseed is intended to attract, like blue jays, cardinals, and chickadees:

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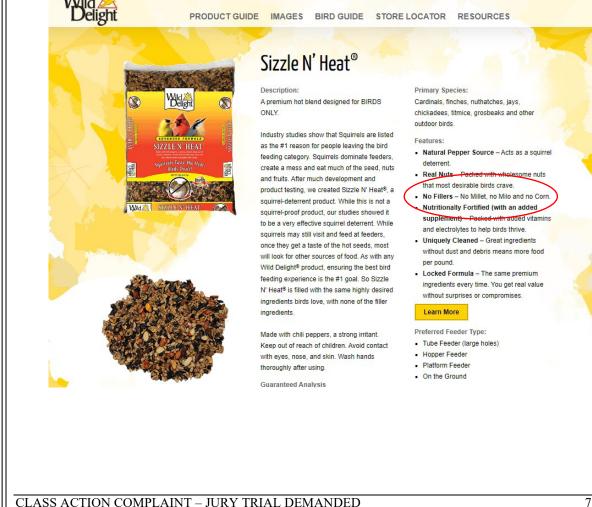
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26. To be sure, unlike the Pennington brand, the Kaylee packaging includes milo on the list of birdseed, claiming that milo attracts sparrows, juncos, and doves. However, that disclosure is also deceptive because it is just a pretext for using milo as a filler. As can be seen from the chart, including milo is not necessary to attract sparrows, juncos, and doves because they also eat every other seed included in the product. At the same time, the chart also confirms that most other birds do not eat milo, but there is no disclosure that the majority of seed in the packaging is milo.

27. How/Why The Conduct Is Misleading: Milo is used as a filler that most birds will not eat. CG&P says as much when selling its higher-priced products.

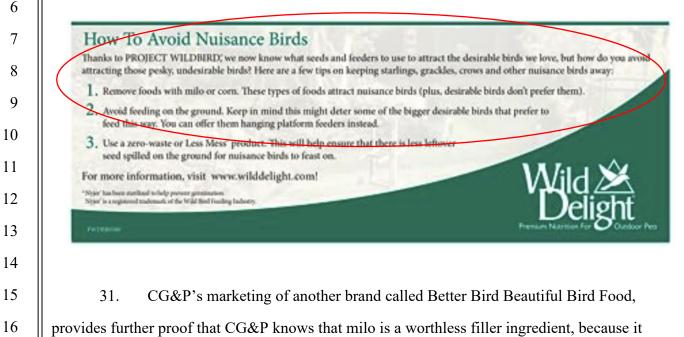
28. As one example, in June 2021, CG&P acquired the "Wild Delight" line of birdseed products, which includes the Wild Delight Sizzle N Heat Wild Bird Seed Blend.

29. The website product page for Wild Delight touts as a "feature" that it has "No Fillers – No Millet, no Milo, and no Corn":



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30. The amazon page for Wild Delight includes more information about attracting wild birds as well as a section titled "How To Avoid Nuisance Birds." There, CG&P tells customers that to avoid "pesky" or "undesirable" birds, they should "**[r]emove foods with milo or corn**. These types of foods attract nuisance birds (plus, **desirable birds don't prefer them**.)."



17 touts that the product is "Milo-Free":



32.	In short, CG&P knows that milo is a mere filler ingredient that doesn't attract the
kinds of birds	s consumers want to attract to their bird feeders, but instead will attract "pesky" and
"undesirable"	'birds. But that's not what CG&P says about its milo-containing Kaytee and
Pennington e	conomy blends. Instead, for those products, it says the opposite: that those blends
are formulate	ed to attract a wide array of desirable birds.
33.	Other groups have likewise warned that milo is just a filler that most birds won't
eat. As the a	uthor of a 2018 Washington Post article explained:
	[Milo is] a common ingredient in wild-birdseed mixes, including the
	one I'd been pouring into my feeder. There's just one problem: Most common backyard birds won't eat it. In its backyard bird feeding
	guide, for instance, the U.S. Fish & Wildlife Service notes that no birds appear to like it.
	Cornell University's Project FeederWatch, which recruits backyard
	birdwatchers to assist in annual bird population counts, recommends that feeders avoid "mixtures that have a high percentage of less-
	appealing 'filler' seeds such as red milo ." Even the Wild Bird Feeding Industry (WBFI), a trade group for birdseed manufacturers,
	warns on its website that seeds such as milo are "less attractive to
	birds."
	A number of common "bird feeds," in other words, are comprised primarily of an ingredient that most birds won't eat." ¹
34.	The Missouri Department of Conservation also advises against the use of milo:
	To attract the greatest diversity of birds, the best seeds to use are
	black oil sunflower, striped sunflower, hulled sunflower and Niger thistle seeds Many components of standard wild bird mixes sold
	in stores are used by relatively few birds. <i>Put out milo, for example, and you won't have many takers.</i> " ²
35.	The city of Worthington, Ohio suggests to its residents that using milo-filled
	ore likely to attract rats than desirable wild birds:
ondseed is in	ore intery to attract rais than desirable wild birds.
¹ https://www with-stuff-bir	w.washingtonpost.com/business/2018/07/31/why-many-bird-seed-mixes-are-filled-rds-wont-eat/
2	.mo.gov/magazines/conservationist/2000-11/backyard-banquet (Emphasis added)

