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BY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CV11-10322 SVW (FMOx)

JULIE GENGO, individually and on behalf of all others similarly situated,

Plaintiff,

v.

FRITO-LAY NORTH AMERICA, INC.,

Defendant.

Case No.

CLASS ACTION

COMPLAINT FOR:

(1) Violation of California Business & Professions Code §§ 17500 *et seq.*;
(2) Violation of California Business & Professions Code §§ 17200 *et seq.*;
(3) Violation of California Civil Code §§ 1750 *et seq.*;
(4) Breach of Express Warranty; and
(5) Violation of Magnuson-Moss Act 15 U.S.C. §§ 2301 *et seq.*

DEMAND FOR JURY TRIAL

ORIGINAL

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Plaintiff Julie Gengo ("Plaintiff"), individually and on behalf of all others similarly situated, alleges the following upon personal knowledge as to her own acts and, as to all other allegations, upon information and belief, and investigation by counsel.

NATURE OF ACTION AND SUMMARY OF ALLEGATIONS

1. Plaintiff brings this class action on behalf of herself and a class of persons who purchased any of the following non-organic products sold under the Tostitos and SunChips brand names: Tostitos Restaurant Style Tortilla Chips, Tostitos Bite Size Rounds Tortilla Chips, Tostitos Crispy Rounds Tortilla Chips, Tostitos Multigrain Tortilla Chips, Tostitos Scoops Tortilla Chips, Tostitos Restaurant Style with a Hint of Lime Tortilla Chips, Tostitos Artisan Recipes Fire-Roasted Chipotle Tortilla Chips, Sun Chips Original flavored Multigrain Snacks, Sun Chips Garden Salsa Flavored Multigrain Snacks, Sun Chips French Onion Flavored Multigrain Snacks, and Sun Chips Harvest Cheddar Flavored Multigrain Snacks (collectively referred to herein as "Tostitos" and "SunChips"). Advertisements and labels for the products are attached hereto as Exhibit A (Frito Lay, Naturally Delicious, http://www.fritolay.com/your-health/naturally-delicious.html (for advertisements, click on product hyperlink on bottom of the page; for labels, click on "See Nutrition Label" on bottom of advertisement pages) (last visited Dec. 8, 2011)).

2. Tostitos and SunChips are brands owned, developed, marketed, and sold by defendant Frito-Lay North America, Inc. ("Frito-Lay" or "Defendant"). Frito-Lay is a wholly owned subsidiary of PepsiCo, Inc. ("PepsiCo").

3. Frito-Lay labels certain of its Tostitos and SunChips products as "made with ALL NATURAL ingredients." This representation is central to Frito-Lay's marketing of Tostitos and SunChips, and this label is displayed on the

product itself, the Frito-Lay website, and Tostitos's and SunChips's advertisements.

4. But Tostitos and SunChips products are not made of "all natural" ingredients. Each of the products that are the subject of this action contain corn and vegetable oil as their main ingredients (based on weight). Corn and vegetable oils constitute the first two ingredients listed on the nutritional label of each of the products that are the subject of this action. In fact, Frito Lay boasts that some of its Tostitos products are only made up of only three simple ingredients: corn, oil and salt.

5. But the corn and vegetable oils (including corn, soybean, and canola oils) are made from genetically modified plants and organisms ("GM" or "GMO").

6. Monsanto Company, a global agricultural company that pioneered GM seeds, defines GMO on its website as food with its "***genetic makeup altered to exhibit traits that are not naturally theirs***. In general, genes are taken (copied) from one organism that shows a desired trait and transferred into the genetic code of another organism." Monsanto, http://www.monsanto.com/newsviews/Pages/glossary.aspx#g (last visited Dec. 8, 2011) (emphasis added). As more fully alleged below, a recognized defining characteristic of genetically modified foods is that they are ***not*** natural.

7. The reasonable consumer assumes that seeds created by swapping genetic material across species to exhibit traits not naturally theirs are not "all natural." Tostitos's and SunChips's advertising is very likely to deceive consumers, and has deceived Plaintiff.

8. Plaintiff was damaged, in an amount to be determined at trial, because she did not get the "all natural" Tostitos's and SunChips's products that were advertised and that she paid for.

9. Defendant's violations of California and federal law through its wrongful conduct designed to mislead and deceive consumers into purchasing its product by labeling it as natural when it is made up of genetically modified ingredients specifically violate California false advertising and unfair competition laws, California Business & Professions Code § 17500 and § 17200, and the Consumers Legal Remedies Act (the "CLRA"), California Civil Code § 1750, constitute a breach of express warranty and violate the Magnuson-Moss Warranty Act 15 U.S.C. § 2301.

JURISDICTION AND VENUE

10. The Court has jurisdiction over the state law claims pursuant to 28 U.S.C. § 1332(d) because there are at least 100 Class Members in the proposed Class, the combined claims of proposed Class Members exceed $5,000,000 exclusive of interest and costs, and at least one Class Member is a citizen of a state other than Defendant's state of citizenship. The Court also has jurisdiction pursuant to 28 U.S.C. § 1331 because a federal question is involved of whether Defendant violated the Magnuson-Moss Act 15 U.S.C. § 2301.

11. Frito-Lay purposefully avails itself of the California consumer market and sells Tostitos and SunChips products in at least hundreds of locations within this District. Frito-Lay's Tostitos and SunChips products are sold at thousands of retail locations throughout California and purchased by thousands of consumers in California every day, including many in this District.

12. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claims asserted occurred in this District, and Plaintiff dealt with Defendant, who is located in and/or does business in this District. Venue is also proper pursuant to 28 U.S.C. § 1391(c) because Defendant is subject to personal jurisdiction in California due to its substantial business in the state (and District), and otherwise purposely avails itself of the markets in

California and this District, through the promotion, sale, and marketing of its products.

THE PARTIES

13. Plaintiff Julie Gengo is a consumer residing in Richmond, California. For years Gengo regularly purchased Tostitos and SunChips products about once a month for her own and her family's consumption, most recently in September 2011. Specifically since 2007, Gengo has purchased Tostitos Multigrain Tortilla Chips, Tostitos Scoops Tortilla Chips, Tostitos Artisan Recipes Fire-Roasted Chipotle Tortilla Chips, Sun Chips Original flavored Multigrain Snacks, Sun Chips French Onion Flavored Multigrain Snacks, and Sun Chips Harvest Cheddar Flavored Multigrain Snacks. During that period (2007 to the present), all of those products contained the representation on their labels and in related advertising that they were "made with All Natural ingredients." Plaintiff became aware of this representation through Frito-Lay's advertising and labeling, which she was exposed to about once a week by observing Frito-Lay's advertisements in print media and retail stores and on the labels of the products themselves. She was also exposed to that representation each time she looked at the label of one of the Frito-Lay products she had at home. She purchased the products because she believed and relied upon Defendant's representations on the product labels and advertisements that the Tostitos and SunChips products she purchased were made of all natural ingredients. Those representations remained the same throughout the period 2007 to the present. Plaintiff would not have purchased those Tostitos and SunChips products, but for Defendant's misleading statements about the product being all natural. Plaintiff was injured in fact and lost money as a result of Defendant's conduct of improperly describing Tostitos and SunChips products as "natural." Plaintiff paid for an all natural product, but did not receive a product that was all natural. Plaintiff received a product that was genetically engineered in

a laboratory, and had its genetic code artificially altered to exhibit not "natural" qualities.

