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9 **UNITED STATES DISTRICT COURT**
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
10

11 ARIEL ANDERSON, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 OUTERNATIONAL BRANDS INC., a
Delaware Corporation;

16 Defendant.
17

Case No: '18CV2550 JLS WVG

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Ariel Anderson (“Plaintiff”) hereby brings this Action against Defendant
2 Outernational Brands, Inc. (“Defendant”), alleging that certain products manufactured,
3 packaged, labeled, advertised, distributed and sold by Defendant are misbranded and
4 falsely advertised and otherwise violates consumer protection laws, and upon
5 information and belief and investigation of counsel alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction over this action under the Class Action
8 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d). The Defendant is a citizen of a
9 state different from that of the Plaintiff, the putative class size is greater than 100 persons,
10 and the amount in controversy in the aggregate for the putative Class exceeds the sum or
11 value of \$5 million exclusive of interest and costs.

12 2. This Court has both general and specific personal jurisdiction over the
13 Defendant because Defendant has conducted and continues to conduct substantial
14 business in the State of California, County of San Diego, and Defendant’s principal place
15 of business is located in the State of California.

16 3. This Court has specific personal jurisdiction arising from Defendant’s
17 decision to advertise and sell the Products in California. Defendant has sufficient
18 minimum contacts with this State and sufficiently avails itself to the markets of this State
19 through its manufacture, promotion, sales, and marketing of the Products to consumers
20 within the State to render the exercise of jurisdiction by this Court reasonable.

21 4. Venue is proper in the United States District Court for the Southern District
22 of California pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events
23 giving rise to the claims occurred within this judicial district, Defendant has marketed
24 and sold the Vivaloe Products at issue in this action in this judicial district, and it conducts
25 business within this judicial district.

NATURE OF THE ACTION

1
2 5. This is a consumer class action for violations of warranty, negligent and
3 intentional misrepresentations/omissions and consumer protection laws, with a
4 nationwide and California class for violation of consumer protection laws.

5 6. Defendant manufactures, distributes, advertises, markets and sells a variety
6 of purportedly natural fruit flavored products known as Vivaloe beverage products,
7 including, without limitation, the Vivaloe Watermelon, Vivaloe Honeydew, and Vivaloe
8 Peach Products (collectively, the “Products”).

9 7. The labeling of the Products are false and misleading and the Products thus
10 are misbranded under California consumer protection laws. Specifically, the Products
11 are labeled as if they are flavored only with natural ingredients when they in fact contain
12 an undisclosed artificial flavor, malic acid, in violation of state and federal law.

13 8. Defendant’s packaging, labeling, and advertising scheme is intended to give
14 consumers the impression that they are buying premium, all-natural products with only
15 natural flavoring ingredients instead of products that contains artificial chemicals and
16 that are artificially flavored.

17 9. Plaintiff, who was deceived by Defendant’s unlawful conduct and
18 purchased the Products in California, brings this action on her own behalf and on behalf
19 of California consumers to remedy Defendant’s unlawful actions.

20 10. On behalf of the Class as defined herein, Plaintiff seeks an Order compelling
21 Defendant to, among other things: (1) cease packaging, distributing, advertising and
22 selling the Vivaloe beverage Products in violation of U.S. FDA regulations and
23 California consumer protection laws and state common laws; (2) re-label or recall all
24 existing deceptively packaged Vivaloe beverage Products; (3) conduct a corrective
25 advertising campaign to inform consumers fully; (4) award Plaintiff and other Class
26 members restitution, actual damages, and punitive damages; and (5) pay all costs of suit,
27 expenses, and attorneys’ fees.

PARTIES

11. Plaintiff Ariel Anderson is a citizen of the State of California and resides in San Diego, California.

12. Plaintiff purchased the Vivaloe Products for personal consumption in 2018 in the State of California.

13. Plaintiff is informed and believes, and upon such information and belief alleges, that Defendant Outernational Inc. is a Delaware corporation with its principal place of business located in San Rafael, California. Plaintiff is informed and believe, and upon such information and belief alleges, that Defendant, at all relevant times, conducted business in the State of California and in the County of San Diego.

FACTUAL BACKGROUND

Defendant Does Not Disclose That The Products Are Artificially Flavored.

14. Defendant’s labeling and advertising scheme is deliberately intended to give consumers the false impression that the Products are composed only of natural flavors and “no artificial colors or flavors.”

15. The images below are a true and accurate reproduction of the front and side label, respectively, of the Vivaloe Peach Aloe product.



1 16. As depicted, the Product’s front label prominently displays an “All Natural”
2 designation and the side label shares the notation “no artificial color or flavors.”
3 Defendant painstakingly and intentionally designed this Product label and the other labels
4 for its Products to deceive consumers into believing that there are no artificial ingredients,
5 including artificial flavoring agents or artificial chemicals contained in the Products.

6 17. All of the Products, however, contain a synthetic chemical flavoring
7 compound identified as “malic acid.” Specifically, the Vivaloe Peach Product’s back
8 label states that the ingredients include: “Water, aloe vera pulp, aloe vera juice, pure cane
9 sugar, peach juice concentrate, apple juice concentrate, citric acid *malic acid*, natural
10 flavor, calcium lactate, gellan gum.

11 18. This “malic acid” is an inexpensive synthetic chemical used in processed
12 food products to make the products taste like tangy fresh fruits – like blueberries, lemons,
13 mangos, or cherries, and in the Products Plaintiff purchased, like the “watermelon” flavor
14 advertised.

