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12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 HEATHER SAAL, On Behalf of Herself
and All Others Similarly Situated,

16 Plaintiff,

17 v.

18 CVS Health, a Rhode Island corporation,

19 Defendant.

Case No.

**CLASS ACTION COMPLAINT
FOR:**

- 1. **VIOLATION OF THE UNFAIR
COMPETITION LAW,
BUSINESS & PROFESSIONS
CODE §17200 *et seq.*;**
- 2. **VIOLATION OF THE
CONSUMERS LEGAL
REMEDIES ACT, CIVIL CODE
§1750 *et seq.*;**
- 3. **DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff Heather Saal, by and through her attorneys, brings this action on behalf
2 of herself and all others similarly situated against Defendant CVS Health (“CVS” or
3 “Defendant”), and alleges as follows:

4 **NATURE OF ACTION**

5 1. Defendant manufactures, markets, sells and distributes CVS Flu Relief
6 (the “Product” or “Flu Relief”). Defendant uniformly represents on the front, back,
7 top, and left and right side panels of each and every Product package that Flu Relief
8 “Temporarily relieves flu-like symptoms.” The front and back panels further
9 represent that Flu Relief’s sole active ingredient “reduces the duration & severity of
10 flu-like symptoms such as fever, aches, pains & chills” (collectively, the “flu-like
11 relief representations”). The Product packaging states that it is for “Adults” and for
12 “children 2 years of age and older.”

13 2. Flu Relief does not and, based upon basic principles of chemistry and
14 physics, cannot provide relief of flu-symptoms. This is because Flu Relief is a sugar
15 pill. The sole “active” ingredient in Flu Relief is described on the label as Anas
16 Barbariae 200CK (“Anas Barbariae”). The remaining ingredients are sugars.

17 3. The Latin term Anas Barbariae refers to the fact that the original
18 substance used for the “active ingredient” in Flu Relief is a combination of duck
19 hearts and livers that go through a process that includes the starting material Anas
20 Barbariae being placed in a solvent and incubated at 37 degrees centigrade
21 approximately 30-40 days.

22 4. The C after the 200 stands for the dilution ratio that is used in making
23 Defendant’s product. It means that there are 200 1:100 dilutions performed on the
24 starting material – the Anas Barbariae. This means that the first dilution of Anas
25 Barbariae is prepared with 1% Anas Barbariae and 99% distilled water. This solution
26 is thoroughly shaken by a machine and 1% of this solution is combined with 99%
27 distilled water. This process is repeated 200 times – ergo the number 200C. The K
28 means that the dilution uses the Korsakovian method of dilution, where the same

1 beaker is used for each dilution.

2 5. The final dilution after these 200 1:100 dilutions is put on little sugar
3 pellets. But, because of the dilution process described above, there is no
4 mathematical/statistical possibility that even a single molecule of the original
5 substance, Anas Barbariae, is in the final dilution. In short, Anas Barbariae 200CK is
6 water and Defendant is placing this water on sugar pellets and selling them as a
7 remedy for flu-like symptoms.

8 6. Well-established principles of chemistry and dilution hold that when a
9 substance is diluted past a certain level, none of the original substance will remain in
10 the dilution. Because Defendant's dilution of 200CK so greatly exceeds the number
11 at which the Anas Barbariae will no longer be in the solution, based upon basic
12 principles of chemistry, the possibility of there being even one molecule of the
13 original Anas Barbariae in one dose of Defendant's product, let alone all of the doses
14 it has sold and will sell during the class period, is a number beyond the known
15 physical realm. Applying well-accepted principles of chemistry and dilution, finding
16 one molecule of Anas Barbariae in one dose of Defendant's product would require
17 making more doses than there are atoms in the observable universe.

18 7. Because Flu Relief is no better than a sugar pill in the relief of flu-like
19 symptoms, Defendant's representations are false, misleading, and deceptive.

20 8. Selling a sugar pill and representing that it provides relief of flu-like
21 symptoms is false, misleading and deceptive, even as to some consumers who,
22 because of psychosomatic reasons, may have experienced a placebo effect after
23 taking Flu Relief.¹

24 9. Despite the deceptive nature of Defendant's representations, Defendant
25 conveyed and continues to convey its deceptive flu-like relief representations through
26 a variety of media (including its website and online promotional materials) and, most

27 ¹ See David A. Mark, Ph.D., The Placebo Effect Quantified, Nutraceuticals World (July 1, 2009) (the placebo effect for
28 pain or mental state symptoms is roughly 30%....).

1 important, uniformly at the point of purchase on its Product's packaging and labeling.
2 Further, the only reason that any consumer would purchase Flu Relief is to obtain
3 flu-relief health benefits, which Flu Relief does not provide.

4 10. As a result of Defendant's deceptive representations, consumers -
5 including Plaintiff and other members of the proposed Class - have purchased and
6 future consumers will continue to purchase Products that do not perform as
7 advertised.

8 11. Plaintiff brings this action on behalf of herself and all others similarly
9 situated who purchased the Product, to halt the dissemination of this false and
10 misleading advertising message, correct the false and misleading perception it has
11 created in the minds of consumers, and obtain redress for those who have purchased
12 Flu Relief. Plaintiff alleges violations of the Consumers Legal Remedies Act and the
13 Unfair Competition Law created by Defendant's advertising, including false labeling,
14 and seeks a declaration pursuant to 28 U.S.C. § 2201 that Defendant's flu-like relief
15 representations are false, misleading and/or deceptive.

