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21 Attorneys for Thomas A. Trax, and the Putative Class

22 **UNITED STATES DISTRICT COURT**
23 **SOUTHERN DISTRICT OF CALIFORNIA**

<p>24 Thomas A. Trax, individually and 25 on behalf of all others similarly 26 situated</p> <p>27 Plaintiff,</p> <p>28 v.</p> <p>LifeLock, Inc.,</p> <p>Defendant.</p>	<p>Case No: <u>'15CV0220 MMAWVG</u></p> <p>Complaint For Damages</p> <p><u>Class Action</u></p> <p>Jury Trial Demanded</p>
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INTRODUCTION

- 1
2 1. Plaintiff Thomas A. Trax (“Trax” or “Plaintiff”) brings this Class Action
3 Complaint for damages, injunctive relief, and any other available legal or
4 equitable remedies, resulting from the unlawful and deceptive business
5 practices of LifeLock, Inc. (“LifeLock” or “Defendant”), with regard to
6 Defendant’s practice of making automatic renewal offers and continuous
7 service offers, as those terms are defined by Cal. Bus. & Prof. Code § 17600,
8 et seq. (“California’s Automatic Purchase Renewal Statute”), to California
9 consumers and the general public in violation of California’s Unfair
10 Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq. (the "UCL") and
11 Cal. Bus. Prof. Code § 17535.
- 12 2. This action seeks to enjoin Defendant’s practice of making automatic renewal
13 offers and continuous service offers, as those terms are defined by
14 California’s Automatic Purchase Renewal Statute, to California consumers
15 and the general public, for Defendant’s commercial purposes and pecuniary
16 gain. Defendant’s unlawful conduct is central to its marketing program, which
17 allows Defendant to take unfair advantage of California consumers.
- 18 3. Defendant’s automatic renewal and continuous service offers are a scheme
19 carried out by Defendant which involves making money from California
20 consumers through false, deceptive, and misleading means by charging
21 California consumers for automatic renewal offers, as California’s Automatic
22 Purchase Renewal Statute defines that term, without the knowledge of those
23 consumers, throughout the period covered by the applicable statute of
24 limitations.
- 25 4. Defendant makes automatic renewal or continuous service offers to California
26 consumers, including Plaintiff and putative class members, in violation of
27 California’s Automatic Purchase Renewal Statute by:
28





1 a) Failing to present the automatic renewal offer terms or
2 continuous service offer terms in a clear and conspicuous manner before the
3 subscription or purchasing agreement is fulfilled and in visual proximity, or
4 in the case of an offer conveyed by voice, in temporal proximity, to the
5 request for consent to the offer, in violation of Cal. Bus. & Prof. Code §
6 17600, et seq.

7 b) Charging the consumer's credit or debit card or the consumer's
8 account with a third party for an automatic renewal or continuous service
9 without first obtaining the consumer's affirmative consent to the agreement
10 containing the automatic renewal offer terms or continuous service offer
11 terms, in violation of Cal. Bus. & Prof. Code § 17600, et seq.

12 c) Failing to provide an acknowledgment that includes the
13 automatic renewal or continuous service offer terms, cancellation policy, and
14 information regarding how to cancel in a manner that is capable of being
15 retained by the consumer; and where the offer includes a free trial, Defendant
16 also fails to disclose in the acknowledgment how to cancel and allow the
17 consumer to cancel before the consumer pays for the goods or services, in
18 violation of Cal. Bus. & Prof. Code § 17600, et seq.

19
20 5. Plaintiff makes these allegations on information and belief, with the
21 exception of those allegations that pertain to a plaintiff, which Plaintiff
22 alleges on personal knowledge.

23 6. While many violations are described below with specificity, this Complaint
24 alleges violations of the statutes cited in their entirety.

25 7. All of the claims stated herein are asserted against Defendant and any of its
26 predecessors, successors, and/or assigns that do, or have done, business, with
27 class members in California during the class period.

