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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

Case No: '20CV0894 DMS JLB

WARREN GROSS and DEBORAH
LEVIN, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

VILORE FOODS COMPANY, INC.,

Defendants.

**CLASS ACTION COMPLAINT
FOR VIOLATIONS OF:**

- 1. CONSUMERS LEGAL REMEDIES ACT,
CAL. CAL. CIV. CODE §§1750 *et seq.***
- 2. UNFAIR COMPETITION LAW,
CAL. BUS. & PROF. CODE §§17200 *et seq.***
- 3. FALSE ADVERTISING LAW,
CAL. BUS. & PROF. CODE §§17500 *et seq.***
- 4. BREACH OF EXPRESS WARRANTY**
- 5. BREACH OF IMPLIED WARRANTY**
- 6. NEGLIGENT MISREPRESENTATION**

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. JURISDICTION AND VENUE 1

II. NATURE OF THE ACTION 2

III. PARTIES 3

IV. FACTUAL ALLEGATIONS 3

Defendant Does Not Disclose That the Products are Artificially Flavored..... 3

Defendant’s Competitors Label Their Products Lawfully..... 8

Plaintiff’s Purchases of the Product 9

V. DELAYED DISCOVERY 11

VI. CLASS ACTION ALLEGATIONS 12

VII. CAUSES OF ACTION..... 14

 First Cause of Action: Violation of the CLRA..... 14

 Second Cause of Action: Violation of the UCL, Unlawful Prong 15

 Third Cause of Action: Violation of the UCL, Unfair Prong 16

 Fourth Cause of Action: Violation of False Advertising Law 19

 Fifth Cause of Action: Breach of Express Warranty 20

 Sixth Cause of Action: Breach of Implied Warranty 20

 Seventh Cause of Action: Negligent Misrepresentation..... 22

VIII. PRAYER FOR RELIEF 23

IX. JURY DEMAND 24

1 Warren Gross and Deborah Levin, (“Plaintiffs”), on behalf of themselves and all
2 others similarly situated, by and through their undersigned counsel, hereby bring this
3 action against Vilore Foods Company, Inc., (“Vilore” or Defendant), and upon
4 information and belief and investigation of counsel, allege as follows:

5 **I. JURISDICTION AND VENUE**

6 1. Plaintiffs bring this action pursuant to the Class Action Fairness Act of 2005
7 (“CAFA”), 28 U.S.C. § 1332(d). Defendant is a citizen of a state different from that of a
8 plaintiff, the putative class size is greater than 100 persons, and the amount in controversy
9 in the aggregate for the putative Class exceeds the sum or value of \$5 million exclusive of
10 interest and costs. The amount in controversy, exclusive of interest, costs, and attorneys’
11 fees, exceeds the minimum jurisdictional amount for this Court and minimal diversity
12 exists. The Court has jurisdiction over this action pursuant to 28 U.S. Code § 1332(d).

13 2. This Court has both general and specific personal jurisdiction over
14 Defendant.

15 3. The Court has personal jurisdiction over Defendant because the company has
16 affirmatively established and maintained contacts with the State of California and is
17 registered to do business in California.

18 4. This Court further has specific personal jurisdiction arising from Defendant’s
19 decision to distribute and sell the Product in California.

20 5. Defendant has sufficient minimum contacts with this State and sufficiently
21 avail themselves of the markets of this State through the promotion, sales, and marketing
22 of the Product within the State to render the exercise of jurisdiction by this Court
23 reasonable.

24 6. Venue is proper in this County because Defendant conducts business here,
25 engages in substantial transactions in this County, and many of the transactions
26 complained of herein occurred in this County including specifically the transactions
27 between Plaintiff Gross and Defendant and many of the transactions between Defendant
28 and the Class.

1 **II. NATURE OF THE ACTION**

2 7. This is a nationwide consumer class action for violation of state consumer
3 protection laws with a California sub-class for violation of California law.

4 8. Defendant distributes, advertises, markets, and sells a variety of juices and
5 juice-based beverage products, including juice-based beverage products labeled “Guava
6 Nectar”, “Apricot Nectar”, and “Peach Nectar” (the “Products”).

7 9. These Products, which are labeled and marketed under the brand name
8 “Kern’s,” are all misbranded and falsely advertised.

9 10. The Kern’s brand is owned in the United States by Grupo Jumex, S.A. de
10 C.V. (“Jumex”), a Mexico corporate entity.

11 11. The Products are packaged in Mexico and imported to the United States.

12 12. Under U.S. law, every food product imported into the U.S. must identify on
13 the product’s package the full legal name and address of either the product manufacturer
14 or the U.S. distributor for consumer contact and liability purposes.

15 13. Vilore, a Texas corporation, is identified on the Product labels as the U.S.
16 distributor.

17 14. The Products’ labeling is false and misleading and violated FDA regulations.

18 15. The Products are labeled as if they are flavored only with natural ingredients
19 when the Products in fact contain undisclosed artificial flavors in violation of state and
20 federal law.

21 16. The Products are misbranded under federal law as well as California and
22 other states’ laws.

23 17. The distribution of misbranded products in interstate commerce violates
24 federal law, 21 U.S.C. § 331, and corresponding state consumer protection laws.

25 18. Vilore is liable under U.S. law for distributing the misbranded Products.