16 **JURISDICTION AND VENUE**

17 12. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2).
18 The matter in controversy, exclusive of interest and costs, exceeds the sum or value
19 of \$5,000,000 and is a class action in which there are in excess of 100 class members
20 and the members of the Class are citizens of a state different from Defendant. Further,
21 because this action presents an actual controversy with respect to whether
22 Defendant's flu-like relief representations are false, misleading and/or deceptive, the
23 Court may grant the declaratory relief sought pursuant to 28 U.S.C. § 2201.

24 13. This Court has personal jurisdiction over Defendant because Defendant
25 is authorized to conduct and does conduct business in California. Defendant has
26 marketed, promoted, distributed, and sold Flu Relief in California, and Defendant has
27 sufficient minimum contacts with this State and/or sufficiently avails itself of the
28 markets in this State through its promotion, sales, and marketing within this State to

1 render the exercise of jurisdiction by this Court permissible.

2 14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)
3 because a substantial part of the events or omissions giving rise to Plaintiff's claims
4 occurred while she resided in this judicial district. Venue is also proper under 18
5 U.S.C. § 1965(a) because Defendant transacts substantial business in this District.

6 **PARTIES**

7 15. Plaintiff Heather Saal resides in Kentfield, California. In or around
8 February 2016, Plaintiff Saal was exposed to, read and relied upon Defendant's flu
9 relief representations on the Flu Relief packaging and purchased and paid
10 approximately \$16.79 for one box of Flu Relief from a CVS in Greenbrae, California.
11 At the time that she purchased Defendant's Product, Plaintiff was deceived by
12 Defendant because she believed that Defendant's Flu Relief product would provide
13 her some or all of the flu relief benefits represented on the packaging. The Flu Relief
14 product Plaintiff purchased could not provide the represented flu relief benefits
15 Defendant represented it would because it is a sugar pill. Had Plaintiff known the
16 truth about Defendant's misrepresentations, including that the Flu Relief product is
17 actually water and sugar and thus cannot ever be effective as represented by
18 Defendant, Plaintiff would not have purchased Defendant's Flu Relief product. As a
19 result, Plaintiff was deceived in some manner into purchasing the Flu Relief product
20 and suffered injury in fact and lost money.

21 16. On information and belief, Plaintiff avers that Defendant CVS Health is
22 a corporation organized and existing under the laws of the state of Rhode Island.
23 CVS's headquarters is at One CVS Drive, Woonsocket, Rhode Island.

24 17. Defendant CVS has manufactured, advertised, marketed, distributed, or
25 sold Flu Relief to tens of thousands of consumers in California and throughout the
26 United States.

27 **FACTUAL ALLEGATIONS**

28 18. Defendant has and continues to manufacture, distribute, market, and sell

1 Flu Relief for the relief of flu-symptoms.

2 19. Flu Relief is sold nationwide at CVS stores. Flu Relief is available in 12
3 dosages and sells for approximately \$20.99.

4 20. Throughout the relevant time period and to the present, Defendant has
5 consistently conveyed the message to consumers throughout California and the
6 United States that Flu Relief will temporarily relieve flu-symptoms and reduce the
7 duration and severity of flu-like symptoms simply by taking the recommended 3
8 doses of Flu Relief every twenty-four hours. It does not.

9 21. On the Flu Relief packaging, Defendant represents that the claimed flu-
10 relief is achieved through the one purported active ingredient in Flu Relief – Anas
11 Barbariae. For example, directly to the right of where Anas Barbariae is listed, the
12 packaging states, “PURPOSE – To reduce the duration and severity of flu-like
13 symptoms.” Defendant uniformly and prominently represents on the front, back, top,
14 and left and right side panels of each and every Product package that Flu Relief
15 “Temporarily relieves flu-like symptoms.” The front and back panels further
16 represent that Flu Relief’s sole active ingredient “reduces the duration & severity of
17 flu-like symptoms such as fever, aches, pains & chills.” It also states on the front of
18 the Flu Relief package to compare to Oscilloccinum – the brand name product that
19 is also similarly prepared through the same dilution process and thus makes similar
20 false representations.

21 22. The following are screen shots of the front, back, top and side panels of
22 the Flu Relief package (attached hereto as Exhibit A):

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CVS
pharmacy™

NDC 0220-9131-34
Compare to the active
ingredient in Oscillocoquinum*†

FLU RELIEF*

TEMPORARILY RELIEVES FLU-LIKE SYMPTOMS

HOMEOPATHIC MEDICINE

- Reduces the duration & severity of flu-like symptoms such as fever, aches, pains & chills*
- Non-drowsy