14. Defendant Frito-Lay is located in Plano, Texas. Frito-Lay markets and distributes Tostitos and SunChips products.

FACTUAL ALLEGATIONS

Frito-Lay Advertises Tostitos and SunChips as "Made With ALL NATURAL Ingredients"

15. Frito-Lay sells many snack products under the Tostitos and SunChips brands. Certain non-organic Tostitos and SunChips products, including all the products at issue here, are sold with a label on the front of the bag that states prominently "made with ALL NATURAL ingredients." Plaintiff purchased the products that contained this representation.

16. In addition to the representation appearing on the product label, there is a page called "Naturally Delicious" on Frito-Lay's website under the "Your Health" tab that describes what the "all natural" label means and lists Frito-Lay's products that feature this representation. The webpage states, in pertinent part:

> We're proud to make so many of the Frito-Lay snacks you love with all natural ingredients. We believe that real flavor comes straight from nature. From farm-fresh tomatoes to fragrant basil to slow-roasted chipotle peppers, we make sure to use the best nature has to offer. Why? Because our snacks go from our home to yours. And for us, there's no better reason.
>
> Natural FAQs
>
> 1. Q: What does it mean when a product is made with all natural ingredients?
>
> A: All Frito-Lay snack chips made with natural ingredients start with ***all-natural corn*** or potatoes and ***healthier oils***. For our flavored

LAY'S®, TOSTITOS® and SUNCHIPS® products, we are using all natural seasonings that don't have artificial or synthetic ingredients. This means these products don't contain any artificial flavors or artificial preservatives, nor do they use monosodium glutamate (MSG) or partially hydrogenated oil.

2. Q: ***Why do we offer products made with all natural ingredients***?

A: ***We know people are increasingly looking for snacks made with natural ingredients. At Frito-Lay, we are proud to offer a wide range of snack options that taste great and meet everyone's needs***.

3. Q: Will my favorite Frito-Lay snacks that are made with all natural ingredients still taste as good?

A: Yes. We know you have come to expect great-tasting products from us. In fact, many of the products you love have always been all natural. We're proud to offer all natural ingredients in some of your favorite brands and still deliver the great taste you love!

4. Q: Where can I find Frito-Lay products made with natural ingredients?

A: ***You can find all natural Frito-Lay products in the regular chip aisle. To easily identify our products made with all natural ingredients, look for the all natural stamp***.

5. Q: Which Frito-Lay products are now made with natural ingredients?

A: Our original potato chips and tortilla chips have actually always been all natural; they are made with just three simple ingredients—potatoes or corn, oil and salt. Now many of your favorite flavored products are made with natural ingredients, too, such as LAY'S® Potato Chips, TOSTITOS® Tortilla Chips and SUNCHIPS®

Multigrain Snacks. For a full list of Frito-Lay natural products, please see the list below.

Frito-Lay, http://www.fritolay.com/your-health/naturally-delicious.html (last visited Dec. 8, 2011) (emphasis added).

17. The "made with ALL NATURAL ingredients" labeling is prominently displayed on the Tostitos and SunChips bags and is featured on the website as a key way to attract consumers to the Frito-Lay products, which Frito-Lay acknowledges it is doing: ***"we know people are increasingly looking for snacks made with natural ingredients" and "[t]o easily identify our products made with all natural ingredients, look for the all natural stamp."*** Frito-Lay, http://www.fritolay.com/your-health/naturally-delicious.html (last visited Dec. 8, 2011) (emphasis added).

18. The claim that Tostitos and SunChips are "natural" is highly material to the average consumer, which is why Frito-Lay places "made with ALL NATURAL ingredients" on the front of its Tostitos and SunChips bags and features it in advertisements.

Tostitos and SunChips Are Made From Genetically Modified Organisms

19. The Tostitos and SunChips products that are the subject of this action are made of ingredients derived from plants (corn and vegetable oils) grown from GMO seeds that are engineered to, among other things, allow for greater yield and to be resistant to pesticides.

20. Frito-Lay clearly targets through its labeling of its Tostitos and SunChips products as "made with ALL NATURAL ingredients" consumers looking for truly natural foods, as it even admits on its website. Reasonable consumers are told that Tostitos and SunChips are made of "all natural" ingredients have no reason to demand products ***without biotechnology ingredients***

because the "natural" designation represents to consumers that they are getting biotech-free food.

Genetically Modified Organisms Are Not "ALL NATURAL"

21. Monsanto Company is one of the world's biggest sellers of GMO seeds and an avid GMO-proponent. On its website, Monsanto defines GMO as follows:

> Genetically Modified Organisms (GMO) – Plants or animals that have had their ***genetic makeup altered to exhibit traits that are not naturally theirs***. In general, genes are taken (copied) from one organism that shows a desired trait and transferred into the genetic code of another organism.

Monsanto, http://www.monsanto.com/newsviews/Pages/glossary.aspx#g (last visited Dec. 8, 2011) (emphasis added).

22. The World Health Organization ("WHO"), which is the United Nations' directing and coordinating authority for health, defines GMO as follows:

> Genetically modified organisms (GMOs) can be defined as organisms in which ***the genetic material (DNA) has been altered in a way that does not occur naturally***. The technology is often called "modern biotechnology" or "gene technology", sometimes also "recombinant DNA technology" or "genetic engineering". It allows selected individual genes to be transferred from one organism into another, also between non-related species.
>
> Such methods are used to create GM plants—which are then used to grow GM food crops.

WHO, http://www.who.int/foodsafety/publications/biotech/20questions/en/ (last visited Dec. 8, 2011) (emphasis added).

23. Romer Labs, a company that provides diagnostic solutions to the agricultural industry, defines GMO as follows:

> Agriculturally important plants are often genetically modified by the insertion of DNA material from outside the organism into the plant's DNA sequence, allowing the plant to ***express novel traits that normally would not appear in nature***, such as herbicide or insect resistance. Seed harvested from GMO plants will also contain these [sic] modification.

Romer Labs, http://www.romerlabs.com/en/analytes/genetically-modified-organisms.html (last visited Dec. 8, 2011) (emphasis added).

24. As demonstrated by the above definitions, genetically modified organisms are "created" artificially in a laboratory through genetic engineering. Tostitos and SunChips are not natural, much less "all natural." Advertising Tostitos and SunChips as natural is deceptive and likely to mislead the public.

CLASS ALLEGATIONS

25. Plaintiff brings this action on her own behalf and as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seeks certification of the following Class:

> All persons in the United States who have purchased Tostitos Restaurant Style Tortilla Chips, Tostitos Bite Size Rounds Tortilla Chips, Tostitos Crispy Rounds Tortilla Chips, Tostitos Multigrain Tortilla Chips, Tostitos Scoops Tortilla Chips, Tostitos Restaurant Style with a Hint of Lime Tortilla Chips, Tostitos Artisan Recipes Fire-Roasted Chipotle Tortilla Chips, Sun Chips Original flavored Multigrain Snacks, Sun Chips Garden Salsa Flavored Multigrain Snacks, Sun Chips French Onion Flavored Multigrain Snacks, and Sun Chips Harvest Cheddar Flavored Multigrain Snacks from

December 12, 2007, through the final disposition of this and any and all related actions (the "Class Period").

