

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

MEFAIL SERIFOSKI, Individually and on behalf of all others similarly situated,)	Case No.: 16-cv-656
)	
Plaintiff,)	CLASS ACTION COMPLAINT
v.)	
)	
BLAIN SUPPLY, INC., d/b/a BLAIN'S FARM & FLEET, and SYNCHRONY BANK,)	Jury Trial Demanded
)	
Defendants.)	

COMES NOW Plaintiff Mefail Serifoski, by his Attorneys, Ademi & O'Reilly, LLP, and for his class action complaint, states as follows:

INTRODUCTION

1. Plaintiff brings this action individually and on behalf of a proposed class (the "Class"), as more fully defined below, of similarly situated consumers throughout the State of Wisconsin to redress the pervasive pattern of fraudulent, deceptive and otherwise improper misrepresentations in retail sales and billing practices in which Defendants Blain Supply, Inc., d/b/a Blain's Farm & Fleet ("Farm & Fleet") and Synchrony Bank ("Synchrony") continue to engage.

2. Specifically, Farm & Fleet represents to customers in its stores, through print advertising and representations by sales staff that certain purchases on the customer's Farm & Fleet credit card will be subject to a 12-month promotional period (the "zero-interest promotion"). If the customer pays the balance within 12 months, the consumer will owe and pay no interest on the purchase. *See, eg.* <http://www.farmandfleet.com/services/credit-card-promo.aspx>. If, however, the customer does not pay off the promotional balance by the end of the 12 month period, then the customer must pay interest at the regular purchase rate, as if the

promotion never existed. Such zero-interest promotions are common in the retail industry, including with retailers whose branded credit cards are issued and serviced by Synchrony.

3. Once the consumer makes the purchase, however, Farm and Fleet and Synchrony do not apply the promotion to the balance of the purchase. Instead, Defendants apply the regular annual purchase interest rate from the first month that the customer carries a balance on his card.

4. Plaintiff brings this action on behalf of himself and other similarly situated consumers to halt these misrepresentations and false billing practices, and obtain redress for those who have been overcharged by Farm & Fleet and Synchrony.

5. Plaintiff alleges violations of Wis. Stat. § 100.18, as well as unjust enrichment under the laws of the state of Wisconsin.

JURISDICTION AND VENUE

6. This matter in controversy potentially exceeds \$5,000,000. Each member of the proposed Class of thousands is entitled to recover his or her pecuniary loss, plus costs and reasonable attorney's fees. Wis. Stat. § 100.18(11)(b). Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). Further, Plaintiff alleges a national class, which will result in at least one Class member belonging to a different state. Therefore, both elements of diversity jurisdiction under the Class Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

7. The court has personal jurisdiction to grant the relief sought by the Plaintiff. Farm & Fleet's and Synchrony's fraudulent billing activities were directed at consumers in Wisconsin. Additionally, Farm & Fleet is a Wisconsin corporation headquartered in Wisconsin and doing substantial business in the state.

8. Venue in Milwaukee County is proper in that Plaintiff sought goods from Farm & Fleet and credit from Synchrony at Farm & Fleet's retail location in Oak Creek, Milwaukee County, and because the claim arose in Milwaukee County and Defendants do substantial business in Milwaukee County.

PARTIES

9. Plaintiff Mefail Serifoski is, and at all times relevant to this action has been, a resident and citizen of Milwaukee County, Wisconsin.

10. Defendant Farm & Fleet is a Wisconsin corporation, and has its principal place of business in Janesville, Wisconsin. Farm & Fleet, therefore, is a citizen of Wisconsin.

11. Farm & Fleet owns and operates 36 retail locations throughout Wisconsin, Illinois and Iowa. According to Farm & Fleet's website, 14 of Farm & Fleet's retail stores are located in Wisconsin. <http://www.farmandfleet.com/stores/>.

12. Defendant Synchrony Bank ("Synchrony") is a Utah corporation with its headquarters at 170 West Election Road, Suite 125, Draper UT 84020.