QUICK-DISSOLVING PELLETS

12 DOSES 0.04 OZ (1 g) EACH

Actual Product Size
on Side Panel

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CVS
pharmacy™

FLU RELIEF*

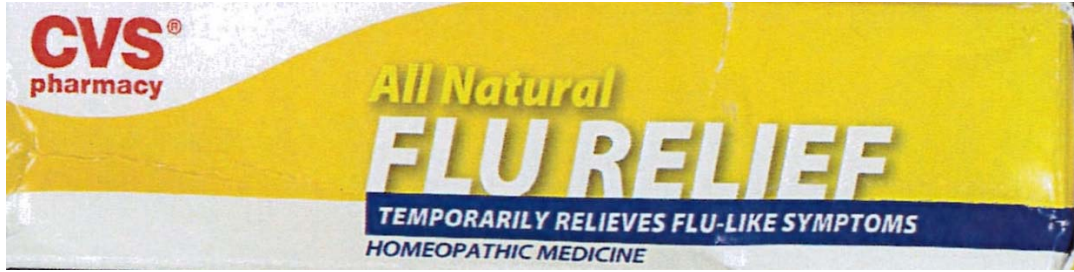
TEMPORARILY RELIEVES FLU-LIKE SYMPTOMS

HOMEOPATHIC MEDICINE

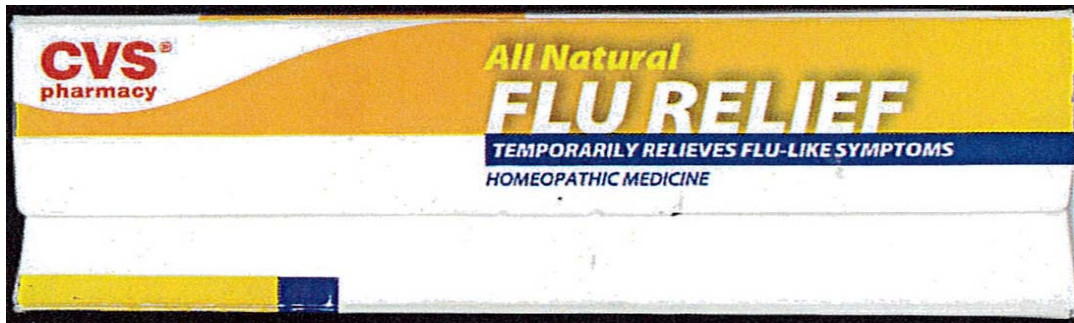
| | |
|---|--|
| Drug Facts | |
| Active ingredient** | Purpose* |
| Anas barbariae 200CK HPUS..... | To reduce the duration and severity of flu-like symptoms |
| <i>The letters HPUS indicate that this ingredient is officially included in the Homeopathic Pharmacopoeia of the United States.</i> | |
| Uses* | |
| Temporarily relieves flu-like symptoms such as fever, aches, pains and chills | |
| Warnings | |
| Ask a doctor before use in children younger than 2 years of age. | |
| Stop use and ask a doctor if symptoms persist for more than 3 days or worsen. | |
| If pregnant or breast-feeding, ask a health professional before use. | |
| Keep out of reach of children. | |
| Directions | |
| ■ Adults and children 2 years of age and older: Dissolve entire contents of one tube in the mouth every 6 hours, up to 3 times a day. | |
| ■ Children younger than 2 years of age: Ask a doctor. | |
| Other information | |
| ■ do not use if glued carton end flaps are open or if the label sealing the dose cap is broken at the perforation or is missing | |
| ■ each 0.04 oz dose contains 1g of sugar | |
| ■ store at 68-77°F (20-25°C) | |
| Inactive ingredients | |
| lactose, sucrose | |

†This product is not distributed by BOIRON® or BOIRON INC., owner of the registered trademark Oscillocoquinum®.
*These "Uses" have not been evaluated by the Food and Drug Administration.
**C, K, CK, and X are homeopathic dilutions: see www.AAHP.info for details.

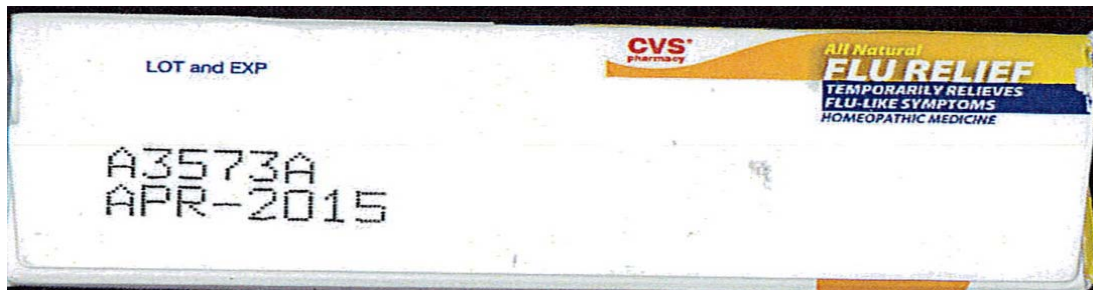
1 Top



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14 Right Side



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23 23. Flu Relief does not and, based upon basic principles of chemistry and
24 dilution as set forth above, cannot provide relief of flu-like symptoms because it is a
25 sugar pill.

26
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28 24. Defendant prominently represents on each and every Flu Relief package
and label that Flu Relief temporarily relieves and reduces the duration and severity
of flu symptoms. Each and every consumer who purchases Flu Relief is exposed to

1 these false and deceptive flu-like relief representations, which appear prominently
2 and conspicuously on the front, back, top, and sides of each Flu Relief package.

3 25. Thus, Defendant's representations about Flu Relief are false, misleading
4 and deceptive.