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JURISDICTION AND VENUE

- 1
- 2 8. This Court has jurisdiction over this matter pursuant to the Class Action
- 3 Fairness Act (CAFA) because the matter in controversy in this matter
- 4 exceeds the sum or value of \$5,000,000 as to all putative Class members,
- 5 exclusive of attorneys’ fees and costs. 28 U.S.C. Sections 1332(d), 1453, and
- 6 1711-1715.
- 7 9. Plaintiff further alleges a class action, which will result in class members
- 8 belonging to a different state than that of Defendant. Therefore, both
- 9 elements of diversity jurisdiction under the Class Action Fairness Act of 2005
- 10 (“CAFA”) are present, and this Court has jurisdiction pursuant to 28 U.S.C. §
- 11 1332(d)(2), as Plaintiff is a resident and citizen of the State of California
- 12 while Defendant is a corporation incorporated under the laws of the State of
- 13 Arizona.
- 14 10. Venue is proper in the United States District Court for the Southern District of
- 15 California pursuant to 28 U.S.C. § 1391(b) and 1441(a) because Plaintiff
- 16 lived in the County of San Diego in the State of California at the time the
- 17 events giving rise to Plaintiff’s causes of action against Defendant occurred,
- 18 and at the time Plaintiff made payment to Defendant. Plaintiff currently
- 19 resides in San Diego County, California and within this judicial district.
- 20 11. Defendant actively participates in substantial business activities in California
- 21 and within the jurisdiction of this court, and intentionally avails itself of the
- 22 advantages of doing business in California and San Diego County. Defendant
- 23 extensively markets and advertises in California while soliciting and
- 24 conducting its operations throughout the state.
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PARTIES

1
2 12. Plaintiff is, and at all times mentioned herein was, an individual and resident
3 of San Diego, California.

4 13. Defendant is, and at all times mentioned herein was, a corporation whose
5 primary corporate address is 60 East Rio Salado Parkway, Suite 400, Tempe
6 Arizona 85281.

7 14. At all times relevant, Defendant conducted business in the State of California
8 and in the County of San Diego.

9 15. Plaintiff is a consumer for purposes of Cal. Bus. Prof. Code § 17601(d).

10 16. Defendant owns and operates a company that offers what it claims is
11 comprehensive identity theft protection to help safeguard the finances, credit
12 and good name of consumers.

ALLEGATIONS

13
14 17. Plaintiff incorporates by reference and realleges all paragraphs previously
15 alleged herein.

16 18. At all times relevant, Defendant made and continues to make automatic
17 renewal offers and continuous service offers, as those terms are defined by
18 Cal. Bus. & Prof. Code § 17600, et seq. (“California’s Automatic Purchase
19 Renewal Statute”) to Plaintiff and other consumers similarly situated.

20
21 19. On or about August 13, 2012, in a good faith effort to protect his financial
22 credit and financial information, Plaintiff purchased a subscription from
23 LifeLock, a company that represents to consumers that it assists in the
24 protection of consumer financial identity.

25 20. With this goal in mind, Plaintiff purchased an annual subscription to the
26 service Defendant offered.

27 21. At the time Plaintiff purchased this subscription Defendant failed to present
28 the automatic renewal offer terms or continuous service offer terms in a clear

1 and conspicuous manner, as defined by California’s Automatic Purchase
2 Renewal Statute, before the subscription or purchasing agreement was
3 fulfilled, and in visual or temporal proximity to Defendant’s request for
4 consent to the offer.

5 22. At the time Plaintiff purchased this subscription Defendant charged, and
6 continues to charge, Plaintiff for this automatic renewal offer without first
7 obtaining the affirmative consent to the agreement containing the automatic
8 renewal offer terms or continuous service offer terms.

9 23. At the time Plaintiff subscribed to Defendant’s services, Plaintiff was
10 subjected to Defendant’s unlawful policies and/or practices as set forth herein,
11 in violation of California’s Automatic Purchase Renewal Statute.

