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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**TRANQUILINO AGUIRRE,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

**VIVINT SOLAR DEVELOPER,
LLC,**

Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION AND INJUNCTIVE
RELIEF FOR VIOLATIONS OF:**

- (1) CALIFORNIA CIVIL CODE
§§ 1632, ET SEQ.; AND,**
- (2) CALIFORNIA BUSINESS &
PROFESSIONS CODE §§
17200, ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

- 1
2 1. Plaintiff TRANQUILINO AGUIRRE (“Plaintiff”), by Plaintiff’s attorneys,
3 brings this Class Action Complaint for damages, injunctive relief, and any
4 other available legal or equitable remedies, resulting from the unlawful and
5 deceptive business practices of VIVINT SOLAR DEVELOPER, LLC
6 (“Defendant”) with regard to Defendant’s practice of utilizing misleading
7 representations regarding the quality of Defendant’s goods and requiring non-
8 English speaking consumers to sign contracts in English in violation of the
9 California Translation Act, California Civil Code §§ 1632, et seq. (“CTA”);
10 and, California’s Unfair Competition Law, California Business & Professions
11 Code §§ 17200, et seq. (the “UCL”).
- 12 2. This Action seeks to enjoin Defendant’s practices of unlawfully forcing
13 California consumers to enter into contracts that are not drafted in a language
14 known by the consumer.
- 15 3. Defendant’s conduct is a scheme carried out by Defendant which involves
16 making significant amounts of money from California consumers through
17 false, deceptive, and misleading means throughout the period covered by the
18 applicable statute of limitations.
- 19 4. Plaintiff makes these allegations on information and belief, with the exception
20 of those allegations that pertain to a Plaintiff, or to a Plaintiff’s counsel, which
21 Plaintiff alleges on personal knowledge.
- 22 5. While many violations are described below with specificity, this Complaint
23 alleges violations of the statutes cited in their entirety.
- 24 6. Unless otherwise stated, Plaintiff alleges that any violations by Defendant
25 were knowing and intentional, and that Defendant did not maintain procedures
26 reasonably adapted to avoid any such violation.

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1 7. Unless otherwise indicated, the use of any Defendant’s name in this
2 Complaint includes all agents, employees, officers, members, directors, heirs,
3 successors, assigns, principals, trustees, sureties, subrogees, representatives,
4 and insurers of that Defendant named.

5 **JURISDICTION AND VENUE**

6 8. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff seeks
7 relief on behalf of a California class, which will result in the class members
8 belonging to a different state than that of Defendant. Plaintiff also seeks
9 restitution which when aggregated among a proposed class numbering in the
10 tens of thousands, exceeds the \$5,000,000 threshold for federal court
11 jurisdiction. Therefore, both diversity jurisdiction and the damages threshold
12 under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this
13 Court has jurisdiction.

14 9. This action arises out of Defendant’s violations of California Translation Act,
15 California Civil Code §§ 1632, et seq. (“CTA”); and, California’s Unfair
16 Competition Law, California Business & Professions Code §§ 17200, et seq.
17 (the “UCL”).

18 10. Because Defendant conducts business within the State of California, personal
19 jurisdiction is established.

20 11. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
21 Plaintiff resides in the County of Kern, State of California which is within this
22 judicial district; (ii) the conduct complained of herein occurred within this
23 judicial district; and, (iii) Defendant conducts business within this judicial
24 district and is located within this judicial district as well.

25 **PARTIES**

26 12. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the
27 City of Shafter, County of Kern, State of California.
28

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1 13. Plaintiff is informed and believes and thereon alleges that Defendant is, and at
2 all times mentioned herein was, a corporation incorporated under the laws of
3 the State of Utah.

4 **FACTUAL ALLEGATIONS**

5 14. Plaintiff realleges and incorporates by reference all of the above paragraphs of
6 this Complaint as though fully stated herein.

7 15. At all times relevant, Defendant made and continues to make marketing
8 efforts to solicit the business of California consumers.

9 16. In or about May 2014, Defendant initiated such solicitation efforts in person at
10 Plaintiff's residence.

