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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Emil Frank, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

Apple Inc.

Defendant.

Case No. _____

Class Action Complaint

Jury Trial Demanded

1 Plaintiff Emil Frank (“Plaintiff”), by and through his attorneys, alleges upon personal
2 knowledge as to himself, and upon information and belief as to all other matters, and based upon
3 the investigation conducted by and through his attorneys, which included, among other things, a
4 review of news reports, press releases issued by Defendant Apple Inc. (“Apple” or
5 “Defendant”), and other publicly available documents, as follows:

6 **Summary of the Action**

7 1. Each year, Apple’s most loyal fans wake up in the middle of the night to order the
8 newest iPhones. Seeking to take advantage of this fervor among their most loyal fans, Apple
9 introduced in 2015 a program called the “iPhone Upgrade Program.” The promise of the
10 program was that customers could make a simple monthly payment and then, each year, upgrade
11 their iPhone to the newest model. Apple promised iPhone Upgrade Program customers a new
12 phone every single year.

13 2. While scores of customers signed up for the program and were ready to take
14 advantage of the every-year upgrade with the release of the new iPhone 7 and 7 Plus on
15 September 9, 2016, Apple had a different plan in mind. It allowed non-iPhone Upgrade Program
16 customers to snap up the limited inventory of the new devices while telling countless iPhone
17 Upgrade Program customers to “check back later.”

18 3. iPhone Upgrade Program customers are left waiting for new phones while they
19 continue to make payments on their old phones. Even worse, their eligibility to get a new phone
20 immediately upon release in 2017 or other future years without making extra payments will be
21 limited by the terms of the program.

22 4. This action seeks to hold Apple responsible for its misleading marketing of the
23 iPhone Upgrade Program. Specifically, Plaintiff seeks compensatory and injunctive relief that (a)
24 reimburses the class for any extra payments they have made or will need to make on their 2015-
25 purchased iPhones while they wait for a new iPhone; (b) retains their eligibility for an iPhone
26 upgrade in September 2017 even if they have not been able to make 12 payments on their 2016
27 device because of the Apple-imposed delay; (c) requires Apple to offer their full inventory to all

1 customers, and to stop limiting the availability of devices to customers using the iPhone Upgrade
 2 Program; and (d) allows aggrieved consumers to return their 2015-purchased iPhones and end
 3 their participation in the iPhone Upgrade Program with no further obligations.

4 **Jurisdiction and Venue**

5 5. This Court has subject-matter jurisdiction over this action pursuant to Title 28,
 6 United States Code, Section 1331, and pursuant to the Class Action Fairness Act of 2005, 28
 7 U.S.C. Sections 1332(a) and (d), because the amount in controversy exceeds \$5 million exclusive
 8 of interest and costs, and more than two thirds of the members of the Class are citizens of states
 9 different from those of Defendants.

10 6. This Court has jurisdiction over Apple because it is a corporation based in
 11 Cupertino, California and has sufficient minimum contacts with this District so as to render the
 12 exercise of jurisdiction by the District Court permissible under traditional notions of fair play and
 13 substantial justice.

14 7. Venue is proper in this District pursuant to 28 U.S.C. § 1931(b), as the Company
 15 has its principal offices located in this District and conducts substantial business here.

16 **Parties**

17 8. Plaintiff Emil Frank is an individual residing in Brooklyn, New York. He signed up
 18 for the iPhone Upgrade Program in September 2015 and currently owns an iPhone 6s Plus 64 GB
 19 in Space Gray which he purchased using the program. He tried to purchase an iPhone 7 Plus in
 20 either Black or Jet Black in either 128 GB or 256 GB on September 9, 2016 under the program,
 21 but was not able to do so.

22 9. Defendant Apple Inc. is a corporation organized under the laws of California with
 23 a principal place of business at 1 Infinite Loop, Cupertino, California 95014.

24 **Substantive Allegations**

25 10. As has become the custom in September of each year, on September 9, 2015,
 26 Apple introduced their then-newest iPhones: the iPhone 6s and iPhone 6s Plus.
 27

1 11. At the same time as it introduced iPhone 6s and 6s Plus, Apple also unveiled what
2 it called the “iPhone Upgrade Program.” The program was described by Apple as a way to get a
3 “new iPhone every year and the coverage you want from AppleCare+.”