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L 2	Use a seed blend for the types of birds you are feeding. <i>Seed blends that contain a lot of filler seeds and grains (millet, milo or sorghum) tend to end up on the ground where it attracts rats.</i> ³	
	36. Texas A&M University has this to say about milo in bird feed:	
	<i>Avoid birdseeds that contain milo</i> and wheat. <i>These foods are fillers and a waste of money.</i> If the birdseed is millet, this will attract doves and sparrows, but not songbirds." ⁴	
	37. Customers who bought Pennington and Kaytee products at issue likewise	
	complain that birds do not eat the birdseed offered. The complaints below are just a sample.	
	There are many more customer complaints about the products at issue here, all with the same	
	theme: the products are a sham because wild birds won't eat them:	
	³ https://www.worthington.org/DocumentCenter/View/1834/RatsBirdFeeders?bidId (Emphasis added).	5
	⁴ https://aggie-hort.tamu.edu/county/smith/tips/land/attractbirds.html (Emphasis added).	
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Pennington:
★☆☆☆☆ Our birds won't touch it Reviewed in the United States on February 28, 2024
Started putting this into a 3rd feeder last fall for all the finches and chickadees. They didn't touch put it in the 2 main feeders in a different area where we always get cardinals, sparrows, dove, finch sometimes a blue jay. Since refilling the 2 main feeders and also adding extra sunflower seeds for cardinals, we have not seen even one bird at the feeders. What's with this stuff?
★☆☆☆ Verified Purchase (i) 1/19/2024
Don't buy!!
Terrible seed— 95% Milo, which isn't even listed white millet is. The birds won't eat the round reddish Milo balls and toss them out looking for edible seed (of which there is little). Even the squirrels won't eat the Milo seed — it is just a mess on the ground. Waste of money.
★☆☆☆☆ Verified Purchase (i) 8/3/2022
99% filler
Last two bags were 99% filler. Trying to attract birds, not squirrels. Moving on to another brand.
★☆☆☆ Verified Purchase (i) 4/15/2023
DON'T BUY THIS PRODUCT
This product is unacceptable trash. It is full of junk seed. Even the birds wouldn't touch or eat the seed. I literally have a full bird feeder that even the squirrels won't touch. I will never buy Penninigton products again.

Kaytee:

