

PATRICK W. EMERY, ESQ., SB #061050
ABBEY, WEITZENBERG, WARREN & EMERY, P.C.
100 Stony Point Road, Suite 200 (95401)
P.O. Box 1566
Santa Rosa, CA 95402-1566
Telephone: 707-542-5050
Facsimile: 707-542-2589

BRETT EMISON, ESQ., *Pro Hac Vice*
ADAM W. GRAVES, ESQ., *Pro Hac Vice*
PHYLLIS A. NORMAN, ESQ., *Pro Hac Vice*
LANGDON & EMISON
911 Main Street
P.O. Box 220
Lexington, MO 64067
Telephone: 660-259-6175
Facsimile: 660-259-4571

ERIC L. DIRKS, ESQ., *Pro Hac Vice*
WILLIAMS DIRKS, LLC
1100 Main Street, Suite 2600
Kansas City, MO 64105
Telephone: 816-876-2600
Facsimile: 816-221-8763

ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THOMAS HAGEDORN, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

NEST LABS, INC.,

Defendant.

Case No. _____

CLASS ACTION

COMPLAINT FOR RELIEF BASED ON:

**(1) VIOLATION OF CALIFORNIA
CONSUMERS LEGAL REMEDIES
ACT**

**(2) VIOLATION OF CALIFORNIA
UNFAIR COMPETITION LAW**

DEMAND FOR JURY TRIAL

Plaintiff Thomas Hagedorn, on behalf of himself and all others similarly situated, alleges
as follows:

///

NATURE OF THE CASE

1. Plaintiff brings this lawsuit because the Nest thermostat is defective.

2. Defendant knew about the defect yet continued to market and sell its product to over one-million consumers in the United States.

3. Plaintiff therefore brings this action on behalf of a proposed class of consumers who purchased the defective Nest thermostat nationwide.

PARTIES

4. Plaintiff Thomas Hagedorn is a citizen and resident of Parkville, Missouri.

5. Defendant Nest Labs, Inc. (“Nest”) is incorporated in Delaware with its principal place of business in Palo Alto, California.

6. Defendant can be served through its registered agent at National Registered Agents, Inc., 818 West 7th Street, Los Angeles, California, 90017.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of the individual class members exceed the sum value of \$5,000,000, exclusive of interest and costs, and this is a class action in which more than two-thirds of the proposed plaintiff class, on the one hand, and Defendant, on the other, are citizens of different states.

8. This Court has jurisdiction over Nest because Nest is registered to conduct business in California, has its principal place of business in California and engaged in its unlawful and unfair conduct from within California.

9. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this District.

FACTUAL ALLEGATIONS

10. The majority of homes today have some form of “programmable” thermostat for the home’s heating/cooling system.

11. These “programmable” systems generally use a simple 4 wire system to control the heating/cooling/system and a disposable battery to power the display.

12. The simple 4 wire system consists of:

- a. A green wire to control the fan
- b. A white wire to control the heat
- c. A yellow wire to control the air conditioning and
- d. An RH/RC wire which supplies power to the thermostat to control the AC/Heating units

13. A modern trend in thermostats is the “smart” thermostat. These thermostats allow a user to control their home heating and AC unit via a computer, tablet or smartphone.

14. In order to control the units through a computer, tablet or smartphone, these “smart” thermostats are generally connected to the internet via the home’s Wifi internet connection.

15. These additional features require more power than a disposable battery and thus an alternative power supply is required.

16. The industry standard “smart” thermostat utilizes a Common Wire or “C” wire to supply the additional power required to operate the smart thermostat.

17. The “C” Wire runs from the heating/cooling unit and provides a direct power supply for the operation of the “smart” thermostat.

18. The Nest thermostat is advertised and sold as an easy to use and simple to install thermostat that learns your schedule and programs itself.

19. Nest represents that nearly anyone can easily install the Nest thermostat.

20. Nest represents that “if you’re comfortable installing a light fixture, you can install the Nest” and that the Nest can be installed within 15 minutes” and that “In fact, 99% of the people who installed Nest themselves would do it again.”