12 24. The material circumstances surrounding this experience by Plaintiff were the
13 same, or nearly the same, as the other class members Plaintiff proposes to
14 represent, and Plaintiff and all class members were required to pay, and did
15 pay, money for this service by Defendant.

16
17 **CLASS ACTION ALLEGATIONS**

18 25. Plaintiff brings this action, on behalf of himself and all others similarly
19 situated (“the Class”).

20 26. Plaintiff represents, and is a member of, the Class, consisting of:

21 All persons within California who purchased products
22 and/or services from Defendant via Defendant’s website
23 as part of an automatic renewal plan or continuous service
24 offer, within four years prior to the filing of the Complaint
in this action.

25 27. Defendant and its employees or agents are excluded from the Class. Plaintiff
26 does not know the number of members in the Class, but believes the Class
27 members number in the hundreds of thousands, if not more. Thus, this matter
28

1 should be certified as a Class action to assist in the expeditious litigation of
2 this matter.

3 28. There is a well-defined community of interest in the litigation, the proposed
4 class is easily ascertainable, and Plaintiff is a proper representative of the
5 Class because:

6 a) **Numerosity**: The potential members of the Class as defined are so
7 numerous and so diversely located throughout California, that joinder of all
8 the members of the Class impracticable. The class members are dispersed
9 throughout California. Joinder of all members of the proposed class is
10 therefore not practicable.

11 b) **Commonality**: There are questions of law and fact common to Plaintiff
12 and the Class that predominate over any questions affecting only individual
13 members of the Class. These common questions of law and fact include,
14 without limitation:

- 15 i. Whether Defendant charged Plaintiff and class members' payment
16 method for an automatic renewal or continuous service without first
17 obtaining Plaintiff's and class members' affirmative consent to the
18 agreement containing the automatic renewal offer terms or
19 continuous service offer terms;
- 20 ii. Whether Defendant's Terms and Conditions contains the automatic
21 renewal offer terms and/or continuous service offer terms as
22 defined by Cal. Bus. & Prof. Code § 17601;
- 23 iii. Whether Defendant failed to present the automatic renewal offer
24 terms or continuous service offer terms in a clear and conspicuous
25 manner before the subscription or purchasing agreement was
26 fulfilled, and in visual or temporal proximity to the request for
27 consent to the offer;
28

- 1 iv. Whether Cal. Bus. & Prof. Code § 17603 provides for restitution
- 2 for money paid by class members in circumstances where the goods
- 3 and services provided by Defendant are deemed an unconditional
- 4 gift;
- 5 v. Whether Plaintiff and the Class are entitled to restitution under Cal.
- 6 Bus. & Prof. Code §§ 17200-17203;
- 7 vi. Whether Plaintiff and class members are entitled to declaratory
- 8 relief, injunctive relief and/or restitution under Cal. Bus. & Prof.
- 9 Code § 17535; and,
- 10 vii. The proper formula(s) for calculating and/or restitution owed to
- 11 Class members.

12 c) **Typicality**: Plaintiff's claims are typical of the claims of the Class.

13 Plaintiff and class members were deprived of property rightly belonging to

14 them, arising out of and caused by Defendant's common course of conduct in

15 violation of law as alleged herein, in similar ways.

16 d) **Adequacy of Representation**: Plaintiff is a member of the Class and

17 will fairly and adequately represent and protect the interests of the class

18 members. Plaintiff's interests do not conflict with those of class members.

19 Counsel who represent Plaintiff are competent and experienced in litigating

20 large class actions, and will devote sufficient time and resources to the case

21 and otherwise adequately represent the Class.

22 e) **Superiority of Class Action**: A class action is superior to other

23 available means for the fair and efficient adjudication of this controversy.