1	Kaytee:
2	★☆☆☆☆ Birds hated it Reviewed in the United States on March 8, 2024
3	Size: 10 Pound (Pack of 1) Verified Purchase
4	Except for the sunflower seeds, the rest of the mix was junk. My song birds hated it and simply picked out the sunflower seeds. My ducks and geese turned their beaks up at it and would only eat the
5	sunflower seeds. I will not buy it again. I threw 1/2 of it away.
6	★☆☆☆☆ Great value for money, but my birds aren't interested at all. Reviewed in the United States on January 25, 2024
7	Size: 10 Pound (Pack of 1) Verified Purchase
8	I had birds at my bird feeder constantly with a prior mixed bag than this one I was drawn to this one for the price it was a great deal for the amount of seed! But, my cardinals, mourning doves, finches
9	and robins will literally fly up to the feeder, land for a second, then fly away without eating. I've refreshed the seed many times just in case it got wet or something they still seem to hate it! I can't
10	figure it out!
11	★☆☆☆☆ <u>Birds didnt eat food</u>
12	Reviewed in the United States on March 9, 2024
13	Size: 10 Pound (Pack of 1) Verified Purchase It is my first time buying this product, and normally I have tons of birds at the feeder, but they would
14	not eat this food. The bag is open so I can't return. So disappointed and so are my cats!
15	★☆☆☆☆ Birds Dont Like, Wont Eat & Disappeared While Feeding This
16	Reviewed in the United States on February 2, 2024 Size: 10 Pound (Pack of 1) Verified Purchase
17	Normally buy the most generic 20 lb bag of bird feed that Walmart sells. Was almost out of bird feed , roads were terrible, with more freezing rain, sleet & ice predicted. So, i ordered this.
18	Been feeding birds for years, with every bird native to my area (mid-west) , along with migrates & seasonal visitors. Theyre not picky. They eat it all
19	Except this.
20	Birds completely disappeared while feeding this! Not sure why because it looked fine?
21	Wont buy again
22	★☆☆☆☆ By frank on May 21, 2023
23	mostly filler
24	, not much is being eaten by the birds. Most of it goes on the ground. Yes it's cheaper, But if you look at
25	how much is not eaten, it's not a bargain.
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1	CLASS ALLEGATIONS
2	38. <i>Class Definition</i> : Plaintiffs bring this action on behalf all people the following
3	classes and subclasses:
4	<u>Nationwide class</u> : all people in the United States who purchased either Pennington Classic Wild Bird Feed or Kaytee Wild Bird Food for personal or
5	household use during the last four years.
6 7	<u>Multi-State Consumer Protection Class</u> : All persons who purchased either Pennington Classic Wild Bird Feed or Kaytee Wild Bird Food for personal, family, or household use: (1) in the states of Michigan Minnesota, or New Jersey within the applicable statute
8	use: (1) in the states of Michigan, Minnesota, or New Jersey within the applicable statute of limitations; (2) in the state Missouri within the applicable statute of limitations; (3) in the states of California, Florida, Massachusetts, or Washington within the applicable
9	statute of limitations; (4) in the states of Illinois and New York within the applicable statute of limitations.
10 11	<u>California class</u> : all people in California who purchased either Pennington Classic Wild Bird Feed or Kaytee Wild Bird Food for personal or household use during
11	the last four years.
13	<u>Massachusetts class</u> : all people in Massachusetts who purchased either Pennington Classic Wild Bird Feed or Kaytee Wild Bird Food for personal or household use during the last four years.
14 15 16	<u>New York class</u> : all people in New York who purchased either Pennington Classic Wild Bird Feed or Kaytee Wild Bird Food for personal or household use during the last four years.
17	39. Each of the above class definitions is a placeholder that "may be altered or
18	amended before final judgment." Fed. Civ. P. 23(c)(1)(C). Subject to additional information
19	obtained through further investigation and discovery, the foregoing class definitions may be
20	expanded or narrowed by amendment or in the motion for class certification, including through
21	the use of multi-state subclasses to account for material differences in state law, if any.
22	40. Specifically excluded from the putative classes are Defendant and any entities in
23	which Defendant have a controlling interest, Defendant's agents and employees, the judge to
24	whom this action is assigned, members of the judge's staff, and the judge's immediate family.
25	41. <i>Numerosity.</i> Members of the Class are so numerous that their individual joinder
26	herein is impracticable. On information and belief, each Class or Subclass includes thousands of
27	consumers. The precise number of Class Members and their identities are unknown to the
28	Plaintiffs at this time but may be determined through discovery. Class Members may be notified

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of the pendency of this action by mail and/or publication through the distribution records of Defendant or other means.

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3 42. *Commonality and Predominance*. Common questions of law and fact exist as to 4 all Class Members and predominate over questions affecting only individual Class Members. 5 Common legal and factual questions include, but are not limited to: Whether milo is used as a filler in the subject products; 6 (a) 7 (b) Whether the product packaging has the tendency or capacity to deceive or 8 confuse a reasonable consumer; 9 (c) Whether Defendant intended to deceive consumers; 10 Whether Defendant is liable to Plaintiff and Class members under the (d) 11 causes of action alleged in this complaint; and 12 (e) Whether Plaintiff and Class members are entitled to any of the forms of 13 relief they seek in this action. 14 43. *Typicality.* The claims of the Plaintiffs are typical of the claims of the Classes in 15 that Plaintiffs and the Classes sustained damages as a result of Defendant's uniform wrongful 16 conduct, as alleged above. 17 44. Adequacy. Plaintiff will fairly and adequately protect the interests of Class 18 members. Plaintiff has retained counsel that is highly experienced in complex consumer class 19 action litigation, and Plaintiff intends to vigorously prosecute this action on behalf of the Class. 20 Plaintiff has no interests that are antagonistic to those of the Class. Plaintiff has no past or 21 present financial, employment, familial, or other relationship with any of the attorneys in this 22 case that would create a conflict of interest with the proposed class members. 23 45. *Superiority*. A class action is superior to all other available methods for the fair 24 and efficient adjudication of this controversy for, inter alia, the following reasons: prosecutions 25 of individual actions are economically impractical for members of the Classes; the Classes are 26 readily definable; prosecution as a class action avoids repetitious litigation and duplicative 27 litigation costs, conserves judicial resources, and ensures uniformity of decisions; and 28 prosecution as a class action permits claims to be handled in an orderly and expeditious manner.