21. Nest’s commercials make it look simple to install and to use.

22. Nowhere does Nest suggest there is a problem with its power supply or that it will stop working at night. Instead, Nest represents that it will keep you comfortable at night.

23. Nest represents that you only need to attach the wires that were attached to the original thermostat and that “no additional wires are required.”

1 24. The Nest is designed differently from the industry standard “Smart” thermostat
2 which uses a “C” wire to charge the battery of the thermostat. The “C” wire is not easily installed
3 by a layperson and so NEST designed its product for use without a “C” wire to make lay person
4 installation easier.

5 25. Without the use of the industry-standard “C” wire, Nest is left to draw its charge
6 from the low voltage wires connected directly to the heating/AC unit. Such a charge can only be
7 drawn when the heating or AC unit is running.

8 26. But when the HVAC unit stops running (for example, when the weather is nice
9 and neither the heat or A/C unit is running or when a customer leaves for vacation) the Nest
10 battery quickly dies.

11 27. In addition, the fluctuating power from the low voltage wires causes a short in the
12 Nest baseplate. In turn, this short can cause the Nest unit to turn the heating or AC unit in a
13 permanent “on” position, meaning the heating or AC unit will remain running until the Nest unit,
14 including its baseplate are removed from the wall and all wires are disconnected.

15 28. This defect leads to the thermostat turning off the HVAC system or to the system
16 running constantly.

17 29. All Nest thermostats that are not connected to a C Wire will fail over time due to
18 this defect.

19 30. Nest Labs, Inc. knew that its thermostats were defective and were likely to fail.
20 But instead of disclosing the problem, it concealed its knowledge from consumers and continued
21 to sell its defective product.

22 31. Nest estimates that it has sold its thermostat to over 1 million U.S. residents. That
23 number continues to grow quickly.

24 32. Nest has refused to repair or provide a refund for malfunctioning units to
25 numerous purchasers, including Plaintiff.

26 33. Plaintiff purchased his Nest thermostat in early January 2013 and installed the unit
27 on or about January 23, 2013.

28 ///

1 34. On or about January 6, 2014, Plaintiff woke up because his thermostat stopped
2 working in the middle of the night.

3 35. Plaintiff contacted an HVAC specialist who told him that the battery to his Nest
4 thermostat had died due to the fact that it was not connected to a “C” wire.

5 36. Three of the pipes in Plaintiff’s home froze and one broke due to the defect.

6 37. On or about January 7, 2014, Plaintiff returned his Nest unit to Lowes and
7 received a replacement unit.

8 38. On the same day, Plaintiff installed the replacement nest unit, yet the replacement
9 unit failed as well.

10 39. Plaintiff attempted to contact Nest customer service about the malfunction on three
11 occasions. Each time he was put on hold for an unreasonably long time period and was never able
12 to connect with a customer service representative. Plaintiff also filed a complaint online.

13 40. Despite his multiple attempts to contact customer service and to seek assistance,
14 Nest has provided no assistance to Plaintiff.

15 41. Numerous other individuals have had similar experiences.

16 42. Nest refuses to tell its customers why their Nest thermostats are failing and that it
17 is a result of a design defect.

18 43. Nest Labs, Inc. has superior and exclusive knowledge of the design defect, and
19 knew that the defect was not known or reasonably discoverable by Plaintiff and class members
20 prior to their purchase of the Nest thermostat.

21 44. Only Nest had access to information about the high failure rate of its thermostats.
22 It knew this through its proprietary testing, customer service, warranty, replacement and sales
23 data.

24 45. The defect is a fact that would be considered material by a reasonable consumer
25 deciding whether to purchase the Nest.

26 46. Reasonable consumers, like Plaintiff, expect and assume that their thermostat will
27 function. Plaintiff and class members further expect and assume that Nest will not sell a
28 thermostat with a known defect.

1 55. Numerosity. Members of the class are so numerous that their individual joinder is
2 impracticable. Nest has sold millions of its thermostats.