26. Plaintiff and the members of the Class are so numerous that joinder of all members individually, in one action or otherwise, is impractical, based on Defendant's national marketing and advertising campaigns that target consumers across the country.

27. This action involves questions of law and fact common to Plaintiff and all members of the Class, which include the following:

(a) Whether Defendant violated California Business & Professions Code Section 17500;

(b) Whether Defendant violated California Business & Professions Code Section 17200;

(c) Whether Defendant violated the CLRA, California Civil Code Section 1750;

(d) Whether Defendant's conduct constituted a breach of express warranty;

(e) Whether Defendant violated Magnuson-Moss Act 15 U.S.C. § 2301; and

(f) Whether Plaintiff and Class Members sustained damages resulting from Defendant's conduct and, if so, the proper measure of damages, restitution, equitable, or other relief, and the amount and nature of such relief.

28. Plaintiff understands and is willing to undertake the responsibilities of acting in a representative capacity on behalf of the proposed Class. Plaintiff will fairly and adequately protect the interests of the Class and has no interests adverse to, or which directly conflict with, the interests of the other members of the Class.

29. Plaintiff has engaged the services of counsel who are experienced in complex class litigation, who will adequately prosecute this action, and who will

assert and protect the rights of and otherwise represent Plaintiff and the absent Class Members.

30. Plaintiff's claims are typical of those of the absent Class Members because Plaintiff and the Class Members each sustained damages arising from Defendant's wrongful conduct, as alleged more fully herein.

31. This action is brought under Rule 23 because Defendant has acted on grounds generally applicable to all members of the Class and/or because questions of law or fact common to Class Members predominate over any questions affecting only individual members.

32. Judicial determination of the common legal and factual issues essential to this case would be far more efficient and economical as a class action than piecemeal individual determinations.

33. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude maintenance as a class action.

COUNT I
Violation of California Business & Professions Code §§ 17500 *et seq.*

34. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

35. Plaintiff brings this claim individually and on behalf of the Class.

36. Throughout the Class Period, Defendant engaged in a public advertising and marketing campaign representing that Tostitos and SunChips are "made with ALL NATURAL ingredients."

37. Tostitos and SunChips are in fact made from genetically modified organisms that are not natural. Defendant's advertisements and marketing representations are, therefore, misleading, untrue, and likely to deceive the public.

38. Defendant engaged in its advertising and marketing campaign with intent to directly induce customers to purchase Tostitos and SunChips based on false claims.

39. In making and disseminating the statements alleged herein, Defendant knew or should have known that the statements were untrue or misleading.

40. Plaintiff believed Defendant's representation that Tostitos and SunChips were made with all natural ingredients. Plaintiff would not have purchased Tostitos and SunChips, but for Defendant's misleading statements about the product being all natural. Plaintiff was injured in fact and lost money as a result of Defendant's conduct of improperly describing Tostitos and SunChips as "natural." Plaintiff paid for an all natural product, but did not receive a product that was all natural. Plaintiff received a product that was genetically engineered in a laboratory, and had its genetic code artificially altered to exhibit un-natural qualities.

41. Plaintiff and Class Members seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief enjoining Defendant from continuing to disseminate its untrue and misleading statements, and other relief allowable under California Business & Professions Code Section 17535.

COUNT II
Violation of California Business & Professions Code §§ 17200 *et seq.*

42. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

43. Plaintiff brings this claim individually and on behalf of the Class.

44. The circumstances giving rise to Plaintiff's allegations include Defendant's corporate policies regarding the sale and marketing of Tostitos and SunChips.

45. By engaging in the acts and practices described above, Defendant committed one or more acts of "unfair competition" within the meaning of Business & Professions Code § 17200. "Unfair competition" is defined to include any "unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [Business & Professions Code §§ 17500 *et seq.*]."

46. Defendant committed "unlawful" business acts or practices by, among other things, violating California Business & Professions Code § 17500.

47. Defendant committed "unfair" business acts or practices by, among other things:

(a) engaging in conduct where the utility of such conduct, if any, is outweighed by the gravity of the consequences to Plaintiff and Class Members;

(b) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and Class Members; and

(c) engaging in conduct that undermines or violates the spirit or intent of the consumer protection laws alleged in this Complaint.

48. Defendant committed "fraudulent" business acts or practices by, among other things, engaging in conduct Defendant knew or should have known was likely to and did deceive the public, including Plaintiff and other Class Members.

49. As detailed above, Defendant's unlawful, unfair, and/or fraudulent practices include making false and/or misleading representations that Tostitos and SunChips were "made with ALL NATURAL ingredients."

50. Plaintiff believed Defendant's representation that Tostitos and SunChips were all natural. Plaintiff would not have purchased Tostitos and SunChips, but for Defendant's misleading statements about the product being made with all natural ingredients. Plaintiff was injured in fact and lost money as a

result of Defendant's conduct of improperly describing Tostitos and SunChips as "natural." Plaintiff paid for an all natural product, but did not receive a product that was all natural. Plaintiff received a product that was genetically engineered in a laboratory, and had its genetic code artificially altered to exhibit qualities that are not natural.

51. Plaintiff and Class Members seek declaratory relief, restitution for monies wrongfully obtained, disgorgement of ill-gotten revenues and/or profits, injunctive relief, and other relief allowable under California Business & Professions Code Section 17203, including, but not limited to, enjoining Defendant from continuing to engage in its unfair, unlawful and/or fraudulent conduct as alleged.

COUNT III
Violation of the California Consumers Legal Remedies Act – Cal. Civ. Code §§ 1750 *et seq.*

52. Plaintiff hereby incorporates by reference the allegations contained in all of the preceding paragraphs of this Complaint.

53. Plaintiff brings this claim individually and on behalf of the Class.

54. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* (the "CLRA"). This cause of action seeks monetary damages and injunctive relief pursuant to California Civil Code § 1782.

55. A demand letter was sent to Defendant prior to the filing of this Complaint.[1] Defendant did not correct the misrepresentations identified in the demand letter.

[1] A copy of Plaintiff's notice and demand letter sent to Defendant is attached hereto as Exhibit B.

56. Defendant's actions, representations, and conduct have violated, and continue to violate, the CLRA because they extend to transactions that are intended to result, or that have resulted, in the sale of goods to consumers.

57. Plaintiff and all members of the Class are "consumers" as that term is defined by the CLRA in California Civil Code § 1761(d).

58. Defendant sold to Plaintiff and other Class Members Tostitos and SunChips products, which are "goods" within the meaning of California Civil Code § 1761(a).

59. By engaging in the actions, misrepresentations, and misconduct set forth in this Class Action Complaint, Defendant violated, and continues to violate, Civil Code § 1770(a)(5) by misrepresenting that Tostitos and SunChips are natural and have particular qualities that they do not have, namely, that they are all natural when they are not.

60. By engaging in the actions, misrepresentations, and misconduct set forth in this Complaint, Defendant violated, and continues to violate, Civil Code § 1770(a)(9), by advertising Tostitos and SunChips with intent not to sell it as advertised.

