

**IN THE UNITED STATES COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

RACHEL LUMBRA, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

GENERAL NUTRITION CORPORATION,

Defendant.

Case No. 1:15-cv-177 (GTS/CFH)

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself, all others similarly situated, and the general public, by and through her undersigned counsel, hereby brings this action against defendant General Nutrition Corporation (hereafter “GNC”), and alleges the following upon her own knowledge, or where she lacks personal knowledge, upon information and belief including the investigation of her counsel.

NATURE OF ACTION

1. GNC markets and sells a line of herbal supplements called “Herbal Plus” that includes GNC Herbal Plus Ginkgo Biloba, GNC Herbal Plus St. John’s Wort, GNC Herbal Plus Ginseng, GNC Herbal Plus Echinacea, and GNC Herbal Plus Saw Palmetto (collectively referred to as Herbal Plus Products).

2. GNC represents on the Herbal Plus Products’ labels and respective web pages that the Herbal Plus Products contain the herb referenced in the title of the product (e.g., GNC Herbal Plus Ginseng actually contains ginseng). These representations are false because, as demonstrated by testing conducted by the New York Attorney General, the Herbal Plus Products that GNC sells do not contain the subject herb (e.g., GNC Herbal Plus Ginseng does not contain ginseng).

3. Plaintiff brings this action on behalf of herself, other purchasers of GNC Herbal Plus Products, and the general public to remedy GNC’s misrepresentations.

THE PARTIES

4. Plaintiff Rachel Lumbr is a resident of Schenectady County, New York.

5. Defendant GNC is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2)(A), because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and at least one member of the class of plaintiffs is a citizen of a State different from GNC. In addition, more than two-thirds of the members of the class reside in states other than the state in which GNC is a citizen and in which this case is filed, and therefore any exceptions to jurisdiction under 28 U.S.C. § 1332(d) do not apply.

7. The Court has personal jurisdiction over GNC because GNC advertises, markets, distributes, offers for sale, and sells goods to consumers in New York and the United States, transacts business in New York, including without limitation through extensive on-the-shelf presence in New York and online marketing intended to reach consumers in New York. Moreover, GNC has sufficient purposeful, systematic, and continuous minimum contacts with the various states of the United States, including New York, and has sufficiently availed itself of the markets of various states of the United States, including New York, to render the exercise of personal jurisdiction by this Court permissible.

8. Venue is proper in this judicial district because a substantial portion of the acts forming the basis for the claims occurred in this district, plaintiff is a resident of this district, and GNC transacts substantial business generally and is headquartered in this district.

FACTS

A. Ginkgo Biloba

9. GNC markets and sells GNC Herbal Plus Ginkgo Biloba as an herbal supplement that “May Support Mental Sharpness.” GNC further states that its Herbal Plus Ginkgo Biloba may assist with eyes and vision, healthy aging, heart and circulatory health, and brain health. On the “supplement facts”, GNC states that its Herbal Plus Ginkgo Biloba contains 60mg of ginkgo biloba leaf extract in a single capsule. Plaintiff purchased and used GNC Herbal Plus Ginkgo Biloba based on defendant’s representations that the product contained ginkgo biloba and that it could assist in supporting mental sharpness (and also support the immune system).

10. According to testing conducted by the New York State Attorney General, GNC’s Ginkgo Biloba does not contain ginkgo biloba, but instead contains undisclosed “filler” ingredients, specifically rice, spruce, and asparagaceae.

11. GNC's marketing and sale of Herbal Plus Ginkgo Biloba is false and misleading, because GNC falsely represents that the product contains ginkgo biloba and that the product therefore may provide the health benefits that defendant claims as noted above, including mental sharpness.

12. Even if GNC's Herbal Plus Ginkgo Biloba contained ginkgo biloba, GNC's related health benefit claims would still be false or misleading because scientific evidence shows ginkgo biloba is not efficacious in improving mental sharpness and cognitive functioning, improving eyes and vision, or assisting with healthy aging, heart and circulatory health, or brain health.