3 56. Existence and predominance of common questions. Common questions of law
4 and fact exist as to all members of the class and predominate over questions affecting only
5 individual class members. These common questions include the following:

- 6 a. Whether the Nest thermostats are defective;
- 7 b. Whether Nest knew of the defect;
- 8 c. How long Nest has known of the defect;
- 9 d. Whether Nest has a duty to disclose the defective nature of the thermostat
10 to Plaintiff and Class members;
- 11 e. Whether Nest has violated the Consumers Legal Remedies Act, Civ. Code
12 § 1750 et seq.;
- 13 f. Whether Nest has engaged in unlawful, unfair, or fraudulent business
14 practices in violation of Business and Professions Code § 17200 et seq.;
- 15 g. Whether Nest is honoring its express warranty; and
- 16 h. Whether Plaintiff and the other class members are entitled to equitable
17 relief, including but not limited to a preliminary and/or permanent injunction.

18 57. Typicality. Plaintiff's claims are typical of the claims of the class, because, among
19 other thing, Plaintiff purchased the same thermostat as all other Class Members.

20 58. Adequacy. Plaintiff is an adequate representative of the class because his interests
21 do not conflict with the interests of the members of the class he seeks to represent. Plaintiff has
22 retained counsel competent and experienced in complex class action litigation and product defect
23 litigation, and Plaintiff intends to prosecute this action vigorously. The interests of members of
24 the class will be fairly and adequately protected by Plaintiff and his counsel.

25 59. Superiority. The class action is superior to other available means for the fair and
26 efficient adjudication of this dispute. The injury suffered by each class member, while meaningful
27 on an individual basis, is not of such magnitude as to make the prosecution of individual actions
28 against Nest economically feasible. Even if class members themselves could afford such

individualized litigation, the court system could not. In addition to the burden and expense of managing numerous actions arising from the defect, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court.

60. In the alternative, the class may be certified because:

a. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class members which would establish incompatible standards of conduct for Nest;

b. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and

c. Nest has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the members of the Class as a whole.

CAUSES OF ACTION

FIRST CAUSE OF ACTION (Violation of the Consumers Legal Remedies Act, Cal. Civ. Code. §§ 1750 *et seq.*)

61. Plaintiff, on behalf of herself and all others similarly situated, realleges as if fully set forth, each and every allegation set forth herein.

62. Nest is a “person” within the meaning of Civil Code §§ 1761(c) and 1770, and provided “goods” within the meaning of California Civil Code §§ 1761(b) and 1770.

63. Plaintiff and members of the class are “consumers” within the meaning of Civil Code §§ 1761(d) and 1770, and have engaged in a “transaction” within the meaning of Civil Code §§ 1761(e) and 1770.

64. As set forth herein, Nest's acts and practices, undertaken in transactions intended to result and which did result in the sale of Nest thermostats, violate Section 1770 of the Consumers Legal Remedies Act in that: (a) Nest represents that its goods have sponsorship, approval, characteristics, uses or benefits which they do not have; (b) Nest advertises its goods with intent not to sell them as advertised; (c) Nest represents that a transaction confers or involves rights, remedies, or obligations which it does not have or involve; and/or (d) Nest represents that its goods have been supplied in accordance with a previous representation when they have not.

65. The acts and practices engaged in by Nest that violate the Consumers Legal Remedies Act include failing to disclose, at the point of sale or otherwise, that the thermostat is defective.

66. Pursuant to the provision of California Civil Code § 1780, Plaintiff seeks an order enjoining Nest from the unlawful practices described herein, a declaration that Nest's conduct violates the Consumers Legal Remedies Act, and attorneys' fees and costs of litigation.

SECOND CAUSE OF ACTION
(For unlawful, unfair, and fraudulent business practices under
Business and Professions Code Section 17200 et seq.)

67. Plaintiff, on behalf of himself and all others similarly situated, realleges as if fully set forth, each and every allegation set forth herein.