15 19. Under these circumstances, the labels of the Vivaloe Products violate
16 California and federal statutes and state common law in multiple respects.

17 20. First, because each of the Products contain additional flavoring ingredients
18 that simulate and reinforce the characterizing flavor, the front label is required by law to
19 disclose those additional flavors rather than misleadingly suggest that the Products are
20 flavored only by natural fruit juices. (California Health & Safety Code § 109875 *et seq.*,
21 (Sherman Law), incorporating 21 C.F.R. § 101.22.)¹

22 21. Second, the Products’ ingredient lists violate federal and state law because
23 they identify, misleadingly, the malic acid flavoring only as the general “malic acid”

24 ¹ California’s Sherman Food, Drug and Cosmetic Act, California Health & Safety Code
25 § 109875 *et seq.*, incorporates into California law all regulations enacted pursuant to the
26 U.S. Food Drug and Cosmetic Act. An act or omission that would violate an FDCA
27 regulation necessarily violates California’s Sherman Law. (Health & Safety Code, §
28 110100.) Regulatory citations in the text are to California’s Sherman Law and reference
the corresponding federal regulation for convenience.

1 instead of using the specific, non-generic name of the ingredient. (*See* 21 C.F.R. §
2 101.4(a)(1).)

3 22. Even more deceptive, however, is the fact that the Products, rather than
4 being flavored only with natural juices and flavors as the labels suggest, contain an
5 undisclosed artificial flavor made from petrochemicals. Defendant conceals this from
6 consumers.

7 23. There is a different, naturally-occurring form of malic acid found in some
8 fruits and vegetables. Defendant does not use this type of malic acid; it instead adds a
9 synthetic industrial chemical called d-l malic acid,² in the form of a racemic mixture of
10 d- and l-isomers, to flavor the Products and make them taste like fresh fruit.

11 24. This type of “malic acid” is not naturally-occurring but is in fact
12 manufactured in petrochemical plants from benzene or butane – components of gasoline
13 and lighter fluid, respectively – through a series of chemical reactions, some of which
14 involve highly toxic chemical precursors and byproducts.

15 25. Both the natural and unnatural forms of malic acid are considered “GRAS”
16 (generally recognized as safe) for use as flavorings in foods marketed to adults³; the d-
17 malic acid form, however, has never been extensively studied for its health effects in
18 human beings. Both forms confer a “tart, fruity” flavor to food products.⁴

19 26. Defendant uses this artificial petrochemical, d-l malic acid, in its Products
20 but pretends otherwise, conflating the natural and artificial flavorings and deceiving
21 consumers.

22
23
24 ² D-malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic
25 acid.

26 ³ The d-l form of malic acid, the one used by Defendant, is forbidden for use in baby
27 foods out of health concerns if consumed by infants.

28 ⁴ <https://thechemco.com/chemical/malic-acid/> (last visited April 30, 2018).

1 27. Because they contain artificial flavoring, both federal and state law require
2 the Products to display both front- and back-label disclosures to inform consumer that
3 they are artificially flavored. (21 C.F.R. § 101.22.)

4 28. These Products have neither front-label nor back-label disclosures.
5 Defendant intentionally designed their Product labels without the required disclosure of
6 “Artificial Flavoring” on the front or back of the label for the purpose of deceiving
7 consumers into believing that there are no artificial ingredients, artificial flavoring agents
8 or artificial chemicals contained in the Products. It is currently unknown whether the
9 Products are also contaminated with precursor chemicals used in the manufacture of d-1
10 malic acid.

11 29. 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
13 the nature of the food product and its characterizing flavors. (21 C.F.R. § 102.5(a).)

14 30. Under FDA regulations, a recognizable primary flavor identified on the
15 front label of a food product is referred to as a “characterizing flavor.” (21 C.F.R. §
16 101.22.)

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

22 32. “Peach”, “watermelon”, “coconut”, “honeydew”, and “natural flavors” are
23 primary recognizable flavors identified on the Vivaloe beverage Products’ front labels.
24 These are characterizing flavors under California and federal regulations.

25 33. If a product’s characterizing flavor is not created exclusively by the
26 characterizing flavor ingredient, the product’s front label must state that the product’s
27 flavor was simulated or reinforced with either or both of natural or artificial flavorings.
28 If any artificial flavor is present which “simulates, resembles or reinforces” the

1 characterizing flavor, the food must be prominently labeled as “Artificially Flavored.”
2 (California’s Sherman Law, incorporating 21 C.F.R. § 101.22(i)(3), (4).)

3 34. A food product’s label also must include a statement of the “presence or
4 absence of any characterizing ingredient(s) or component(s) ... when the presence or
5 absence of such ingredient(s) or component(s) in the food has a material bearing on price
6 or consumer acceptance ... and consumers may otherwise be misled about the presence
7 or absence of the ingredient(s) or component(s) in the food.” (California’s Sherman Law,
8 incorporating 21 C.F.R. § 102.5(c).) Such statements must be in boldface print on the
9 front display panel and of sufficient size for an average consumer to notice. (*Id.*)

10 35. The synthetic d-l malic acid in the Products simulates, resembles, and
11 reinforces the characterizing fruit flavors for the Products. Under these regulations,
12 Defendant was required to place prominently on the Products’ front labels a notice
13 sufficient to allow California consumers to understand that the Products contained
14 artificial flavorings.

15 36. Defendant failed to do so, deceiving consumers and violating California
16 law, federal law, and corresponding state common laws.

17 37. Accordingly, Plaintiff and the Class were unaware that the Products
18 contained artificial flavoring when they purchased them.