5 26. It is quite possible that Defendant subcontracts out the production of Flu
6 Relief to a third party who also purports to provide Defendant the scientific bases for
7 the claims made on the packaging and it is possible that this third party also contracts
8 to indemnify Defendant for any consumer fraud claims. While Defendant is still
9 primarily liable for the frauds alleged above, Plaintiff reserves the right to any such
10 third party as a defendant in this action if and when discovery uncovers these facts.

11 ***The Impact of Defendant's Wrongful Conduct***

12 27. Despite the fact that Flu Relief is nothing more than a sugar pill,
13 Defendant continues to unequivocally claim that Flu Relief temporarily relieves flu-
14 like symptoms and reduces the duration and severity of flu-like symptoms for adults
15 and children 2 years of age or older.

16 28. Plaintiff and Class members have been and will continue to be deceived
17 or misled by Defendant's deceptive representations. The Product's sole purported
18 purpose is to provide relief of flu-like symptoms. Thus, the only purpose behind
19 purchasing Flu Relief would be to obtain relief of flu-like symptoms. There is no
20 other reason for Plaintiff or the Class to have purchased Flu Relief and Plaintiff and
21 the Class would not have purchased Flu Relief had they known Defendant's
22 representations were false and misleading. Thus, Defendant's representations and
23 omissions necessarily deceived and misled Plaintiff and the Class in some manner
24 and said deception was a proximate cause of Plaintiff's and the Class' injuries.

25 29. As a result, Plaintiff and Class members have been damaged in their
26 purchases of Flu Relief in that they were deceived in some manner into purchasing
27 Defendant's Product.

28

1 **CLASS ALLEGATIONS**

2 30. Plaintiff Saal brings this action on behalf of herself and all other similarly
3 situated Class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules
4 of Civil Procedure and seeks certification of the following Class against Defendant:

5 **Multi-State Class**

6 All consumers who, within the applicable statutes of limitations,
7 purchased Defendant’s Flu Relief product in California and states with
8 similar laws.²

9 Excluded from the Class are Defendant, its parents, subsidiaries,
10 affiliates, officers and directors, and those who purchased Flu Relief for
11 the purpose of resale.

12 31. In the alternative, Plaintiff Saal brings this action on behalf of herself and
13 all other similarly situated consumers pursuant to Rule 23(a), (b)(2), and (b)(3) of the
14 Federal Rules of Civil Procedure and seeks certification of the following Class
15 against Defendant for violations of California consumer protection laws:

16 **California Only-Class**

17 All consumers who, within the applicable statute of limitations period,
18 purchased Defendant’s Flu Relief product in California.

19 Excluded from the Class are Defendant, its parents, subsidiaries,
20 affiliates, officers and directors, and those who purchased Flu Relief for
21 the purpose of resale.

22 32. **Numerosity.** The members of the Class are so numerous and
23 geographically dispersed that joinder of all Class members is impracticable. Plaintiff
24 is informed and believes, and on that basis alleges, that the proposed Class(es)

25 ² While discovery may alter the following, Plaintiff preliminarily avers that Defendant
26 violated the laws prohibiting unfair and deceptive trade practices of the states and
27 territories wherein Class members reside, including: Cal. Bus. & Prof. Code §17200 et
28 seq.; California Civil Code §1750 et seq.; Fla. Stat. §501.201 et seq.; Fla. Stat.
§§817.06; 815 Ill. Comp. Stat. 502/1, et seq.; Mass. Gen. Laws ch.93A et seq.; Mich.
Stat. §445.901 et seq.; Minn. Stat. §8.31 et seq.; Missouri Stat. §407.010 et seq.; N.J.
Rev. Stat. §56:8-1 et seq.; N.Y. Gen. Bus. Law §349 et seq.; and Wash. Rev. Code.
§19.86.010 et seq.

1 contain(s) thousands of purchasers of the Flu Relief product who have been injured
2 by Defendant's conduct as alleged herein. The precise number of Class members is
3 unknown to Plaintiff, but ascertainable.

4 **33. Existence and Predominance of Common Questions of Law and**
5 **Fact.** This action involves common questions of law and fact, which predominate
6 over any questions affecting individual Class members. The common legal and
7 factual questions include, but are not limited to, the following:

- 8 • Whether Defendant's representations are false, misleading, or
9 likely to deceive;
- 10 • Whether Defendant engaged in false or misleading advertising;
- 11 • Whether Plaintiff and the Class members have sustained monetary
12 loss and the proper measure of that loss;
- 13 • Whether Plaintiff and Class members are entitled to a declaration
14 that Defendant's flu-like relief representations are false, misleading, and/or likely to
15 deceive;
- 16 • Whether Plaintiff and the Class members are entitled to other
17 appropriate remedies, including corrective advertising and injunctive relief;
- 18 • Whether Defendant's alleged conduct violates public policy; and
- 19 • Whether Defendant's alleged conduct constitutes violations of the
20 laws asserted herein.

21 **34. Typicality.** The claims asserted by Plaintiff in this action are typical of
22 the claims of the members of the Class because, *inter alia*, all Class members were
23 injured through the uniform misconduct described above and were subject to
24 Defendant's deceptive flu-like relief representations that accompanied each and
25 every package of Flu Relief. Plaintiff is also advancing the same claims and legal
26 theories on behalf of herself and all members of the Class and the evidence she will
27 use to prove her claims will be the same as evidence that would prove the claims of
28 all Class members.