26 19. Plaintiffs, who were deceived by Defendant’s unlawful conduct, purchased
27 the Products in California, and were damaged thereby, bring this action on their own
28

1 behalf and on behalf of California and other states’ consumers to remedy Defendant’s
2 unlawful acts.

3 20. On behalf of the Class and sub-class as defined herein, Plaintiffs seek an
4 order compelling Defendant to, *inter alia*: (1) cease distributing, advertising and selling
5 the Products in violation of U.S. and California and other states’ consumer protection law;
6 (2) re-label or recall all existing deceptively packaged Products; (3) conduct a corrective
7 advertising campaign to fully inform California and other states’ consumers; (4) award
8 Plaintiffs and other Class-members restitution, actual damages, and punitive damages; and
9 (5) pay all costs of suit, expenses, and attorney fees.

10 **III. PARTIES**

11 21. Defendant Vilore Foods Company (“Vilore”) is a Texas Corporation with its
12 principal place of business at 3838 Medical Drive, San Antonio, Texas.

13 22. Vilore is registered with the California Secretary of State to do business in
14 California under entity number C1944592.

15 23. Vilore is the designated U.S. distributor and liable entity for the Products.

16 24. Defendant advertises, markets, distributes, and sells the Products in
17 California and throughout the United States.

18 25. Plaintiff Warren Gross (“Gross”) is a resident and citizen of Pima County,
19 Arizona. Gross purchased one or more of the Products multiple times in San Diego
20 County, California for personal and household consumption.

21 26. Plaintiff Deborah Levin (“Levin”; collectively with Gross, “Plaintiffs”) is a
22 resident and citizen of Santa Monica, California. Levin purchased the Products multiple
23 times since 2014 in California for personal and household consumption.

24 **IV. FACTUAL ALLEGATIONS**

25 **Defendant Does Not Disclose That the Products are Artificially Flavored.**

26 27. The image below [overleaf] is a true and accurate reproduction of the front
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1 labels of two of the Products during the proposed class period.¹



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14 28. The Mango Nectar product label, for example, shows a pictorial
15 representation of ripe fresh mangos. The Apricot Nectar product label shows a pictorial
16 representation of ripe fresh apricots.

17 29. The labeled names, “Mango” and “Apricot” along with these pictorial
18 representations, under U.S. and California law inform the consumer that the Products
19 consist exclusively of and are flavored only with natural juices.

20 30. Both labels further advertise that the Product is “100% Natural.”

21 31. Both Products, however, contain a chemical identified as “malic acid.”

22 32. The “malic acid” that is added to the Products is a synthetic chemical that is
23 used to make manufactured food products taste like real fruit.

24 33. The Product labels violate California and other state law in multiple regards.

25 34. California’s Sherman Food, Drug, and Cosmetic Act, Cal. Health & Saf.

26
27 ¹ <http://kerns.com>, as of 2017. The manufacturer apparently has since deleted “100%
28 Natural” on the retail can labels.

1 Code §109875 et seq, for example, incorporates into California law all regulations enacted
2 pursuant to the U.S. Food Drug and Cosmetic Act. Any act or omission that would violate
3 an FDCA regulation necessarily therefore violates California’s Sherman Law.

4 35. Numerous other states have similar consumer protection laws.

5 36. The Products violate the federal FDCA, and therefore violate these state laws,
6 in multiple ways.

7 37. First, because each Product contains additional flavoring ingredients that
8 simulate and reinforce the characterizing flavor, the front label is required by law to
9 disclose those additional flavors rather than misleadingly suggest that the Product is
10 flavored only by the labeled natural juices. Cal. Health & Saf. Code §109875 et seq.

11 38. Second, the Product ingredient list violates Federal and state law because it
12 misleadingly identifies the malic acid ingredient only as generic “malic acid” instead of
13 using the specific, non-generic name of the ingredient. *See* 21 CFR 101.4(a)(1).

14 39. Even more deceptive, however, is the fact that the Products contain
15 undisclosed artificial flavoring made from petrochemicals. Defendant conceals this fact
16 from consumers.

17 40. The manufacturer adds an industrial chemical called d-l malic acid,² in the
18 form of a racemic mixture of d- and l- isomers, to flavor the Products and make them taste
19 like fresh fruit.

20 41. This ‘malic acid’ is not naturally-occurring but is in fact manufactured in
21 petrochemical plants from benzene or butane—components of gasoline and lighter fluid,
22 respectively—through a series of chemical reactions, some of which involve highly toxic
23 chemical precursors and byproducts.

24 42. Both the natural and unnatural forms of malic acid are considered GRAS
25 (generally recognized as safe) for use as flavorings; the d-malic acid form, however, has
26 not been extensively studied for its health effects in human beings.

27
28 ² D-malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

1 43. Both forms of malic acid confer a “tart, fruity” flavor to food products.³

2 44. The manufacturer uses this artificial petrochemical, d-l malic acid, in its
3 Products but Defendant pretends otherwise, conflating the natural and the artificial
4 flavorings and deceiving consumers.

5 45. Because it contains artificial flavor, both federal and state law require the
6 Products to display both front- and back-label disclosures to inform consumers that they
7 are artificially flavored. 21 CFR 101.22.

8 46. They have neither.

9 47. The labels of some of the Products during the proposed class period, in fact,
10 claimed the Products are “*100% Natural*”.

