

Joseph W. Shea III (0002758 OH)
Gregory P. Hartmann (0070334 OH)
Michelle A. Cheek (0086476 OH)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

**PATRICIA WILSON, on behalf of
herself and all others similarly situated**

CASE NO. 1:16-cv-454

Plaintiffs,

JUDGE:

v.

CLASS ACTION COMPLAINT

AND

**DIRECT ENERGY SERVICES, LLC
dba DIRECT ENERGY**

JURY DEMAND

Defendant.

Plaintiff, Patricia Wilson, by and through her attorneys, for her class action complaint, alleges, with personal knowledge as to her own actions, and upon information and belief as to those of others, as follows:

INTRODUCTION

1. This action seeks to redress the deceptive pricing practices of Direct Energy that have caused thousands of consumers to pay considerably more for their electricity utilities than they should otherwise have paid. Defendant has taken advantage of the deregulation of the retail electricity markets by luring consumers into switching electricity suppliers with false promises of lowering their electricity bill.

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2. Unfortunately for consumers the rate at which they were charged by the Defendant turned out to be higher than if they had continued to receive their utilities from their original supplier.

PARTIES

3. Plaintiff Patricia Wilson is a resident of Reading, Ohio with a current address of 7 Lakeshore Dr. E Apt 30, Cincinnati, OH 45237.
4. Defendant Direct Energy is a Delaware Limited Liability Company. Upon information and belief, no members of the LLC are citizens of the State of Ohio.
5. Defendant Direct Energy has designated its agent in Ohio as Corporate Creations Network Inc. 119 E. Court Street Cincinnati, OH 45202

JURISDICTION

6. Jurisdiction in this civil action is authorized pursuant to 28 U.S.C. § 1332(d)(2), as complete diversity exists, and the aggregated amount in controversy is in excess of five million dollars.

OPERATIVE FACTS

7. Direct Energy consistently markets its service by promising to reduce the amount paid by consumers on their monthly energy bill.
8. In the case of Plaintiff, a representative of Direct Energy contacted Plaintiff by telephone on or about early January 2016 and asked about the details of her energy bill. The representative stated that if she switched to Direct Energy her rate would be cheaper.

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9. Plaintiff was also promised an incentive in the form of a \$50 gift card.
10. Before Plaintiff switched to Direct Energy, she received her service from Duke Energy through an aggregated rate negotiated by the City of Reading, Ohio.
11. After Plaintiff agreed to switch, the savings that she was promised never materialized, and instead her bill was larger than if she had stayed with her original supplier. To date, she has not received the \$50 gift card she was promised when she signed up with Direct Energy.
12. Plaintiff's electric rate prior to switching suppliers was a fixed rate of 5.84 cents/kWh. The rate was fixed until the December 2017 meter reading.
13. Plaintiff's electric rate after switching suppliers to Defendant Direct Energy is now a fixed rate of 6.79 cents/kWh for a term of 18 months.
14. After Plaintiff realized that she was paying more for Direct Energy's services, she attempted to terminate her contract with Direct Energy. However, Plaintiff was informed that there was a \$99.00 termination fee to quit the service.
15. Plaintiff is not the only electricity consumer that switched to Defendant Direct Energy based on promised savings. Defendant has used the promise of savings to lure in potentially thousands of customers.
16. These customers have a valid contract with the Defendant which includes representations Defendant made to these customers.
17. Defendant knew at the time these representations were made that they were false, or could have easily discovered they were false; instead Defendant misrepresented what customers would save by switching to Direct Energy.

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CLASS ACTION ALLEGATIONS

18. Plaintiff brings all claims herein as class claims pursuant to Fed. R. Civ. P. 23. The requirement of Fed. R. Civ. P. 23(a), (b)(2), and (b)(3) are met with respect to the class defined below.

A. CLASS DEFINITIONS

19. Plaintiff brings this action on her own behalf and additionally, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all persons who, based on Defendant Direct Energy's incentives and promise of lower rates, switched energy suppliers to Direct Energy from January 1, 2014 to the present and who reside in Ohio or whose contract specifies that Ohio law governs the agreement.

B. NUMEROSITY

20. This class consists of thousands of persons and is therefore so numerous that joinder of all members, whether otherwise required or permitted is impractical;

C. COMMONALITY

21. There are questions of common law or fact common to the class that predominate over any questions affecting only individual members including:
- a. Whether Defendant contracted to provide savings and/or a competitive rate their electric services;
 - b. Whether Defendant made representations that they would provide savings and/or competitive electric rates to induce potential customers into securing their services;

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- c. Whether Defendants' inability or unwillingness to provide savings or competitive rates as complained herein and failed to disclose it to Plaintiff and the Class;
- d. Whether Defendants had an actual or imputed knowledge of their inability or unwillingness to provide savings or competitive rates as complained of herein and failed to disclose it to Plaintiff and the Class;
- e. Whether Defendant acted or refused to act on grounds generally applicable to the Class;
- f. Whether Defendant's actions constitutes fraud and/or common law fraud;
- g. Whether Defendant was unjustly enriched by their conduct;
- h. Whether Plaintiff and other members of the Class have been damaged, and if so, what is the proper measure of such damage?

D. TYPICALITY

- 22. Plaintiff has the same interests in this matter as all other members of the Class, and his claims are typical of all members of the class.