61. By engaging in the actions, misrepresentations, and misconduct set forth in this Complaint, Defendant violated, and continues to violate, § 1770(a)(16) by misrepresenting that a subject of a transaction has been supplied in accordance with a previous representation when it has not.

62. Defendant violated the CLRA by representing through its advertisements Tostitos and SunChips as described above when they knew, or should have known, that the representations and advertisements were unsubstantiated, false, and misleading.

63. Plaintiff believed Defendant's representation that Tostitos and SunChips were all natural. Plaintiff would not have purchased Tostitos and

SunChips, but for Defendant's misleading statements about the products being all natural. Plaintiff was injured in fact and lost money as a result of Defendant's conduct of improperly describing Tostitos and SunChips as "natural." Plaintiff paid for an all natural product but did not receive a product that was all natural. Plaintiff received a product that was genetically engineered in a laboratory, and had its genetic code artificially altered to exhibit qualities that are not natural.

64. Plaintiff requests that this Court enjoin Defendant from continuing to employ the unlawful methods, acts, and practices alleged herein pursuant to California Civil Code § 1780(a)(2). If Defendant is not restrained from engaging in these types of practices in the future, Plaintiff and the Class will continue to suffer harm.

COUNT IV
Breach of Express Warranty

65. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

66. Plaintiff brings this claim individually and on behalf of the Class.

67. Plaintiff, and each member of the Class, formed a contract with Defendant at the time Plaintiff and the other Class Members purchased Tostitos and SunChips. The terms of that contract include the promises and affirmations of fact made by Defendant on Tostitos's and SunChips's packaging and through marketing and advertising, as described above. This marketing and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between Plaintiff and the members of the Class and Defendant.

68. Defendant purports through its advertising to create express warranties of Tostitos and SunChips as natural by making the affirmation of fact, and promising, that Tostitos and SunChips are "All Natural."

69. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class, when they purchased the product and used it as directed.

70. Despite express warranties about the "All Natural" nature of Tostitos and SunChips, they are composed of GMOs and are, in fact, not as they are found in nature.

71. Defendant breached express warranties about Tostitos and SunChips and their qualities, because the product does not conform to Defendant's affirmations and promises to be natural and provide such benefits described above.

72. As a result of Defendant's breach of express warranty, Plaintiff and the Class were harmed in the amount of the purchase price of Tostitos and SunChips.

COUNT V
Violation of Magnuson-Moss Act (15 U.S.C. §§ 2301 *et seq.*)

73. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

74. Plaintiff and the Class are consumers as defined in 15 U.S.C. § 2301(3).

75. Defendant is supplier and warrantor as defined in 15 U.S.C. § 2301(4)(5).

76. Tostitos and SunChips are consumer products as defined in 15 U.S.C. § 2301(6).

77. By reason of Defendant's breach of its implied warranties and express written warranties stating that Tostitos and SunChips are "all natural," but in fact they are composed of GMOs and are not as they are found in nature, Defendant has violated the statutory rights due the Plaintiff and the Class pursuant to the

Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.*, thereby damaging Plaintiff and the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, pray for judgment against Defendant as follows:

A. An order certifying this case as a class action and appointing Plaintiff and her counsel to represent the Class Members;

B. An order declaring that the acts and practices of Defendant constitute violations of California Business & Professions Code §§ 17500 and §§ 17200 *et seq.*, and California Civil Code §§ 1750 *et seq.*, and constitute breaches of express warranties;

C. For damages pursuant to California law in an amount to be determined at trial, including interest, pursuant to the CLRA;

D. For damages pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§2301 *et seq.*;

E. For restitution for monies wrongfully obtained and/or disgorgement of ill-gotten revenues and/or profits;

F. A permanent injunction enjoining Defendant from continuing to harm Plaintiff and the members of the Class and from violating California law;

G. An order requiring Defendant to adopt and enforce a policy that requires removal of misleading natural claims, which complies with California law;

H. Reasonable attorneys' fees and the costs of the suit; and

I. Such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: December 14, 2011

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Search

TOSTITOS® Restaurant Style Tortilla Chips

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- Kosher Triangle K
- Lactose Free
- MSG Free
- Onion Free
- Pig (Porcine) Free

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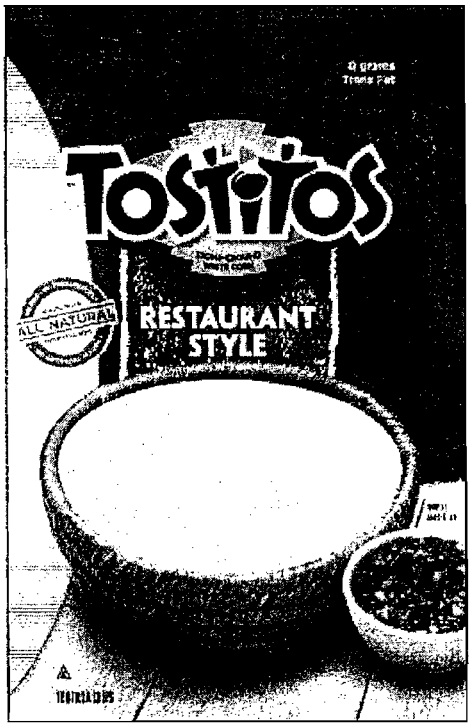

INGREDIENTS: White Corn, Vegetable Oil (Corn, Soybean, Canola and/or Sunflower Oil), and Salt.
No Preservatives.

Nutrition Facts

Serving Size 1 oz (28g/About 7 chips)

Amount Per Serving

Calories 140	Calories from Fat 60
	% Daily Value*
Total Fat 7g	**10%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Polyunsaturated Fat 3g	
Monounsaturated Fat 2g	
Cholesterol 0mg	**0%**
Sodium 115mg	**5%**
Total Carbohydrate 19g	**6%**
Dietary Fiber 2g	**7%**
Sugars 0g	
Protein 2g	

Vitamin A 0% • Vitamin C 0%

Calcium 2% • Iron 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

Search

TOSTITOS® Bite Size Rounds Tortilla Chips

Like 37 SHARE THIS PAGE

- 0g Trans Fat
- Gluten Free
- Additive Free
- Casein Free
- Kosher Triangle K
- Lactose Free
- MSG Free
- Onion Free
- Pig (Porcine) Free

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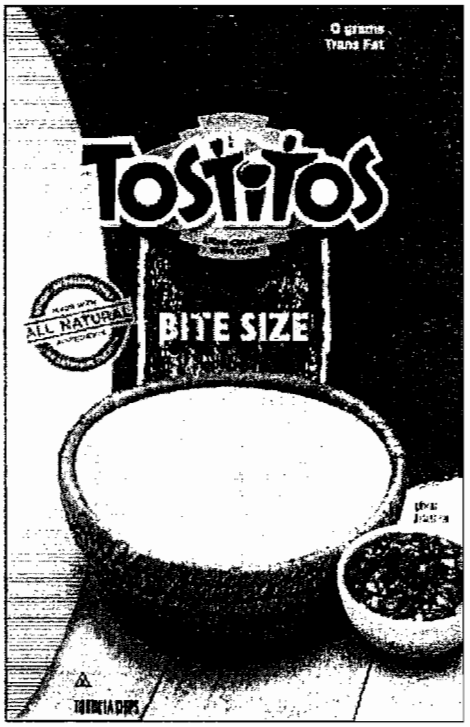


INGREDIENTS: Whole White Corn, Vegetable Oil (Corn, Soybean, Canola and/or Sunflower Oil), and Salt.
No Preservatives.