11 48. California law, incorporating and identically mirroring U.S. Food, Drug, and
12 Cosmetic Act regulations by reference, requires that a food’s label accurately describe the
13 nature of the food product and its characterizing flavors. 21 C.F.R. 102.5(a).

14 49. Under FDA regulations, a recognizable primary flavor identified on the front
15 label of a food Products are referred to as a “characterizing flavor”. 21 CFR 101.22.

16 50. FDA regulations and California law establish that if “the label, labeling, or
17 advertising of a food makes any direct or indirect representations with respect to the
18 primary recognizable flavor(s), by word, vignette, e.g., depiction of a fruit, or other
19 means” then “such flavor shall be considered the characterizing flavor”. 21 C.F.R.
20 101.22(i).

21 51. “Mango,” “Apricot,” and “Guava” are primary recognizable flavors
22 identified on Product front labels. These are all therefore characterizing flavors.

23 52. If a product’s characterizing flavor is not created exclusively by the
24 characterizing flavor ingredient, the product’s front label must state that the product’s
25 flavor was simulated or reinforced with either or both of natural or artificial flavorings. If
26

27 _____
28 ³ <https://thechemco.com/chemical/malic-acid/>; visited 04/12/17.

1 any artificial flavor is present which “simulates, resembles or reinforces” the
2 characterizing flavor, the food must be prominently labeled as “Artificially Flavored.” 21
3 C.F.R. 101.22(i) (3), (4).

4 53. A food product’s label also must include a statement of the “presence or
5 absence of any characterizing ingredient(s) or component(s) . . . when the presence or
6 absence of such ingredient(s) or component(s) in the food has a material bearing on price
7 or consumer acceptance . . . and consumers may otherwise be misled about the presence
8 or absence of the ingredient(s) or component(s) in the food.” 21 C.F.R. 102.5(c).

9 54. Such statements must be in boldface print on the front display panel and of
10 sufficient size for an average consumer to notice. *Id.*

11 55. Under these regulations, Defendant, before distributing the Products in U.S.
12 commerce, was required to place prominently on the Products’ front labels a notice
13 sufficient to allow consumers to understand that the Products contained additional
14 flavoring ingredients and artificial flavorings.

15 56. Defendant failed to do so, deceiving consumers and violating federal and
16 state law.

17 57. Accordingly, Plaintiffs were unaware that the Products contained artificial
18 flavoring when they purchased them.

19 58. When purchasing the Products, Plaintiffs were seeking a product of particular
20 qualities that were flavored only with the natural ingredients claimed on the label and
21 which did not contain artificial flavoring.

22 59. Plaintiffs are not alone in these purchasing preferences. As reported in Forbes
23 Magazine, 88% of consumers polled recently indicated they would pay more for foods
24 perceived as natural or healthy. “All demographics [of consumers]—from Generation Z to
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1 Baby Boomers—say they would pay more” for such products, specifically including foods
2 with no artificial flavors.⁴

3 60. California’s Health & Safety Code specifically states that “Any food is
4 misbranded if it bears or contains any artificial flavoring, artificial coloring, or chemical
5 preservative, unless its labeling states that fact.” Cal. Health & Saf. Code §110740.

6 61. California law required Defendant to include sufficient notice on the
7 Products’ labels to alert California consumers that the Products are artificially flavored.

8 62. Defendant failed to do so.

9 63. Accordingly, the Products were misbranded and illegal to distribute or sell in
10 California. Cal. Health & Saf. Code §110740; §110760; §110765.

11 64. Because the Products violated California law, they were misbranded when
12 offered for sale.

13 65. Plaintiffs lost money as a result of Defendant’s conduct because they
14 purchased Products that contained undisclosed artificial flavors and were illegal to sell.

15 66. John Compton, the CEO of a competing beverage manufacturer, announced
16 to investors that, “We have talked extensively to consumers . . . and they come back and
17 tell us the number one motivation for purchase is products that claim to be all natural.”

18 67. Defendant’s labeling and advertising reflects consumers’ preferences -- not
19 by making the Product solely with natural ingredients, but instead by concealing the fact
20 that the Products are artificially flavored.

21 **Defendant’s Competitors Label Their Products Lawfully.**

22 68. Defendant not only deceives consumers but also gains an unfair commercial
23 advantage in the marketplace by marketing and distributing misbranded Products.

24 69. Manufacturers and distributor of competing beverage products label their
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26 _____
27 ⁴ “Consumers Want Healthy Foods--And Will Pay More For Them”; Forbes Magazine,
28 February 15, 2015. <https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-foods-and-will-pay-more-for-them/#4b8a6b4b75c5>; visited April 7, 2017.

1 products lawfully.

2 70. Meadow Gold, Value Time, and Tang, for example, accurately label their
3 artificially flavored fruit juice beverages as “Artificially Flavored.”

4 71. Other competing major manufacturers, offering products whose labels
5 suggest just as Defendant’s do that their products are naturally flavored, truly are flavored
6 only with natural ingredients.

7 72. Defendant, however, conceals the use of artificial flavoring, deceiving
8 consumers, illegally cutting costs and increasing profits, and competing unfairly and
9 unlawfully in the marketplace, hurting their competitors as well as consumers.

10 73. Defendant’s conduct injures competing manufacturers and distributors that
11 do not engage in the same illegal behavior. These manufacturers and distributors compete
12 for market share and limited shelf space, as well as for consumers’ buying preferences and
13 dollars.