B. Ginseng

13. GNC markets and sells GNC Herbal Plus Panax Ginseng as an herbal supplement that is "used to support vitality and overall well-being." GNC further states that its Herbal Plus Ginseng may help promote diabetic nutrition, fitness, and improve the immune system. On the "supplement facts", GNC states that its Herbal Plus Ginseng contains 600mg of ginseng in a single capsule. On its website relating to its ginseng product, GNC represents that the product contains "No Wheat." Plaintiff purchased and used GNC Herbal Plus Ginseng based on defendant's representations that the product contained ginseng and that it could support vitality and improve the immune system.

14. According to testing conducted by the New York State Attorney General, GNC's Ginseng does not contain ginseng, but instead contains undisclosed "filler" ingredients, specifically oryza, dracaena, pinus strobus, wheat/grass, and citrus.

15. GNC's marketing and sale of Herbal Plus Panax Ginseng is false and misleading, because GNC falsely represents that the product contains ginseng and that the product therefore may provide the health benefits that defendant claims as noted above, including supporting vitality and improving the immune system (and further, that the product contains no wheat).

16. Even if GNC's Herbal Plus Ginseng contained ginseng, GNC's related health benefit claims would still be false or misleading because scientific evidence shows ginseng is not efficacious in improving vitality or overall well-being, diabetic nutrition, fitness or improving the immune system.

C. Echinacea

17. GNC sells GNC Herbal Plus Echinacea & Vitamin C as an herbal supplement that supports "the immune system and protects against cell-damaging free radicals", and also sells

GNC Herbal Plus Echinacea Purpurea as an herbal supplement that “supports natural resistance.” On the “supplement facts,” GNC states that the Herbal Plus Echinacea & Vitamin C contains 400mg of Echinacea purpurea Root Extract and 100 mg of echinacea angustifolia root extract (and 60 mg of Vitamin C) in a single capsule, and that its Herbal Plus Echinacea Purpurea contains 400mg of echinacea purpurea Herb in a single capsule. Plaintiff purchased and used GNC’s Herbal Plus Echinacea & Vitamin C based on defendant’s representations that the product contained echinacea and that it would support the immune system.

18. According to testing conducted by the New York State Attorney General, GNC’s Echinacea does not contain echinacea, but instead contains undisclosed “filler” ingredients, specifically pinus or ranunculaceae (a family of flowering plants, unrelated to Echinacea).

19. GNC’s marketing and sale of Herbal Plus Echinacea products is false and misleading, because GNC falsely represents that the products contain echinacea and that the products therefore may provide the health benefits that defendant claims as noted above, including supporting the immune system and natural resistance.

20. Even if GNC’s Herbal Plus Echinacea products contained echinacea, GNC’s related health benefit claims would still be false or misleading because scientific evidence shows echinacea is not efficacious in improving the immune system and supporting natural resistance.

D. St. Johns’ Wort

21. GNC markets and sells GNC Herbal Plus St. John’s Wort as an herbal supplement that “promotes positive mood balance.” GNC further states that its Herbal Plus St. John’s Wort may help promote general well-being, and assist with stress and mood health, skin care, brain health, immune system, and menopause. On the “supplement facts”, GNC states that its Herbal Plus St. John’s Wort contains 300mg of St. John’s wort herb extract in a single capsule. GNC further states: “This active ingredient is considered by science to be the key ingredient responsible for the herb's health benefits.”

22. According to testing conducted by the New York State Attorney General, GNC’s St. John’s Wort does not contain St. John’s wort, but instead contains undisclosed “filler” ingredients, specifically allium, oryza, and a tropical houseplant known as dracaena.

23. GNC’s marketing and sale of Herbal Plus St. John’s Wort is false and misleading, because GNC falsely represents that the product contains St. John’s wort and that the product

therefore provides the health benefits that defendant claims as noted above, including promoting positive mood balance.

24. Even if GNC's Herbal Plus St. John's Wort contained St. John's wort, GNC's related health benefit claims would still be false or misleading because scientific evidence shows St. John's wort is not efficacious in promoting a positive mood, general well-being, or assisting with stress and mood health, skin care, brain health, immune system, and menopause.