Nutrition Facts

Serving Size 1 oz (28g/About 24 chips)

Amount Per Serving	
Calories 140	Calories from Fat 70
	% Daily Value*
Total Fat 7g	**11%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Polyunsaturated Fat 3g	
Monounsaturated Fat 2g	
Cholesterol 0mg	**0%**
Sodium 110mg	**5%**
Total Carbohydrate 18g	**6%**
Dietary Fiber 2g	**7%**
Sugars 0g	
Protein 2g	

Vitamin A 0%	•	Vitamin C 0%
Calcium 2%	•	Iron 2%
Vitamin E 4%	•	Thiamin 2%
Niacin 2%	•	Vitamin B6 4%
Phosphorus 4%	•	Magnesium 4%

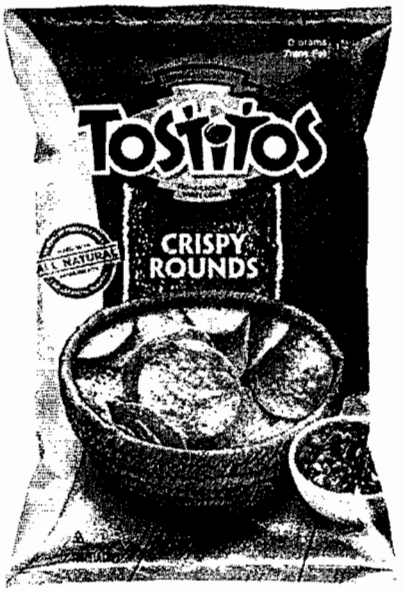
* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

Search

TOSTITOS® Crispy Rounds Tortilla Chips



Like 20 SHARE THIS PAGE

- 0g Trans Fat
- Gluten Free
- Additive Free
- Casein Free
- Kosher Triangle K
- Lactose Free
- MSG Free
- Onion Free
- Pig (Porcine) Free

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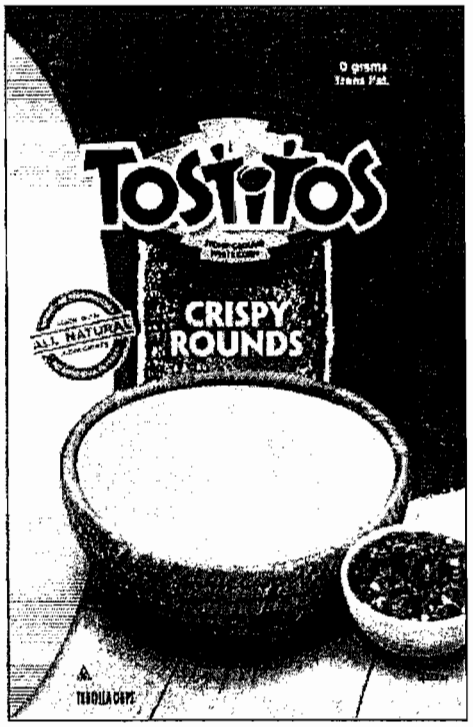

INGREDIENTS: Whole White Corn, Vegetable Oil (Corn, Soybean, Canola and/or Sunflower Oil), and Salt.
No Preservatives.

Nutrition Facts

Serving Size 1 oz (28g/About 13 chips)

Amount Per Serving	
Calories 140	Calories from Fat 70
	% Daily Value*
Total Fat 7g	**11%**
Saturated Fat 1g	**6%**
Trans Fat 0g	
Polyunsaturated Fat 3g	
Monounsaturated Fat 2g	
Cholesterol 0mg	**0%**
Sodium 120mg	**5%**
Total Carbohydrate 18g	**6%**
Dietary Fiber 2g	**7%**
Sugars 0g	
Protein 2g	

Vitamin A 0%	•	Vitamin C 0%
Calcium 4%	•	Iron 2%
Vitamin E 4%	•	Niacin 2%
Vitamin B_6 4%	•	Phosphorus 6%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

Search

TOSTITOS® Multigrain Tortilla Chips

Like 79 SHARE THIS PAGE

- 0g Trans Fat
- Additive Free
- Kosher Triangle K
- Lactose Free
- MSG Free
- Onion Free
- Pig (Porcine) Free

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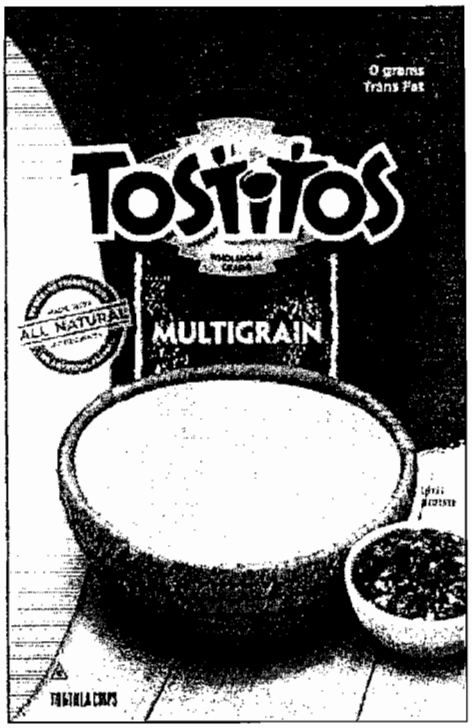


INGREDIENTS: Whole Corn, Vegetable Oil (Corn, Soybean, Canola, and/or Sunflower Oil), Corn Starch, Whole Buckwheat Flour, Whole Oat Flour, Sugar, Toasted Corn Germ, Whole Wheat Flour, and Salt. **CONTAINS WHEAT INGREDIENTS.**

Nutrition Facts

Serving Size 1 oz (28g/About 8 chips)

Amount Per Serving

Calories 150	Calories from Fat 70
	% Daily Value*
Total Fat 7g	**11%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Polyunsaturated Fat 3g	
Monounsaturated Fat 2g	
Cholesterol 0mg	**0%**
Sodium 110mg	**5%**
Total Carbohydrate 19g	**6%**
Dietary Fiber 2g	**7%**
Sugars less than 1g	
Protein 2g	

Vitamin A 0%	•	Vitamin C 0%	
Calcium 2%	•	Iron 2%	
Thiamin 2%	•	Vitamin B_6 2%	
Phosphorus 4%	•	Magnesium 4%	

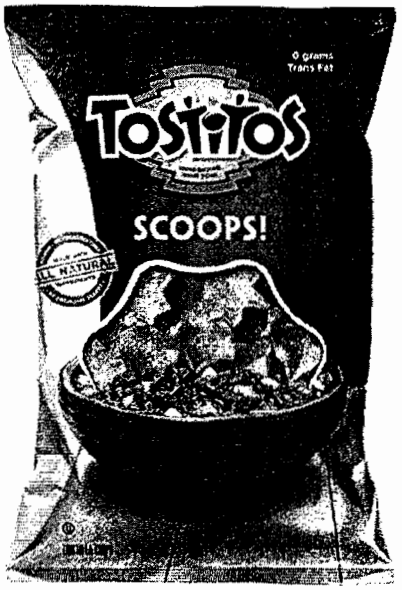
* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