1 35. **Adequacy of Representation.** Plaintiff will fairly and adequately
2 represent and protect the interests of the members of the Class. Plaintiff has retained
3 counsel competent and experienced in complex consumer class action litigation, and
4 Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or
5 antagonistic interests to those of the Class.

6 36. **Superiority.** A class action is superior to other available methods for the
7 fair and efficient adjudication of this controversy. The financial injury suffered by
8 individual Class members is relatively small compared to the burden and expense
9 that would be entailed by individual litigation of their claims against Defendant. It
10 would thus be virtually impossible for the members of the Class, on an individual
11 basis, to obtain effective redress for the wrongs done to them. Furthermore, even if
12 Class members could afford such individualized litigation, the court system could
13 not. Individualized litigation would create the danger of inconsistent or contradictory
14 judgments arising from the same set of facts. Individualized litigation would also
15 increase the delay and expense to all parties and the court system from the issues
16 raised by this action. By contrast, the class action device provides the benefits of
17 adjudication of these issues in a single proceeding, economies of scale, and
18 comprehensive supervision by a single court, and presents no unusual management
19 difficulties under the circumstances here.

20 37. Plaintiff seeks preliminary and permanent injunctive and equitable relief
21 on behalf of the entire Class, on grounds generally applicable to the entire Class, to
22 enjoin and prevent Defendant from engaging in the acts described, and requiring
23 Defendant to provide full restitution to Plaintiff and Class members.

24 38. Unless a Class is certified, Defendant will retain monies received as a
25 result of its conduct that were taken from Plaintiff and Class members. Unless a
26 Class-wide injunction is issued, Defendant will continue to commit the violations
27 alleged, and the members of the Class and the general public will continue to be
28 deceived.

1 39. Defendant has acted and refused to act on grounds generally applicable
2 to the Class, making appropriate final injunctive relief with respect to the Class as a
3 whole.

4 **COUNT I**

5 **Violation of the Business & Professions Code § 17200, *et seq.***

6 **(Applicable to the Multi-State Class, or Alternatively, to the California-Only**
7 **Class)**

8 40. Plaintiff re-alleges and incorporates by reference the allegations
9 contained in the paragraphs above as if fully set forth herein.

10 41. Plaintiff Heather Saal brings this claim individually and on behalf of the
11 Class.

12 42. As alleged herein, Plaintiff has suffered injury in fact and lost money or
13 property as a result of Defendant's conduct because she purchased Flu Relief in
14 reliance on Defendant's flu-like relief representations detailed above, but did not
15 receive a product that relieves or reduces the duration of flu-like symptoms.

16 43. The Unfair Competition Law, Business & Professions Code § 17200, *et*
17 *seq.* ("UCL"), and similar laws in other states, prohibits any "unlawful," "fraudulent,"
18 or "unfair" business act or practice and any false or misleading advertising.

19 44. In the course of conducting business, Defendant committed unlawful
20 business practices by, *inter alia*, making misrepresentations (which also constitutes
21 advertising within the meaning of § 17200) and omissions of material facts, as set
22 forth more fully herein, and violating Civil Code §§ 1572, 1573, 1709, 1711, 1770
23 and Business & Professions Code §§ 17200, *et seq.*, 17500, *et seq.* Plaintiff and the
24 Class reserve the right to allege other violations of law, which constitute other
25 unlawful business acts or practices. Such conduct is ongoing and continues to this
26 date.

27 45. In the course of conducting business, Defendant committed "unfair"
28 business acts or practices by, *inter alia*, making the flu-like relief representations

1 (which also constitutes advertising within the meaning of § 17200) and omissions of
2 material facts regarding Flu Relief in its advertising campaign, including the
3 Product's packaging, as set forth more fully herein. There is no societal benefit from
4 false advertising, only harm. Plaintiff and other Class members paid money for
5 Products that would temporarily relieve flu-like symptoms and reduce the duration
6 and severity of flu-like symptoms, which they did not receive. While Plaintiff and
7 Class members were harmed, Defendant was unjustly enriched by its flu-like
8 symptom representations and omissions. Because the utility of Defendant's conduct
9 (zero) is outweighed by the gravity of the harm Plaintiff and Class members suffered,
10 Defendant's conduct is "unfair" having offended an established public policy.
11 Further, Defendant engaged in immoral, unethical, oppressive, and unscrupulous
12 activities that are substantially injurious to consumers.

13 46. Further, as stated in this Complaint, Plaintiff alleges violations of
14 consumer protection, unfair competition and truth in advertising laws, resulting in
15 harm to consumers. Defendant's acts and omissions also violate and offend the
16 public policy against engaging in false and misleading advertising, unfair competition
17 and deceptive conduct towards consumers. This conduct constitutes violations of the
18 unfair prong of Business & Professions Code § 17200, *et seq.*

19 47. There were reasonably available alternatives to further Defendant's
20 legitimate business interests, other than the conduct described herein.

21 48. Business & Professions Code § 17200, *et seq.*, also prohibits any
22 "fraudulent business act or practice."

23 49. In the course of conducting business, Defendant committed "fraudulent
24 business act or practices" by, *inter alia*, making the flu-like relief representations
25 (which also constitutes advertising within the meaning of § 17200) and omissions
26 of material facts regarding Flu Relief in its advertising campaign, including the
27 Product's packaging, as set forth more fully herein. Defendant misrepresented on
28 each and every Flu Relief box that the Product, *inter alia*, "Temporarily relieves flu-

1 like symptoms” and that its sole active ingredient “reduces the duration & severity of
2 flu-like symptoms such as fever, aches, pains and chills.”