4 12. Using marketing language such as “Get a new iPhone every year,” and “Getting
5 the latest iPhone has never been easier,” Apple encouraged customers to make monthly
6 payments to Apple in exchange for the promise of consistently getting access to the newest
7 iPhone each year.

8 13. The iPhone Upgrade Program offered Apple’s biggest fans and most loyal
9 customers a way to make simple monthly payments in exchange for the newest iPhones, with a
10 promise that “every year” the customer would be able to trade in last year’s iPhone and receive
11 the newest version of the phone.

12 14. For example, a customer who was interested in purchasing a 64 GB iPhone 6s Plus
13 could pay \$40.75 per month to receive the phone and AppleCare+ warranty service.

14 15. Under the terms of the program, so long as the customer waited at least six
15 months and had made at least 12 payments, they could trade in their old iPhone and receive a
16 new one at a similar monthly fee. Once the customer makes 24 payments on a single phone, she is
17 entitled to keep the device and the contract ends.

18 16. Importantly, the payments account for more than the price of paying outright for
19 the iPhone device. Customers pay an extra fee to Apple in order to have access to the newest
20 devices on an annual basis and are required to bundle AppleCare+ warranty service as part of
21 their plan.

22 17. Because Apple typically releases new iPhones in September each year, Apple’s
23 message was simple: make 12 monthly payments on the iPhone 6s or 6s Plus and then, next
24 September, use the Upgrade Program to immediately upgrade to the newest iPhone technology.

25 18. As Apple’s marketing page explained it, “[Y]ou can also upgrade to a new iPhone
26 after just six months, if you’ve made at least 12 payments. Just trade in your current iPhone and
27 start a new plan. It’s that easy.”

1 19. The program was a huge success. One analyst, Gene Munster of Piper Jaffray,
2 estimated that “15% of new iPhone customers” might opt-in to the program when it was first
3 announced. By November, Munster had raised his estimates to “as high as 50%,” after a survey
4 indicated that at least 37% of respondents joined the program.

5 20. At the first opportunity that iPhone Upgrade Program customers had to use the
6 program, however, they found out that the program was anything but “easy.” Instead, it was a
7 marketing scheme that utterly failed its participants.

8 21. On September 7, 2016, Apple announced the iPhone 7 and iPhone 7 Plus.

9 22. As Apple explains it, the iPhone 7 and 7 Plus are the “best, most advanced
10 iPhone[s] ever,” and are “packed with unique innovations that improve all the ways iPhone is
11 used every day.”

12 23. The new iPhones promoted better performance, better battery life, innovative
13 new cameras, an “amazing audio experience,” and water resistance, among other breakthrough
14 features.

15 24. Apple announced that customers could start ordering the iPhone 7 and 7 Plus on
16 Friday, September 9 (at 12:01 a.m. Pacific time), and that the phones would be available in stores
17 and delivered to customers beginning on Friday, September 16.

18 25. Like many Apple customers, iPhone Upgrade Customers, including Plaintiff,
19 stayed up late or set their alarms to wake up in the middle of the night so that they could be
20 among the first to pre-order the new phones.

21 26. As promised, sales of the iPhone 7 and 7 Plus became available at apple.com and
22 on the Apple Store “app” at 12:01 a.m. on September 9.

23 27. While traditional, non-program Apple customers were directed to add phones to
24 their shopping carts and proceed to checkout, Apple’s iPhone Upgrade Program customers were
25 sent a different route.

26 28. What became clear to these Upgrade Program customers very quickly was that
27 Apple was providing extremely limited inventory for them to reserve for pickup at specific Apple

1 Stores. While other non-plan customers snapped up popular iPhone 7 and 7 Plus devices in
2 various sizes and colors, most iPhone Upgrade Program customers had access to almost *no*
3 iPhone inventory to choose from for their upgrade.