Search

TOSTITOS® SCOOPS!® Tortilla Chips



Like 109 SHARE THIS PAGE

- 0g Trans Fat
- Gluten Free
- Additive Free
- Casein Free
- Kosher OU
- Kosher Triangle K
- Lactose Free
- MSG Free
- Onion Free
- Pig (Porcine) Free

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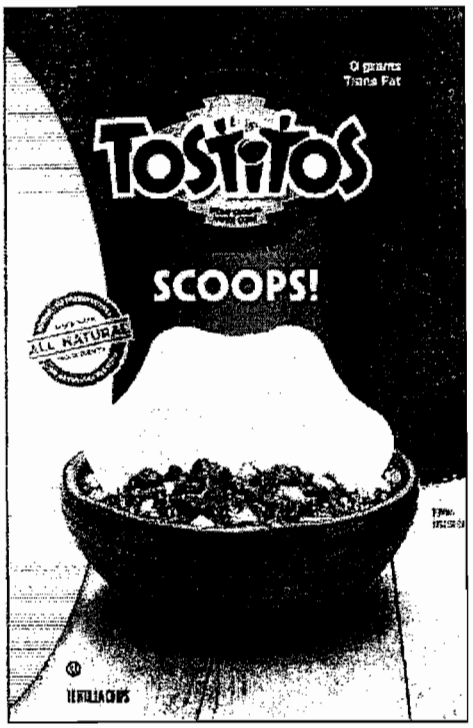

INGREDIENTS: Whole White Corn, Vegetable Oil (Corn, Soybean, Canola and/or Sunflower Oil), and Salt.

No Preservatives.

Nutrition Facts

Serving Size 1 oz (28g/About 12 chips)

Amount Per Serving	
Calories 140	Calories from Fat 60
	% Daily Value*
Total Fat 7g	**11%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Polyunsaturated Fat 3g	
Monounsaturated Fat 2g	
Cholesterol 0mg	**0%**
Sodium 120mg	**5%**
Total Carbohydrate 19g	**6%**
Dietary Fiber 2g	**7%**
Sugars 0g	
Protein 2g	

Vitamin A 0%	•	Vitamin C 0%
Calcium 2%	•	Iron 0%
Vitamin E 4%	•	Thiamin 2%
Riboflavin 2%	•	Vitamin B_6 4%
Phosphorus 6%	•	Magnesium 4%
Zinc 2%		

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

Search

TOSTITOS® Restaurant Style with a Hint of Lime Tortilla Chips

Like 233 SHARE THIS PAGE

- 0g Trans Fat
- No Gluten Ingredients
- Kosher Triangle K
- MSG Free
- Onion Free
- Pig (Porcine) Free

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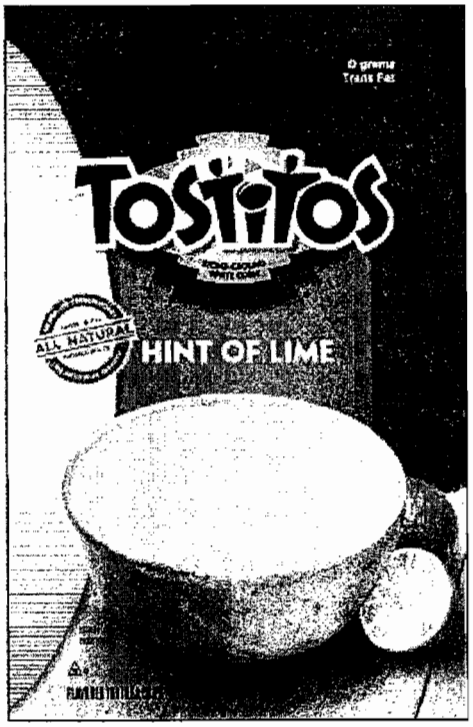

INGREDIENTS: Whole White Corn, Vegetable Oil (Corn, Soybean, Canola and/or Sunflower Oil), Maltodextrin (Made From Corn), Salt, Sugar, Natural Flavors (Including Natural Lime Flavor), Corn Sugar, Sour Cream (Cultured Cream, Nonfat Milk), Corn Bran, Whey, Spice, and Yeast Extract.
CONTAINS MILK INGREDIENTS.

No Preservatives.

Nutrition Facts

Serving Size 1 oz (28g/About 6 chips)

Amount Per Serving

Calories 150	Calories from Fat 70
	% Daily Value*
Total Fat 7g	**11%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Polyunsaturated Fat 3g	
Monounsaturated Fat 2g	
Cholesterol 0mg	**0%**
Sodium 125mg	**5%**
Total Carbohydrate 18g	**6%**
Dietary Fiber 2g	**7%**
Sugars less than 1g	
Protein 2g	

Vitamin A 0% • Vitamin C 0%

Calcium 2% • Iron 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

Search

TOSTITOS® ARTISAN RECIPES® Fire-Roasted Chipotle Tortilla Chips

Like 417 SHARE THIS PAGE

- 0g Trans Fat
- Kosher Triangle K
- MSG Free
- Pig (Porcine) Free

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INGREDIENTS: Whole White Corn, Vegetable Oil (Corn, Soybean, Canola and/or Sunflower Oil), Corn Starch, Maltodextrin (Made From Corn), Dried Pinto Beans, Whole White Wheat, Whole Triticale, Whole Oats, Whole Rye, Whole Barley, Spices (Including Chipotle Chili Pepper), Whole Millet, Whole Buckwheat, Salt, Whole Brown Rice, Sugar, Onion Powder, Natural Flavors (Contains Milk), Yeast Extract, and Garlic Powder.

CONTAINS WHEAT AND MILK INGREDIENTS.

Nutrition Facts

Serving Size 1 oz. (28g/About 8 chips)

Amount Per Serving	
Calories 140	Calories from Fat 70
	% Daily Value*
Total Fat 7g	**11%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Polyunsaturated Fat 3g	
Monounsaturated Fat 2g	
Cholesterol 0mg	**0%**
Sodium 90mg	**4%**
Total Carbohydrate 18g	**6%**
Dietary Fiber 2g	**9%**
Sugars less than 1g	
Protein 2g	

Vitamin A 0%	•	Vitamin C 0%
Calcium 2%	•	Iron 2%
Thiamin 2%	•	Riboflavin 2%
Niacin 2%	•	Vitamin B_6 2%
Phosphorus 6%	•	Magnesium 6%
Zinc 2%		

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

http://www.fritolay.com/assets/images/bigVault/tostitos-artisan-fire-roasted-chipotle.jpg 12/8/2011

Search

SUNCHIPS® Original Flavored Multigrain Snacks

Like 35 SHARE THIS PAGE

- 0g Trans Fat
- Additive Free
- Kosher Triangle K
- Lactose Free
- MSG Free
- Onion Free
- Pig (Porcine) Free
- Soy Free
- 18g of Whole Grain

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Ingredients: Whole Corn, Sunflower and/or Canola Oil, Whole Wheat, Whole Oat Flour, Rice Flour, Sugar, Corn Bran, Salt, Natural Flavor, and Maltodextrin (Made from Corn). **CONTAINS A WHEAT INGREDIENT.**

No Preservatives.