E. Saw Palmetto

25. GNC sells GNC Herbal Plus Saw Palmetto Extract and GNC Herbal Plus Saw Palmetto Berries as herbal supplements that "support[] healthy prostate function." On the "supplement facts", GNC states that its Herbal Plus Saw Palmetto Extract contains 160mg of saw palmetto berries extract in a single capsule, and that its Herbal Plus Saw Palmetto Berries contains 540mg of saw palmetto berry in a single capsule.

26. According to testing conducted by the New York State Attorney General, GNC's Saw Palmetto does not contain saw palmetto, but instead contains undisclosed "filler" ingredients, specifically asparagaceae and oryza, and only when certain of the tests identified any DNA at all (most of the tests of the saw palmetto showed no plant DNA).

27. GNC's marketing and sale of Herbal Plus Saw Palmetto products is false and misleading, because GNC falsely represents that the products contain saw palmetto and that the products therefore provide the health benefits that defendant claims as noted above, namely supporting healthy prostate function.

28. Even if GNC's Herbal Plus Saw Palmetto products contained saw palmetto, GNC's related health benefit claims would still be false or misleading because scientific evidence shows saw palmetto is not efficacious in supporting healthy prostate function.

F. GNC Was Instructed to Cease-And-Desist Its Sales of the Herbal Plus Products

29. As a result of the testing noted above, the New York State Attorney General sent a cease-and-desist letter to GNC demanding that it cease selling the Herbal Plus Products. In the letter, the Attorney General characterized GNC's Herbal Plus Products as "contaminated or substituted products." He further states that GNC "is not providing the public with authentic products without substitution, contamination or fillers." The Attorney General also noted the questionable history of the herbal supplement market by pointing out that, as shown in its recent

testing, “the industry has failed to clean up its practices.” As a result of this letter, GNC agreed to stop selling its Herbal Plus Products in any New York store at the present time.

PLAINTIFF’S RELIANCE & INJURIES

30. Plaintiff purchased and used GNC Herbal Plus Ginkgo Biloba, Herbal Plus Ginseng, and Herbal Plus Echinacea & Vitamin C, relying on GNC’s claims that those products contained the ingredients on the label, namely ginkgo biloba, ginseng, and echinacea. Plaintiff also purchased and used these products in reliance on the health benefits that defendant represented are provided by these products, namely that the ginkgo biloba provides for improved mental sharpness, the ginseng supports vitality, and the echinacea supports an improved immune system.

31. Defendant’s representations regarding the ingredients and health benefits of its Herbal Plus Products were false and misleading, and had the capacity, tendency, and likelihood to confuse or confound plaintiff and other consumers acting reasonably.

32. Plaintiff paid more for the GNC Herbal Plus Products than she otherwise would have absent these statements. In fact, because the Herbal Plus Products do not contain the ingredients stated on the label and therefore do not provide the promised health benefits, their true value was zero, and absent defendant’s false and misleading representations, plaintiff would not have purchased these products at all at any price.

33. Plaintiff and the putative class sustained legally cognizable injury in the form of lost money as a result of GNC’s misrepresentations, at least in the amount of their purchases.

CLASS ACTION ALLEGATIONS

34. Pursuant to Federal Rule of Civil Procedure 23, plaintiff seeks to represent a class of all persons in New York who purchased the GNC Herbal Plus Products for personal, family, or household use, and not for resale.

35. The members in the proposed class are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of all class members in a single action will provide substantial benefits to the parties and Court.

36. Questions of law and fact common to plaintiff and the class include, but are not limited to the following:

- a. Whether the Herbal Plus Ginkgo Biloba product contains ginkgo biloba;
- b. Whether the Herbal Plus Ginseng product contains ginseng.

- c. Whether the Herbal Plus Echinacea products contains echinacea;
- d. Whether the Herbal Plus St. John's Wort product contains St. John's wort;
- e. Whether the Herbal Plus Saw Palmetto products contain saw palmetto;
- f. Whether the Herbal Plus Products provide the health benefits touted by defendant;
- g. Whether GNC's marketing of the Herbal Plus Products had the capacity, tendency, or likelihood of confusing or confounding ordinary consumers acting reasonably;
- h. Whether GNC marketed and sold the Herbal Plus Products knowing that its representations were likely to confuse and deceive reasonable consumers;
- i. The proper equitable and injunctive relief;
- j. The proper amount of actual or compensatory damages;
- k. The proper amount of restitution or disgorgement;
- l. The proper amount of punitive damages; and
- m. The proper amount of reasonable litigation expenses and attorneys' fees.