19 38. When purchasing the Products, Plaintiff and Class Members were seeking
20 products of particular qualities that were flavored only with the natural ingredients
21 claimed on the label and which did not contain artificial flavoring.

22 39. Plaintiff is 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
25 to Baby Boomers – say they would pay more” for such products, specifically including
26 foods with no artificial flavors.⁵ Forty-one percent (41%) of consumers rated the absence

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28 ⁵ *Consumers Want Healthy Foods - And Will Pay More For Them*”; Forbes Magazine,
February 15, 2015.

1 of artificial flavors in food products as “Very Important,” and eighty percent (80%) of
 2 North American consumers are willing to pay a premium for foods with no artificial
 3 ingredients.⁶

4 40. John Compton, the CEO of a beverage manufacturer, spoke to investors at
 5 the Morgan Stanley Consumer & Retail Conference, stating: “We have talked extensively
 6 to consumers about this idea, and they come back and tell us the number one motivation
 7 for purchase is products that claim to be natural.”

8 41. Defendant’s labeling and advertising reflect these consumer preferences –
 9 not by making the Products solely with natural ingredients, but instead by concealing the
 10 fact that the Products are artificially flavored.

11 42. Table 1, below, lists the Products included in this Action.

Vivaloe Watermelon	Vivaloe Original Aloe
Vivaloe Honeydew	Vivaloe Peach Aloe
Vivaloe Coconut Aloe	Vivaloe Pink Lemonade

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 17 43. The Products’ back labels list “malic acid” on the ingredients list as shown
 18 below.

19 ///

20 ///

24 [https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-
 foods-and-will-pay-more-for-them/#4b8a6b4b75c5](https://www.forbes.com/sites/nancygagliardi/2015/02/18/consumers-want-healthy-

 25 foods-and-will-pay-more-for-them/#4b8a6b4b75c5); (last visited March 22, 2018).

26 ⁶ The Nielsen Company, Global Health and Wellness Survey, “Healthy Eating Habits
 27 Around the World,” 2015; [https://www.nielsen.com/content/dam/niensenglobal/eu/
 nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%200-%20January%202015.pdf](https://www.nielsen.com/content/dam/niensenglobal/eu/

 28 nielseninsights/pdfs/Nielsen%20Global%20Health%20and%20Wellness%20Report%200-%20January%202015.pdf); (last visited March 22, 2018)

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1 44. California’s Health & Safety Code states that “[a]ny food is misbranded if
2 it bears or contains any artificial flavoring, artificial coloring, or chemical preservative,
3 unless its labelling states that fact.” (California Health & Safety Code, § 110740.)

4 45. California law requires Defendant to include sufficient notice on the
5 Products’ labels to alert California consumers that the Products are artificially flavored.
6 Defendant failed to do so. Accordingly, Defendant’s Products were misbranded and
7 illegal to distribute or sell in California. (California Health & Safety Code, §§ 110740,
8 110760, 110765.)

9 46. Because the Products violated California law, they were misbranded when
10 offered for sale in California.

11 47. Plaintiff and the Class lost money as a result of Defendant’s conduct because
12 they purchased Products that contained undisclosed artificial flavors and were illegal to
13 sell.

14 **Plaintiff’s Purchase Of The Vivaloe Products**

15 48. Plaintiff Ariel Anderson purchased the Vivaloe Products in San Diego,
16 California during the Class Period defined herein.

17 49. Plaintiff purchased the Vivaloe Products in April 2018 at Wal-Mart located
18 on 3412 College Avenue, San Diego, CA, 92115.

19 50. Plaintiff subsequently discovered Defendant’s unlawful acts as described
20 herein in October 2018, when she learned that the Vivaloe beverage Products’
21 characterizing flavors were deceptively created or reinforced using artificial flavoring
22 even though Defendant failed to disclose that fact on the Vivaloe labels.

23 51. Plaintiff was deceived by and relied upon the Products’ deceptive labeling,
24 and specifically the omission of the legally-required notice that it contained artificial
25 flavorings. Plaintiff purchased the Vivaloe Products believing it was naturally flavored,
26 based on the Products’ deceptive labelling and failure to disclose that they were
27 artificially flavored.

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1 52. Plaintiff, as a reasonable consumer, is not required to subject consumer food
2 products to laboratory analysis, to scrutinize the back of the label to discover that the
3 product's front label is false and misleading, or to search the label for information that
4 federal regulations require be displayed prominently on the front – and, in fact, under
5 state law are entitled to rely on statements that Defendant deliberately places on the
6 Vivaloe Products' labelling. Defendant, but not Plaintiff, knew or should have known
7 that this labelling was in violation of federal regulations and state law.

8 53. Because Plaintiff reasonably assumed that the Vivaloe Products would be
9 free of artificial flavoring, based on the Products' labels, when they were not, she did not
10 receive the benefit of her purchase. Instead of receiving the benefit of products free of
11 artificial flavoring, she received Products that were unlawfully labeled to deceive the
12 consumer into believing that they were exclusively naturally flavored and contained no
13 artificial flavoring, in violation of federal and state labelling regulations.

14 54. Plaintiff would not have purchased the Products in the absence of
15 Defendant's misrepresentations and omissions. Had Defendant not violated California
16 law, Plaintiff would not have been injured.

17 55. The Vivaloe beverage Products were worth less than what Plaintiff paid for
18 it and Class members would not have paid as much as they have for the Products absent
19 Defendant's false and misleading statements and omissions.