68. Nest's acts and practices, as alleged in this complaint, constitute unlawful, unfair and/or fraudulent business practices, in violation of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.

69. The business practices engaged in by Nest that violate the Unfair Competition Law include failing to disclose, at the point of sale or otherwise, that the thermostat is defective, and refusing to recall or notify consumers about the defect.

70. Nest engaged in unlawful business practices by violating the Consumers Legal Remedies Act, Civil Code § 1750 et seq.

71. Nest engaged in unfair business practices by, among other things:

a. Engaging in conduct where the utility of that conduct is outweighed by the gravity of the consequences to Plaintiff and other members of the class;

b. Engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and other members of the class; and

c. Engaging in conduct that undermines or violates the stated policies underlying the CLRA, which seeks to protect consumers against unfair and sharp business practices and to promote a basic level of honesty and reliability in the marketplace.

72. Nest engaged in fraudulent business practices by engaging in conduct that was and is likely to deceive a reasonable consumer.

73. As a direct and proximate result of Nest's unlawful, unfair and fraudulent business practices as alleged herein, Plaintiff and Class members have suffered injury in fact and lost money or property, in that they purchased the Nest thermostat they otherwise would not have, paid more for the Nest thermostat than they otherwise would, paid for repairs and replacements, and are left with thermostats of diminished value and utility because of the defect. Meanwhile, Nest has sold more thermostats than it otherwise could have and charged inflated prices, unjustly enriching itself thereby.

74. Plaintiff and Class members are entitled to equitable relief, including corrective notice, restitutionary disgorgement of all profits accruing to Nest because of its unlawful, unfair and fraudulent, and deceptive practices, attorneys' fees and costs, declaratory relief, and a permanent injunction enjoining Nest from its unlawful, unfair, fraudulent and deceitful activity.

PRAYER

WHEREFORE, Plaintiff, on Plaintiff's own behalf and on behalf of the Class, prays for judgment as follows:

a. For an order certifying the Plaintiff Class and appointing Plaintiff and his counsel to represent the Class;

b. For an order awarding Plaintiff and the members of the Class restitution, or other equitable relief as the Court deems proper;

c. For an order enjoining Nest from continuing to engage in unlawful business practices, as alleged herein;

d. For a declaration that Nest's practices are unlawful and unfair and ordering corrective notice to consumers;

e. For an order awarding Plaintiff and the members of the Class pre-judgment and post-judgment interest;

f. For an order awarding Plaintiff and the members of the Class reasonable attorneys' fees and costs of suit, including expert witness fees; and

g. For an order awarding such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff, by counsel, requests a trial by jury on his legal claims, as set forth herein.

DATED: February 19, 2014. Respectfully submitted,

/s/ Patrick W. Emery

PATRICK W. EMERY, ESQ., SB #061050
ABBAY, WEITZENBERG, WARREN & EMERY, P.C.

BRETT EMISON, ESQ., *Pro Hac Vice* pending
ADAM W. GRAVES, ESQ., *Pro Hac Vice* pending
PHYLLIS A. NORMAN, ESQ., *Pro Hac Vice* pending
LANGDON & EMISON

ERIC L. DIRKS, ESQ., *Pro Hac Vice* pending
WILLIAMS DIRKS, LLP

ATTORNEYS FOR PLAINTIFF

JS 44 (Rev. 12/12) cand rev (1/15/13)

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

THOMAS HAGEDORN, on behalf of himself and all others
similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Patrick W. Emery, Abbey, Welzenberg, Warren & Emery P.C.
100 Stony Point Road, Ste. 200, Santa Rosa, CA 95401; 707-542-5050

DEFENDANTS

NEST LABS, INC.

County of Residence of First Listed Defendant Santa Clara County, CA
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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 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 checked="" 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)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other 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	<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"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

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

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

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:
Consumer protection class action.

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
02/19/2014

SIGNATURE OF ATTORNEY OF RECORD
//s/ PATRICK W. EMERY

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)



SAN FRANCISCO/OAKLAND

☐ SAN JOSE

☐ EUREKA

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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.