11 17. Since Plaintiff solely speaks Spanish, the negotiation between Plaintiff and
12 Defendant was conducted solely in Spanish.

13 18. During the course of these negotiations, Defendant represented to Plaintiff
14 that Plaintiff's energy bill would decrease if Defendant installed solar panels
15 at Plaintiff's residence.

16 19. Following the conclusion of said negotiations, Defendant required Plaintiff to
17 sign an English-language contract.

18 20. Plaintiff protested signing such a contract since Plaintiff only spoke Spanish.

19 21. Defendant neither provided Plaintiff a Spanish translation of the contract nor
20 did Defendant mail a Spanish translation of the contract to Plaintiff at any
21 time thereafter.

22 22. After installation of the solar panels, Plaintiff did not experience any energy
23 savings as promised by Defendant.

24 23. To the contrary, Plaintiff's electricity has increased each month with the solar
25 panels installed.

26 24. In failing to provide a Spanish translation of the contract, Defendant violated
27 Cal. Civ. Code § 1632(b).
28

1 25. As discussed in further detail below, Defendant’s misrepresentations as to the
2 quality of Defendant’s solar panels also violate the UCL.

3 **CLASS ALLEGATIONS**

4 26. Plaintiff brings this action on behalf of himself individually, and on behalf of
5 all others similarly situated (“the Class”).

6 27. Plaintiff defines the Class as follows:

7 all persons within California who entered into an English-
8 language contract with Defendant for solar panels after
9 negotiating in a language other than English within the four
10 years prior to the filing of this action through the date of filing.

11 28. Defendant and their employees or agents are excluded from the Class.

12 29. Plaintiff does not know the exact number of persons in the Class, but believes
13 them to be in the several hundreds, if not thousands, making joinder of all
14 these actions impracticable.

15 30. The identity of the individual members is ascertainable through Defendant’s
16 and/or Defendant’s agents’ records or by public notice.

17 31. There is a well-defined community of interest in the questions of law and fact
18 involved affecting the members of the Class. The questions of law and fact
19 common to the Class predominate over questions affecting only individual
20 class members, and include, but are not limited to, the following:

- 21 a. Whether Defendant negotiates primarily in Spanish with consumers
22 prior to having said consumers sign an English-language contract;
- 23 b. Whether Defendant negotiates primarily in Chinese with consumers
24 prior to having said consumers sign an English-language contract;
- 25 c. Whether Defendant negotiates primarily in Tagalog with consumers
26 prior to having said consumers sign an English-language contract;
- 27 d. Whether Defendant negotiates primarily in Vietnamese with
28 consumers prior to having said consumers sign an English-language
contract;

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- e. Whether Defendant negotiates primarily in Korean with consumers prior to having said consumers sign an English-language contract;
- f. Whether Defendant’s conduct was willful;
- g. Whether Defendant’s conduct was negligent;
- h. Whether Plaintiff and the Class are entitled to statutory damages;
- i. Whether Plaintiff and the Class are entitled to actual damages;
- j. Whether Plaintiff and the Class are entitled to the recovery of restitution;
- k. Whether Plaintiff and the Class are entitled to injunctive relief;
- l. Whether Plaintiff and the Class are entitled to the recovery of attorneys’ fees;
- m. Whether Plaintiff and the Class are entitled to the recovery of litigation costs; and,
- n. Whether Defendant’s practices violate California Business and Professions Code § 17200;
- o. Whether Defendant’s practices are “unlawful” as described by California Business and Professions Code § 17200;
- p. Whether Defendant’s practices are “unfair” as described by California Business and Professions Code § 17200;
- q. Whether Defendant’s practices are “fraudulent” as described by California Business and Professions Code § 17200;
- r. Whether Defendant should be enjoined from engaging in such conducted in the future.

32. Plaintiff will fairly and adequately protect the interest of the Class.

33. Plaintiff has retained counsel experienced in consumer class action litigation and in handling claims involving unlawful debt collection practices.

1 34. Plaintiff's claims are typical of the claims of the Class, which all arise from
2 the same operative facts involving English-language contracts being utilized
3 for non-English speaking consumers.