20 56. Plaintiff and the Class therefore lost money as a result of Defendant's
21 unlawful behavior. Plaintiff and the Class altered their position to their detriment and
22 suffered loss in an amount equal to the amounts they paid for the Products.

23 57. Plaintiff intends to, seeks to, and will purchase the Vivaloe Products again
24 when she can do so with the assurance that the Products' labels, which indicate that the
25 Products are naturally flavored, is lawful and consistent with the Products' ingredients.

CLASS ACTION ALLEGATIONS

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2 58. Plaintiff brings this action on behalf of herself and all others similarly
3 situated (the “Class”) pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and
4 23(b)(3).

5 59. The nationwide Class is defined as follows:

6 All U.S. citizens who purchased the Products in their respective state of
7 citizenship on or after January 1, 2012 and until the Class is certified, for
8 personal use and not for resale, excluding Defendant and Defendant’s
9 officers, directors, employees, agents and affiliates, and the Court and its
10 staff.

11 60. The California Class is defined as follows:

12 All California citizens who made retail purchases of the Products in
13 California on or after January 1, 2012 and until the Class is certified, for
14 personal use and not for resale, excluding Defendant and Defendant’s
15 officers, directors, employees, agents and affiliates, and the Court and its
16 staff.

17 61. During the Class Period, the Products unlawfully contained the undisclosed
18 artificial flavors d-malic acid or d-l malic acid and were otherwise improperly labeled.
19 Defendant failed to label the Products as required by California law.

20 62. During the Class Period, Class members purchased the misbranded
21 Products, paying a price premium for those Products compared to similar products
22 lawfully labeled.

23 63. The proposed Class meets all criteria for a class action, including
24 numerosity, commonality, typicality, predominance, superiority, and adequacy of
25 representation.

26 64. This action has been brought and may properly be maintained as a class
27 action against Defendant. While the exact number and identities of other Class Members
28 are unknown to Plaintiff at this time, Plaintiff is informed and believes that there are

1 hundreds of thousands of Members in the Class. The Members of the Class are so
2 numerous that joinder of all Members is impracticable and the disposition of their claims
3 in a class action rather than in individual actions will benefit the parties and the courts.

4 65. The proposed Class satisfies typicality. Plaintiff's claims are typical of and
5 are not antagonistic to the claims of other Class members. Plaintiff and the Class
6 members all purchased the Products, were deceived by the false and deceptive labeling,
7 and lost money as a result, purchasing Products that were illegal to sell in California.

8 66. The proposed Class satisfies superiority. A class action is superior to any
9 other means for adjudication of the Class members' claims because each Class member's
10 claim is modest, based on the Products' retail purchase prices which are generally under
11 \$5.00 per unit. It would be impractical for individual Class members to bring individual
12 lawsuits to vindicate their claims.

13 67. Because Defendant's misrepresentations were made on the label of the
14 Products, all Class members including Plaintiff was exposed to and continue to be
15 exposed to the omissions and affirmative misrepresentations. If this action is not brought
16 as a class action, Defendant can continue to deceive consumers and violate California
17 law with impunity.

18 68. The proposed Class representative satisfies adequacy of representation.
19 Plaintiff is an adequate representative of the Class as she seeks relief for the Class, her
20 interests do not conflict with the interests of the Class members, and she has no interests
21 antagonistic to those of other Class members. Plaintiff has retained counsel competent in
22 the prosecution of consumer fraud and class action litigation.

23 69. There is a well-defined community of interest in questions of law and fact
24 common to the Class, and these predominate over any individual questions affecting
25 individual Class members in this action.

26 70. Questions of law and fact common to Plaintiff and the Class include:

27 a. Whether Defendant failed to disclose the presence of the artificial flavoring
28 ingredient d-l malic acid in the Products;

1 b. Whether Defendant's labeling omissions and representations constituted
2 false advertising under California law;

3 c. Whether Defendant's conduct constituted a violation of California's Unfair
4 Competition Law;

5 d. Whether Defendant's conduct constituted a violation of California's
6 Consumer Legal Remedies Act;

7 e. Whether Defendant's label statements claiming solely natural flavorings
8 was an affirmative representation of the Products' composition and conveyed an express
9 warranty;

10 f. Whether Defendant's conduct constitutes a breach of implied warranties
11 under California's Commercial Code;

12 g. Whether the statute of limitations should be tolled on behalf of the Class;

13 h. Whether the Class is entitled to restitution, rescission, actual damages,
14 punitive damages, attorney fees and costs of suit, and injunctive relief; and

15 i. Whether members of the Class are entitled to any such further relief as the
16 Court deems appropriate.

17 71. Plaintiff will fairly and adequately protect the interests of the Class, has no
18 interests that are incompatible with the interests of the Class, and have retained counsel
19 competent and experienced in class litigation.

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

22 73. Class treatment is therefore appropriate under California law.

23 74. Class damages will be adduced at trial through expert testimony and other
24 competent evidence.

25 75. California law holds that the price-premium consumers paid for the falsely-
26 advertised Products, as a percentage of the Products' retail prices, is a proper measure of
27 Class damages.

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1 76. Food-industry consumer research is consistent and readily supports such
2 estimates of that price-premium, as consumers quantitatively report that they seek out,
3 value, and are willing to pay a premium for food products with no artificial flavors.

4 77. On information and belief, based on publicly-available information,
5 Plaintiff alleges that the total amount in controversy exclusive of fees, costs, and interest,
6 based on the estimated price premium and Product revenues for sales to the Class in
7 California during the proposed Class Period, exceeds \$5 million.