4 29. Before long, certain iPhone models were backordered until at least November
5 2016. But iPhone Upgrade Customers could still not even place orders that would arrive when
6 inventory became available the way Apple's traditional customers could. Instead, they were
7 simply shut out of reservations and told to check back later for future appointments and
8 inventory.

9 30. iPhone Upgrade Program customers were told bluntly: "We're not taking any
10 more reservations to upgrade your iPhone right now. Reservations will reopen at 8:00 a.m. on
11 September 17. Please come back then to make a reservation."

12 31. Outrage was immediate. For example, the MacRumors website reported that this
13 message appeared "just minutes after pre-orders began," and while Apple's traditional
14 customers were still snapping up iPhones set to be delivered on September 16.

15 32. As online publication Motherboard put it: Apple created "two separate pools of
16 phones to order from. If you paid up front, you were pulling from what appeared to be a universal
17 stock list. But to upgrade your old iPhone using the upgrade program, stocks were allocated to
18 specific stores. . . The in-store requirement makes it harder, obviously, to get your desired iPhone
19 if you're part of the upgrade program."

20 33. Motherboard continued: "Another thing making it hard to get the specific iPhone
21 you want [if you are an iPhone Upgrade Program customer] is the fact that . . . Apple isn't even
22 offering the option to preorder or get on a waitlist for phones that aren't in stock."

23 34. iPhone Upgrade Program customers—some of whom had woken up at three in
24 the morning to place their orders—were shocked.

25 35. News outlets covered the disappointment. Motherboard ran a story headlined
26 "iPhone 7 Shortages Are Turning Apple's iPhone Upgrade Program into a Big Mess."
27

1 36. 9to5Mac ran a story entitled “Apple’s iPhone Upgrade Program looks like the
2 worst way to pre-order the iPhone 7”.

3 37. MacRumors ran a story entitled “iPhone Upgrade Program Causes Headaches on
4 Launch Day due to Limited Stock.”

5 38. This is not just a problem created by the limited supply of the newly released
6 iPhones. Rather, Apple *intentionally* limited the inventory available to iPhone Upgrade Program
7 customers (who are already contractually locked into making monthly payments for their old
8 devices) to capture sales from new customers who weren’t already part of the program.

9 39. Indeed, customers who purchased their devices from carriers (such as AT&T or
10 Verizon) or from Apple without being part of the program were able to secure their iPhones long
11 after iPhone Upgrade Program customers were shut out. Even customers on similar plans offered
12 by the carriers (such as AT&T Next) were provided more access than iPhone Upgrade
13 Customers were.

14 40. The consequences for iPhone Upgrade Program members are severe.

15 41. *First*, they are not able to get a new iPhone “every year” as Apple promised, as
16 they will now be delayed weeks or months (unlike many of Apple’s other customers, who were
17 able to order what they wanted during the launch and who will start to receive their desired
18 devices as soon as Friday, September 16.) For these customers, having quick access to the latest
19 technology is the very reason they signed up for the program in the first place.

20 42. *Second*, iPhone Upgrade Program customers will now be forced to make additional
21 payments on their old phones while they wait for availability of new ones, violating the promise of
22 the program. If an iPhone Upgrade Program customer is not able to get her choice of iPhone until
23 November, they might make two or three additional payments on their old phone.

24 43. *Third*, the knock-on effects are even worse. Because the terms of the program
25 require a customer to make twelve payments before upgrading to a new phone, if Apple
26 introduces another revolutionary new phone in September 2017 (as most pundits expect), iPhone
27 Upgrade Program customers that are now forced to wait until November or later to purchase

1 their 2016 iPhones will be shut out completely from receiving the new phone (without making
2 extra payments) until at least November 2017, months after everyone else receives their phone.