37. Plaintiff's claims are typical of class members' claims in that they are based on the same underlying facts, events, and circumstances relating to GNC's conduct.

38. Plaintiff will fairly and adequately represent and protect the interests of the class, has no interests incompatible with the interests of the class, and has retained counsel competent and experienced in class action litigation.

39. Class treatment is superior to other options for resolution of the controversy because the relief sought for each class member is small such that, absent representative litigation, it would be infeasible for class members to redress the wrongs done to them.

40. Questions of law and fact common to the class predominate over any questions affecting only individual class members.

41. As a result of the foregoing, class treatment is appropriate under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

FIRST CAUSE OF ACTION

UNFAIR AND DECEPTIVE BUSINESS PRACTICES,

N.Y. GEN. BUS. L. § 349

42. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

43. GNC's conduct constitutes deceptive acts or practices or false advertising in the conduct of business, trade or commerce or in the furnishing of services in New York which affects the public interest under N.Y. Gen. Bus. L. § 349.

44. As alleged herein, by advertising, marketing, distributing, and selling the Herbal Plus Products to plaintiff and other class members with false or misleading claims and representations, GNC engaged in, and continues to engage in, deceptive acts and practices in violation of N.Y. Gen. Bus. L. § 349.

45. GNC's conduct was materially misleading to plaintiff and the class.

46. During the class period, GNC carried out a plan, scheme and course of conduct that was consumer oriented.

47. As a direct and proximate result of GNC's violation of N.Y. Gen. Bus. L. § 349, plaintiff and the class were injured and suffered damages.

48. The injuries to plaintiff and the class were foreseeable to GNC and therefore GNC's actions were unconscionable and unreasonable.

49. GNC is liable for damages sustained by plaintiff and the class to the maximum extent allowable under N.Y. Gen. Bus. L. § 349.

50. Pursuant to N.Y. Gen. Bus. L. § 349 (h), plaintiff and the class seek an Order enjoining GNC from continuing to engage in unfair and deceptive practices including those set forth herein.

SECOND CAUSE OF ACTION

FALSE ADVERTISING

N.Y. GEN. BUS. L. § 350

51. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

52. GNC has engaged and is engaging in consumer-oriented conduct which is deceptive or misleading in a material way, constituting false advertising in the conduct of any business, trade, or commerce, in violation of N.Y. Gen. Bus. L. § 350.

53. As a result of GNC's false advertising, plaintiff and the class have suffered and continue to suffer substantial injury, including damages, which would not have occurred but for the false and deceptive advertising, and which could continue to occur unless GNC is permanently enjoined by this Court.

THIRD CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY OF DESCRIPTION

54. Plaintiff realleges and incorporate the allegations elsewhere in the Complaint as if fully set forth herein.

55. In selling the Herbal Plus Products to plaintiff and the class, GNC expressly described and affirmed as a fact or promise to plaintiff and other buyers that these products contained the described ingredients, namely ginkgo bilboa, ginseng, echinacea, St. John's wort, and saw palmetto, and that they provided the described health benefits derived therefrom, such as mental sharpness, vitality, supporting immune system, promoting positive mood, and supporting healthy prostate function.

56. These affirmations of fact or promises relate to the goods and became part of the basis of the bargain for the purchase of these products, and created an express warranty created by GNC that the goods conformed to the affirmation or promise.

57. GNC breached this warranty of affirmation, promise and description because the Herbal Plus Products do not contain the ingredients described and therefore do not provide the benefits described.

58. Plaintiff and the class suffered injury as a result of GNC's breach in that they paid money for a product that did not adequately contain ingredients and provide benefits as affirmed, promised and described.