13. Synchrony does substantial business in Wisconsin.

14. Synchrony issues and services branded credit cards around the world, including in Wisconsin. Some of Synchrony's branded credit cards include Amazon, Walmart, Lowe's, Guitar Center, Gap, BP, Ashley HomeStores, and Discount Tire, among others.

15. Synchrony issues and services "Farm & Fleet" branded credit cards.

16. Defendants' actions were intended to, and did, lead Plaintiff and members of the proposed Class to enter into credit card agreements and to make purchases on those credit cards, under the belief that such purchases would be subject to the zero-interest promotion.

17. Plaintiff and members of the Class justifiably relied on Defendants' misrepresentations that purchases greater than \$299 would be subject to the zero-interest promotion.

18. Subsequently, Defendants failed to apply the promotional period to those eligible purchases and instead, applied the regular purchase interest rate.

19. Plaintiff suffered an injury in fact and lost money as a result of the deceptive and unfair conduct described herein. Plaintiff's balance reflects interest being applied from one billing cycle after the first promotion-eligible purchase. Plaintiff has also made monthly payments, much of which were applied to interest on items that should have been subject to the zero-interest promotion, but for Defendants' misrepresentations.

SUBSTANTIVE ALLEGATIONS

20. On June 13, 2015, Plaintiff visited the Farm & Fleet store in Oak Creek, Wisconsin.

21. Plaintiff had no continuing relationship with Defendant prior to June 13, 2015, other than occasional purchases. He did not have a Farm & Fleet credit card account at the time of the first transaction described below, and has never been an employee of Farm & Fleet.

22. At the store, Plaintiff spoke with a Farm & Fleet representative about purchasing a Cub Cadet LT42 riding lawn mower, which was listed at \$1,539.99. *See* <http://www.farmandfleet.com/products/880691-cub-cadet-xt1-lt-42-lawn-tractor.html>.

23. At the time Plaintiff was in the store, he saw printed signs advertising the zero-interest promotion. The signs stated that purchases over \$299 would be interest free if the customer paid the entire promotional balance off within 12 months.

24. Plaintiff specifically asked the sales representative to confirm that the zero-interest promotion would apply if Plaintiff opened a Farm & Fleet credit card account to

purchase the lawn mower. The sales representative confirmed that the zero-interest promotion would apply.

25. Relying on the representations made by the store clerk and in-store advertising, Plaintiff opened a Farm & Fleet credit card and purchased the lawn mower using the new account. Plaintiff paid \$1,626.23 total for the lawn mower.

26. Plaintiff would not have purchased the lawn mower if not for the promotion. Plaintiff believed he would be able to pay off the balance before the 12 month period ended but would not have purchased the lawn mower if he had to pay interest on the purchase from the date of purchase.

27. At the time of the purchase, the zero-interest promotion was not applied to the purchase of the lawn mower.

28. Plaintiff spoke with the store clerk, who expressed surprise that the zero-interest promotion was not automatically applied to Plaintiff's account.

29. Plaintiff also spoke with the store manager, who told him to call Synchrony after 24 hours and tell Synchrony to apply the zero-interest promotion to the purchase.

30. Plaintiff called Synchrony the next day, 24 hours after the purchase. Synchrony's representative did not apply the zero-interest promotion to Plaintiff's lawn mower purchase.

31. The first Farm & Fleet credit card statement after Plaintiff's purchase did not reflect that the lawn mower purchase was subject to the zero-interest promotion.

32. From the second Farm & Fleet credit card statement period after Plaintiff purchased the lawn mower, Synchrony began charging Plaintiff interest on the lawn mower purchase at the regular annual purchase interest rate of 29.99%.

33. On December 6, 2015, Plaintiff purchased a “46 inch snow blade” (the “plow attachment”) for the Cub Cadet lawn tractor for \$329.99 at the Oak Creek Farm & Fleet store.

34. At the time Plaintiff was in the store, he saw printed signs advertising the credit card promotion - that purchases over \$299 would be interest free if the customer paid the balance off within 12 months.