4 35. A class action is a superior method for the fair and efficient adjudication of
5 this controversy.

6 36. Class-wide damages are essential to induce Defendant to comply with the
7 federal and State laws alleged in the Complaint.

8 37. The interests of class members in individually controlling the prosecution of
9 separate claims against Defendant is small.

10 38. Management of these claims is likely to present significantly fewer difficulties
11 than those presented in many class claims, e.g., securities fraud.

12 39. Defendant has acted on grounds generally applicable to the Class, thereby
13 making appropriate final declaratory relief with respect to the class as a
14 whole.

15 40. Plaintiff contemplates providing notice to the putative class members by direct
16 mail in the form of a postcard-type notice and via Internet website.

17 41. Plaintiff requests certification of a hybrid class for monetary damages and
18 injunctive relief.

19 **CAUSES OF ACTION CLAIMED BY PLAINTIFF**

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF CAL. CIV. CODE § 1632, ET SEQ.**

22 **[AGAINST ALL DEFENDANTS]**

23 42. Plaintiff incorporates by reference all of the above paragraphs of this
24 Complaint as though fully stated herein.

25 43. At a date presently unknown to Plaintiff, but at least four years prior to the
26 filing of this action, and as set forth above, Defendant has engaged in the
27 practice of forcing California consumers, like Plaintiff, to enter into illegal
28 contracts written in a language unknown to said consumers.

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- 1 44. The foregoing acts and omission constitute numerous and multiple violations
2 of Cal. Civ. Code § 1694, et seq.
- 3 45. CTA was enacted in 1976 to increase consumer information and protection for
4 California’s sizable and growing Spanish-speaking population. *See* Cal. Civ.
5 Code § 1692(a)(1).
- 6 46. The Legislature also determined that California’s population has become
7 increasingly diverse and the number of Californians who speak languages
8 other than English as their primary language at home has increased
9 dramatically. Cal. Civ. Code § 1692(a)(2).
- 10 47. The Legislature also reviewed the American Community Survey which
11 determined that 15.2 million Californians speak a language other than English
12 at home based upon data collected between 2009 and 2011. Cal. Civ. Code §
13 1692(a)(3).
- 14 48. The five languages other than English that are most widely spoken at home
15 are Spanish, Chinese, Tagalog, Vietnamese, and Korean. *Id.*

16 **SECOND CAUSE OF ACTION**

17 **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.**

18 **[CALIFORNIA’S UNFAIR COMPETITION LAW]**

- 19 49. Plaintiff incorporates by reference all of the above paragraphs of this
20 Complaint as though fully stated herein.
- 21 50. Plaintiff and Defendant are each “person[s]” as defined by California Business
22 & Professions Code § 17201. California Bus. & Prof. Code § 17204
23 authorizes a private right of action on both an individual and representative
24 basis.
- 25
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1 51. “Unfair competition” is defined by Business and Professions Code Section §
2 17200 as encompassing several types of business “wrongs,” two of which are
3 at issue here: (1) an “unlawful” business act or practice, (2) an “unfair”
4 business act or practice, (3) a “fraudulent” business act or practice, and (4)
5 “unfair, deceptive, untrue or misleading advertising.” The definitions in §
6 17200 are drafted in the disjunctive, meaning that each of these “wrongs”
7 operates independently from the others.

8 52. By and through Defendant’s conduct alleged in further detail above and
9 herein, Defendant engaged in conduct which constitutes (a) unlawful and (b)
10 unfair business practices prohibited by Bus. & Prof. Code § 17200 et seq.

11 **“UNLAWFUL” PRONG**

12 53. As a result of Defendant’s acts and practices in CTA violation, Defendant has
13 violated California’s Unfair Competition Law, Business & Professions Code
14 §§ 17200 *et seq.*, which provides a cause of action for an “unlawful” business
15 act or practice perpetrated on members of the California public.

16 54. Defendant had other reasonably available alternatives to further its legitimate
17 business interest, other than the conduct described herein, such as providing a
18 Spanish language contract for Plaintiff.

19 55. Plaintiff reserves the right to allege other violations of law, which constitute
20 other unlawful business practices or acts, as such conduct is ongoing and
21 continues to this date.