FOURTH CAUSE OF ACTION

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

59. Plaintiff realleges and incorporate the allegations elsewhere in the Complaint as if fully set forth herein.

60. In selling the Herbal Plus Products to plaintiff and the class, GNC impliedly warranted that the goods sold were merchantable, but the Herbal Plus Products do not contain the ingredients listed on their labels to provide any health benefits touted by GNC.

61. Plaintiff and the class suffered injury as a result of GNC's breach in that they paid money for a product that does contain the ingredients represented and does not provide the benefits advertised.

FIFTH CAUSE OF ACTION

UNJUST ENRICHMENT

62. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if fully set forth herein.

63. By means of its material misrepresentations as set forth herein, GNC induced plaintiff and the class to purchase the Herbal Plus Products.

64. As a consequence of this misconduct, plaintiff and the class spent money they would not otherwise have been willing to spend absent the misrepresentations by GNC.

65. By virtue of the foregoing, GNC has been unjustly enriched in an amount to be determined with respect to plaintiff and the class, to the extent that GNC received and kept revenues collected from the sale of the Herbal Plus Products, which GNC would not have received absent its misrepresentations.

SIXTH CAUSE OF ACTION

RESTITUTION

66. Plaintiff realleges and incorporate the allegations elsewhere in the Complaint as if fully set forth herein.

67. By virtue of deceptive and unlawful business practices, GNC charged and received payment for the Herbal Plus Products. GNC should not be permitted to retain those payments in equity and good conscience, as those payments were obtained in contravention of the law. To permit GNC to retain those payments would wrongfully and inequitably confer a benefit upon GNC at the expense of plaintiff and the class, and therefore restitution to plaintiff and the class is warranted.

PRAYER FOR RELIEF

68. Wherefore, plaintiff, on behalf of herself, all others similarly situated and the general public, prays for judgment against GNC as to each and every cause of action, including:

- A. An Order declaring this action to be a proper class action, appointing plaintiff and her counsel to represent the class, and requiring GNC to bear the costs of class notice;
- B. An Order enjoining GNC from selling the Herbal Plus Products in a false or misleading manner, and in any manner that otherwise violates federal and state regulations;
- C. An Order requiring GNC to engage in a corrective advertising campaign and engage in any further appropriate affirmative injunctive relief, such as recalling existing product;
- D. An Order awarding declaratory relief, and any further retrospective or prospective injunctive relief permitted by law or equity, including enjoining GNC from continuing the unlawful practices alleged herein, and injunctive relief to remedy GNC's past conduct;
- E. An Order requiring GNC to pay to the nationwide class restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading advertising, or a violation of New York law;
- F. An Order requiring GNC to disgorge or return all monies, revenues, and profits obtained by means of any wrongful or unlawful act or practice;
- G. An Order requiring GNC to pay all actual and statutory damages permitted under the causes of action alleged herein;
- H. An Order requiring GNC to pay treble actual damages if the Court deems it proper;
- I. An Order requiring GNC to pay punitive damages on any causes of action so allowable if plaintiff proves GNC's conduct was knowing, willful, malicious, oppressive, or reckless;
- J. An Order awarding attorneys' fees and costs to plaintiff and the class;
- K. An Order awarding pre-and post-judgment interest on any monetary award or judgment; and

L. An Order providing for all other such equitable relief as may be just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: February 12, 2015

/Andrew P. Saulitis/

By: Andrew P. Saulitis (SBN 1702950)

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Attorneys for Plaintiff and the Proposed Class

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

Lumbra, Rachel on behalf of herself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Law Offices of Andrew P. Saulitis P.C. 40 Wall Street - 37th Floor New York, NY 10005 212-459-0900

DEFENDANTS

General Nutrition Corporation

County of Residence of First Listed Defendant Allegheny, PA (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)

- 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, Personal Injury, Labor, 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): NY Gen. Bus. Law sections 349 and 350. Brief description of cause: Violations of New York Unfair and Deceptive Business Practices and False Advertising

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/12/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Andrew P. Saulitis

FOR OFFICE USE ONLY

RECEIPT # 0206-3197902 AMOUNT \$400 APPLYING IFP JUDGE GTS MAG. JUDGE CFH

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.