 in further damages to the Plaintiffs and Members of the Classes and will likely retain the benefits of its wrongdoing. <u>COUNT 1</u> Violations of California's Unfair Competition Law ("UCL") Cal. Bus. & Prof. Code §§ 17200, et seq. 48. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth herein. 49. Plaintiffs bring this cause of action individually and on behalf the nationwide class and each of their respective state subclasses. 50. California Business & Professions Code Section 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising." 51. Defendant acted with knowledge and intent. 52. Plaintiffs allege a claim under all three prongs of the UCL. 53. As alleged above, Defendant engaged in fraudulent conduct that had the tendence or capacity to deceive or confuse reasonable consumers. 54. Defendant's conduct also constitutes "unfair" business acts and practices within the meaning of the UCL, in that its conduct was injurious to consumers, offended public policy, and was unethical and unscrupulous. Defendant's violation of consumer protection and unfair competition laws resulted in harm to consumers. 		
 whole. 47. Without a class action, Defendant will continue a course of action that will result in further damages to the Plaintiffs and Members of the Classes and will likely retain the benefits of its wrongdoing. COUNT 1 Violations of California's Unfair Competition Law ("UCL") Cal. Bus. & Prof. Code §§ 17200, et seq. 48. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth herein. 49. Plaintiffs bring this cause of action individually and on behalf the nationwide class and each of their respective state subclasses. 50. California Business & Professions Code Section 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising." 51. Defendant acted with knowledge and intent. 52. Plaintiffs allege a claim under all three prongs of the UCL. 53. As alleged above, Defendant engaged in fraudulent conduct that had the tendene or capacity to deceive or confuse reasonable consumers. 54. Defendant's conduct also constitutes "unfair" business acts and practices within the meaning of the UCL, in that its conduct was injurious to consumers, offended public policy, and was unethical and unserupulous. Defendant's violation of consumer protection and unfair competition laws resulted in harm to consumers. 55. Plaintiffs also allege a violation under the "unlawful" prong of the UCL because Defendant's conduct violated consumer protection laws and the common law as set forth herein 56. As a direct and proximate result of Defendant's unfair and deceptive practices, 	46.	Defendant has acted or failed to act on grounds generally applicable to the
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	Defendant's c	conduct violated consumer protection laws and the common law as set forth herein.
Plaintiffs and the other members of the Class have suffered and will continue to suffer out-of-	56.	As a direct and proximate result of Defendant's unfair and deceptive practices,
	Plaintiffs and	the other members of the Class have suffered and will continue to suffer out-of-

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57. Plaintiffs and class members have suffered an injury in fact resulting in the loss of money and/or property as a proximate result of the violations of law and wrongful conduct of Defendant alleged herein, and they lack an adequate remedy at law to address the unfair conduct at issue here. Legal remedies available to Plaintiffs and class members are inadequate because they are not equally prompt and certain and in other ways efficient as equitable relief. Damages are not equally certain as restitution because the standard that governs restitution is different than the standard that governs damages. Hence, the Court may award restitution even if it determines that Plaintiffs fail to sufficiently adduce evidence to support an award of damages. Damages and restitution are not the same amount. Unlike damages, restitution is not limited to the amount of money defendant wrongfully acquired plus the legal rate of interest. Equitable relief, including restitution, entitles a plaintiff to recover all profits from the wrongdoing, even where the original funds taken have grown far greater than the legal rate of interest would recognize. Legal claims for damages are not equally certain as restitution because claims under 14 the UCL entail few elements. In short, significant differences in proof and certainty establish 15 that any potential legal claim cannot serve as an adequate remedy at law.

58. Equitable relief is appropriate because Plaintiffs may lack an adequate remedy at law if, for instance, damages resulting from their purchase of the Product is determined to be an amount less than the premium price of the Product. Without compensation for the full premium price of the Product, Plaintiffs would be left without the parity in purchasing power to which they are entitled.

> 59. Plaintiffs seeks all relief available under the UCL.

COUNT II Violation of California's False Advertising Law Cal. Bus. & Prof. Code. §§ 17500, et seq.

60. Plaintiffs incorporate and reallege each preceding paragraph as though fully set forth herein.

26 61. Plaintiffs bring this cause of action individually and on behalf the nationwide 27 class and each of their respective state subclasses.