E. ADEQUACY

- 23. Plaintiff is committed to pursuing this action and has retained competent counsel. Plaintiff will fairly and adequately represent the interests of the Class members and does not have interests adverse to the class.

THE PREREQUISITES OF RULE 23(B)(2) ARE SATISFIED

- 24. The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Fed. R. P. 23 (b)(2) exist as Defendant has acted or refused to act on grounds generally

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applicable to the Class thereby making final injunctive relief and equitable relief appropriate with respect to the Class as a whole.

25. Defendant's actions are generally applicable to the Class as a whole, and Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole.
26. Defendant's systematic policies and practices make declaratory relief with respect to the class as a whole appropriate.

THE PREREQUISITES OF RULE 23(B)(3) ARE SATISFIED

27. This case satisfies the prerequisites of Fed. R. Civ. P. 23(b)(3). The common questions of law and fact enumerated above predominate over questions affecting only individual members of the class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially when compared to the relatively modest amount of monetary, injunctive and equitable relief at issue for each individual Class member. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Class defined above.

CAUSES OF ACTION

COUNT I - BREACH OF CONTRACT

28. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraphs as though fully set forth herein.
29. Defendant has valid contracts with Plaintiff and the Class Members.

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- 30. Plaintiff and the Class substantially performed their obligations under the contracts.
- 31. As discussed herein, Defendants breached the contracts.

COUNT II - UNJUST ENRICHMENT

- 32. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraphs as though fully set forth herein.
- 33. Should the court determine that a valid, enforceable and binding enforceable contractual relationship did not exist between the parties at any time or covering any aspect of their relationship, Plaintiff brings this claim in the alternative for unjust enrichment.
- 34. Because of Defendant's wrongful activities described above, including charging Plaintiff and the Class rates grossly out of line with market conditions; Defendant has received money belonging to the Plaintiff and the Class.
- 35. By collecting these rates from the Plaintiff and the Class, Defendants have benefited from receipt of the excessive rates, and under principles of equity and good conscience, Defendant should not be permitted to keep this money.
- 36. Defendants have reaped improperly obtained profits and unjustly enriched themselves at the expense of Plaintiff and the Class.
- 37. As a result of Defendant's imposition of these excessive and unreasonable energy rates, Defendant must account to Plaintiff and the Class for such unjust enrichment and disgorge their improperly obtained profits as restitution to Plaintiff and the Class.
- 38. Plaintiff seeks to obtain a pecuniary benefit for the Class in the form of all reimbursement, restitution, and disgorgement from Defendant. Plaintiff's counsel are

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entitled to recover their reasonable attorneys' fees and expenses as a result of the conference of a pecuniary benefit on behalf of the Class, and will seek an award of such fees and expenses at the appropriate time.

39. By reason of the forgoing, Plaintiff and the Class have suffered money damages in an amount to be determined during the trial of his action.

COUNT III – FRAUD

40. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraphs as though fully set forth herein.
41. Defendant represented falsely represented to Plaintiff that engaging Direct Energy as her energy supplier would result in lower rates than she was paying at the time.
42. This representation to Plaintiff was made in order to induce Plaintiff to switch electricity suppliers and was the reason she switched services.
43. This representation made by Defendant was made with knowledge, or at least with utter disregard and recklessness, as to the truth or falsehood of the representations.
44. This representation was made with the intent to lure Plaintiff and Class Members into switching their energy supplier to Defendant Direct Energy.
45. Plaintiff and Class members justifiably relied on such representations since they were made by representatives of Direct Energy after reviewing the rate Plaintiff and Class members were paying on their electricity bill.
46. This reliance caused Plaintiff and Class Members to lose money since they were charged a higher rate by Direct Energy.

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PRAYER FOR RELIEF

Wherefore, Plaintiff, individually and on behalf of the Class of persons described herein, pray for an order as follows:

- a) Finding that this action satisfies the prerequisite for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and/or (b)(3), and certify the class defined herein;
- b) Designating Plaintiff as representative of the Class and her counsel as Class counsel;
- c) Entering judgement in favor of Plaintiff and the Class and against Defendant;
- d) Awarding Plaintiff and Class members their individual damages and attorneys' fees and allowing costs, including interest thereon;
- e) Awarding punitive damages;
- f) Imposing a constructive trust on amounts wrongfully collected from Plaintiff and the Class members pending resolution of their claims herein;
- g) Award injunctive relief as appropriate and necessary to remedy Defendant's wrongful conduct and to prevent the wrongful conduct from continuing, and;
- h) Granting such further relief as the Court deems just.

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiff hereby demands a trial by Jury.

Dated: April 8, 2016

Respectfully Submitted,

Joseph W. Shea III (0002758 OH)
Gregory P. Hartmann (0070334 OH)
Michelle A. Cheek (0086476 OH)

/s/ Joseph W. Shea III

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Attorneys for Plaintiffs

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

PATRICIA WILSON, on behalf of herself
and all others similarly situated

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

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

Joseph Shea, Greg Hartmann, Michelle Cheek SheaHartmann LLP 119
W. Central Parkway Cincinnati, OH 45202 (513) 621-8333

DEFENDANTS

DIRECT ENERGY SERVICES LLC dba DIRECT ENERGY

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)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2)

Brief description of cause:

class action complaint against energy supplier for breach of contract, misrepresentation and fraud

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5,000,001.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

04/08/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/Joseph W. Shea III

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

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.