14 74. Defendant’s competitors do so lawfully. Defendant does not.

15 **Plaintiffs’ Purchases of the Product**

16 75. Plaintiff Gross purchased one or more of the Products in California during
17 the Class Period defined herein.

18 76. Plaintiff Levin purchased one or more of the Products in California during
19 the Class Period as defined herein.

20 77. Plaintiff Gross purchased the Products in 2018 and 2019, most recently in
21 August 2019 at the Costco store at Gateway Center Drive in San Diego, California.

22 78. Plaintiff Levin purchased the Products multiple times since 2014, including,
23 but not limited to, from a Gelson’s Market store located at 2627 Lincoln Boulevard, Santa
24 Monica, CA 90405 and a 99 Cents Only store located at 201 Lincoln Boulevard, Venice,
25 California 90291

26 79. The Products were purchased at the marked retail prices, recently \$0.79 per
27 11.5 ounce single-serving can, or from time to time at higher or lower promotional prices.
28

1 80. Plaintiff Levin first discovered Defendant's unlawful acts described herein
2 in September of 2018, when she learned the Product's characterizing flavors were
3 deceptively created or reinforced using artificial flavoring.

4 81. Plaintiff Gross first discovered Defendant's unlawful acts described herein
5 in March of 2020, when he learned the Product's characterizing flavors were deceptively
6 created or reinforced using artificial flavoring.

7 82. Plaintiffs were deceived by and relied upon the Product's deceptive labeling,
8 and specifically the omission of the legally required notice that it contained artificial
9 flavorings. Plaintiffs purchased the Product believing it was naturally flavored, based on
10 the Product's deceptive labeling and failure to disclose that it was artificially flavored.

11 83. Plaintiffs, as reasonable consumers, are not required to subject consumer
12 food products to laboratory analysis, to scrutinize the back of the label to discover that the
13 product's front label is false and misleading, or to search the label for information that
14 federal regulations require be displayed prominently on the front – and, in fact, under state
15 law are entitled to rely on statements that Defendant places on or omits from the Product's
16 labeling. Defendant, but not Plaintiffs, knew or should have known that this labeling was
17 in violation of federal regulations and state law.

18 84. Because Plaintiffs reasonably assumed the Products to be free of artificial
19 flavoring, based on the Product labels, when they were not, they did not receive the benefit
20 of their purchases. Instead of receiving the benefit of products free of artificial flavoring,
21 they received a Product that was unlawfully labeled so as to deceive the consumer into
22 believing that it is exclusively naturally flavored and contains no artificial flavoring, in
23 violation of federal and state labeling regulations.

24 85. Plaintiffs would not have purchased the Products absent Defendant's
25 misrepresentations and omissions. Had Defendant not violated California law, Plaintiffs
26 would not have been injured.

1 86. The Products were worth less than what Plaintiffs paid for them and class
2 members would not have paid as much as they have for the Products absent Defendant's
3 false and misleading statements and omissions.

4 87. Plaintiffs lost money as a result of Defendant's unlawful behavior. Plaintiffs
5 altered their position to their detriment and suffered loss in an amount equal to the amount
6 they paid for the Product.

7 88. Plaintiffs intend to, seek to, and will purchase the Products again when they
8 can do so with the assurance that Product labels, which indicate that the Products are
9 naturally flavored, are lawful and consistent with the Products' ingredients.

10 **V. DELAYED DISCOVERY**

11 89. Plaintiffs did not discover that the labeling of the Products was false and
12 misleading until 2018 and 2020, respectively, when they learned the Products contained
13 undisclosed artificial flavoring.

14 90. Plaintiffs and the Class members are reasonably diligent consumers who
15 exercised reasonable diligence in their purchase and consumption of the Products.
16 Nevertheless, they would not have been able to discover Defendant's deceptive practices
17 and lacked the means to discover them given that, like nearly all consumers, they rely on
18 and are entitled to rely on the manufacturer's obligation to label its products in compliance
19 with federal regulations and state law. Furthermore, Defendant's labeling practices and
20 non-disclosures—in particular, failing to identify the artificial flavor in the ingredient list,
21 or to disclose that the Products contained artificial flavoring, or to accurately identify the
22 kind of malic acid that Defendant put in the Products—impeded Plaintiffs' and Class
23 members' abilities to discover the deceptive and unlawful labeling of the Products
24 throughout the Class Period.

25 91. Because Defendant actively concealed their illegal conduct, preventing
26 Plaintiffs and the Class from discovering their violations of state law, Plaintiffs and the
27 Class are entitled to delayed discovery and an extended Class Period tolling the applicable
28 statute of limitations.

1 **VI. CLASS ACTION ALLEGATIONS**

2 93. Plaintiffs bring this action on behalf of themselves and all others similarly situated (the
3 “Class” and “sub-class”) as a proposed class action pursuant to the Class Action Fairness
4 Act of 2005, 28 U.S.C. § 1332(d), with a nationwide class and California sub-class.

5 94. The Class is defined as follows:

6 All U.S. citizens who purchased the Product in California on or after June 1,
7 2014, excluding Defendant and Defendant’s officers, directors, employees,
8 agents, and affiliates, and the Court and its staff.

9 95. The California sub-class is defined as follows:

10 All California citizens who purchased the Product in California on or after
11 June 1, 2014, excluding Defendant and Defendant’s officers, directors,
12 employees, agents, and affiliates, and the Court and its staff.