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1	62.	Defendant violated California's False Advertising Law ("FAL"), Cal. Bus. &	
2	Prof. Code § 17500 by engaging in the conduct alleged above.		
3	63.	Defendant knew or should have known that its conduct was false and/or	
F	misleading.		
	64.	Defendant knew or should have known that its conduct was false and/or	
	misleading.		
	65.	Plaintiffs lack an adequate remedy at law for the reasons already alleged above in	
	connection w	vith the UCL claim.	
	66.	Plaintiffs and class members have suffered harm as a result of Defendant's	
	violations of	the FAL.	
	67.	Plaintiffs seek all available relief under the FAL.	
	, v	<u>COUNT III</u> Violations of California's Consumer Legal Remedies Act ("CLRA") Cal. Civ. Code §§ 1750, <i>et seq</i> .	
	68.	Plaintiffs incorporate and reallege each preceding paragraph as though fully set	
	forth herein.		
	69.	Plaintiffs bring this cause of action individually and on behalf the nationwide	
	class and eac	h of their respective state subclasses.	
	70.	Defendant is a "person" as defined by California Civil Code § 1761(c).	
	71.	Plaintiff and the other Class members are "consumers" within the meaning of	
	California Ci	vil Code § 1761(d).	
	72.	For the reasons alleged above, Defendant violated California Civil Code	
	§ 1770(a)(5)((7) and (9).	
	73.	Plaintiffs provided pre-suit notice of the claims asserted under the CLRA, in	
	compliance with all of the CLRA's requirements.		
	74.	Defendant's unfair and deceptive acts or practices occurred repeatedly in	
	Defendant's	trade or business.	
	75.	Defendant acted with knowledge and intent.	
		N COMPLAINT – IURY TRIAL DEMANDED 17	

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	76.	As alleged above, Defendant engaged in conduct that had the tendency or
capacit	y to de	eceive or confuse reasonable consumers.
	77.	With respect to the CLRA claim, Plaintiffs allege in the alternative that they lack
an adeo	quate r	remedy at law for the reasons already alleged above in connection with the UCL
claim.		
	78.	As a result of Defendant's misconduct, Plaintiff and other Class members have
suffere	d mon	ietary harm.
	79.	Plaintiff seeks all relief available under the CLRA.
		<u>COUNT IV</u> Violations of New York General Business Law § 349
	80.	Plaintiffs reallege and incorporate the above allegations by reference as if set
forth fi	ully he	rein.
	81.	Plaintiff Melackrinos ("Plaintiff" for purposes of this count) brings this claim
individ	ually a	and on behalf of the New York subclass.
	82.	GBL § 349 prohibits deceptive acts or practices in the conduct of any business,
trade, c	or com	imerce.
	83.	In its sale of goods throughout the State of New York, Defendant conducts
busines	ss and	trade within the meaning and intendment of GBL § 349.
	84.	Plaintiff and the New York class members are consumers who purchased
produc	ts fron	n Defendant for their personal use.
	85.	By the acts and conduct alleged herein, Defendant has engaged in deceptive,
unfair,	and m	isleading acts and practices, as alleged above. Had Plaintiff and the New York
class m	nember	rs been apprised of these facts, they would not have purchased the Products.
	86.	The foregoing deceptive acts and practices were directed at consumers.
	87.	The foregoing deceptive acts and practices are misleading in a material way. A
reasona	able co	onsumer would not have knowingly purchased the Products if the products had been
truthfu	llv adv	vertised, or they would not have paid the price premium associated with the

products. By reason of this conduct, Defendant engaged in deceptive conduct in violation of GBL § 349.

88. Defendant's actions are the direct, foreseeable, and proximate cause of the damages that Plaintiff and the New York class members have sustained from having paid for and used Defendant's Products.

89. As a result of Defendant's violations, Plaintiff and the New York class members have suffered damages because: (a) they paid a premium price based on Defendant's deceptive conduct; and (b) the Products do not have the characteristics, uses, benefits, or qualities as promised.

90. On behalf of themselves and other members of New York class members,Plaintiff seeks to recover seeks all available relief for claims pursued under GBL § 349.

<u>COUNT V</u> Violations of New York General Business Law § 350

91. Plaintiffs reallege and incorporate the above allegations by reference as if set forth fully herein.

92. Plaintiff Melackrinos ("Plaintiff" for purposes of this count) brings this claim individually and on behalf of the New York subclass.

93. GBL § 350 prohibits false advertising in the conduct of any business, trade, or commerce. Pursuant to § 350, false advertising is defined as "advertising, including labeling, of a commodity ... if such advertising is misleading in a material respect."

94. In its sale of goods throughout the State of New York, Defendant conducts business and trade within the meaning and intendment of GBL § 350.