24 Individual joinder of all class members is not practicable, and questions of

25 law and fact common to the Class predominate over any questions affecting

26 only individual members of the Class. Plaintiff and class members have

27 suffered or may suffer loss in the future by reason of Defendant's unlawful

28

1 policies and/or practices of not complying with Cal. Bus. Prof. Code §§
 2 17600-17606. Certification of this case as a class action will allow those
 3 similarly situated persons to litigate their claims in the manner that is most
 4 efficient and economical for the parties and the judicial system. Certifying
 5 this case as a class action is superior because it allows for efficient and full
 6 restitution to class members, and will thereby effectuate California's strong
 7 public policy of protecting the California public from violations of its laws. If
 8 this action is not certified as a Class Action, it will be impossible as a
 9 practical matter for many or most class members to bring individual actions
 10 to recover monies due from Defendant, due to the relatively small amounts of
 11 such individual recoveries relative to the costs and burdens of litigation.

12 **FIRST CAUSE OF ACTION**

13 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17600, ET SEQ.**

14 **[CALIFORNIA'S AUTOMATIC PURCHASE RENEWAL STATUTE]**

- 15 29. Plaintiff incorporates by reference all of the above paragraphs of this
 16 Complaint as though fully stated herein.
- 17 30. At a date presently unknown to Plaintiff, but at least four years prior to the
 18 filing of this action, and as set forth above, Defendant has engaged in the
 19 practice of making automatic renewal offers and continuous service offers, as
 20 those terms are defined by Cal. Bus. & Prof. Code § 17600, et seq.
 21 ("California's Automatic Purchase Renewal Statute"), to California
 22 consumers and the general public.
- 23 31. Plaintiff and members of the putative Class have suffered an "injury in fact"
 24 and have lost money and/or property as a result of Defendant's: (a) failure to
 25 present Defendant's automatic renewal offer terms or continuous service offer
 26 terms in a clear and conspicuous manner before the subscription or
 27 purchasing agreement is fulfilled and in visual proximity, or in the case of an
 28



1 offer conveyed by voice, in temporal proximity, to the request for consent to
2 the offer; (b) charges to the consumer's credit or debit card or the consumer's
3 account for an automatic renewal or continuous service without first obtaining
4 the consumer's affirmative consent to the agreement containing the automatic
5 renewal offer terms or continuous service offer terms; and (c) failure to
6 provide an acknowledgment that includes the automatic renewal or
7 continuous service offer terms, cancellation policy, and information regarding
8 how to cancel in a manner that is capable of being retained by the consumer;
9 and where Defendant's offer includes a free trial, Defendant also fails to
10 disclose in the acknowledgment how to cancel and allow the consumer to
11 cancel before the consumer pays for the goods or services, in violation of Cal.
12 Bus. & Prof. Code § 17600, et seq.

13
14 32. As a direct and proximate result of Defendant's aforementioned conduct and
15 representations, Defendant received and continues to hold monies rightfully
16 belonging to Plaintiff and other similarly situated consumers

17 33. As a direct and proximate result of Defendant's violations of Cal. Bus. &
18 Prof. Code § 17600, et seq., Plaintiff and members of the Class are entitled to
19 a declaration that Defendant violated the California Automatic Purchase
20 Renewal Statute.

21 34. Plaintiff and the Class are also entitled to and seek injunctive relief
22 prohibiting such conduct in the future.

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SECOND CAUSE OF ACTION

VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.

[CALIFORNIA’S UNFAIR COMPETITION LAW]

35. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

36. Plaintiff and Defendant are each “person[s]” as defined by California Business & Professions Code § 17201. California Bus. & Prof. Code § 17204 authorizes a private right of action on both an individual and representative basis.

37. “Unfair competition” is defined by Business and Professions Code Section § 17200 as encompassing several types of business “wrongs,” two of which are at issue here: (1) an “unlawful” business act or practice, (2) an “unfair” business act or practice, (3) a “fraudulent” business act or practice, and (4) “unfair, deceptive, untrue or misleading advertising.” The definitions in § 17200 are drafted in the disjunctive, meaning that each of these “wrongs” operates independently from the others.