3 44. For example, imagine an iPhone Upgrade Program customer who signed up for
4 the program in September 2015 and purchased an iPhone 6s Plus. The customer has made 12
5 monthly payments as of September 2016 and logs in to take advantage of the upgrade and receive
6 a new iPhone 7 Plus, but instead is told to come back later and must wait until November (or
7 later) to receive the phone she wants. The customer will have to make at least two additional
8 monthly payments on the iPhone 6s Plus (costing her \$80 or more) before receiving the new
9 iPhone 7 Plus as promised. When Apple releases the next iPhone in September 2017, that
10 customer will have only made 10 payments on their iPhone 7 Plus. Even if there is plenty of
11 inventory set aside for iPhone Upgrade Program customers in 2017, that customer will need to
12 make two extra payments (an additional \$80 or more) to be eligible for the immediate upgrade, or
13 will instead need to wait months to receive her new phone.

14 45. What is worse, iPhone Upgrade Program customers *still* can't place orders for
15 new phones. Instead, they have been told to check back on September 17 at 8:00 a.m. to see if
16 they can make an appointment at a local Apple store to receive a new device. The appointment
17 will be successful only if the local store has inventory of the desired device. But for devices which
18 are backordered and unavailable, iPhone Upgrade Program customers will be forced to check
19 back every day to make an appointment. No other iPhone customer is *required* to be so actively
20 involved in securing the newest phone. Other customers can simply place their orders now and
21 receive their phones as soon as they are available. Shockingly, the very customers who are most
22 likely to value receiving new iPhones as soon as they are available are the ones Apple courted
23 with their iPhone Upgrade Program. These customers are now in a worse position than every
24 other iPhone customer because they joined the program.

25 **Plaintiff's Experiences**

26 46. Emil Frank is a loyal Apple customer who chose to join the iPhone Upgrade
27 Program because he saw it as a premium option for the luxury of having a new phone every year.

He relied on Apple's unambiguous promise of a "new iPhone every 12 months." It was this promise that caused him to join the program, and this promise that Apple violated. Mr. Frank woke up at 2:45 a.m. New York time and was shocked to find that within moments, it was impossible to find an iPhone under the program anywhere near his location in New York City. He began searching in other parts of the state, as he was willing to drive to Buffalo or Albany to get access to his new phone, all to no avail. He expanded his search as far as North Carolina and Maine: nowhere was he able to get the iPhone model he desired. Mr. Frank checked inventory at every Apple store in New York, New Jersey, Pennsylvania, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, Maine, Maryland, Delaware, Virginia, and North Carolina: none would offer him any of the four devices he was interested in, nor would any allow him to order the device and be notified when it was ready. At the same time as he was being shut out, customers outside the program were snapping up 128 and 256 GB iPhone 7 Plus devices in Black and Jet Black. Non-upgrade customers were able to place orders that guaranteed in-store pickup or promised to deliver as early as September 16 or shortly thereafter. Now, Mr. Frank is left waiting—likely into November or December. Customers outside the program were securing phones that would have been acceptable to Mr. Frank for hours after he was completely shut out. Having lost all faith in the iPhone Upgrade Program, Mr. Frank decided to purchase a new phone for approximately \$950; his best hope of receiving the phone will be sometime in October, three weeks or more after it was made available to others. He is now stuck with an obligation to make twelve additional payments on the Upgrade Program phone he wasn't able to use as intended.

Class Action Allegations

47. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of all persons and entities who joined the Apple iPhone Upgrade Program prior to September 2016, fulfilled their obligation to make twelve monthly payments under the Program or are willing to fulfill that obligation, and have been unable to reserve or acquire a new iPhone 7 or 7 Plus. Excluded from the Class is the Defendant, directors and officers of Defendant, as well as their families and affiliates.

1 48. The members of the Class are so numerous that joinder of all members is
2 impracticable. The disposition of their claims in a class action will provide substantial benefits to
3 the parties and the Court.

4 49. There is a well-defined community of interest in the questions of law and fact
5 involved in this case. Questions of law and fact common to the members of the Class which
6 predominate over questions which may affect individual Class members include, but are not
7 limited to:

- 8 a. Whether Apple breached their contracts with iPhone Upgrade Program customers
- 9 by refusing to allow them to reserve phones or access new iPhone inventory
- 10 b. Whether Apple's implementation of the iPhone Upgrade Program violates the
- 11 duty of good faith and fair dealing;
- 12 c. Whether Apple's implementation of the iPhone Upgrade Program was unfair
- 13 and/or deceptive;

14 50. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class
15 sustained similar damages from Defendants' wrongful conduct alleged herein.