95. Defendant has engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of GBL § 350.

96. Plaintiff and the New York class members are consumers who purchased products from Defendant for their personal use.

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1	97. By the acts and conduct alleged herein, Defendant has engaged in deceptive,		
2	unfair, and misleading acts and practices, as alleged above. Had Plaintiff and the New York		
3	class members been apprised of these facts, they would not have purchased the Products.		
4	98. The foregoing deceptive acts and practices were directed at consumers.		
5	99. The foregoing deceptive acts and practices are misleading in a material way. A		
6	reasonable consumer would not have knowingly purchased the Products if the products had been		
7	truthfully advertised, or they would not have paid the price premium associated with the		
8	products. By reason of this conduct, Defendant engaged in deceptive conduct in violation of		
9	GBL § 350.		
10	100. Defendant's actions are the direct, foreseeable, and proximate cause of the		
11	damages that Plaintiff Teitler and the New York class members have sustained from having paid		
12	for and used Defendant's Products.		
13	101. As a result of Defendant's violations, Plaintiff and the New York class members		
14	have suffered damages because: (a) they paid a premium price based on Defendant's deceptive		
15	conduct; and (b) the Products do not have the characteristics, uses, benefits, or qualities as		
16	promised.		
17	102. On behalf of themselves and other members of New York class members,		
18	Plaintiff seeks all available relief for claims pursued under GBL § 350.		
19	<u>COUNT VI</u> Violations of the Mass. Gen. Laws Chapter 93A, § 2		
20	103. Plaintiffs repeat and re-allege all previous paragraphs, as if fully included herein.		
21			
22	104. Plaintiff Oldakowski ("Plaintiff" for purposes of this count) brings this claim on behalf of the Massachusetts subclass.		
23	105. Massachusetts law prohibits "unfair or deceptive acts or practices in the conduct		
24			
25	of any trade or commerce." Mass. Gen. Laws Ch. 93a, § 2.		
26	106. Plaintiff, members of the Massachusetts Class, and Defendant are "persons"		
27	within the meaning of Mass. Gen. Laws Ch. 93a, § 1(a).		
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	s Ch. 93A, § 2.
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	9. Defendant engaged in one or more of the following unfair or deceptive acts or
practices a	as prohibited by Mass. Gen. Laws Ch. 93A, § 2:
	a. Misrepresenting the approval or certification of goods;
	b. Representing that goods have sponsorship, approval, characteristics, uses, benefits, or quantities which they do not have;
	c. Representing that goods are of a particular standard, quality, or grade, if they are of another;
	d. Disparaging the goods, services, or business of another by false or misleading representation of fact;
	e. Advertising goods with intent not to sell them as advertised;
	f. Engaging in other conduct which created a likelihood of confusion or of misunderstanding;
	g. Using or employing deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon such concealment, suppression or omission, in connection with the advertisement and sale of the Products, whether or not any person has in fact been misled, deceived or damaged thereby; and
	h. Representing that goods have been supplied in accordance with a previous representation when they have not been.
11	0. Defendant's acts and omissions are unfair in that they (1) offend public policy;
(2) are im	moral, unethical, oppressive, or unscrupulous; and (3) cause substantial injury to
	s. Defendant has, through knowing, intentional, material omissions, sold mislabeled
Products.	
11	1. Defendant's acts and omissions are also unfair in that they cause substantial
injury to c	consumers far in excess of any conceivable benefit; and are injuries of a nature that
	d not have been reasonably avoided by consumers.
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112. Defendant's foregoing unfair methods of competition and unfair or deceptive acts or practices, including its omissions, were and are committed in its course of trade or commerce, directed at consumers, affect the public interest, and injured Plaintiff and Class members.

113. Plaintiff and the members of the Massachusetts Class have suffered injury in fact, including economic injury, and actual damages resulting from Defendant's material omissions and misrepresentations because, *inter alia*, they lost money when they purchased the Products and/or paid an inflated purchase price for the Products.

114. Defendant knew, should have known, or was reckless in not knowing, that the Products were mislabeled.

115. Defendant had a duty to disclose mislabeling and misbranding because Defendant
had knowledge of the true facts related to the Products prior to marketing and selling the
Products.

116. As a direct and proximate result of Defendant's unfair methods of competition
and unfair or deceptive acts or practices, Plaintiff and the members of the Massachusetts Class
have incurred damages and are entitled to recover actual damages to the extent permitted by law,
including class action rules, in an amount to be proven at trial.

117. Plaintiff and the members of the Massachusetts Class have suffered ascertainablelosses, which include but are not limited to, the costs they incurred paying for a product whichwas not the one that had been represented to them.

118. Pursuant to Mass. Gen. Laws, Chapter 93A § 9, Plaintiff and the members of the
 Massachusetts Class seek an order enjoining Defendant's unfair and/or deceptive acts or
 practices, and awarding damages, punitive damages, reasonable attorney's fees, costs, and any
 other just and proper relief available under Massachusetts law.

