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12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14 LARRY MAESTAS, individually,  
15 and on behalf of other members of  
16 the general public similarly situated,

17 Plaintiff,

18 vs.

19 WAL-MART STORES, INC., and  
20 DOES 1-10 Inclusive,

21 Defendant.

Case No.

**CLASS ACTION COMPLAINT**

- 22 (1) Violation of False Advertising Law  
(Cal. Business & Professions Code  
23 §§ 17500 *et seq.*),
- 24 (2) Violation of Unfair Competition  
25 Law (Cal. Business & Professions  
26 Code §§ 17200 *et seq.*).

**Jury Trial Demanded**

1 Plaintiff LARRY MAESTAS (“Plaintiff”), individually and on behalf of all  
2 other members of the public similarly situated, alleges as follows:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action Complaint against Defendant WAL-  
5 MART STORES, INC. (hereinafter “Defendant”) to stop Defendant’s practice of  
6 falsely advertising and selling warranties for their car batteries that they have no  
7 intention of honoring and to obtain redress for a nationwide class of consumers  
8 (“Class Members”) who were misled, within the applicable statute of limitations  
9 period, by Defendant.

10 2. Defendant advertised to consumers that a warranty would accompany  
11 the purchase of its car batteries (“the Class Products”), whereby the consumer  
12 product would be replaced if it was defective.

13 3. Warranties are of particular value to consumers because they provide  
14 a guarantee of the value of a good after it is purchased. This is particularly true  
15 for car batteries which are critical to the safe functioning of consumers’ vehicles.

16 4. Plaintiff and other consumers similarly situated were exposed to these  
17 advertisements through print and digital media.

18 5. Defendant misrepresented and falsely advertised and represented to  
19 Plaintiff and others similarly situated by failing to disclose in either its  
20 advertisements or the contract itself that Defendant would not honor the warranty  
21 if a consumer is placed on an internal fraud database for any reason.

22 6. Defendant’s misrepresentations to Plaintiff and others similarly  
23 situated induced them to purchase Defendant’s Class Products.

24 7. Defendant took advantage of Plaintiff and similarly situated  
25 consumers unfairly and unlawfully.

26 **JURISDICTION AND VENUE**

27 8. This class action is brought pursuant to Federal Rule of Civil  
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1 Procedure 23.

2 9. This matter is properly venued in the United States District Court for  
3 the Eastern District of California because Defendant does business within the state  
4 of California and the Eastern District of California and Plaintiff resides in the  
5 Eastern District of California.

6 10. There is original federal subject matter jurisdiction over this matter  
7 pursuant to the Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (Feb.  
8 18, 2005), by virtue of 28 U.S.C. §1332(d)(2), which explicitly provides for the  
9 original jurisdiction of federal courts in any class action in which at least 100  
10 members are in the proposed plaintiff class, any member of the plaintiff class is a  
11 citizen of a State different from the State of citizenship of any defendant, and the  
12 matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interests and  
13 costs.

14 11. In the case at bar, there are at least 100 members in the proposed  
15 Class, the total claims of the proposed Class members are in excess of  
16 \$5,000,000.00 in the aggregate, exclusive of interests and costs, and Plaintiff seeks  
17 to represent a nationwide class of consumers, establishing minimum diversity.

18 **THE PARTIES**

19 12. Plaintiff LARRY MAESTAS is a citizen and resident of the State of  
20 California, County of San Joaquin.

21 13. Defendant WAL-MART STORES, INC. is a corporation that does  
22 business in California, including in San Joaquin County, that is incorporated in  
23 Delaware and has its headquarters in Bentonville, Arkansas.

24 14. Plaintiff alleges, on information and belief, that Defendant's  
25 marketing campaign, as pertains to this matter, was created by Defendant and was  
26 disseminated throughout California and the United States.

27 15. Plaintiff is informed and believes, and thereon alleges, that at all time  
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1 relevant, Defendant's sales of products and services are governed by the  
2 controlling law in the state in which they do business and from which the sales of  
3 products and services, and the allegedly unlawful acts occurred, which is  
4 California.