35. Plaintiff specifically asked the sales representative to confirm that the promotional period would apply if Plaintiff purchased the plow attachment with his Farm & Fleet credit card account. Plaintiff told the sales representative that Defendants had not applied the zero-interest promotion to the prior purchase of the lawn mower. The sales representative said the zero-interest promotion would apply.

36. Relying on the representations made by the store clerk and in-store advertising, Plaintiff purchased the plow attachment with his Farm & Fleet credit card.

37. Plaintiff would not have purchased the plow attachment if not for the promotion.

38. At the time of the purchase, the promotional program was not applied.

39. Plaintiff called Synchrony after 24 hours. Synchrony did not apply the promotion.

40. Plaintiff's statements from Synchrony do not reflect that the promotion was ever applied to either of Plaintiff's eligible purchases. As a result, the balance that should have been at a zero interest rate for 12 months has been accruing interest at 29.99% since July 2015.

41. Plaintiff has overpaid Synchrony, as his payments have been applied to interest that Defendants should not have charged. Synchrony has not refunded the unauthorized interest.

42. At the time that Plaintiff agreed to a contract with Farm & Fleet and Synchrony, Farm & Fleet was misrepresenting its zero-interest promotion through the advertising and marketing mediums set forth above, including marketing and advertising materials at Oak Creek

location and in-person representations by Farm & Fleet representatives at the Oak Creek location.

43. Upon information and belief, Defendant routinely represents to prospective members that purchases over \$299 with the Farm and Fleet credit card are eligible for the zero-interest for 12 months promotion, but after the member makes the purchase, Farm & Fleet and Synchrony do not actually apply the promotion.

44. Plaintiff and the proposed Class members entered into purchase agreements with Farm & Fleet in reliance on the foregoing misrepresentations of the Defendants.

45. As a result of Farm & Fleet's misrepresentations, Plaintiff and the proposed Class members paid interest to Synchrony that they would not otherwise have paid.

CLASS ACTION ALLEGATIONS

46. Plaintiff brings his claims on behalf of a class, pursuant to Wis. Stat. § 803.08, consisting of (a) all natural persons in the United States (b) who purchased an item for greater than \$299 on his or her Farm & Fleet credit card account, (c) at a Farm & Fleet retail store in the state of Wisconsin (d) while Farm & Fleet represented to the person that the zero interest for 12 month promotion would apply, (e) and the promotion was not applied to the purchase (f) on or after June 3, 2014.

47. Upon information and belief, the Class is so numerous that joinder of all members of the Class is impracticable. While the exact number of Class members is presently unknown and can only be ascertained through discovery, Plaintiff believes that there are thousands of Class members based upon the fact that Farm & Fleet has 14 retail locations in Wisconsin and Synchrony services hundreds, if not thousands, of Farm & Fleet credit card accounts.

48. Plaintiff's claims are typical of the claims of the proposed Class, and Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does not

have any interests antagonistic to those of the proposed Class. Plaintiff has retained competent counsel experienced in the prosecution of this type of litigation. The questions of law and fact common to the proposed Class members, some of which are set out above, predominate over any questions affecting only individual Class members.

49. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. The trial and the litigation of Plaintiff's claims are manageable.

50. Certification of a class under Fed. R. Civ. P. 23 is appropriate. The common questions predominate over any individual questions. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, in that:

- a. The individual class members may not be aware of their legal rights.
- b. Concentration of the litigation concerning this matter in this Court is desirable.
- c. The claims of the representative plaintiff are typical of the claims of the class.
- d. A failure of justice will result from the absence of a class action.

Outrageous Conduct

51. Plaintiff incorporates the above-numbered paragraphs by reference.

52. Wis. Stat. § 895.043(3) provides that "The plaintiff may receive punitive damages if evidence is submitted showing that the defendant acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff."

53. Defendants acted maliciously and/or in an intentional disregard of the rights of the Plaintiff and the class members.

54. Such conduct violates Section 895.043 and renders Defendants liable for punitive damages.

COUNT I
Violation of Wis. Stat. § 100.18

55. Plaintiff incorporates the above numbered paragraphs by reference.

56. Plaintiff brings Count I individually and on behalf of all similarly situated residents for violations of the Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18, *et seq.*

57. Defendants' foregoing misrepresentations regarding the zero-interest promotion are deceptive and/or unfair acts or practices prohibited by the Wisconsin Deceptive Trade Practices Act.