16 51. Plaintiff will adequately protect the interests of the Class and has retained counsel
17 who are experienced in class action securities litigation. Plaintiff has no interests that conflict
18 with those of the Class.

19 52. A class action is superior to other available methods for the fair and efficient
20 adjudication of this controversy.

21 **Causes of Action**

22 **Count 1** 23 **Breach of Contract**

24 53. Plaintiff repeats and re-alleges each and every allegation contained above as if fully
25 set forth herein.

26 54. Plaintiff and members of the Class entered into a contract with Apple for the
27 iPhone Upgrade Program.

65. Apple appreciates and/or has knowledge of this benefit.

66. Under principles of equity and good conscience, Apple should not be permitted to retain revenue acquired by virtue of their unlawful conduct.

67. Plaintiff has no adequate remedy at law.

Count 4

Violations of the Consumer Legal Remedies Act, California Civil Code § 1750, *et seq.*

68. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

69. In violation of Civil Code section 1750, *et seq.* (the “CLRA”), Defendant Apple has engaged and is engaging in unfair and deceptive acts and practices in the course of transactions with Plaintiff, and such transactions are intended to and have resulted in the sale of goods to consumers. Plaintiff and the Class Members are “consumers” as that term is used in the CLRA because they sought or acquired Defendant’s goods and services for personal, family, or household purposes. Defendant’s past and ongoing acts and practices include, but are not limited to, Defendant’s representations about the iPhone Upgrade Program and Defendant’s implementation of the program to limit the supply of phones.

70. Defendant’s violations of the Civil Code have caused damage to Plaintiff and other Class Members and threaten additional injury if the violations continue, including as set forth above.

71. At this time, Plaintiff seeks only injunctive relief pursuant to the CLRA, without prejudice to amend their complaint to seek money damages under the CLRA at a later time. Cal. Civ. Code § 1782(d).

Count 5

Violations of the Unfair Competition Law (UCL), California Business and Professions Code § 17200, *et seq.*

72. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

73. In violation of California Business and Professions Code 17200 *et seq.*, Defendant’s conduct in this regard is ongoing, and includes, but is not limited to, statements

1 made by Defendant and Defendant's omissions, including marketing material related to the
 2 iPhone Upgrade Program, the iPhone Upgrade Program contract, marketing material on
 3 Defendant's website and in Defendant's retail stores, and material provided to the press by
 4 Defendant. Defendant has failed to disclose their business conduct as set forth above.

5 74. By engaging in the above-described acts and practices, Defendant has committed
 6 one or more acts of unfair competition within the meaning of the Unfair Competition Law, and,
 7 as a result, Plaintiff and the Class have suffered injury-in-fact and have lost money and property
 8 as described above.

9 75. Defendant's business acts and practices are unlawful, in part, because they violate
 10 California Business and Professions Code, § 17500, *et seq.*, which prohibits false advertising, in
 11 that Defendant made untrue and misleading statements regarding the iPhone Upgrade Program
 12 designed to induce consumers to enter into obligations relating to the program, and regarding
 13 which statements Defendant knew or which, and by the exercise of reasonable care Defendant
 14 should have known, were untrue and misleading.

15 76. Defendant is therefore in violation of the unlawful prong of the Unfair
 16 Competition Law.

17 77. Defendant's business acts and practices are also unfair because they have caused
 18 harm and injury-in-fact to Plaintiff and Class Members and for which Defendants have no
 19 justification other than to increase, beyond what Defendant would have otherwise realized,
 20 revenue from its iPhone Upgrade Program at the expense of the class.

21 78. Defendant's conduct lacks reasonable and legitimate justification in that
 22 Defendant has benefited from such conduct and practices while Plaintiff and the Class members
 23 have been misled as to the nature and integrity of Defendant's iPhone Upgrade Program, and
 24 have, in fact, suffered material disadvantage regarding their interests. Defendant's conduct
 25 offends public policy in California tethered to the Consumer Legal Remedies Act. In addition,
 26 Defendant's *modus operandi* constitutes a sharp practice in that Defendant knew and should have
 27

1 known that consumers would be offended by the manner in which Defendant implemented the
2 iPhone Upgrade Program.