5 16. Plaintiff is informed and believes, and thereon alleges, that each and  
6 all of the acts and omissions alleged herein were performed by, or is attributable  
7 to, Defendant and/or its employees, agents, and/or third parties acting on its behalf,  
8 each acting as the agent for the other, with legal authority to act on the other's  
9 behalf. The acts of any and all of Defendant's employees, agents, and/or third  
10 parties acting on its behalf, were in accordance with, and represent, the official  
11 policy of Defendant.

12 17. Plaintiff is informed and believes, and thereon alleges, that said  
13 Defendants are in some manner intentionally, negligently, or otherwise  
14 responsible for the acts, omissions, occurrences, and transactions of each and all  
15 their employees, agents, and/or third parties acting on their behalf, in proximately  
16 causing the damages herein alleged.

17 18. At all relevant times, Defendant ratified each and every act or  
18 omission complained of herein. At all relevant times, Defendant, aided and  
19 abetted the acts and omissions as alleged herein.

### 20 **PLAINTIFF'S FACTS**

21 19. In or around late 2013 Plaintiff purchased an EverStart MAXX car  
22 battery ("the Battery") from Defendant.

23 20. The in-store advertisement for the Battery stated that it came with a  
24 five (5) year warranty consisting of a three (3) year replacement warranty and a  
25 two (2) year pro-rata warranty. The Battery itself also stated clearly on the label  
26 that it had a three (3) year replacement warranty.

27 21. The advertisement appears to be part of a national advertising  
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1 campaign performed by Defendant.

2 22. Plaintiff purchased the Battery from Defendant.

3 23. After using the Battery for two years, and within the three (3) year  
4 replacement warranty period, in or around November 2015, it began to  
5 malfunction.

6 24. Plaintiff requested, pursuant to the replacement warranty, that  
7 Defendant honor the replacement warranty and replace the Battery.

8 25. Defendant refused to replace the Battery, thereby refusing to honor  
9 its warranty, because Plaintiff was on an internal fraud database.

10 26. Defendant alleged that Plaintiff had paid a bad check to Defendant in  
11 Colorado in 2000. Plaintiff, however, was not even in the State of Colorado at  
12 that time, as he was serving in the United States Army in the State of Kansas.

13 27. Defendant omitted from its advertisements and contracts that if  
14 purchasers were reported on an internal fraud database, irrespective of the veracity  
15 of such reports, Defendant would refuse to honor its warranty.

16 28. Since Defendant refused to honor the warranty, Plaintiff had to  
17 purchase a new Battery at a cost of over \$100.

18 29. Plaintiff was significantly upset by Defendant's refusal to honor its  
19 warranty as advertised.

20 30. Such sales tactics employed on Defendant rely on falsities and have  
21 a tendency to mislead and deceive a reasonable consumer.

22 31. Plaintiff is informed, believes, and thereupon alleges that such  
23 representations were part of a common scheme to mislead consumers and  
24 incentivize them to purchase products from Defendant.

25 32. Plaintiff reasonably believed and relied upon Defendant's  
26 representations in its advertisement.

27 33. Plaintiff materially changed his position in reliance on Defendant's  
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1 representations and was harmed thereby.

2 34. Plaintiff would not have purchased the Battery or any similarly  
3 advertised product had Defendant disclosed that it would not honor its warranties  
4 if Plaintiff was reported on an internal fraud database irrespective of whether they  
5 in fact defrauded Defendant.

6 35. Had Defendant properly marketed, advertised, and represented that it  
7 would not honor warranties stated in its advertisements, Plaintiff would not have  
8 purchased the Battery or any similarly advertised product.

9 36. Defendant benefited from falsely advertising and representing the  
10 costs of its products. Defendant benefited on the loss to Plaintiff and provided  
11 nothing of benefit to Plaintiff in exchange.

12 **CLASS ACTION ALLEGATIONS**

13 37. Plaintiff brings this action, on behalf of himself and all others  
14 similarly situated, and thus, seeks class certification under Federal Rule of Civil  
15 Procedure 23.

16 38. The class Plaintiff seeks to represent (the “Class”) is defined as  
17 follows:

18 All consumers, who, between the applicable statute of  
19 limitations and the present, purchased Defendant’s Class  
Products.

20 39. As used herein, the term “Class Members” shall mean and refer to the  
21 members of the Class described above.

22 40. Excluded from the Class are Defendant, its affiliates, employees,  
23 agents, and attorneys, and the Court.