3 50. Defendant’s actions, claims, nondisclosures and misleading statements,
4 as more fully set forth above, were also false, misleading and/or likely to deceive the
5 consuming public within the meaning of Business & Professions Code § 17200, *et*
6 *seq.*

7 51. Plaintiff and other members of the Class have in fact been deceived by
8 Defendant’s material flu-like relief representations and omissions. Defendant’s
9 deception has caused harm to Plaintiff and other members of the Class who each
10 purchased Flu Relief. Plaintiff and the other Class members have suffered injury in
11 fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

12 52. Defendant knew, or should have known, that its material representations
13 and omissions would be likely to deceive the consuming public and result in
14 consumers purchasing Flu Relief.

15 53. As a result of its deception, Defendant has been able to reap unjust
16 revenue and profit.

17 54. Unless restrained and enjoined, Defendant will continue to engage in the
18 above-described conduct. Accordingly, injunctive relief is appropriate.

19 55. Plaintiff, on behalf of herself and all others similarly situated, seeks
20 restitution and disgorgement of all money obtained from Plaintiff and the members
21 of the Class collected as a result of unfair competition, an injunction prohibiting
22 Defendant from continuing such practices, corrective advertising and all other relief
23 this Court deems appropriate, consistent with Business & Professions Code § 17203.

24 **COUNT II**
25 **Violations of the Consumers Legal Remedies Act –**
26 **Civil Code § 1750, *et seq.***
27 **(Applicable to the California-Only Class)**

28 56. Plaintiff repeats and re-alleges the allegations contained in the

1 paragraphs above, as if fully set forth herein.

2 57. Plaintiff Heather Saal brings this claim individually and on behalf of the
3 California Class.

4 58. This cause of action is brought pursuant to the Consumers Legal
5 Remedies Act, California Civil Code § 1750, *et seq.* (the “Act”). Plaintiff is a
6 consumer as defined by California Civil Code § 1761(d). Defendant’s Flu Relief
7 product is a “good” within the meaning of the Act.

8 59. Defendant violated and continues to violate the Act by engaging in the
9 following practices proscribed by California Civil Code § 1770(a) in transactions
10 with Plaintiff and the Class which were intended to result in, and did result in, the
11 sale of the Flu Relief product:

12
13 (5) Representing that [the Flu Relief product has] . . . approval,
14 characteristics . . . uses [and] benefits . . . which [it does] not have

* * *

15 (7) Representing that [the Flu Relief product is] of a particular
16 standard, quality or grade . . . if [it is] of another.

* * *

17 (9) Advertising goods . . . with intent not to sell them as advertised.

* * *

18 (16) Representing that [the Flu Relief product has] been supplied in
19 accordance with a previous representation when [it has] not.

20 60. Defendant violated the Act by representing and failing to disclose
21 material facts on the Flu Relief labels and associated advertising, as described above,
22 when it knew, or should have known, that the representations were false and
23 misleading and that the omissions were of material facts it was obligated to disclose.

24 61. Pursuant to California Civil Code § 1782(d), Plaintiff and the Class seek
25 a Court order enjoining the above-described wrongful acts and practices of Defendant
26 and for restitution and disgorgement.

27 62. Pursuant to § 1782 of the Act, by letter dated February 26, 2016
28

1 (attached hereto as Exhibit B), Plaintiff notified Defendant in writing by certified
2 mail of the particular violations of § 1770 of the Act and demanded that Defendant
3 rectify the problems associated with the actions detailed above and give notice to all
4 affected consumers of Defendant's intent to so act.

5 63. Pursuant to § 1780(d) of the Act, attached hereto as Exhibit C is the
6 affidavit showing this action has been commenced in the proper forum.

7
8 **COUNT III**
9 **Declaratory Relief Pursuant to 28 U.S.C. § 2201**

10 64. Plaintiff repeats and re-alleges the allegations contained in the
11 paragraphs above, as if fully set forth herein.

12 65. Pursuant to 28 U.S.C. § 2201, in a case of "actual controversy" this
13 Court may "declare the rights and legal relations of any interested party seeking
14 such declaration, whether or not further relief is or could be sought."

15 66. An actual controversy has arisen and now exists between Plaintiff Saal
16 and putative class members and Defendant CVS within the meaning of 28 U.S.C. §
17 2201 concerning whether Defendant's flu-like relief representations are false,
18 misleading and/or deceptive.

19 67. Plaintiff maintains that Defendant's flu-like relief representations are
20 false, misleading and/or deceptive.

21 68. Accordingly, Plaintiff seeks a declaration that Defendant's flu-like
22 relief representations are false, misleading and/or deceptive.

23 **PRAYER FOR RELIEF**

24 Plaintiff and the Class pray that the Court enter an Order as follows:

- 25 a. Certifying the Class(es) as requested herein;
- 26 b. That the Court enter an Order against Defendant awarding restitution and
27 disgorgement of Defendant's revenues to Plaintiff and the proposed Class members;
- 28

- 1 c. Awarding injunctive relief as permitted by law or equity, including:
2 enjoining Defendant from continuing the unlawful practices as set forth herein;
3 d. Ordering Defendant to engage in a corrective advertising campaign;
4 e. Entering a declaratory judgment that Defendant's flu-like relief
5 representations are false, misleading and/or deceptive;
6 f. Awarding attorneys' fees, expert fees and costs; and
7 g. Awarding such other and further relief as the Court deems just and
8 proper.