Nutrition Facts

Serving Size 1 oz (28g/About 16 chips)

Amount Per Serving	
Calories 140	Calories from Fat 50
	% Daily Value*
Total Fat 6g	**10%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Polyunsaturated Fat 1g	
Monounsaturated Fat 3.5g	
Cholesterol 0mg	**0%**
Sodium 120mg	**5%**
Total Carbohydrate 19g	**6%**
Dietary Fiber 3g	**10%**
Sugars 2g	
Protein 2g	

Vitamin A 0%	•	Vitamin C 0%
Calcium 0%	•	Iron 2%
Vitamin E 6%	•	Thiamin 2%
Niacin 2%	•	Vitamin B_6 2%
Phosphorus 4%	•	Magnesium 4%
Zinc 2%		

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

Search

SUNCHIPS® Garden Salsa Flavored Multigrain Snacks

Like 46 SHARE THIS PAGE

- 0g Trans Fat
- MSG Free
- Pig (Porcine) Free
- Soy Free
- 18g of Whole Grain

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INGREDIENTS: Whole Corn, Sunflower and/or Canola Oil, Whole Wheat, Whole Oat Flour, Rice Flour, Sugar, Corn Bran, Tomato Powder, Salt, Natural Flavors, Maltodextrin (Made From Corn), Cheddar Cheese (Milk, Cheese Cultures, Salt, Enzymes), Dextrose, Buttermilk, Onion Powder, Whey, Yeast Extract, Romano Cheese (Part Skim Cow's Milk, Cheese Cultures, Salt, Enzymes), Whey Protein Concentrate, Corn Oil, Spices (Including Jalapeño Pepper), Citric Acid, Paprika Extracts, and Lactic Acid.
CONTAINS WHEAT AND MILK INGREDIENTS.

Nutrition Facts

Serving Size 1 oz. (28g/About 15 chips)

Amount Per Serving	
Calories 140	Calories from Fat 60
	% Daily Value*
Total Fat 6g	**9%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Polyunsaturated Fat 1.5g	
Monounsaturated Fat 3.5g	
Cholesterol 0mg	**0%**
Sodium 140mg	**6%**
Potassium 70mg	**2%**
Total Carbohydrate 19g	**6%**
Dietary Fiber 3g	**10%**
Sugars 2g	
Protein 2g	

Vitamin A 0%	•	Vitamin C 0%
Calcium 0%	•	Iron 2%
Vitamin E 6%	•	Thiamin 2%
Riboflavin 2%	•	Niacin 2%
Vitamin B_6 4%	•	Phosphorus 6%
Magnesium 4%	•	Zinc 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

Search

SUNCHIPS® French Onion Flavored Multigrain Snacks

Like 39 SHARE THIS PAGE

- 0g Trans Fat
- MSG Free
- Pig (Porcine) Free
- 18g of Whole Grain

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INGREDIENTS: Whole Corn, Sunflower and/or Canola Oil, Whole Wheat, Whole Oat Flour, Rice Flour, Sugar, Corn Bran, Whey Protein Concentrate, Salt, Buttermilk, Whey, Onion Powder, Sour Cream (Cream, Skim Milk, Cultures), Natural Flavors, Gum Acacia, Skim Milk, Mozzarella Cheese (Milk, Cheese Cultures, Salt, Enzymes), Yeast Extract, Spices (Including Parsley), and Maltodextrin (Made From Corn).
CONTAINS WHEAT AND MILK INGREDIENTS.

Nutrition Facts

Serving Size 1 oz. (28g/About 15 chips)

Amount Per Serving	
Calories 140	Calories from Fat 60
	% Daily Value*
Total Fat 6g	**10%**
Saturated Fat 1g	**5%**
Trans Fat 0g	
Polyunsaturated Fat 1g	
Monounsaturated Fat 3.5g	
Cholesterol 0mg	**0%**
Sodium 150mg	**6%**
Potassium 75mg	**2%**
Total Carbohydrate 18g	**6%**
Dietary Fiber 3g	**10%**
Sugars 3g	
Protein 2g	

Vitamin A 0%	•	Vitamin C 0%
Calcium 0%	•	Iron 2%
Vitamin E 6%	•	Thiamin 2%
Niacin 2%	•	Vitamin B_6 4%
Phosphorus 6%	•	Magnesium 4%
Zinc 2%		

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

Search

SUNCHIPS® HARVEST CHEDDAR® Flavored Multigrain Snacks

Like 46 SHARE THIS PAGE

- 0g Trans Fat
- MSG Free
- Pig (Porcine) Free
- Soy Free
- 18g of Whole Grain

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INGREDIENTS: Whole Corn, Sunflower and/or Canola Oil, Whole Wheat, Whole Oat Flour, Rice Flour, Sugar, Corn Bran, Maltodextrin (Made From Corn), Salt, Cheddar Cheese (Milk, Cheese Cultures, Salt, Enzymes), Natural Flavors, Whey, Whey Protein Concentrate, Onion Powder, Romano Cheese (Cow's Milk, Cheese Cultures, Salt, Enzymes), Buttermilk, Yeast Extract, Citric Acid, Paprika Extracts, Lactic Acid, Garlic Powder, Parmesan Cheese (Milk, Cheese Cultures, Salt, Enzymes), and Skim Milk.
CONTAINS WHEAT AND MILK INGREDIENTS.

Nutrition Facts

Serving Size 1 oz. (28g/About 15 chips)

Amount Per Serving

Calories 140	Calories from Fat 60
	% Daily Value*
Total Fat 6g	**10%**
Saturated Fat 1g	**4%**
Trans Fat 0g	
Polyunsaturated Fat 1g	
Monounsaturated Fat 3.5g	
Cholesterol 0mg	**0%**
Sodium 200mg	**8%**
Potassium 70mg	**2%**
Total Carbohydrate 19g	**6%**
Dietary Fiber 3g	**10%**
Sugars 2g	
Protein 2g	

Vitamin A 0%	•	Vitamin C 0%
Calcium 0%	•	Iron 2%
Vitamin E 6%	•	Thiamin 2%
Riboflavin 2%	•	Niacin 2%
Vitamin B_6 4%	•	Phosphorus 6%
Magnesium 4%	•	Zinc 2%

* Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your calorie needs:

	Calories:	2,000	2,500
Total Fat	Less than	65g	80g
Sat Fat	Less than	20g	25g
Cholesterol	Less than	300mg	300mg
Sodium	Less than	2,400mg	2,400mg
Potassium		3,500mg	3,500mg
Total Carbohydrate		300g	375g
Dietary Fiber		25g	30g

Calories per gram:
Fat 9 • Carbohydrate 4 • Protein 4

MILBERG LLP

NEW YORK
LOS ANGELES
TAMPA
DETROIT

Andrei Rado
Telephone: 212-594-5300
arado@milberg.com

October 14, 2011

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frito Lay North America, Inc.
ATTN: General Counsel/Legal
7701 Legacy Drive
Plano, TX 75024

PepsiCo, Inc.
700 Anderson Hill Road
Purchase, NY 10577

Re: Demand for Action Pursuant to California Civil Code § 1782

To Whom It May Concern:

We represent a purchaser of Frito-Lay North America, Inc.'s ("Frito-Lay") Tostitos and Sun Chips products. Our client purchased Tostitos Multigrain Tortilla Chips, Tostitos Scoops Tortilla Chips, Tostitos Artisan Recipes Fire-Roasted Chipotle Tortilla Chips, Sun Chips Original flavored Multigrain Snacks, Sun Chips French Onion Flavored Multigrain Snacks, and Sun Chips Harvest Cheddar Flavored Multigrain Snacks. Our client is a resident of California. This letter serves as notice and demand for corrective action by Frito-Lay and its parent Company PepsiCo, Inc. ("PepsiCo") pursuant to Consumers Legal Remedies Act, California Civil Code § 1782 ("CLRA"). We hereby demand on behalf of our client and other consumers that you immediately discontinue the false and misleading advertising and marketing of Tostitos and Sun Chips as "natural" and "made with all natural ingredients" and that you return the money you received as a result of your wrongful conduct to the purchasers of Tostitos and Sun Chips products.