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **FRAUD BY OMISSION,**

11 **Cal. Civ. Code §§ 1709-1710**

12 **and the common law of all states**

13 (on behalf of the Nationwide Class and the California Class)

14 78. Plaintiff re-alleges and incorporates by reference the allegations made
15 elsewhere in the Complaint as if set forth in full herein.

16 79. Plaintiff brings this claim for fraud by omission pursuant to California Civil
17 Code §§ 1709-1710, *et seq.* and the common law of all states. The elements of fraud are
18 substantially similar from state to state, thus making nationwide class certification
19 appropriate.

20 80. Defendant actively concealed material facts, in whole or in part, with the
21 intent to induce Plaintiff and members of the Class to purchase the Products.
22 Specifically, Defendant actively concealed the truth about the Products by not disclosing
23 the existence of artificial flavoring ingredients on the front label of the Products as is
24 required by California and federal law.

25 81. Plaintiff and the Class were unaware of these omitted material facts and
26 would not have purchased the Products, or would have paid less for the Products, if they
27 had known of the concealed facts.

28 82. Plaintiff and the Class suffered injuries that were proximately caused by
Defendant's active concealments and omissions of material facts.

1 83. Defendant's fraudulent concealments and omissions were a substantial
2 factor in causing the harm suffered by Plaintiff and the Class members as they would
3 not have purchased the products at all if all material facts were properly disclosed.

4 **SECOND CAUSE OF ACTION**

5 **NEGLIGENT MISREPRESENTATION,**

6 **Cal. Civ. Code §§ 1709-1710**

7 **and the common law of all states**

8 **(on behalf of the Nationwide Class and the California Class)**

9 84. Plaintiff re-alleges and incorporates by reference the allegations made
10 elsewhere in the Complaint as if set forth in full herein.

11 85. Plaintiff brings this claim for negligent misrepresentation pursuant to
12 California Civil Code §§ 1709-1710, *et seq.* and the common law of all states. The
13 elements of negligent misrepresentation are substantially similar from state to state, thus
14 making nationwide class certification appropriate.

15 86. Defendant had a duty to disclose to Plaintiff and the Class members the
16 existence of artificial flavoring ingredients on the front labels of the Products pursuant
17 to California and federal law. Defendant was in a superior position than Plaintiff and the
18 Class members such that reliance by Plaintiff and the Class members was justified.
19 Defendant possessed the skills and expertise to know the type of information that would
20 influence a consumer's purchasing decision.

21 87. During the applicable Class period, Defendant negligently or carelessly
22 misrepresented, omitted, and concealed from consumers material facts regarding the
23 products, including the existence of artificial flavoring ingredients.

24 88. Defendant was careless in ascertaining the truth of their representations in
25 that it knew or should have known that Plaintiff and the Class members would not have
26 realized the true existence of artificial flavoring ingredients in the Products.

27 89. Plaintiff and the Class members was unaware of the falsity of Defendant's
28 misrepresentations and omissions and, as a result, justifiably relied on them when
making the decision to purchase the Products.

1 90. Plaintiff and the Class members would not have purchased the Products, or
2 would have paid less for the Products, if the true facts had been known.

3 **THIRD CAUSE OF ACTION**

4 **VIOLATION OF CALIFORNIA’S CONSUMERS LEGAL REMEDIES ACT,**

5 **CAL. CIV. CODE §§ 1750, *et seq.***

6 **(on behalf of the California Class)**

7 91. Plaintiff re-alleges and incorporates herein by reference the allegations
8 contained in all preceding paragraphs, and further allege as follows:

9 92. The California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et*
10 *seq.* (“CLRA”) prohibits any unfair, deceptive and unlawful practices, and
11 unconscionable commercial practices in connection with the sale of any goods or
12 services to consumers.

13 93. Plaintiff and the Class are “consumers” as defined by Cal. Civ. Code §
14 1761(d). The Products are a “good” as defined by Cal. Civ. Code § 1761.

15 94. Defendant’s failure to label the Products in compliance with federal and
16 state labeling regulations, was an unfair, deceptive, unlawful, and unconscionable
17 commercial practice.

18 95. Defendant’s conduct violates the CLRA, including but not limited to, the
19 following provisions:

20 § 1770(a)(5): representing that goods have characteristics, uses, or benefits which
21 they do not have.

22 § 1770(a)(7): representing that goods are of a particular standard, quality, or grade
23 if they are of another.

24 § 1770(a)(9): advertising goods with intent not to sell them as advertised.

25 § 1770(a)(16): representing the subject of a transaction has been supplied in
26 accordance with a previous representation when it has not.

27 96. As a result of Defendant’s violations, Plaintiff and the Class suffered
28 ascertainable losses in the form of the price premiums they paid for the deceptively
labeled and marketed Products, which they would not have paid had these Products been

1 labeled truthfully, and in the form of the reduced value of the Products purchased
2 compared to the Products as labeled and advertised.

3 97. On or about October 23, 2018, prior to filing this action, Plaintiff sent a
4 CLRA notice letter to Defendant which complies with California Civil Code § 1782(a).
5 Plaintiff sent Defendant, individually and on behalf of the proposed Class, a letter via
6 Certified Mail, advising Defendant that it is in violation of the CLRA and demanding
7 that it cease and desist from such violations and make full restitution by refunding the
8 monies received therefrom.

9 98. Wherefore, Plaintiff seeks injunctive relief for Defendant's violations of
10 the CLRA. If Defendant fails to take the corrective action detailed in Plaintiff's CLRA
11 letter within thirty days of the date of the letter, then Plaintiff will seek leave to amend
12 their complaint to add a claim for damages under the CLRA.