9 **DEMAND FOR JURY TRIAL**

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

12 DATED: February 26, 2016

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.

14 By: s/Patricia N. Syverson
15 BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
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24 BOODELL & DOMANSKIS, LLC
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Telephone: (312) 938-1670
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this, the 26th day of February 2016.

s/Patricia N. Syverson _____
Patricia N. Syverson (203111)
psyverson@bffb.com
BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
600 W. Broadway, Suite 900
San Diego, California 92101
Telephone: (602) 274-1100

EXHIBIT A

FRONT

CVS[®]
pharmacy

NDC 0220-9131-34

Compare to the active
ingredient in Oscillocoquinum**

All Natural
FLU RELIEF

TEMPORARILY RELIEVES FLU-LIKE SYMPTOMS

HOMEOPATHIC MEDICINE

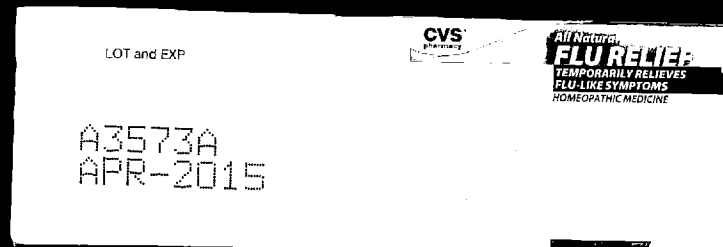
- *Reduces the duration & severity of flu-like symptoms such as fever, aches, pains & chills*
- *No known drug interactions or side effects*
- *Non-drowsy*

QUICK DISSOLVING PELLETS

12 DOSES 0.04 OZ (1 g) EACH



RIGHT SIDE



BACK

CVS[®]
pharmacy

All Natural FLU RELIEF

TEMPORARILY RELIEVES FLU-LIKE SYMPTOMS

HOMEOPATHIC MEDICINE

Drug Facts

Active ingredient

Anas barbariae hepatis et cordis extractum 200CK HPUS

Purpose

To reduce the duration and severity of flu-like symptoms

The letters HPUS indicate that this ingredient is officially included in the Homeopathic Pharmacopoeia of the United States.

Uses

Temporarily relieves flu-like symptoms such as fever, aches, pains and chills.

Warnings

Do not use if glued carton end flaps are open or if the dose seal is broken.

Ask a doctor before use in children younger than 2 years of age.

Stop use and ask a doctor if symptoms persist for more than 3 days or worsen.

If pregnant or breast-feeding, ask a health professional before use. Keep out of reach of children.

Directions

■ Adults and children 2 years of age and older: Dissolve entire contents of one tube in the mouth every 6 hours, up to 3 times a day.

■ Children younger than 2 years of age: Ask a doctor.

Other information

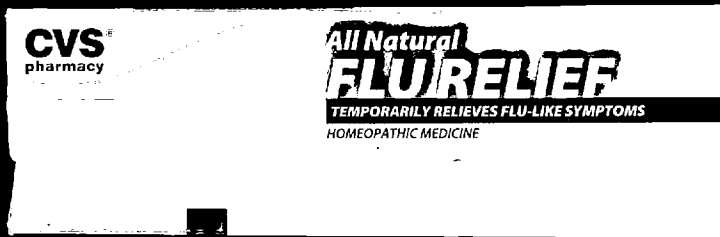
■ store at 68-77°F (20-25°C)

Inactive ingredients

lactose, sucrose

*This product is not distributed by Boiron® or Boiron USA, owner of the registered trademark Oscilloccinum®.

LEFT SIDE



TOP



EXHIBIT B

WILLIAM G. FAIRBOURN
VAN BUNCH⁸
ELAINE A. RYAN⁷
JONATHAN S. WALLACK
CHRISTINA L. BANNON
TONNA K. FARRAR⁵
KEVIN R. HANGER
LAURA A. VAN BUREN

ANDREW S. FRIEDMAN
ROBERT J. SPURLOCK
ANDREW Q. EVERROAD
GUY A. HANSON
MANFRED P. MUECKE⁴
T. BRENT JORDAN⁶
ERIC D. ZARD
AUDRA E. PETROLLE¹⁰

FRANCIS J. BALINT, JR.⁹
C. KEVIN DYKSTRA
PATRICIA N. SYVERSON²
KIMBERLY C. PAGE³
WILLIAM F. KING
ANDREW M. EVANS
KENDALL K. WILSON
CARRIE A. LALIBERTE

JERRY C. BONNETT,¹ Of Counsel
MICHAEL N. WIDENER, Of Counsel

¹Admitted Also in Colorado
²Admitted Also in California
³Admitted Also in Alabama and Georgia
⁴Admitted Only in California
⁵Admitted Only in California, Kansas, Missouri
and Oregon (located in Oregon)
⁶Admitted Only in Pennsylvania
⁷Admitted Also in Colorado, Idaho, Illinois,
Kansas, Missouri, Texas, Utah and
Washington
⁸Admitted Also in Tennessee and West Virginia
⁹Admitted Also in Massachusetts and Virginia
¹⁰Admitted Also in New Jersey and New York

February 26, 2016

VIA CERTIFIED MAIL
(RECEIPT NO. 7014 1200 0001 5813 9031)

CVS Health
General Counsel
One CVS Drive
Woonsocket, RI 02895

Re: *Saal v. CVS Health*

Dear Sir or Madam:

Our law firm together with Boodell & Domanskis, LLC represent Heather Saal and all other consumers similarly situated in an action against CVS Health (“Defendant”) arising out of, *inter alia*, misrepresentations by Defendant to consumers that its Flu Relief product “Temporarily relieves flu-like symptoms” and “reduces the duration & severity of flu-like symptoms such as fever, aches, pains & chills” (collectively, the “flu-like relief representations”).