24 41. Plaintiff reserves the right to amend the Class, and to add additional  
25 subclasses, if discovery and further investigation reveals such action is warranted.

26 42. Upon information and belief, the proposed class is composed of  
27 thousands of persons. The members of the class are so numerous that joinder of  
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1 all members would be unfeasible and impractical.

2 43. No violations alleged in this complaint are contingent on any  
3 individualized interaction of any kind between class members and Defendant.

4 44. Rather, all claims in this matter arise from the identical, false,  
5 affirmative written statements that Defendant would provide warranties to the  
6 Class Members, when in fact, such representations were false.

7 45. There are common questions of law and fact as to the Class Members  
8 that predominate over questions affecting only individual members, including but  
9 not limited to:

- 10 (a) Whether Defendant engaged in unlawful, unfair, or deceptive  
11 business practices in advertising warranties with its products to  
12 Plaintiff and other Class Members with no intention of  
13 honoring them in case Class Members are on an internal fraud  
14 database;
- 15 (b) Whether Defendant made misrepresentations with respect to its  
16 warranties for its products;
- 17 (c) Whether Defendant profited from this advertisement;
- 18 (d) Whether Defendant violated California Bus. & Prof. Code §  
19 17200, *et seq.* California Bus. & Prof. Code § 17500, *et seq.*,  
20 and California Civ. Code § 1750, *et seq.*;
- 21 (e) Whether Plaintiff and Class Members are entitled to equitable  
22 and/or injunctive relief;
- 23 (f) Whether Defendant's unlawful, unfair, and/or deceptive  
24 practices harmed Plaintiff and Class Members; and
- 25 (g) The method of calculation and extent of damages for Plaintiff  
26 and Class Members.

27 46. Plaintiff is a member of the class he seeks to represent  
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1           55. California Business and Professions Code section 17500, *et seq.*'s  
2 prohibition against false advertising extends to the use of false or misleading  
3 written statements.

4           56. Defendant misled consumers by making misrepresentations and  
5 untrue statements about its warranties, namely, Defendant made consumers  
6 believe that Defendant would honor the warranties for the Class Products listed in  
7 its advertisement even though this was not the case.

8           57. Defendant knew that its representations and omissions were untrue  
9 and misleading, and deliberately made the aforementioned representations and  
10 omissions in order to deceive reasonable consumers like Plaintiff and other Class  
11 Members.

12           58. As a direct and proximate result of Defendant's misleading and false  
13 advertising, Plaintiff and the other Class Members have suffered injury in fact.  
14 Plaintiff reasonably relied upon Defendant's representations regarding the  
15 warranties for Defendant's products. In reasonable reliance on Defendant's false  
16 advertisements, Plaintiff and other Class Members purchased Class Products from  
17 Defendant believing that in case they would be covered by warranties providing  
18 for their replacement or repair, and that Defendant would honor the warranties.  
19 However, Defendant did not inform Class Members that in case Class Members  
20 are placed on an internal fraud database, irrespective of whether said placement is  
21 justified, Defendant would not honor the warranties.

22           59. Plaintiff alleges that these false and misleading written  
23 representations made by Defendant constitute a "scheme with the intent not to sell  
24 that personal property or those services, professional or otherwise, so advertised  
25 at the price stated therein, or as so advertised."

26           60. Defendant advertised to Plaintiff and other putative class members,  
27 through written representations and omissions made by Defendant and its  
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1 employees.

2 61. Defendant knew that they would not provide Plaintiff and Class  
3 Members with the warranties as they are advertised.

4 62. Thus, Defendant knowingly lied to Plaintiff and other putative class  
5 members in order to induce them to purchase the Class Products from Defendant.

6 63. The misleading and false advertising described herein presents a  
7 continuing threat to Plaintiff and the Class Members in that Defendant persist and  
8 continue to engage in these practices, and will not cease doing so unless and until  
9 forced to do so by this Court. Defendant's conduct will continue to cause  
10 irreparable injury to consumers unless enjoined or restrained. Plaintiff is entitled  
11 to preliminary and permanent injunctive relief ordering Defendant to cease their  
12 false advertising, as well as disgorgement and restitution to Plaintiff and all Class  
13 Members of Defendant's revenues associated with their false advertising, or such  
14 portion of those revenues as the Court may find equitable.