13 **FOURTH CAUSE OF ACTION**

14 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW,
15 (UNLAWFUL PRONG)**

16 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

17 **(on behalf of the California Class)**

18 99. Plaintiff re-alleges and incorporates by reference each and every allegation
19 contained elsewhere in this Complaint as if fully set forth herein.

20 100. Section 17200 of the California Business & Professions Code ("Unfair
21 Competition Law" or "UCL") prohibits any "unlawful," "unfair" and "fraudulent"
22 business practice. Section 17200 specifically prohibits any "unlawful . . . business act
23 or practice."

24 101. The UCL borrows violations of other laws and statutes and considers those
25 violations also to constitute violations of California law.

26 102. Defendant's practices as described herein were at all times during the Class
27 Period and continue to be unlawful under, *inter alia*, FDA regulations and California's
28 Sherman Law.

103. Among other violations, Defendant's conduct in unlawfully packaging and

1 labeling and distributing the Products in commerce in California violated U.S. FDA and
2 California packaging and labeling regulations.

3 104. The Products' front labels fail to disclose that they contain synthetic
4 artificial flavoring and are not flavored with and do not contain any or all of the natural
5 fruits named on the labels, in violation of 21 C.F.R. § 101.22 and California's Sherman
6 Law.

7 105. The "Vivaloe Watermelon" Product, for example, contains the synthetic dl-
8 malic acid flavoring ingredient.

9 106. The dl-malic acid is a synthetic flavoring material which creates, simulates,
10 or reinforces the characterizing "Watermelon" flavor of the Product.

11 107. The dl-malic acid in the Vivaloe Products are not derived from any natural
12 material as defined in the applicable state regulations and is therefore, by law, an
13 artificial flavoring.

14 108. Defendant fails to inform consumers of the presence of artificial flavors in
15 the Products on the front label as required by law.

16 109. Defendant's packaging, labeling, advertising, and marketing of high-sugar
17 juice beverages are intentionally designed to give consumers the impression that they
18 are buying an all-natural product instead of a product that contains artificial flavors and
19 large amounts of added sugar, and are therefore likely to deceive reasonable consumers.

20 110. Defendant's conduct further violates other applicable California and federal
21 regulations as alleged herein.

22 111. Defendant's practices are therefore unlawful under Section 17200 *et seq.*
23 of the California Civil Code.

24 **FIFTH CAUSE OF ACTION**

25 **VIOLATION OF THE UNFAIR COMPETITION LAW (UNFAIR PRONG),**

26 **CAL. BUS. & PROF. CODE §§ 17200, *et seq.***

27 **(on behalf of the California Class)**

28 112. Plaintiff re-allege and incorporates by reference each and every allegation
contained elsewhere in this Complaint as if fully set forth herein.

1 113. Section 17200 of the California Business & Professions Code (“Unfair
2 Competition Law” or “UCL”) prohibits any “unfair . . . business act or practice.”
3 Defendant’s practices violate the Unfair Competition Law “unfair” prong as well.

4 114. Defendant’s practices as described herein are “unfair” within the meaning
5 of the California Unfair Competition Law because the conduct is unethical and injurious
6 to California residents and the utility of the conduct to Defendant does not outweigh the
7 gravity of the harm to consumers.

8 115. While Defendant’s decision to label the Products deceptively and in
9 violation of California law may have some utility to Defendant in that it allows
10 Defendant to sell the Products to consumers who otherwise would not purchase an
11 artificially-flavored food product at the premium retail price, or at all, if it were labeled
12 correctly, and to realize higher profit margins than if they formulated or labeled the
13 Products lawfully, this utility is small and far outweighed by the gravity of the harm
14 inflicted on California consumers.

15 116. Defendant’s conduct with respect to the labeling, advertising, and sale of
16 Defendant’s high-sugar juice beverages was also unfair to consumers because it allows
17 Defendant to sell the Products to consumers who otherwise would not purchase a
18 product high in added sugars that contributes to excessive sugar consumption. The
19 consumer injury was substantial, not outweighed by benefits to consumers or
20 competition, and not one that consumers themselves could reasonably have avoided.

21 117. Defendant’s conduct also injures competing food product manufacturers,
22 distributors, and sellers, that do not engage in the same unfair and unethical behavior.

23 118. Moreover, Defendant’s practices violate public policy expressed by
24 specific constitutional, statutory, or regulatory provisions, including the Sherman Law,
25 the False Advertising Law, and the FDA regulations cited herein.

26 119. Plaintiff’s purchases and all Class members’ purchases of the Products all
27 took place in California.

28 120. Defendant labeled the Products in violation of federal regulations and
California law requiring truth in labeling.

1 121. Defendant consciously failed to disclose material facts to Plaintiff and the
2 Class in Defendant's advertising and marketing of the Products.

3 122. Defendant's conduct is unconscionable because, among other reasons, it
4 violates 21 C.F.R. § 101.22(c), which requires all foods containing artificial flavoring to
5 include:

6 A statement of artificial flavoring . . . [which] shall be placed on the food or
7 on its container or wrapper, or on any two or all three of these, as may be
8 necessary to render such a statement likely to be read by the ordinary person
9 under customary conditions of purchase and use of such food.

10 123. Defendant's conduct is also "unconscionable" because it violates, *inter*
11 *alia*, 21 C.F.R. § 101.22, which requires all food products for which artificial flavoring
12 provides a characterizing flavor to disclose this fact prominently on the product's front
13 label.