13 96. During the Class Period, the Products unlawfully contained the undisclosed
14 artificial flavors d-malic acid or d-l malic acid and were otherwise improperly labeled as
15 alleged herein. Defendant failed to label the Products as required by California law.

16 97. The proposed Class and sub-class meet all criteria for a class action, including
17 numerosity, typicality, superiority, and adequacy of representation.

18 98. The proposed Class and sub-class satisfy numerosity. The Products are
19 offered for sale at over two thousand supermarkets in California alone; the Class numbers
20 at minimum in the hundreds of thousands. Individual joinder of the class members in this
21 action is impractical. Addressing the class members’ claims through this class action will
22 benefit Class members, the parties, and the courts.

23 99. The proposed Class and sub-class satisfy typicality. Plaintiffs’ claims are
24 typical of and are not antagonistic to the claims of other Class members. Plaintiffs and the
25 class members all purchased the Products, were deceived by the false and deceptive
26 labeling, and lost money as a result, purchasing products that were illegal to sell in
27 California and the United States.

28 100. The proposed Class and sub-class satisfy superiority. A class action is

1 superior to any other means for adjudication of the Class members' claims because each
2 class member's claim is modest, based on the Product's retail purchase price which is
3 generally under \$5.00. It would be impractical for individual class members to bring
4 individual lawsuits to vindicate their claims.

5 101. Because Defendant's misrepresentations were made on the label of the
6 Products themselves, all Class members including Plaintiffs were exposed to and continue
7 to be exposed to the omissions and affirmative misrepresentations. If this action is not
8 brought as a class action, Defendant can continue to deceive consumers and violate
9 California and other states' laws with impunity.

10 102. The proposed Class representatives satisfy adequacy of representation. Each
11 Plaintiffs is an adequate representative of the Class as each seeks relief for the Class, their
12 interests do not conflict with the interests of the Class members, and each has no interest
13 antagonistic to those of other class members. Plaintiffs have retained counsel who are
14 competent in the prosecution of consumer fraud and class action litigation.

15 103. There is a well-defined community of interest in questions of law and fact
16 common to the Class, and these predominate over any individual questions affecting
17 individual Class members in this action.

18 104. Questions of law and fact common to Plaintiffs and the Class include:

- 19 a. Whether Defendant failed to disclose the presence of the
20 artificial flavoring ingredient dl-malic acid in the Product;
- 21 b. Whether Defendant's label statement, "100% Natural" was a
22 false or misleading statement of fact;
- 23 c. Whether Defendant's labeling omissions and representations
24 constituted false advertising under California law;
- 25 d. Whether Defendant's conduct constituted a violation of
26 California's Unfair Competition Law;
- 27 e. Whether Defendant's conduct constituted a violation of
28 California's Consumer Legal Remedies Act;

- f. Whether Defendant's label statements were affirmative representations of the Product's composition and conveyed an express warranty;
- g. Whether Defendant's conduct constitutes a breach of implied warranties under California's Commercial Code;
- h. Whether Defendant's conduct violates U.S. Food and Drug Administration labeling regulations;
- i. Whether the statute of limitations should be tolled on behalf of the Class;
- j. Whether the Class is entitled to restitution, rescission, actual damages, punitive damages, attorney fees and costs of suit, and injunctive relief; and
- k. Whether members of the Class are entitled to any such further relief as the Court deems appropriate.

105. Plaintiffs will fairly and adequately protect the interests of the Class, have no interests that are incompatible with the interests of the Class, and have retained counsel competent and experienced in class litigation.

106. Defendant has acted on grounds applicable to the entire Class, making final injunctive relief or declaratory relief appropriate for the Class as a whole.

107. Class treatment is therefore appropriate. Plaintiffs will, if notice is required, confer with Defendant and seek to present the Court with a stipulation and proposed order on the details of a class notice plan.

VII. CAUSES OF ACTION

First Cause of Action: Violation of the CLRA

108. Plaintiffs realleges and incorporates by reference the allegations made elsewhere in the Complaint as if set forth in full herein.

109. The California Consumers Legal Remedies Act, Cal. Civ. Code §1750 et seq. prohibits any unfair, deceptive and unlawful practices, and unconscionable commercial

1 practices in connection with the sale of any goods or services to consumers.

2 110. Plaintiffs and the Class are “consumers” as defined by Cal. Civ. Code
3 §1761(d). The Products are a “good” as defined by Cal. Civ. Code §1761.

4 111. Defendant’s failure to label the Products in accord with federal and state
5 labeling regulations, omitting the required information that the Products contain artificial
6 flavoring, was an unfair, deceptive, unlawful and unconscionable commercial practice.

7 112. Defendant’s conduct violates the Consumer Legal Remedies Act.

8 113. As a result of Defendant’s violations, Plaintiffs and the Class suffered
9 ascertainable losses in the form of the purchase price they paid for the unlawfully labeled
10 and marketed products, which they would not have paid had the Product been labeled
11 correctly, and in the form of the reduced value of the Product in relation to the Product as
12 advertised.

13 114. Pursuant to §1782 of the CLRA, Plaintiffs will notify Defendant in writing
14 of the particular violations of §1770 of the CLRA and demand that Defendant rectify the
15 actions described above by providing monetary relief, agreeing to be bound by their legal
16 obligations, and giving notice to all affected customers of their intent to do so. Plaintiffs
17 will send this notice by certified mail, return receipt requested, to Defendant’s principal
18 places of business, and if Defendant do not comply within 30 days, Plaintiffs will amend
19 this complaint accordingly. Until such time, this Complaint seeks only injunctive relief
20 and not damages under §§1770 and 1782.