38. By and through Defendant’s conduct alleged in further detail above and herein, Defendant engaged in conduct which constitutes (a) unlawful and (b) unfair business practices prohibited by Bus. & Prof. Code § 17200 et seq.

(a) Unlawful” Prong

39. As a result of Defendant’s acts and practices in violation of California’s Automatic Renewal Statute, California’s Bus. & Prof. Code § 17600, et seq., Defendant has violated California’s Unfair Competition Law, Business & Professions Code §§ 17200 *et seq.*, which provides a cause of action for an “unlawful” business act or practice perpetrated on members of the California public.

1 40. Defendant had other reasonably available alternatives to further its legitimate
2 business interest, other than the conduct described herein, such as adequately
3 disclosing the terms of Defendant’s automatic renewal offers and continuous
4 service offers, as set forth by Cal. Bus. & Prof. Code § 17600, et seq.

5 41. Plaintiff and the putative class members reserve the right to allege other
6 violations of law, which constitute other unlawful business practices or acts,
7 as such conduct is ongoing and continues to this date.

8 ***(b) “Unfair” Prong***

9 42. Defendant’s actions and representations constitute an “unfair” business act or
10 practice under § 17200 in that Defendant’s conduct is substantially injurious
11 to consumers, offends public policy, and is immoral, unethical, oppressive,
12 and unscrupulous as the gravity of the conduct outweighs any alleged benefits
13 attributable to such conduct. Without limitation, it is an unfair business act or
14 practice for Defendant to knowingly or negligently fail to adequately disclose
15 the terms of Defendant’s automatic renewal offers and continuous service
16 offers, as set forth by Cal. Bus. & Prof. Code §§ 17600, et seq.

17 43. At a date presently unknown to Plaintiff, but at least four years prior to the
18 filing of this action, and as set forth above, Defendant has committed acts of
19 unfair competition as defined by Cal. Bus. & Prof. Code §§ 17200 et seq., as
20 alleged further detail above and herein.

21 44. Plaintiff and other members of the Class could not have reasonably avoided
22 the injury suffered by each of them. Plaintiff reserves the right to allege
23 further conduct that constitutes other unfair business acts or practices. Such
24 conduct is ongoing and continues to this date, as Defendant continues to make
25 automatic renewal offers and continuous service offers in the manner
26 described above in herein, in violation of Cal. Bus. & Prof. Code §§ 17600, et
27 seq. and Cal. Bus. & Prof. Code §§ 17200, et seq.
28

THIRD CAUSE OF ACTION

VIOLATION OF CAL. BUS. & PROF. CODE §§ 17535, ET SEQ.

1
2
3 45. Plaintiff incorporates by reference all of the above paragraphs of this
4 Complaint as though fully stated herein.

5 46. Cal. Bus. & Prof. Code § 17535, et seq. (the “UCL”) allows “any person who
6 has suffered injury in fact and has lost money or property” to prosecute a civil
7 action for violation of the UCL. Such a person may bring such an action on
8 behalf of himself and others similarly situated who are affected by the
9 unlawful, unfair, or fraudulent business practice.

10 47. Beginning at an exact date unknown to Plaintiff, but prior to January 16,
11 2013, and continuing to the present, Defendant has committed unlawful,
12 unfair, and/or fraudulent business acts and practices as defined by the UCL,
13 by violating Cal. Bus. & Prof. Code § 17602.

14 48. As a direct and proximate result of Defendant’s unlawful, unfair, and/or
15 fraudulent acts and practices described herein, Defendant has received and
16 continues to hold unlawfully obtained property and money belonging to
17 Plaintiff and class members in the form of payments made for subscription
18 agreements by Plaintiff and class members. Defendant has profited from its
19 unlawful, unfair, and/or fraudulent acts and practices in the amount of those
20 business expenses and interest accrued thereon.