14 124. Defendant intended that Plaintiff and the Class rely on Defendant's acts and
15 omissions to induce them to purchase the Products.

16 125. Had Defendant disclosed all material information regarding the Products,
17 Plaintiffs and the Class would not have purchased the Products or would only have been
18 willing to pay less for the Products than they did.

19 126. Plaintiff suffered injury in fact and lost money or property as a result of
20 Defendant's deceptive advertising: she was denied the benefit of the bargain when she
21 purchased the Products based on Defendant's violation of the applicable laws and
22 regulations, and purchased the Products in favor of competitors' products, which are less
23 expensive, contain no artificial flavoring, or are lawfully labeled.

24 127. The acts, omissions, and practices of Defendant detailed herein proximately
25 caused Plaintiff and other members of the Class to suffer an ascertainable loss in the
26 form of, *inter alia*, the price premium of monies spent to purchase the Products they
27 otherwise would not have, and she is entitled to recover such damages, together with
28 appropriate penalties, including restitution, damages, attorneys' fees and costs of suit.

128. Section 17200 also prohibits any "unfair, deceptive, untrue or misleading

1 advertising.” For the reasons set forth above, Defendant engaged in unfair, deceptive,
2 untrue and misleading advertising in violation of California Business & Professions
3 Code § 17200.

4 129. Pursuant to California Business & Professions Code § 17203, Plaintiff
5 seeks an order requiring Defendant to immediately cease such acts of unlawful, unfair,
6 and fraudulent business practices and requiring Defendant to return to the Class the
7 amount of money improperly collected.

8 **SIXTH CAUSE OF ACTION**

9 **VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW,**

10 **CAL. BUS. & PROF. CODE §§ 17500, *et seq.***

11 **(on behalf of the California Class)**

12 130. Plaintiff re-alleges and incorporates by reference each and every allegation
13 contained elsewhere in this Complaint as if fully set forth herein.

14 131. Defendant made and distributed, in California and in interstate commerce,
15 Products that unlawfully fail to disclose the presence of artificial flavoring as required
16 by federal and state food labeling regulations.

17 132. The Products’ labeling and advertising in California presents the Products
18 as if they were solely naturally-flavored and contain the natural fruit(s) shown on the
19 labels.

20 133. Under California’s False Advertising Law (“FAL”), Business and
21 Professions Code § 17500 *et seq.*,

22 “It is unlawful for any person, firm, corporation or association, or any employee
23 thereof with intent directly or indirectly to dispose of real or personal property . .
24 . . to make or disseminate or cause to be made or disseminated before the public
25 in this state, or to make or disseminate or cause to be made or disseminated from
26 this state before the public in any state, in any newspaper or other publication, or
27 any advertising device . . . any statement, concerning that real or personal
28 property . . . which is untrue or misleading, and which is known, or which by the
exercise of reasonable care should be known, to be untrue or misleading. . . .” Cal.

1 Bus. & Prof. Code § 17500.

2 134. Defendant's labeling and advertising statements on the Products' labels and
3 in advertising and marketing materials are "advertising device[s]" under the FAL.

4 135. Defendant's labeling and advertising statements, which communicated to
5 consumers that the Products contain the identified natural fruit(s) and concealed the fact
6 that they contain synthetic artificial flavor, were untrue and misleading, and Defendant
7 at a minimum by the exercise of reasonable care should have known those actions were
8 false or misleading.

9 136. Defendant's labeling and advertising for Products as natural fruit juice
10 beverages which actually contain substantial amounts of added sugar is deceptive in
11 light of the strong evidence that excessive sugar consumption greatly increases risk of
12 chronic disease.

13 137. Defendant's conduct violated California's False Advertising Law.

14 **SEVENTH CAUSE OF ACTION**

15 **BREACH OF EXPRESS WARRANTIES,**

16 **CAL. COMM. CODE § 2313**

17 **(on behalf of the California Class and all states with substantially similar laws)**

18 138. Plaintiff re-alleges and incorporates by reference each and every allegation
19 contained elsewhere in this Complaint as if fully set forth herein.

20 139. The Products' front label representations misleadingly suggest that the
21 Products are flavored only with natural fruits such as watermelon or peaches and contain
22 no artificial flavors.

23 140. Defendant's front label statement of contents, for example, "Watermelon",
24 was an affirmative representation of the Product's composition creating an express
25 warranty.

26 141. These promises became part of the basis of the bargain between the parties
27 and thus constituted an express warranty, which Defendant breached: The Products are
28 artificially flavored.

142. Defendant sold the goods to Plaintiff and the other Class members who

1 bought the goods from Defendant.

2 143. Plaintiff and the Class did not receive goods as warranted by Defendant.

3 144. Within a reasonable amount of time after Plaintiff discovered that the
4 Products contained synthetic flavorings, Plaintiff notified Defendant of such breach.

5 145. As a proximate result of this breach of warranty by Defendant, Plaintiff and
6 the Class have been damaged in an amount to be determined at trial.

7 **EIGHT CAUSE OF ACTION**
8 **BREACH OF IMPLIED WARRANTIES,**
9 **CAL. COMM. CODE § 2314**

10 **(on behalf of the California Class and all states with substantially similar laws)**

11 146. Plaintiff re-alleges and incorporates the allegations made elsewhere in the
12 Complaint as if set forth in full herein.

13 147. Defendant's label representations also created implied warranties that the
14 product was suitable for a particular purpose, specifically as an exclusively naturally-
15 flavored food product containing the advertised fruit juice(s). Defendant breached this
16 warranty.