21 **Second Cause of Action: Violation of the UCL, Unlawful Prong**

22 115. Plaintiffs reallege and incorporate by reference each and every allegation
23 contained elsewhere in this Complaint, as if fully set forth herein.

24 116. Section 17200 of the California Business & Professions Code (“Unfair
25 Competition Law” or “UCL”) prohibits any “unlawful,” “unfair” and “fraudulent”
26 business practice. Section 17200 specifically prohibits any “unlawful . . . business act or
27 practice.”

28 117. The UCL borrows violations of other laws and statutes and considers those

1 violations also to constitute violations of California law.

2 118. Defendant's practices as described herein were at all times during the Class
3 Period and continue to be unlawful under, *inter alia*, FDA regulations and California's
4 Sherman Law.

5 119. Among other violations, Defendant's conduct in unlawfully distributing the
6 Products in commerce in California violated U.S. FDA packaging and labeling
7 regulations.

8 120. Defendant distributes misbranded products in interstate commerce in
9 violation of federal law. 21 U.S.C. § 331.

10 121. The Products' labels fail to disclose that they contain synthetic artificial
11 flavoring in violation of 21 CFR 101.22 and California's Sherman Law and are therefore
12 misbranded.

13 122. The Products contain dl-malic acid.

14 123. The dl-malic acid is a flavoring material that creates, simulates, and
15 reinforces the Products' characterizing fruit flavors.

16 124. The dl-malic acid in the Products is not derived from any natural material as
17 defined in 21 CFR 101.22 and is therefore by law an artificial flavor.

18 125. Defendant fails to inform consumers of the presence of the artificial flavor in
19 the Products, on either the front or back-label as required by law, and distributes the
20 Products in interstate commerce and in California.

21 126. Defendant's practices are therefore unlawful as defined in Section 17200 of
22 the California Civil Code.

23 **Third Cause of Action: Violation of the UCL, Unfair Prong**

24 127. Plaintiffs reallege and incorporate by reference each and every allegation
25 contained elsewhere in this Complaint as if fully set forth herein.

26 128. Section 17200 of the California Business & Professions Code ("Unfair
27 Competition Law" or "UCL") prohibits any "unfair . . . business act or practice."
28 Defendant's practices violate the Unfair Competition Law "unfair" prong as well.

1 129. The Defendant's practices as described herein are "unfair" within the
2 meaning of the California Unfair Competition Law because the conduct is unethical and
3 injurious to California residents and the utility of the conduct to Defendant does not
4 outweigh the gravity of the harm to consumers.

5 130. While Defendant's decision to distribute the misbranded Products in
6 violation of federal and state law may have some utility to Defendant in that it allows
7 Defendant to sell the Product to consumers who otherwise would not purchase an
8 artificially-flavored food product at the retail price or at all if it were labeled correctly, and
9 to realize higher profit margins than if the Product was formulated or labeled lawfully,
10 this utility is small and far outweighed by the gravity of the harm Defendant inflicts upon
11 California consumers.

12 131. Defendant's conduct also injures competing food product manufacturers,
13 distributors, and sellers that do not engage in the same unlawful, unfair, and unethical
14 behavior.

15 132. Moreover, Defendant's practices violate public policy expressed by specific
16 constitutional, statutory, or regulatory provisions, including the Sherman Law, the False
17 Advertising Law, and the FDA regulations cited herein.

18 133. Plaintiffs' and all class members' purchases of the Product all took place in
19 California.

20 134. Defendant labeled the Product in violation of federal regulations and
21 California law requiring truth in labeling.

22 135. Defendant consciously failed to disclose material facts to Plaintiffs and the
23 Class in Defendant's advertising and marketing of the Product.

24 136. Defendant's conduct is unconscionable because, among other reasons, it
25 violates 21 C.F.R. 101.22(c), which requires all foods containing artificial flavoring to
26 include:

27 A statement of artificial flavoring . . . [which] shall be placed on the food or
28 on its container or wrapper, or on any two or all three of these, as may be

1 necessary to render such a statement likely to be read by the ordinary person
2 under customary conditions of purchase and use of such food.

3 137. Defendant's conduct is "unconscionable" because it violates, inter alia, 21
4 C.F.R. 101.22(c), which requires all food products distributed in commerce in the U.S. for
5 which artificial flavoring provides a characterizing flavor to disclose this fact prominently
6 on the product's front label.

7 138. Defendant intended that Plaintiffs and the Class rely on Defendant's acts of
8 omissions so that Plaintiffs and the other Class members would purchase the Product.

9 139. Had Defendant disclosed all material information regarding the Product in its
10 advertising and marketing, Plaintiffs and the Class would not have purchased the Product
11 or would have paid less for the Product.

12 140. Plaintiffs suffered injury in fact and lost money or property as a result of
13 Defendant's deceptive advertising: they were denied the benefit of the bargain when they
14 decided to purchase the Product based on Defendant's violation of the applicable laws and
15 regulations, or to purchase the Product in favor of competitors' products, which are less
16 expensive, contain no artificial flavoring, or are lawfully labeled.