21
22 49. Plaintiff and similarly situated class members are entitled to injunctive relief
23 under restitution pursuant to Cal. Bus. & Prof. Code § 17535 for all monies
24 paid by class members under the subscription agreements from January 16,
25 2013 to the date of such restitution, at rates specified by law. Defendant
26 should be required to disgorge all the profits and gains it has reaped and
27 restore such profits and gains to Plaintiff and class members, from whom they
28 were unlawfully taken.



1 50. In prosecuting this action for the enforcement of important rights affecting the
2 public interest, Plaintiff seeks the recovery of attorneys' fees, which is
3 available to a prevailing plaintiff in class action cases such as this matter.

4 51. Plaintiff, on behalf of himself and similarly situated class members, request
5 relief as described below.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff respectfully requests the Court grant Plaintiff and
8 the Class members damages against Defendant and relief as follows:

- 9
- 10 • That this action be certified as a Class Action, Plaintiff be appointed as the
11 representatives of the Class, and Plaintiff's attorneys be appointed Class
12 counsel;
 - 13 • That the Court find and declare that Defendant has violated Cal. Bus. & Prof.
14 Code § 17602(a)(2) by charging Plaintiff and class members payment
15 method without first obtaining their affirmative consent to the agreement
16 containing the automatic renewal offer term or continuous service offer terms
17 prior to charging their credit cards;
 - 18 • That the Court find and declare that Defendant has violated the UCL and
19 committed unfair and unlawful business practices by violating Cal. Bus. &
20 Prof. Code § 17602;
 - 21 • That the Court find that Plaintiff and class members are entitled to injunctive
22 relief and/or restitution pursuant to Cal. Bus. & Prof. Code § 17535;
 - 23 • That the Court find that Defendant is in possession of money that belong to
24 Plaintiff and class members that Defendant has not returned the money;
 - 25 • That the Court award Plaintiff and the Class damages and/or full restitution
26 in the amount of the subscription payments made by them pursuant to Cal.
27 Bus. & Prof. Code § 17603 in an amount to be proved at trial;
- 28





- 1 • An order requiring Defendant to pay restitution to Plaintiff and the Class due
2 to Defendant's UCL violations, pursuant to Cal. Bus. & Prof. Code
3 §§ 17200-17205 in the amount of their subscription agreement payments;
- 4 • An order requiring imposition of a constructive trust and and/or
5 disgorgement of Defendant's ill-gotten gains and to pay restitution to
6 Plaintiff and all members of the Class and to restore to Plaintiff and
7 members of the Class all funds acquired by means of any act or practice
8 declared by this court to be an unlawful, fraudulent, or unfair business act or
9 practice, in violation of laws, statutes or regulations, or constituting unfair
10 competition;
- 11 • That Plaintiff and the Class be awarded reasonable attorneys' fees and costs
12 of this suit pursuant to Code of Civil Procedure § 1021.5, and California
13 Civil Code § 1780, and/or other applicable law; and
- 14 • Any and all other relief as this Court may deem necessary or appropriate.

15 **TRIAL BY JURY**

16 52. Plaintiff, on behalf of himself and the Class, hereby demands a jury trial on
17 all causes of action and claims with respect to which they have a right to jury
18 trial.
19

20
21 Respectfully submitted,

Hyde & Swigart

22
23
24 Date: February 2, 2015

By: /s/ Robert Hyde
Robert L. Hyde
Attorneys for Plaintiff

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 A. Trax, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Robert L. Hyde, Esq. (227183); Joshua B. Swigart, Esq. (225557) Hyde & Swigart (619) 233-7770 2221 Camino Del Rio South, Suite 101, San Diego, CA 92108

DEFENDANTS

LifeLock, Inc.

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

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

Attorneys (If Known) '15CV0220 MMAWVG

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

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, 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. § 1332(d) Brief description of cause: Diversity

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 02/02/2015 SIGNATURE OF ATTORNEY OF RECORD s/Robert L. Hyde

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print Save As... Reset

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.