17 148. The Products' front labels misleadingly imply that they are flavored only
18 with the natural ingredients comprising the characterizing flavors.

19 149. The Products also made representations that the products are natural and
20 healthy and not filled with added sugars.

21 150. As alleged in detail above, at the time of purchase Defendant had reason to
22 know that Plaintiff, as well as all members of the Class, intended to use the Products as
23 naturally-flavored food products.

24 151. This became part of the basis of the bargain between the parties.

25 152. Based on that implied warranty, Defendant sold the goods to Plaintiff and
26 other Class members who bought the goods from Defendant.

27 153. At the time of purchase, Defendant knew or had reason to know that
28 Plaintiff and the Class members were relying on Defendant's skill and judgment to select
or furnish a product that was suitable for this particular purpose, and Plaintiff and the

1 Class justifiably relied on Defendant's skill and judgment.

2 154. The Products were not suitable for this purpose.

3 155. Plaintiff purchased the Products believing they had the qualities Plaintiff
4 sought, based on the deceptive advertising and labeling, but the Products were actually
5 unsatisfactory to Plaintiff for the reasons described herein.

6 156. The Products were not merchantable in California, as they were not of the
7 same quality as other products in the category generally acceptable in the trade.

8 157. The Products would not pass without objection in the trade when packaged
9 with the existing labels, because the Products were misbranded and illegal to sell in
10 California. Cal. Comm. Code 2314(2)(a).

11 158. The Products also were not acceptable commercially and breached the
12 implied warranty because they were not adequately packaged and labeled as required.
13 Cal. Comm. Code 2314(2)(e).

14 159. The Products also were not acceptable commercially and breached the
15 implied warranty because they did not conform to the promises or affirmations of fact
16 made on the container or label, Cal. Comm. Code 2314(2)(f), and other grounds as set
17 forth in Commercial Code section 2314(2).

18 160. By offering the Products for sale and distributing the Products in California,
19 Defendant also warranted that the Products were not misbranded and were legal to
20 purchase in California. Because the Products were misbranded in several regards and
21 were therefore illegal to sell or offer for sale in California, Defendant breached this
22 warranty as well.

23 161. As a result of this breach, Plaintiff and the other California consumers in
24 the Class did not receive goods as impliedly warranted by Defendant.

25 162. Within a reasonable amount of time after the Plaintiff discovered that the
26 Products breached these warranties, Plaintiff notified Defendant of such breach.

27 163. As a proximate result of this breach of warranty, Plaintiff and other
28 California consumers have been damaged in an amount to be determined at trial.

164. As a result, Plaintiff, the Class, and the general public are entitled to

1 injunctive and equitable relief, restitution, and an order for the disgorgement of the funds
2 by which Defendant was unjustly enriched.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated in
5 California, and the general public, pray for judgment against Defendant as follows:

- 6 A. An order confirming that this action is properly maintainable as a class
7 action as defined above;
- 8 B. An order appointing Plaintiff as class representatives and The Law Office
9 of Ronald A. Marron as counsel for the Class;
- 10 C. An order requiring Defendant to bear the cost of Class notice;
- 11 D. An order declaring that the conduct complained of herein violates the
12 CLRA;
- 13 E. An order declaring that the conduct complained of herein violates the UCL;
- 14 F. An order declaring that the conduct complained of herein violates the FAL;
- 15 G. An order declaring that the conduct complained of herein breached express
16 warranties, implied warranties, or both;
- 17 H. An order requiring Defendant to disgorge any benefits received from
18 Plaintiff and any unjust enrichment realized as a result of the improper and
19 misleading labeling, advertising, and marketing of the Products;
- 20 I. An order requiring Defendant to pay restitution and damages to Plaintiff
21 and Class members so that they may be restored any money which was
22 acquired by means of any unfair, deceptive, unconscionable or negligent
23 acts;
- 24 J. An award of punitive damages in an amount to be proven at trial;
- 25 K. An order enjoining Defendant's deceptive and unfair practices;
- 26 L. An order requiring Defendant to conduct corrective advertising;
- 27 M. An award of pre-judgment and post-judgment interest;
- 28 N. An award of attorney fees and costs; and
- O. Such other and further relief as this Court may deem just, equitable, or

1 proper.

2 **JURY DEMAND**

3 Plaintiff demands a trial by jury on all claims for damages. Plaintiff does not seek
4 a jury trial for claims sounding in equity.

5 DATED: November 6, 2018

6 Respectfully Submitted,

7 /s/ Ronald A. Marron

8 Ronald A. Marron

9 **LAW OFFICES OF RONALD A. MARRON**

10 Ronald A. Marron

11 *ron@consumersadvocates.com*

12 Michael T. Houchin

13 *mike@consumersadvocates.com*

14 651 Arroyo Drive

15 San Diego, CA 92103

16 Telephone: (619) 696-9006

17 Fax: (619) 564-6665

18 ***Counsel for Plaintiff and the***
19 ***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

Ariel Anderson

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
The Law Offices of Ronald A. Marron
651 Arroyo Drive
San Diego, CA 92103

DEFENDANTS

Outernational Brands Inc.

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

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

Attorneys (If Known)

'18CV2550 JLS WVG

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 checked="" 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 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	<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"/> 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 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	<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	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<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	<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	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	<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"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. sec. 1332(d)

Brief description of cause:

Diversity case brought under the Class Action Fairness Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,000.00

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE 11/06/2018 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.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Outernational Brands Hit with Class Action Suit Over Vivaloe 'Naturally Flavored' Claims](#)