17 141. Plaintiffs suffered an ascertainable loss of money. The acts, omissions and
18 practices of Defendant detailed herein proximately caused Plaintiffs and other members
19 of the Class to suffer an ascertainable loss in the form of, *inter alia*, monies spent to
20 purchase the Product they otherwise would not have, and they are entitled to recover such
21 damages, together with appropriate penalties, including restitution, damages, attorneys'
22 fees and costs of suit.

23 142. Section 17200 also prohibits any "unfair, deceptive, untrue or misleading
24 advertising." For the reasons set forth above, Defendant engaged in unfair, deceptive,
25 untrue and misleading advertising in violation of California Business & Professions Code
26 §17200.

27 143. Pursuant to California Business & Professions Code §17203, Plaintiffs seek
28 an order requiring Defendant to immediately cease such acts of unlawful, unfair and

1 fraudulent business practices and requiring Defendant to return the full amount of money
2 improperly collected to all those who purchased the Product.

3 **Fourth Cause of Action: Violation of False Advertising Law**

4 144. Plaintiffs reallege and incorporate by reference each and every allegation
5 contained elsewhere in this Complaint as if fully set forth herein.

6 145. Defendant made and distributed, in California and in interstate commerce, a
7 Product that unlawfully fails to disclose artificial flavoring on its packaging as required
8 by federal food labeling regulations.

9 146. The Product’s labeling and advertising in California falsely describe it as if
10 it were naturally-flavored.

11 147. Some versions of the Products further advertise that the Product is “100%
12 Natural.”

13 148. Under California’s False Advertising Law, Business and Professions Code
14 §17500 *et seq*,

15 “It is unlawful for any person, firm, corporation or association, or any employee
16 thereof with intent directly or indirectly to dispose of real or personal property . . .
17 to make or disseminate or cause to be made or disseminated before the public in
18 this state, or to make or disseminate or cause to be made or disseminated from this
19 state before the public in any state, in any newspaper or other publication, or any
20 advertising device . . . any statement, concerning that real or personal property . . .
21 which is untrue or misleading, and which is known, or which by the exercise of
22 reasonable care should be known, to be untrue or misleading. . . .” Cal. Bus. & Prof.
23 Code §1.7500

24 149. The labeling and advertising statements on Products that Defendant
25 distributed, communicating to consumers that the Product was “100% Natural,” was solely
26 flavored with the natural fruit juices identified on the front labels, and concealing the fact
27 that the Products contained a synthetic artificial flavor, were untrue and misleading, and
28 Defendant at a minimum by the exercise of reasonable care should have known that

1 labeling was false or misleading.

2 150. Defendant profited from and participated in the false advertising displayed
3 on the Product labels.

4 151. Defendant's conduct violated California's False Advertising Law.

5 **Fifth Cause of Action: Breach of Express Warranty**

6 152. Plaintiffs reallege and incorporate by reference the allegations found
7 elsewhere in the Complaint as if set forth in full herein.

8 153. Some versions of the Product labels warrant that the Products are "100%
9 Natural."

10 154. The Products' front labels also misleadingly warrant by operation of law that
11 the Products are flavored only with the listed fruits.

12 155. These promises became part of the basis of the bargain between the parties
13 and thus constituted an express warranty, which Defendant breached as the Products are
14 artificially flavored.

15 156. Defendant sold the goods to Plaintiffs and other consumers who bought the
16 goods from Defendants.

17 157. As a result, Plaintiffs and other consumers did not receive goods as warranted
18 by Defendants.

19 158. Within a reasonable amount of time after Plaintiffs discovered that the
20 Product contained synthetic flavoring ingredients, Plaintiffs notified the Defendant of such
21 breach.

22 159. As a proximate result of this breach of warranty by Defendants, Plaintiffs and
23 other consumers have been damaged in an amount to be determined at trial.

24 **Sixth Cause of Action: Breach of Implied Warranty**

25 160. Plaintiffs reallege and incorporate all of the allegations elsewhere in the
26 Complaint as if set forth in full herein.

27

28

1 161. Defendant's label representations also created implied warranties that the
2 product was suitable for a particular purpose, specifically as a naturally-flavored food
3 product. Defendant breached this warranty as well.

4 162. The Product's front label misleadingly implies that it is flavored solely with
5 the natural ingredients comprising the characterizing flavors.

6 163. As alleged in detail above, at the time of purchase Defendant had reason to
7 know that Plaintiffs as well as all members of the Class, intended to use the Product as a
8 naturally-flavored food product.

9 164. This became part of the basis of the bargain between the parties.

10 165. Based on that implied warranty, Defendant sold the goods to Plaintiffs and
11 other Class members who bought the goods from Defendants.

12 166. At the time of purchase, Defendant knew or had reason to know that Plaintiffs
13 and the Class members were relying on Defendant's skill and judgment to select or furnish
14 a product that was suitable for this particular purpose, and Plaintiffs justifiably relied on
15 Defendant's skill and judgment.

16 167. The Product was not suitable for this purpose.

17 168. Plaintiffs purchased the Product believing it had the qualities Plaintiffs
18 sought, based on the deceptive advertising and labeling, but the Product was actually
19 unsatisfactory to Plaintiffs for the reasons described herein.

20 169. In addition, the Product was not merchantable in California, as it was not of
21 the same quality as other products in the category generally acceptable in the trade.