15 **SECOND CAUSE OF ACTION**

16 **Violation of Unfair Competition Law**

17 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

18 64. Plaintiff incorporates by reference each allegation set forth above.

19 65. Actions for relief under the unfair competition law may be based on  
20 any business act or practice that is within the broad definition of the UCL. Such  
21 violations of the UCL occur as a result of unlawful, unfair or fraudulent business  
22 acts and practices. A plaintiff is required to provide evidence of a causal  
23 connection between a defendant's business practices and the alleged harm--that is,  
24 evidence that the defendant's conduct caused or was likely to cause substantial  
25 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct  
26 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory  
27 definition of unfair competition covers any single act of misconduct, as well as  
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1 ongoing misconduct.

2 **UNFAIR**

3 66. California Business & Professions Code § 17200 prohibits any  
4 “unfair ... business act or practice.” Defendant’s acts, omissions,  
5 misrepresentations, and practices as alleged herein also constitute “unfair”  
6 business acts and practices within the meaning of the UCL in that its conduct is  
7 substantially injurious to consumers, offends public policy, and is immoral,  
8 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs  
9 any alleged benefits attributable to such conduct. There were reasonably available  
10 alternatives to further Defendant’s legitimate business interests, other than the  
11 conduct described herein. Plaintiff reserves the right to allege further conduct  
12 which constitutes other unfair business acts or practices. Such conduct is ongoing  
13 and continues to this date.

14 67. In order to satisfy the “unfair” prong of the UCL, a consumer must  
15 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing  
16 benefits to consumers or competition; and, (3) is not one that consumers  
17 themselves could reasonably have avoided.

18 68. Here, Defendant’s conduct has caused and continues to cause  
19 substantial injury to Plaintiff and members of the Class. Plaintiff and members of  
20 the Class have suffered injury in fact due to Defendant’s decision to mislead  
21 consumers. Thus, Defendant’s conduct has caused substantial injury to Plaintiff  
22 and the members of the Class.

23 69. Moreover, Defendant’s conduct as alleged herein solely benefits  
24 Defendant while providing no benefit of any kind to any consumer. Such  
25 deception utilized by Defendant convinced Plaintiff and members of the Class that  
26 Defendant would provide them with a warranty and that Defendant would honor  
27 that warranty upon purchasing Defendant’s Class Products. In fact, Defendant  
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1 knew that they had no intention of providing the advertised warranties and thus  
2 unfairly profited. Thus, the injury suffered by Plaintiff and the members of the  
3 Class are not outweighed by any countervailing benefits to consumers.

4 70. Finally, the injury suffered by Plaintiff and members of the Class is  
5 not an injury that these consumers could reasonably have avoided. After  
6 Defendant falsely represented the warranties, consumers changed their position by  
7 purchasing the warranted Class Products, thus causing them to suffer injury in  
8 fact. Defendant failed to take reasonable steps to inform Plaintiff and class  
9 members that the advertisement was false. As such, Defendant took advantage of  
10 Defendant's position of perceived power in order to deceive Plaintiff and the  
11 Class. Therefore, the injury suffered by Plaintiff and members of the Class is not  
12 an injury which these consumers could reasonably have avoided.

13 71. Thus, Defendant's conduct has violated the "unfair" prong of  
14 California Business & Professions Code § 17200.

15 **FRAUDULENT**

16 72. California Business & Professions Code § 17200 prohibits any  
17 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"  
18 prong of the UCL, a consumer must allege that the fraudulent business practice  
19 was likely to deceive members of the public.

20 73. The test for "fraud" as contemplated by California Business and  
21 Professions Code § 17200 is whether the public is likely to be deceived. Unlike  
22 common law fraud, a § 17200 violation can be established even if no one was  
23 actually deceived, relied upon the fraudulent practice, or sustained any damage.

24 74. Here, not only were Plaintiff and the Class members likely to be  
25 deceived, but these consumers were actually deceived by Defendant. Such  
26 deception is evidenced by the fact that Defendant did not provide Plaintiff with  
27 the warranty as advertised by Defendant. Plaintiff's reliance upon Defendant's  
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1 deceptive statements is reasonable due to the unequal bargaining powers of  
2 Defendant against Plaintiff. For the same reason, it is likely that Defendant’s  
3 fraudulent business practice would deceive other members of the public.