Ms. Saal and others similarly situated purchased Flu Relief unaware that Defendant’s flu-like relief representations are false. Flu Relief’s flu-like relief representations are false because, based upon basic principles of chemistry and dilution, Flu Relief is nothing more than a sugar pill and it thus cannot provide relief of flu-symptoms. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Defendant’s flu-like relief representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendant with the intent to induce the consuming public to purchase Flu Relief. The flu-like relief representations do not assist consumers; they simply mislead them.

Defendant’s flu-like relief representations violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [Flu Relief has] . . . characteristics, . . . uses [or]

February 26, 2016
Page 2

benefits. . . which [it does] not have.

* * *

- (7) Representing that [Flu Relief is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

- (9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

- (16) Representing that [Flu Relief has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Defendant's flu-like relief representations also constitute violations of California Business and Professions Code §17200, *et seq.*

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that Defendant immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Defendant should offer to refund the purchase price to all consumer purchasers of Flu Relief, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under the already asserted Consumers Legal Remedies Act claims. Thus, to avoid further litigation, it is in the interest of all parties concerned that Defendant address these violations immediately.

Defendant must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of Flu Relief;
2. Notify all such purchasers so identified that upon their request, Defendant will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the

February 26, 2016
Page 3

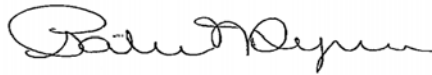
purchase price paid for Flu Relief, plus interest, costs and fees;

3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Flu Relief purchasers who so request; and

4. Cease from representing to consumers that Flu Relief “Temporarily relieves flu-like symptoms” and “reduces the duration & severity of flu-like symptoms such as fever, aches, pains & chills” when there is no reasonable basis for so claiming, as more fully described in the enclosed Complaint.

We await your response.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Patricia N. Syverson".

Patricia N. Syverson
For the Firm

PNS:td
Enclosures

EXHIBIT C

1 BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
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Manfred P. Muecke (CA SBN 222893)
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12 Chicago, IL 60604
sweltman@boodlaw.com
13 mstein@boodlaw.com
14 Telephone: (312) 938-1670

Attorneys for Plaintiff

15
16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 HEATHER SAAL, an Individual, On
19 Behalf of Herself and All Others Similarly
Situated,

20 Plaintiff,

21 v.

22 CVS HEALTH, a Rhode Island
23 corporation,

24 Defendant.

Case No.:

CLASS ACTION:

**DECLARATION OF PATRICIA N.
SYVERSON PURSUANT TO
CALIFORNIA CIVIL CODE §1780(d)**

25
26
27
28

1 I, Patricia N. Syverson, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the
3 State of California. I am a shareholder of the law firm of Bonnett, Fairbourn, Friedman
4 & Balint, P.C., the counsel of record for plaintiff in the above-entitled action.

5 2. Defendant CVS Health has done and are doing business in the Northern
6 District of California. Such business includes the distributing, marketing, labeling,
7 packaging and sale of CVS Flu Relief. Furthermore, Plaintiff purchased Flu Relief in
8 Greenbrae, California.

9 3. I declare under penalty of perjury under the laws of the State of California
10 that the foregoing is true and correct.

11 Executed this 26th day of February, 2016, at San Diego, California

12 BONNETT, FAIRBOURN, FRIEDMAN
13 & BALINT, P.C.
14 PATRICIA N. SYVERSON (203111)

15 /s/ Patricia N. Syverson
16 Patricia N. Syverson
17 600 W. Broadway, Suite 900
18 San Diego, California 92101
19 psyverson@bffb.com
20 Telephone: (619) 756-7748

21 Attorney for Plaintiff
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CERTIFICATE OF SERVICE

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I hereby certify that on February 26, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

I certify under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 26, 2016.

/s/ Patricia N. Syverson
Patricia N. Syverson
600 W. Broadway, Suite 900
San Diego, California 92101
psyverson@bffb.com
Telephone: (619) 756-7748

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

HEATHER SAAL, On Behalf of Herself and All Others Similarly Situated

DEFENDANTS

CVS HEALTH, a Rhode Island corporation

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

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.

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

Attorneys (If Known)

Bonnett Fairbourn Friedman & Balint, PC, 600 W. Broadway, Ste 900 San Diego, CA 92101, 619-798-4593

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, Real Estate, 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 USC § 1332. Brief description of cause: To recover damages sustained as a result of Defendant's sale of CVS Flu Relief

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 02/26/2016 SIGNATURE OF ATTORNEY OF RECORD s/Patricia N. Syverson

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.