<u>COUNT VII</u> Breach of Implied Warranty

1.Plaintiffs incorporate and reallege each preceding paragraph as though fully setforth herein.

2. Each Plaintiff brings this cause of action individually and on behalf of their

respective state subclasses against Defendant.

3. Each Plaintiff asserts this cause of action under the laws of the state where they are domiciled.

4. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller of the products at issue, impliedly warranted that they were specially formulated and suitable for wild birds, when in fact the majority of the product is filler that wild birds do not eat.

5. Defendant breached its warranty implied in the contract for the sale of the products because they could not pass without objection in the trade under the contract description: the products were not adequately contained, packaged, and labeled as per Defendant's contract with Plaintiffs and members of the Classes, and the products do not conform to the implied affirmations of fact made on the marketing and packaging for the Product. U.C.C. §§ 2-313(2)(a), (e), (f). As a result, Plaintiffs and members of the Classes did not receive the goods as impliedly warranted by Defendant to be merchantable.

6. Plaintiffs and Members of the Classes purchased the Product in reliance uponDefendant's skill and judgment and the implied warranties of fitness for the purpose.

The Product was defective when it left the exclusive control of Defendant.

8. Plaintiffs and Members of the Classes did not receive the goods as warranted.

9. As a direct and proximate cause of Defendant's breach of the implied warranty,
Plaintiffs and Members of the Classes have been injured and harmed because: (a) they would
not have purchased the products on the same terms if they knew that the Product was dangerous;
and (b) the Product does not have the characteristics, uses, or benefits as promised by
Defendant.

Plaintiffs seek all available relief under this cause of action.

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11. Plaintiffs incorporate and reallege each preceding paragraph as though fully set

COUNT VIII

Unjust Enrichment

27 forth herein.

12. Each Plaintiff brings this cause of action individually and on behalf of their

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respective state subclasses against Defendant. 1 2 13. Each Plaintiff asserts this cause of action under the laws of the state where they 3 are domiciled. 4 14. To the extent required, Plaintiffs assert this cause of action in the alternative to 5 legal claims, as permitted by Rule 8. 6 15. Plaintiffs and the Class Members conferred a benefit on Defendant in the form of 7 the gross revenues Defendant derived from the money they paid to Defendant. 8 16. Defendant knew of the benefit conferred on it by Plaintiffs and the Class 9 Members. 10 17. Defendant has been unjustly enriched in retaining the revenues derived from 11 Plaintiffs' and the Class Members' purchases of the Products, which retention of such revenues 12 under these circumstances is unjust and inequitable because Defendant omitted that the Product 13 was dangerous. This caused injuries to Plaintiffs and Members of the Classes because they 14 would not have purchased the Product or would have paid less for them if the true facts 15 concerning the Product had been known. 16 18. Defendant accepted and retained the benefit in the amount of the gross revenues 17 it derived from sales of the Product to Plaintiffs and the Class Members. 18 19. Defendant has thereby profited by retaining the benefit under circumstances 19 which would make it unjust for Defendant to retain the benefit. 20 20. Plaintiffs and the Class Members are, therefore, entitled to restitution in the form 21 of the revenues derived from Defendant's sale of the Product. 22 21. As a direct and proximate result of Defendant's actions, Plaintiffs and the 23 Members of the Classes have suffered in an amount to be proven at trial. 24 22. Putative class members have suffered an injury in fact and have lost money as a 25 result of Defendant's unjust conduct. 26 23. Putative class members lack an adequate remedy at law with respect to this claim 27 and are entitled to non-restitutionary disgorgement of the financial profits that Defendant 28 obtained as a result of its unjust conduct.

	<u>PRAY</u>	YER FOR RELIEF			
WHEREFO	RE, Plaintiffs, individ	ually and on behalf of all others similarly situated, s			
judgment against D	efendant, as follows:				
	a. For an order certifying the Class and naming Plaintiffs as the representatives of the Class or Classes				
b. For an o	rder declaring Defend	ant's conduct violates the statutes referenced herein			
c. For an o	rder finding in favor o	of Plaintiffs and the Class on all counts asserted here			
	al, compensatory, stat ned by the Court and/c	utory, and/or punitive damages in amounts to be or jury;			
e. For prej	udgment interest on al	l amounts awarded;			
f. For an o	rder of restitution and	all other forms of equitable monetary relief;			
g. For inju	nctive relief as pleaded	d or as the Court may deem proper; and			
h. For an order awarding Plaintiffs and the Classes their reasonable attorneys' fees, expenses, and costs of suit.					
	JURY 1	TRIAL DEMANDED			
Plaintiffs demand a trial by jury on all claims so triable.					
Dated: August 21,	2024	Respectfully submitted,			
		/s/ Joel D. Smith			
		SMITH KRIVOSHEY, PLLC Joel D. Smith (State Bar No. 244902)			
		867 Boylston Street, 5 th Floor, Ste. 1520			
		Boston, MA 02116 Phone: 617-377-7404			
		E-Mail: joel@skclassactions.com			
		SMITH KRIVOSHEY, PLLC Yeremey O. Krivoshey (State Bar No.			
		295032) 166 Geary Street, Ste. 1500-1507			
		San Francisco, CA 94108			
		Phone: 415-839-7000 E-Mail: yeremey@skclassactions.com			
		Attorneys for Plaintiffs			