22 **“UNFAIR” PRONG**

23 56. Defendant’s actions and representations constitute an “unfair” business act or
24 practice under § 17200 in that Defendant’s conduct is substantially injurious
25 to consumers, offends public policy, and is immoral, unethical, oppressive,
26 and unscrupulous as the gravity of the conduct outweighs any alleged benefits
27 attributable to such conduct. Without limitation, it is an unfair business act or
28 practice for Defendant to knowingly or negligently fail to provide a translated

1 contract pursuant to CTA.

2 57. At a date presently unknown to Plaintiff, but at least four years prior to the
3 filing of this action, and as set forth above, Defendant has committed acts of
4 unfair competition as defined by Cal. Bus. & Prof. Code §§ 17200 et seq., as
5 alleged further detail above and herein.

6 58. Plaintiff could not have reasonably avoided the injury suffered herein.
7 Plaintiff reserves the right to allege further conduct that constitutes other
8 unfair business acts or practices. Such conduct is ongoing and continues to
9 this date, as Defendant continues to require California consumers to enter in
10 contracts that violate CTA and Cal. Bus. & Prof. Code §§ 17200, et seq.

11 **FRAUDULENT**

12 59. California Business & Professions Code § 17200 prohibits any “fraudulent ...
13 business act or practice.” In order to prevail under the “fraudulent” prong of
14 the UCL, a consumer must allege that the fraudulent business practice was
15 likely to deceive members of the public.

16 60. The test for “fraud” as contemplated by California Business and Professions
17 Code § 17200 is whether the public is likely to be deceived. Unlike common
18 law fraud, a § 17200 violation can be established even if no one was actually
19 deceived, relied upon the fraudulent practice, or sustained any damage.

20 61. Here, absent a Spanish contract, California consumers were never informed of
21 their rights pursuant to the contract.

22 62. In addition, Defendant’s oral misrepresentations also deceived Plaintiff to
23 believe that Plaintiff would receive a benefit from installing Defendant’s solar
24 panels.

25 63. Despite the passage of time, Plaintiff has received no such benefit from the
26 installation of defendant’s solar panels.

27 64. Thus, Defendant’s conduct has violated the “fraudulent” prong of California
28 Business & Professions Code § 17200.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff damages against Defendant and relief as follows:

- That this action be certified as a class action on behalf of The Class and Plaintiff be appointed as the representatives of The Class;
- That Plaintiff’s counsel be appointed to represent The Class;
- That the Court find that Plaintiff is entitled to injunctive relief and/or restitution pursuant to Cal. Bus. & Prof. Code § 17535;
- That the Court find that Defendant is in possession of money that belongs to Plaintiff and that Defendant has not returned the money;
- An order requiring Defendant to pay restitution to Plaintiff due to Defendant’s UCL violations, pursuant to Cal. Bus. & Prof. Code §§ 17200-17205 in the amount of Plaintiff’s monthly payments;
- An order requiring imposition of a constructive trust and and/or disgorgement of Defendant’s ill-gotten gains and to pay restitution to Plaintiff and to restore to Plaintiff all funds acquired by means of any act or practice declared by this court to be an unlawful, fraudulent, or unfair business act or practice, in violation of laws, statutes or regulations, or constituting unfair competition;
- That Plaintiff and the Class be awarded reasonable attorneys’ fees and costs of this suit pursuant to Code of Civil Procedure § 1021.5, and California Civil Code § 1780, and/or other applicable law; and,

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- Any and all other relief as this Court may deem necessary or appropriate.

Dated: September 4, 2017

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Matthew M. Loker
 MATTHEW M. LOKER, ESQ.
 ATTORNEY FOR PLAINTIFF

TRIAL BY JURY

65. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff and The Class are entitled to, and demand, a trial by jury.

Dated: September 4, 2017

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Matthew M. Loker
 MATTHEW M. LOKER, ESQ.
 ATTORNEY FOR PLAINTIFF

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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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

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

(c) Attorneys (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 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 1:17-cv-01197-LJO-JLT Document 1-1 Filed 09/04/17 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.