4 75. As explained above, Defendant deceived Plaintiff and other Class  
5 Members by representing the availability of the warranty Defendant sold.

6 76. Thus, Defendant’s conduct has violated the “fraudulent” prong of  
7 California Business & Professions Code § 17200.

### 8 UNLAWFUL

9 77. California Business and Professions Code Section 17200, *et seq.*  
10 prohibits “any unlawful...business act or practice.”

11 78. As explained above, Defendant deceived Plaintiff and other Class  
12 Members by falsely representing warranties.

13 79. Defendant used false advertising, marketing, and misrepresentations  
14 to induce Plaintiff and Class Members to purchase Class Products from Defendant,  
15 in violation of California Business and Professions Code Section 17500, *et seq.*  
16 Had Defendant not falsely advertised, marketed, or misrepresented the warranties  
17 for its products, Plaintiff and Class Members would not have purchased the  
18 warrantied Class Products from Defendant. Defendant’s conduct therefore caused  
19 and continues to cause economic harm to Plaintiff and Class Members.

20 80. These representations by Defendant are therefore an “unlawful”  
21 business practice or act under Business and Professions Code Section 17200 *et*  
22 *seq.*

23 81. Defendant has thus engaged in unlawful, unfair, and fraudulent  
24 business acts entitling Plaintiff and Class Members to judgment and equitable  
25 relief against Defendant, as set forth in the Prayer for Relief. Additionally,  
26 pursuant to Business and Professions Code section 17203, Plaintiff and Class  
27 Members seek an order requiring Defendant to immediately cease such acts of  
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1 unlawful, unfair, and fraudulent business practices and requiring Defendant to  
2 correct its actions.

3 **MISCELLANEOUS**

4 82. Plaintiff and Class Members allege that they have fully complied with  
5 all contractual and other legal obligations and fully complied with all conditions  
6 precedent to bringing this action or all such obligations or conditions are excused.

7 **REQUEST FOR JURY TRIAL**

8 83. Plaintiff requests a trial by jury as to all claims so triable.

9 **PRAYER FOR RELIEF**

10 84. Plaintiff, on behalf of himself and the Class, requests the following  
11 relief:

- 12 (a) An order certifying the Class and appointing Plaintiff as  
13 Representative of the Class;
- 14 (b) An order certifying the undersigned counsel as Class Counsel;
- 15 (c) An order requiring Defendant, at its own cost, to notify all  
16 Class Members of the unlawful and deceptive conduct herein;
- 17 (d) An order requiring Defendant to engage in corrective  
18 advertising regarding the conduct discussed above;
- 19 (e) Actual damages suffered by Plaintiff and Class Members as  
20 applicable from being induced to call Defendant under false  
21 pretenses;
- 22 (f) Punitive damages, as allowable, in an amount determined by  
23 the Court or jury;
- 24 (g) Any and all statutory enhanced damages;
- 25 (h) All reasonable and necessary attorneys' fees and costs provided  
26 by statute, common law or the Court's inherent power;
- 27 (i) Pre- and post-judgment interest; and  
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(j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

Dated: October 31, 2016      Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

By: /s Todd. M. Friedman  
TODD M. FRIEDMAN, ESQ.  
Attorney for Plaintiff LARRY MAESTAS



CIVIL COVER SHEET

Case 2:16-cv-02597-KJM-KJN Document 1-1 Filed 10/31/16 Page 1 of 2

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

LARRY MAESTAS, individually, and on behalf of other members of the general public similarly situated,

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

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

Law Offices of Todd M. Friedman, P.C. 21550 Oxnard St., Suite 780, Woodland Hills, CA 91367 (877) 206-4741

DEFENDANTS

WAL-MART STORES, INC., and DOES 1-10 Inclusive,

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)(2)
Brief description of cause: Class Action Fairness Act of 2005

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.01 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/31/2016 SIGNATURE OF ATTORNEY OF RECORD s/Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



Case 2:16-cv-02597-KJM-KJN Document 1-1 Filed 10/31/16 Page 2 of 2  
**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.