58. Defendants intended to be deceptive and/or unfair to Plaintiff and the proposed Class by intentionally making the foregoing false and misleading statements as alleged above, because had Defendants provided accurate information, Plaintiff and the proposed Class members would not have entered into consumer credit transactions with Farm & Fleet and Synchrony.

59. Farm & Fleet's practice of creating, approving and distributing advertising for its zero-interest promotion that contained false and misleading representations regarding whether the promotion would be applied, as alleged in detail *supra*, is both an unfair act and deceptive practice prohibited by the foregoing statute.

60. Defendants intended to be deceptive and unfair to Plaintiff and the proposed Class by unlawfully representing that purchases over \$299 on the Farm & Fleet credit card would be subject to the zero-interest promotion, when in fact, Farm & Fleet and Synchrony actually refused to apply the promotion.

61. Defendants intended that Plaintiff and the proposed Class members rely on Defendants' misrepresentations. The zero-interest promotion is a strong incentive to choose to make a purchase on credit, if the customer does not know that the promotion is false or that it would not be applied.

62. Plaintiff and the proposed Class members justifiably relied on the misrepresentations to their detriment by signing up for a Farm & Fleet credit card account and making purchases.

63. Had Plaintiff and the proposed Class members known the truth, they would not have entered into purchase agreements with Farm & Fleet and Synchrony.

64. The above-described deceptive and unfair acts and practices were used or employed in the conduct of trade or commerce, namely, the sale of products to Plaintiff and the proposed Class members on credit.

65. The above-described deceptive and unfair acts offend public policy and cause substantial injury to consumers.

66. As a direct and proximate result of the foregoing, the Plaintiff and Class members have been damaged in an amount to be determined at trial.

COUNT II
Unjust Enrichment

67. Plaintiff incorporates the above numbered paragraphs by reference.

68. Plaintiff brings this claim individually, and on behalf of all similarly situated residents in and under the unjust enrichment laws.

69. As a direct and proximate result of Defendants' misconduct as set forth above, Defendants have been unjustly enriched.

70. Specifically, by their misconduct described herein, Defendants have accepted a benefit (*i.e.*, interest paid by Plaintiff and the proposed Class members during the time period when the zero-interest promotion should have applied) to the detriment of Plaintiff and the proposed Class.

71. Defendants' retention of the full amount of monies paid for the account violates the fundamental principles of justice, equity, and good conscience.

72. Defendants accepted the benefit based on their misrepresentations and omissions regarding the zero-interest promotion to the Plaintiff and the proposed Class members, and it would be inequitable for the Defendants to retain the benefit of those monies, as it was paid the money under false pretenses.

73. Defendants have obtained money to which they are not entitled, and interest on that money, and under these circumstances equity and good conscience require that the Defendants return the money with interest to the Plaintiff and the proposed Class.

74. As a direct and proximate result of the foregoing, Plaintiff and the proposed Class have been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and against Defendants for:

- a. Statutory damages;
- b. Actual damages;
- c. Punitive damages;
- d. Injunctive relief;
- e. Attorney's fees, litigation expenses and costs of suit;
- f. Such other or further relief as the Court deems proper.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury.

Dated: June 3, 2016

Respectfully submitted,

ADEMI & O'REILLY, LLP

By: /s/ John D. Blythin

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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 THE REVERSE OF THE FORM.)

Place an X in the appropriate Box: Green Bay Division Milwaukee Division

I. (a) PLAINTIFFS

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

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

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

Attorneys (If Known)

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

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

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

- | | | | | | |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> 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	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General	IMMIGRATION		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition			

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
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE _____

SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IEP _____ 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.C.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; 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 clerks 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 seven 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.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

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 dollar amount (in thousands of dollars) 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.

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JON W. SANFILIPPO
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JON W. SANFILIPPO
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: