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11 *Attorneys for Plaintiff and the Proposed Classes*

12
 13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE DIVISION

15 **DANIEL MAZZONE**, individually and on
 16 behalf of other similarly situated individuals,

17 Plaintiff,

18 v.

19 **TOPSTAR TECHNOLOGY, LLC**,

20 Defendant.

Case No. 5:18-cv-06989

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Daniel Mazzone, a New York resident (“Plaintiff” or “Mr. Mazzone”), individually and on
2 behalf of other similarly situated individuals, alleges the following against defendant Topstar
3 Technology, LLC. (“Topstar” or “Defendant”), upon personal knowledge as to his self and his
4 own acts and upon information and belief – based upon, *inter alia*, the investigation made by his
5 attorneys – as to all other matters, as follows:

6 **INTRODUCTION**

7 1. In recent years consumers have become increasingly dependent on portable
8 electronic devices like smart phones, tablets and laptop computers (“PED”). PEDs have made it
9 convenient for consumers to constantly stay in communication with colleagues, friends, and loved
10 ones, and to immediately access information. However, like any electronic device, PEDs require
11 power and their internal batteries must be periodically recharged.

12 2. To address the needs of consumers to use PEDs during travel, or when the consumer
13 otherwise lacks access to an electrical outlet, the portable charger industry emerged. A portable
14 charger, often called a power bank (“Power Bank”), is a small, portable power source consumers
15 can use to recharge their PEDs during travel. The greater the capacity of the Power Bank, as is
16 expressed in milliampere-hours (“mAh”), the more times the Power Bank can be used to recharge
17 PEDs before the Power Bank must be recharged itself. Thus, consumers prefer and are willing to
18 pay a premium for Power Banks with higher mAh ratings.

19 3. Topstar manufactures, markets, and distributes for sale nationwide to consumers a
20 number of Power Banks under the GETIHU label (the “Products”). It does so by prominently
21 representing the Products’ capacities as measured in mAh. Unfortunately for consumers, testing
22 has shown the Products’ actual capacity is substantially lower than what Topstar represents.

23 4. By deceiving consumers about the Products’ capacity as detailed herein, Topstar is
24 able to sell more of, and charge more for, the Products than it could if they were labeled accurately.
25 Further, Topstar is incentivized to mislead consumers to take away market share from competing
26 products, thereby increasing its own sales and profits.

27 5. This is a proposed class action brought by Plaintiffs, individually and on behalf of
28 a class of similarly situated individuals, against Topstar, seeking redress for the Company’s unjust,

1 unfair, and deceptive practices in misrepresenting the capacity of the Products in violation of state
2 law.

3 **JURISDICTION AND VENUE**

4 6. This Court has personal jurisdiction over the parties in this case. Topstar
5 Technology, LLC's principal place of business is within Santa Clara County, in San Jose.
6 Additionally, Topstar purposefully avails itself of the California consumer market and distributes
7 the Products to thousands throughout California. On information and belief, the deceptive
8 practices alleged herein were conceived, reviewed, approved, sent and otherwise controlled from
9 Topstar's headquarters in San Jose, California.

10 7. This Court has original subject-matter jurisdiction over this proposed class action
11 pursuant to 28 U.S.C. § 1332(d), which, under the provisions of the Class Action Fairness Act
12 ("CAFA"), explicitly provides for the original jurisdiction of the federal courts in any class action
13 in which the proposed plaintiff class is comprised of at least 100 members, any member of the
14 plaintiff class is a citizen of a State different from any defendant, and the matter in controversy
15 exceeds the sum of \$5,000,000.00, exclusive of interest and costs. The total claims of individual
16 members of the proposed class (as defined herein) are well in excess of \$5,000,000.00 in the
17 aggregate, exclusive of interest and costs.

18 8. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial acts in
19 furtherance of the alleged improper conduct, including the dissemination of false and misleading
20 information regarding the Products, occurred within this District.

21 **INTRADISTRICT ASSIGNMENT**

22 9. Assignment to the San Jose Division is appropriate under Civil L.R. 3-2(c) and (e)
23 because a substantial part of the events or omissions that give rise to the claim, including the
24 dissemination of false and misleading information regarding the Products, occurred within the
25 County of Santa Clara.

26 **PARTIES**

27 10. Plaintiff Daniel Mazzone is an individual consumer who, at all times material
28 hereto, was a citizen and resident of Brooklyn, New York. On May 17, 2017, Plaintiff purchased

1 the Product from Amazon.com. In deciding to purchase the Product, Plaintiff read and relied on
2 Defendant's representations that the Product's capacity is 10000mAh. Had Plaintiff known the
3 truth, that the Product's mAh was really less, he would not have purchased it or would not have
4 been willing to pay as much as he paid for the Product.

5 11. Plaintiff frequently uses PEDs during travel and when he otherwise does not have
6 access to an electrical outlet. Plaintiff would consider purchasing the Product again if he could
7 trust that Topstar's representations about its mAh rating were correct going forward, such as if the
8 Product was redesigned to make Topstar's representations about it correct, and if the price fairly
9 reflected the actual mAh capacity of the battery. Plaintiff also has a strong interest in ensuring
10 honesty in the marketplace for Power Banks.

11 12. Defendant TopStar Technology, LLC is a California corporation with its principal
12 place of business at 610 Azule Avenue, San Jose, California 95123. Topstar owns the GETIHU
13 brand. Topstar markets and distributes the Products from California throughout the State of
14 California and the United States.

15 **TOPSTAR DECEPTIVELY MARKETS ITS POWER BANKS.**

16 13. Millions of Americans depend on PEDs to conduct their daily lives. PEDs have
17 made it more convenient for consumers to constantly stay in communication with colleagues,
18 friends, and loved ones, and to immediately access information.

19 14. To address the needs of consumers to power their PEDs during travel, or when they
20 otherwise lack access to an electrical outlet, an industry for Power Banks has emerged. The sale
21 of Power Banks now generates more than \$15 billion in revenue each year.

22 15. The most important factor for consumers in choosing a Power Bank is its capacity,
23 which is measured in milliamperes-hours, or "mAh." The higher the mAh, the greater the number
24 of times a Power Bank can be used to recharge PEDs before the Power Bank itself must be
25 recharged. Consumers thus have a strong preference for, and pay more for, Power Banks with a
26 higher mAh. Accordingly, for most Power Banks, the mAh rating is featured prominently in the
27 product's advertising.

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All consumers who purchased the Products within New York. Excluded from the New York Class is anyone who received a refund, as well as any of Topstar’s officers, directors, or employees; officers, directors, or employees of any entity in which Topstar currently has or has had a controlling interest; and Topstar’s legal representatives, heirs, successors, and assigns.

21. Additionally, Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and similarly situated individuals within certain States (the “Multi-State Class”), defined as follows:

All consumers who purchased the Products in California, Florida, Illinois, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, and Washington. Excluded from the Multi-State Class are any of Topstar’s officers, directors, or employees; officers, directors, or employees of any entity in which Topstar currently has or has had a controlling interest; and Topstar’s legal representatives, heirs, successors, and assigns.

The Nationwide Class, New York Class, and Multi-State Class are referred to collectively as the “Classes.”

22. At this time, Plaintiff does not know the exact number of members of the Classes but the number is estimated to be in the thousands or more. The Classes are so numerous that joinder of all members is impracticable.

23. There are questions of law or fact common to the Classes that predominate over any questions affecting only individual members, including:

- (a) whether Topstar misrepresented the Products’ mAh ratings;
- (b) whether Topstar’s conduct was unfair and/or deceptive;
- (c) whether Topstar has been unjustly enriched as a result of the unlawful, fraudulent, and unfair conduct alleged in this Complaint such that it would be inequitable for Topstar to retain the benefits conferred upon it by Plaintiff and the Classes;
- (d) whether Topstar’s conduct constitutes a breach of express warranty;
- (e) whether Topstar violated state consumer protection laws;

- 1 (f) whether Plaintiff and the Classes have sustained damages and, if so, the
- 2 proper measure thereof;
- 3 (g) whether Plaintiff and the Classes are entitled to restitution, and if so, the
- 4 proper measure thereof; and
- 5 (h) whether Topstar should be enjoined from continuing to sell the Products as
- 6 currently labeled;

7 24. Plaintiff's claims are typical of those of the members of the Classes, because
8 Plaintiff, like all members of the Classes, purchased, in a typical consumer setting, Topstar's
9 Product bearing the claim that its capacity is greater than it really is, and Plaintiff sustained
10 damages from Topstar's wrongful conduct.

11 25. Plaintiff will fairly and adequately protect the interests of the Classes and has
12 retained counsel that is experienced in litigating complex class actions. Plaintiff has no interests
13 which conflict with those of the Classes.

14 26. A class action is superior to other available methods for the fair and efficient
15 adjudication of this controversy.

16 27. No member of the Classes has a substantial interest in individually controlling the
17 prosecution of a separate action. The damages for each individual member of the Classes will
18 likely be relatively small, especially given the burden and expense of individual prosecution of the
19 complex litigation necessitated by Topstar's conduct. Thus, it would be virtually impossible for
20 them individually to effectively redress the wrongs done to them.

21 28. The prerequisites to maintaining a class action for injunctive or equitable relief are
22 met as Topstar has acted or refused to act on grounds generally applicable to the Classes thereby
23 making appropriate final injunctive or equitable relief with respect to the Classes.

24 29. The prosecution of separate actions by members of the Classes would create a risk
25 of establishing inconsistent rulings and/or incompatible standards of conduct for Topstar. For
26 example, one court might enjoin Topstar from performing the challenged acts, whereas another
27 might not. Additionally, individual actions could be dispositive of the interests of members of the
28 Classes who are not parties to such actions.

1 30. Topstar’s conduct is generally applicable to the Classes as a whole and Plaintiff
2 seeks, *inter alia*, equitable remedies with respect to the Classes as a whole. As such, Topstar’s
3 systematic policies and practices make declaratory relief with respect to the Classes as a whole
4 appropriate.

5 **CAUSES OF ACTION**

6 **COUNT I**

7 **(Unfair and Deceptive Acts and Practices in**
8 **Violation of the California Consumers Legal Remedies Act,**
9 **on Behalf of the Nationwide Class)**

10 31. Plaintiff incorporates by reference and realleges herein all paragraphs alleged
11 above.

12 32. This cause of action is brought pursuant to California’s Consumers Legal Remedies
13 Act, Cal. Civ. Code §§ 1750-1785 (the “CLRA”).

14 33. Plaintiff and the other members of the Nationwide Class are “consumers,” as the
15 term is defined by California Civil Code § 1761(d), because they bought the Products for personal,
16 family, or household purposes.

17 34. Plaintiff, the other members of the Nationwide Class, and Topstar have engaged in
18 “transactions,” as that term is defined by California Civil Code §1761(e).

19 35. The conduct alleged in this Complaint constitutes unfair methods of competition
20 and unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was
21 undertaken by Topstar in transactions intended to result in, and which did result in, the sale of
22 goods to consumers.

23 36. As alleged more fully above, Topstar has violated the CLRA by falsely representing
24 to Plaintiff and the other members of the Nationwide Class that the Products’ capacity is greater
25 than it actually is.

26 37. As a result of engaging in such conduct, Topstar has violated California Civil Code
27 § 1770(a)(5), (a)(7), and (a)(9).
28

1 38. Pursuant to California Civil Code § 1780(a)(2) and (a)(5), Plaintiff seeks an order
2 of this Court that includes, but is not limited to, an order requiring Topstar to remove and/or refrain
3 from making representations that the Products' capacity is greater than it actually is.

4 39. Plaintiff and the other Nationwide Class members may be irreparably harmed
5 and/or denied an effective and complete remedy if such an order is not granted.

6 40. The unfair and deceptive acts and practices of Topstar, as described above, present
7 a serious threat to Plaintiff and the other members of the Nationwide Class.

8 41. CLRA § 1782 NOTICE. On November 9, 2018, Plaintiff sent a CLRA demand
9 letter to Topstar via certified mail, return receipt requested (the "Demand Letter"). In the Demand
10 Letter, Plaintiff provided notice of Topstar's violation of the CLRA and demanded that within
11 thirty (30) days from that date, Topstar correct, repair, replace, or otherwise rectify the unlawful,
12 unfair, false and/or deceptive practices complained of herein. The letter also stated that if Topstar
13 refused to do so, a complaint seeking damages in accordance with the CLRA would be filed.

14 42. If Topstar does not fully meet the demands set forth in Demand Letter, Plaintiff will
15 amend or seek leave to amend this Complaint in order to seek the following relief under California
16 Civil Code § 1780 for Topstar's violations of California Civil Code §§ 1770(a)(5), 1770(a)(7), and
17 1770(a)(9):

- 18 • actual damages under California Civil Code § 1780(a)(1);
- 19 • punitive damages under California Civil Code § 1780(a)(4);
- 20 • attorneys' fees and costs under California Civil Code § 1780(d); and
- 21 • any other relief the Court deems proper under California Civil Code § 1780(a)(5).

22 **COUNT II**
23 **(Violations of California's False Advertising Law,**
24 **on Behalf of the Nationwide Class)**

25 43. Plaintiff incorporates by reference and realleges herein all paragraphs alleged
26 above.

27 44. As alleged more fully above, Topstar has falsely advertised the Products by falsely
28 claiming that the Products' capacity is greater than it really is.

1 52. By committing the acts and practices alleged herein, Topstar has violated
2 California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-17210, as to the
3 Nationwide Class as a whole, by engaging in unlawful, fraudulent, and unfair conduct.

4 53. Topstar has violated the UCL’s proscription against engaging in *unlawful* conduct
5 as a result of:

6 (a) its violations of the CLRA, Cal. Civ. Code § 1770(a)(5), (a)(7), and (a)(9), as
7 alleged above; and

8 (b) its violations of the FAL, Cal. Bus. & Prof. Code § 17500 *et seq.*, as alleged
9 above

10 54. Topstar’s acts and practices described above also violate the UCL’s proscription
11 against engaging in fraudulent conduct.

12 55. As more fully described above, Topstar’s false and misleading marketing,
13 advertising, packaging, and labeling of the Products is likely to deceive reasonable consumers.
14 Indeed, Plaintiff and the other members of the Nationwide Class were unquestionably deceived
15 regarding the capacity of the Products, as Topstar’s marketing, advertising, packaging, and
16 labeling of the Products misrepresent and/or omit the true facts concerning the benefits of the
17 Products. Said acts are fraudulent business practices.

18 56. Topstar’s acts and practices described above also violate the UCL’s proscription
19 against engaging in *unfair* conduct.

20 57. Plaintiff and the other Nationwide Class members suffered a substantial injury by
21 virtue of buying the Products that they would not have purchased absent Topstar’s unlawful,
22 fraudulent, and unfair marketing, advertising, packaging, and labeling or by virtue of paying an
23 excessive premium price for the unlawfully, fraudulently, and unfairly marketed, advertised,
24 packaged, and labeled Products.

25 58. There is no benefit to consumers or competition from the deceptive marketing and
26 labeling of the Products, which Topstar misrepresents as having a greater capacity than they
27 actually do.

28

1 continue to falsely and misleadingly advertise the capacity of the Products. Towards that end,
2 Plaintiff and the New York Class request an order granting them injunctive relief in the form of an
3 order prohibiting Topstar from representing that the Products' capacity is greater than it really is.

4 67. In this regard, Topstar has violated, and continues to violate, New York GBL § 349,
5 which makes deceptive acts and practices unlawful. As a direct and proximate result of Topstar's
6 violation of GBL § 349 as described above, Plaintiff and the other members of the New York Class
7 have suffered damages based on the price premium Topstar can and does charge as a result of its
8 misrepresentations and deceptive conduct in an amount to be determined at trial.

9 68. Wherefore Plaintiff, on behalf of the New York Class, prays for relief as set forth
10 herein.

11 **COUNT V**
12 **(Violation of New York General Business Law § 350,**
13 **on Behalf of the New York Class)**

14 69. Plaintiff incorporates by reference and realleges herein all paragraphs alleged
15 above.

16 70. Topstar engaged in false advertising concerning the Products and was able to obtain
17 higher purchase prices for the Products based on false advertising.

18 71. As fully alleged above, by advertising, marketing, distributing, and/or selling the
19 Products to Plaintiff and other members of the New York Class, Topstar engaged in and continues
20 to engage in false advertising.

21 72. Plaintiff and the other members of the New York Class seek to enjoin such unlawful
22 false advertising as described above. Each of the New York Class members will be irreparably
23 harmed unless the unlawful actions of Topstar are enjoined, in that Topstar will continue to falsely
24 and misleadingly advertise the capacity of the Products. Towards that end, Plaintiff and the New
25 York Class request an order granting them injunctive relief in the form of an order prohibiting
26 Topstar from misrepresenting the Products' capacity.

27 73. In this regard, Topstar has violated, and continues to violate, GBL § 350, which
28 makes false advertising unlawful. As a direct and proximate result of Topstar's violation of GBL
§ 350 as described above, Plaintiff and the other members of the New York Class have suffered

1 damages based on the price premium Defendant can and does charge as a result of its
2 misrepresentations and deceptive conduct in an amount to be determined at trial.

3 74. Wherefore Plaintiff, on behalf of the New York Class, prays for relief as set forth
4 herein.

5 **COUNT VI**

6 **(Violation of Materially Identical State Consumer Protection Statutes,
7 on Behalf of the Multi-State Class)**

8 75. Plaintiff incorporates by reference and realleges herein all paragraphs alleged
9 above.

10 76. Topstar is engaged in “trade” and “commerce” as it distributes the Products to retail
11 stores for sale to consumers within this and each of the states listed below.

12 77. Topstar’s representations regarding the capacity of the Products was material to a
13 reasonable consumer and likely to affect consumer decisions and conduct.

14 78. Topstar has used and employed unfair methods of competition and unfair or
15 deceptive acts or practices in the conduct of trade or commerce.

16 79. Topstar’s acts and practices are immoral, unethical, oppressive and unscrupulous.

17 80. Topstar’s conduct is substantially injurious to consumers. Such conduct has, and
18 continues to cause, substantial injury to consumers because consumers would not have paid such
19 a high price for the Products but for Topstar’s false promotion of the Product’s electrical storage
20 capacity. Consumers have thus overpaid for the Products and such injury is not outweighed by
21 any countervailing benefits to consumers or competition.

22 81. No benefit to consumers or competition results from Topstar’s conduct. Since
23 reasonable consumers are deceived by Topstar’s representations of the Products and they were
24 injured as a result, consumers could not have reasonably avoided such injury.

25 82. The foregoing unfair and deceptive practices directly, foreseeably and proximately
26 caused Plaintiff and the Multi-State Class to suffer an ascertainable loss when they paid a premium
27 for the Products.
28

1 83. The practices discussed above all constitute unfair competition or unfair,
2 unconscionable, deceptive, or unlawful acts or business practices in violation of at least the
3 following state consumer protection statutes:¹

- 4 (a) **California Consumer Legal Remedies Act**, Cal. Civ. Code § 1750, *et seq.*,
5 (b) **California Unfair Competition Law**, Cal. Bus. & Prof. Code § 17200, *et seq.*;
6 (c) **Florida Deceptive and Unfair Trade Practices Act**, Fla. Stat. § 501.201, *et*
7 *seq.*;
8 (d) **Illinois Consumer Fraud and Deceptive Business Practices Act**, 815 Ill.
9 Comp. Stat. § 505/1, *et seq.*;
10 (e) **Massachusetts Regulation of Business Practices for Consumers' Protection**
11 **Act**, Mass. Gen. Laws Ann. ch. 93A, § 1 *et seq.*;
12 (f) **Michigan Consumer Protection Act**, Mich. Comp. Laws § 445.901 *et seq.*;
13 (g) **New Jersey Consumer Fraud Act**, N.J. Stat. Ann. § 56:8-1, *et seq.*;
14 (h) **New York Deceptive Acts and Practices Act**, N.Y. Gen. Bus. Law § 349, *et*
15 *seq.*;
16 (i) **North Carolina Unfair and Deceptive Trade Practices Act**, N.C. Gen. Stat.
17 § 75-1.1(a).
18 (j) **Ohio's Consumers Sales Practice Act**, Ohio Revised Code § 1345, *et seq.*
19 (k) **Washington Consumer Protection Act**, Wash. Rev. Code § 19.86.010, *et*
20 *seq.*;

21 84. The foregoing unfair and deceptive practices directly, foreseeably and proximately
22 caused Plaintiff and the Multi-State Class to suffer an ascertainable loss when they paid a premium
23 for the Products over comparable products.

24
25
26 _____
27 ¹ There is no material conflict between these state statutes because these state statutes (1) do not
28 require reliance by unnamed class members; (2) do not require scienter; and (3) allow class actions.

1 85. Plaintiff and the Multi-State Class are entitled to recover damages and other
2 appropriate relief, as alleged below.²

3 **COUNT VII**
4 **(Breach of Express Warranty on Behalf**
5 **of the Classes)**

6 86. Plaintiff incorporates by reference and realleges herein all paragraphs alleged
7 above.

8 87. Topstar's representations regarding the Products' capacity constitute affirmations
9 of fact.

10 88. Topstar's representations that the Products' capacity is greater than it really is
11 relates to the goods and became part of the basis of the bargain between Topstar and purchasers of
12 the Products.

13 89. Plaintiff and the other members of the Classes purchased the Products, believing
14 that they conformed to the express warranties.

15 90. As set forth in the paragraphs above, Topstar's statements concerning the Products
16 are false.

17 91. All conditions precedent to Topstar's liability under the above-referenced contract
18 have been performed by Plaintiff and the other members of the Classes.

19 92. Topstar breached its express warranties about the Products because, as alleged
20 above, the Products' capacity was lower than Topstar represented. Topstar therefore breached the
21 applicable state statutes.

22 93. As a result of Topstar's breaches of express warranty, Plaintiff and the other
23 members of the Classes were damaged in the amount of the purchase price they paid for the
24 Products, or in the amount they paid based upon the misrepresentations, in amounts to be proven
25 at trial.

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27
28 ² As is alleged in Count I, at this time Plaintiff only seeks equitable relief and attorneys' fees for
Defendant's alleged CLRA violations.

1 F. Awarding Plaintiff and the Classes statutory damages in the maximum amount
2 provided by law;

3 G. Awarding Plaintiff and the Classes restitution of Topstar's ill-gotten gains;

4 H. Awarding Plaintiff and the other members of the Classes the reasonable costs and
5 expenses of suit, including their attorneys' fees; and

6 I. For any further relief that the Court may deem appropriate.

7 **JURY TRIAL DEMANDED**

8 Plaintiff demands a trial by jury for all claims so triable.

9 Respectfully submitted,

10 **FINKELSTEIN, BLANKINSHIP,**
11 **FREI-PEARSON & GARBER, LLP**

12 DATED: November 19, 2018

By: /s/ D. Greg Blankinship
D. Greg Blankinship

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18 DATED: November 19, 2018

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Laurence D. King, attest that concurrence in the filing of this document has been obtained from the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19th day of November, 2018, at San Francisco, California.

s/ Laurence D. King
LAURENCE D. KING

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

(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)

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

- 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)

	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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	LABOR	PROPERTY RIGHTS	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	790 Other Labor Litigation	SOCIAL SECURITY	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	IMMIGRATION	862 Black Lung (923)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury -Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/Exchange
196 Franchise	CIVIL RIGHTS	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
REAL PROPERTY	PRISONER PETITIONS		865 RSI (405(g))	891 Agricultural Acts
210 Land Condemnation	HABEAS CORPUS		FEDERAL TAX SUITS	893 Environmental Matters
220 Foreclosure	463 Alien Detainee		870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	510 Motions to Vacate Sentence		871 IRS—Third Party 26 USC § 7609	896 Arbitration
240 Torts to Land	530 General			899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	535 Death Penalty			950 Constitutionality of State Statutes
290 All Other Real Property	OTHER			
	440 Other Civil Rights			
	441 Voting			
	442 Employment			
	443 Housing/Accommodations			
	445 Amer. w/Disabilities—Employment			
	446 Amer. w/Disabilities—Other			
	448 Education			
	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

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

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

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.