- 11	CLRA Venue Declaration, Civil Code § 1780(c)								
	I, Joel D. Smith, declare as follows:								
	1. I have personal knowledge to the facts stated herein and, if called upon to do so,								
	could competently testify hereto.								
	2. I am the attorney for Plaintiffs in the above-captioned action.								
	3. I submit this declaration in support of the Class Action Complaint, which is based								
	in part on violations of the Consumers Legal Remedies Act, California Civil Code § 1750 et seq.								
	4. The Class Action Complaint has been filed in the proper place for trial of this								
	action.								
	5. It is my understanding that Defendant regularly transacts business in this County								
	and the acts and omissions giving rise to this action occurred in large part in this County.								
	I declare under penalty of perjury under the laws of the United States that the foregoing								
	is true and correct to the best of my knowledge. Executed on August 21, 2024 in Killingly, CT								
	By: /s/ Joel D. Smith								
	Joel D. Smith								

JS-CAND 44 (Rev. 10/2020) Case 4:24-cv-05559-KAW_Document 1-1_Filed 08/21/24 Page 1 of 2 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			DEFEN	DANTS					
(b) (c)	County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES) Attorneys (Firm Name, Address, and Telephone Number)			<i>(IN U.Š. PL</i> NOTE:	THE TRAC	i <i>ses oni</i> ondemi	LY) NATION	CASES, USE THE LOCATION OF	7	
II.	BASIS OF JURISDICTION (Place an "X" in One Box Only)	Ш		IZENSHI Diversity Case		INCIP	AL PA	RTIES (Place an "X" in One Bo and One Box for Defend		aintiff
						PTF	DEF		PTF	DEF
1	U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)		Citize	n of This State		1	1	Incorporated <i>or</i> Principal Place of Business In This State	4	4
2	U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item II)		Citize	n of Another St	ate	2	2	Incorporated <i>and</i> Principal Place of Business In Another State	5	5
	(inaccure Chizenship of Farties in term in	Ci		Citizen or Subject of a Foreign Country		3	3	Foreign Nation	6	6

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

CONTRACT	CONTRACT TORTS			BANKRUPTCY	OTHER STATUTES				
CONTRACT 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	PERSONAL INJURYPERSONAL INJURY310 Airplane365 Personal Injury – Product315 Airplane Product Liability367 Health Care/ Pharmaceutical Personal Injury Product Liability300 Federal Employers' Liability367 Health Care/ Pharmaceutical Personal Injury Product Liability340 Marine367 Health Care/ Pharmaceutical Personal Injury Product Liability340 Marine360 Notor Vehicle355 Motor Vehicle Product Liability360 Other Personal Injury 360 Other Personal Injury -Medical Malpractice360 Other Personal Injury -Medical Malpractice371 Truth in Lending 380 Other Personal Property Damage3640 Other Civil Rights PRISONER PETITIONS 440 Other Civil Rights HABEAS CORPUS 441 Voting Accommodations463 Alien Detainee 510 Motions to Vacate Sentence445 Amer. w/Disabilities- Employment535 Death Penalty446 Amer. w/Disabilities- Employment540 Mandamus & Other 		FORFEITURE/PENALTY 625 Drug Related Seizure of Property 21 USC § 881 690 Other 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	BANKRUPTCY 422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 158 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent—Abbreviated New Drug Application 840 Trademark 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC § 7609	OTHER STATUTES 375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 485 Telephone Consumer Protection Act 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State 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): Brief description of cause: Demanded in complaint: JURY DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER DOCKET NUMBER IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) JURY JEAN JURY JEAN JURY JEAN									
(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE									

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) <u>United States defendant</u>. 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) <u>Diversity of citizenship</u>. 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) <u>Removed from State Court</u>. 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) <u>Remanded from Appellate Court</u>. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) <u>Reinstated or Reopened</u>. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) <u>Transferred from Another District</u>. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) <u>Multidistrict Litigation Transfer</u>. 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) <u>Multidistrict Litigation Direct File</u>. 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. <u>Brief Description</u>: 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.