3 79. Defendant's acts and practices were fraudulent within the meaning of the Unfair
4 Competition Law because they were likely to mislead (and did in fact mislead) the members of
5 the public to whom they were directed.

6 **Prayer for Relief**

7 Wherefore, Plaintiff prays for relief and judgment as follows:

- 8 a. Determining that this action is a proper class action pursuant to Rule 23(a) and
9 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class as defined
10 herein, and a certification of Plaintiff as Class Representatives pursuant to Rule 23
11 of the Federal Rules of Civil Procedure and appointment of Plaintiff's counsel as
12 Class Counsel;
- 13 b. awarding compensatory and punitive damages in favor of Plaintiff and the other
14 class members against Defendant for all damages sustained as a result of
15 Defendant's wrongdoing, in an amount to be proven at trial, including pre-
16 judgment and post-judgment interest thereon;
- 17 c. awarding injunctive relief sought by Plaintiff;
- 18 d. awarding Plaintiff and other members of the Class their costs and expenses in this
19 litigation, including reasonable attorneys' fees and experts' fees and other costs
20 and disbursements; and
- 21 e. awarding Plaintiff and the other Class members such other relief as this Court may
22 deem just and proper.

23 **Demand for Jury Trial**

24 Plaintiff hereby demands a trial by jury in this action of all issues so triable.
25
26
27

September 12, 2016

Block & Leviton LLP

/s/ Jacob A. Walker

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CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS	DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorneys (Firm Name, Address, and Telephone Number)	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)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																												
<table><tr><td>1 U.S. Government Plaintiff</td><td>3 Federal Question (U.S. Government Not a Party)</td></tr><tr><td>2 U.S. Government Defendant</td><td>4 Diversity (Indicate Citizenship of Parties in Item III)</td></tr></table>	1 U.S. Government Plaintiff	3 Federal Question (U.S. Government Not a Party)	2 U.S. Government Defendant	4 Diversity (Indicate Citizenship of Parties in Item III)	<table><tr><td></td><td>PTF</td><td>DEF</td><td></td><td>PTF</td><td>DEF</td></tr><tr><td>Citizen of This State</td><td>1</td><td>1 Incorporated or Principal Place of Business In This State</td><td>4</td><td>4</td><td></td></tr><tr><td>Citizen of Another State</td><td>2</td><td>2 Incorporated and Principal Place of Business In Another State</td><td>5</td><td>5</td><td></td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td>3</td><td>3 Foreign Nation</td><td>6</td><td>6</td><td></td></tr></table>		PTF	DEF		PTF	DEF	Citizen of This State	1	1 Incorporated or Principal Place of Business In This State	4	4		Citizen of Another State	2	2 Incorporated and Principal Place of Business In Another State	5	5		Citizen or Subject of a Foreign Country	3	3 Foreign Nation	6	6	
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Citizen or Subject of a Foreign Country	3	3 Foreign Nation	6	6																									

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury - Medical Malpractice	PERSONAL INJURY 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	625 Drug Related Seizure of Property 21 USC § 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities-Employment 446 Amer. w/Disabilities-Other 448 Education	PRISONER PETITIONS Habeas Corpus: 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty Other: 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 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-Transfer	8 Multidistrict Litigation-Direct File
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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 RULE 23, Fed. R. Civ. P.	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: Yes No
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VIII. RELATED CASE(S), IF ANY (See instructions):	JUDGE	DOCKET NUMBER
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IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2) (Place an "X" in One Box Only)	SAN FRANCISCO/OAKLAND	SAN JOSE	EUREKA-MCKINLEYVILLE
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DATE:	SIGNATURE OF ATTORNEY OF RECORD:
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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - (3) Federal question. This refers to suits under 28 USC § 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.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 Federal Rule of Civil Procedure 23.
- 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."
- Date and Attorney Signature.** Date and sign the civil cover sheet.