Frito Lay markets and advertises certain of its non-organic products, Tostitos Restaurant Style Tortilla Chips, Tostitos Bite Size Rounds Tortilla Chips, Tostitos Crispy Rounds Tortilla Chips, Tostitos Multigrain Tortilla Chips, Tostitos Scoops Tortilla Chips, Tostitos Restaurant Style with a Hint of Lime Tortilla Chips, Tostitos Artisan Recipes Fire-Roasted Chipotle Tortilla Chips, Sun Chips Original flavored Multigrain Snacks, Sun Chips Garden Salsa Flavored

Multigrain Snacks, Sun Chips French Onion Flavored Multigrain Snacks, and Sun Chips Harvest Cheddar Flavored Multigrain Snacks as "All Natural." The term "natural" conveys to reasonable consumers that these products are made of natural ingredients. However, these products are not "100% natural," but instead are made from genetically modified plants ("GM") or genetically modified organisms ("GMO"). Our client and others purchased Tostitos and Sun Chips products, unaware of the fact that the representations about its natural ingredients were not truthful.

These representations and omissions are false and misleading and constitute unfair methods of competition and unlawful, unfair, and/or fraudulent acts or practices, undertaken by Frito-Lay with the intent to result in the sale of Tostitos and Sun Chips products to the consuming public.

Frito-Lay's practices involving its marketing, advertising and sale of Tostitos and Sun Chips constitute violations of the CLRA § 1750 *et seq*. Specifically, Frito-Lay's practices violate CLRA § 1770(a) under, *inter alia*, as described with respect to the following subdivisions:

> (9) advertising Tostitos and Sun Chips products with intent not to sell it as advertised; and
>
> (16) misrepresenting that a subject of a transaction has been supplied in accordance with a previous representation when it has not.

Frito-Lay's practices also violate California Business & Professions Code § 17200 and § 17500 *et seq*. and constitute a breach of warranty.

Pursuant to California Civil Code § 1782, we hereby demand on behalf of our client and all others similarly situated that Frito-Lay immediately correct and rectify these violations by ceasing the misleading marketing and advertising campaign for Tostitos and Sun Chips products, and initiating a corrective advertising campaign to re-educate consumers regarding the truth about Tostitos and Sun Chips products. In addition, Frito-Lay must offer to refund the purchase price of all Tostitos and Sun Chips products, plus provide reimbursement for interest.

We await your response.

Sincerely,

Andrei V. Rado

Andrei V. Rado
MILBERG LLP

cc:
MILBERG LLP
Jessica J. Sleater
One Pennsylvania Plaza
New York, New York 10119

MILBERG LLP
Jeff S. Westerman
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300 S. Grand Avenue, Suite 3900
Los Angeles, CA 90071

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Sent To: Frito Lay North America, Inc.
Street, Apt. No., or PO Box No.: Attn: General Counsel/Legal 7701 Legacy Drive
City, State, ZIP+4: Plano, TX 75204

PS Form 3800, August 2006 See Reverse for Instructions

7010 0290 0002 8104 4486

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Pepsico, Inc.
700 Anderson Hill Road
Purchase, NY 10577

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Eddie Munoz ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

PURCHASE NY 10577 OCT 17 2011 USPS

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from ser. 7010 0290 0002 8104 4493

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

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PURCHASE NY 10577 OFFICIAL USE

Postage	$ $1.08
Certified Fee	$2.85
Return Receipt Fee (Endorsement Required)	$2.30
Restricted Delivery Fee (Endorsement Required)	$0.00
Total Postage & Fees	$ $6.83

PURCHASE NY 10577-9998 09 OCT 14 2011 Postmark Here

Sent To Pepsico, Inc.
Street, Apt. No.; or PO Box No. 700 Anderson Hill Road
City, State, ZIP+4 Purchase, NY 10577

PS Form 3800, August 2006 See Reverse for Instructions

Track & Confirm

You entered: 70100290000281044486

Status: Delivered

Your item was delivered at 4:18 am on October 18, 2011 in PLANO, TX 75024. Additional information for this item is stored in files offline.

Additional information for this item is stored in files offline. You may request that the additional information be retrieved from the archives, and that we send you an e-mail when this retrieval is complete. Requests to retrieve additional information are generally processed within four hours. This information will remain online for 30 days.

I would like to receive notification on this request

[redacted]

Find Another Item

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
JULIE GENGO, individually and on behalf of all others similarly situated,

DEFENDANTS
FRITO-LAY NORTH AMERICA, INC.,

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

MILBERG LLP, JEFF S. WESTERMAN and DAVID E. AZAR
300 S. Grand Avenue, Suite 3900, Los Angeles, CA 90071
Telephone: (213) 617-1200 Facsimile: (213) 617-1975

Attorneys (If Known)

GIBSON, DUNN & CRUTCHER, ANDREW S. TULUMELLO
1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
Telephone: (202) 955-8657 Facsimile: (202) 530-9678

II. BASIS OF JURISDICTION (Place an X in one box only.)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☑ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☑ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. 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 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☑ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☑ Yes ☐ No ☑ **MONEY DEMANDED IN COMPLAINT: $** TBD

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Violation of Cal Bus & Prof Code §§17500 et seq. and 17200 et seq., Cal Civ Code §1750 et seq., Breach of Express Warranty; and 15 U.S.C. §2301 et seq.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 810 Selective Service
☐ 850 Securities/Commodities/ Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 890 Other Statutory Actions
☐ 891 Agricultural Act
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Info. Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☑ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS
PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Fed. Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury-Med Malpractice
☐ 365 Personal Injury-Product Liability
☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
☐ 462 Naturalization Application
☐ 463 Habeas Corpus-Alien Detainee
☐ 465 Other Immigration Actions

TORTS
PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/Accommodations
☐ 444 Welfare
☐ 445 American with Disabilities - Employment
☐ 446 American with Disabilities - Other
☐ 440 Other Civil Rights

PRISONER PETITIONS
☐ 510 Motions to Vacate Sentence Habeas Corpus
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus/ Other
☐ 550 Civil Rights
☐ 555 Prison Condition

FORFEITURE / PENALTY
☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 R.R. & Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety /Health
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS-Third Party 26 USC 7609

CV1110322

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☑ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☑ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:
(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Contra Costa

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Texas

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	Contra Costa and generally throughout the state

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ **Date** December 14, 2011

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))