22 170. The Product would not pass without objection in the trade when packaged
23 with its existing label, because the Product was misbranded and illegal to sell in California.
24 Cal. Comm. Code 2314(2)(a).

25 171. The Product also was not acceptable commercially and breached its implied
26 warranty because it was not adequately packaged and labeled as required. Cal. Comm.
27 Code 2314(2)(e).

1 172. The Product also was not acceptable commercially and breached its implied
2 warranty because it did not conform to the promises or affirmations of fact made on the
3 container or label, Cal. Comm. Code 2314(2)(f), and other grounds as set forth in
4 Commercial Code section 2314(2).

5 173. By offering the Products for sale and distributing the Products in California,
6 Defendant also warranted that the Products were not misbranded and were legal to
7 purchase in California. Because the Products were misbranded in several regards and was
8 therefore illegal to sell or offer for sale in California, Defendant breached this warranty as
9 well.

10 174. As a result of this breach, Plaintiffs and other California consumers did not
11 receive goods as impliedly warranted by Defendants.

12 175. Within a reasonable amount of time after the Plaintiffs discovered that the
13 Products contained synthetic ingredients, Plaintiffs notified the Defendant of such breach

14 176. As a proximate result of this breach of warranty, Plaintiffs and other
15 California consumers have been damaged in an amount to be determined at trial.

16 177. As a result, Plaintiffs, the Class, and the general public are entitled to
17 injunctive and equitable relief, restitution, and an order for the disgorgement of the funds
18 by which Defendant were unjustly enriched.

19 **Seventh Cause of Action: Negligent Misrepresentation**

20 178. Plaintiffs reallege and incorporate the allegations elsewhere in the Complaint
21 as if set forth in full herein.

22 179. The label representations on Products that Defendant distributed negligently
23 misrepresented the Products as if they were exclusively naturally flavored.

24 180. Defendant was negligent in distributing Products labeled as if they were
25 exclusively naturally-flavored and in failing to identify the Products as artificially
26 flavored.

27 181. Defendant represented the Products to Plaintiffs and the Class as solely
28 naturally flavored as if this were true.

1 182. Defendant's representations were not true.

2 183. The Products are not exclusively naturally flavored but are instead artificially
3 flavored as described herein.

4 184. Defendant had no reasonable basis for believing that the Products were
5 naturally flavored at the time or any time relevant to this action.

6 185. Defendant intended for Plaintiffs and the Class to rely on this representation.

7 186. Plaintiffs and the Class reasonably relied on this representation.

8 187. Plaintiffs and the Class were harmed thereby as alleged herein.

9 188. Plaintiffs and the Class's reliance was a substantial factor in that harm.

10 189. As a result, Plaintiffs and the Class are entitled to injunctive and equitable
11 relief, restitution, and an order for the disgorgement of the funds by which Defendant was
12 unjustly enriched.

13 **VIII. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly situated, and
15 the general public, prays for judgment against Defendant as follows:

- 16 A. An order confirming that this action is properly maintainable as a class action
17 as defined above, appointing Plaintiffs and their undersigned counsel to
18 represent the Class, and requiring Defendant to bear the cost of class notice;
- 19 B. An order declaring that the conduct complained of herein violates the CLRA;
- 20 C. An order declaring that the conduct complained of herein violates the UCL;
- 21 D. An order declaring that the conduct complained of herein violates the FAL;
- 22 E. An order declaring that the conduct complained of herein breached express
23 warranties, implied warranties, or both;
- 24 F. An order requiring Defendant to disgorge any benefits received from
25 Plaintiffs and any unjust enrichment realized as a result of the improper and
26 misleading labeling, advertising, and marketing of the Product;
- 27 G. An order requiring Defendant to pay restitution and damages to Plaintiffs and
28 Class members so that they may be restored any money which was acquired

- 1 by means of any unfair, deceptive, unconscionable or negligent acts;
2 H. An award of punitive damages in an amount to be proven at trial;
3 I. An order enjoining Defendant's deceptive and unfair practices;
4 J. An order requiring Defendant to conduct corrective advertising;
5 K. An award of pre-judgment and post-judgment interest;
6 L. An award of attorney fees and costs; and
7 M. Such other and further relief as this Court may deem just, equitable, or proper.

8 **IX. JURY DEMAND**

9 Plaintiffs demand a trial by jury on all claims for damages. Plaintiffs do not seek a
10 jury trial for claims sounding in equity.

11
12 DATED: May 13, 2020

Respectfully Submitted,

13 */s/ Ronald A. Marron*

14 **LAW OFFICES OF**
15 **RONALD A. MARRON**
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Counsel for Plaintiffs and the
26 ***Proposed Class***

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 WARREN GROSS and DEBORAH LEVIN, on behalf of themselves and all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 LAW OFFICES OF RONALD A. MARRON
 651 Arroyo Drive, San Diego, California 92103
 (619) 696-9006

DEFENDANTS
 VILORE FOODS COMPANY, INC.

County of Residence of First Listed Defendant Bexar County, TX
 (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'20CV0894 DMS JLB

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

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

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

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | 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 |

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

Click here for: Nature of Suit Code Descriptions.

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

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):
 Class Action Fairness Act, 28 U.S.C. § 1332(d)
 Brief description of cause:
 Violations of Consumer Protection Laws

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 5/13/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Ronald A. Marron

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. When the petition for removal is granted, check this box.
 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.