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**30 East Butler Pike**  
**Ambler, PA 19002**  
**Attorney of Record: Amy L.B. Ginsburg (AB0891)**  
**Attorney for Plaintiff**

*Attorneys for Plaintiff, Ellen Fensterer,  
and all others similarly situated*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

ELLEN FENSTERER, an individual; on  
behalf of themselves and all others similarly  
situated,

Plaintiff,

vs.

CAPITAL ONE, N.A.,

Defendant.

**CLASS ACTION COMPLAINT  
--and--  
DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT AND DEMANF FOR JURY TRIAL**

Plaintiff, Ellen Fensterer, on behalf of herself and all others similarly situated, and demanding a trial by jury, brings this action against Defendant, Capital One, N.A. (“Capital One”) for violations of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. 56:8, *et. seq.*, unjust enrichment, conversion, fraudulent misrepresentation, and breach of contract. In support of this Complaint, Plaintiff avers as follows:

**I. PRELIMINARY STATEMENT**

1. Defendant’s Capital One Venture Card entices consumers to open an account in large part to earn rewards points every time the credit card is used. Consumers can redeem points

for various purchases, combine points and cash and, most specifically, use points or points and cash to purchase airlines tickets and hotel stays. If a Capital One Venture Card holder does not have enough points on their account, a cash payment can be used to bridge the difference to secure the desired travel purchase.

2. Beginning on or about March 2020, the Coronavirus Disease 2019 (“COVID-19) pandemic caused airlines to cancel flights most especially trips outside of the United States. Hotel stays have been affected for the same reasons with many hotels closed for business. As a result of the near total shut down of the airline and travel industry, consumers holding tickets for flights that were canceled as a result of the COVID-19 pandemic were unable to use what they had purchased.

3. As to tickets secured using Defendant’s Capital One Venture Card travel services specifically, such consumers were instructed to call a special phone number instead of being furnished a refund. Defendant knew that the number it instructed card members to call was insufficiently staffed and would and did result in hours-long phone delays, misinformation, delayed action and inadequate solutions. When customers were able to finally reach a representative of Defendant card members were told that they would only be given airline-specific travel vouchers which included limitations and arbitrary deadlines for use, without regard to the wishes of the card member.

4. Plaintiff purchased tickets for herself and her family to travel and visit her child studying abroad and the flight was cancelled due the travel restrictions set forth above. The tickets cost her approximately \$5,000 in cash and additional consideration in rewards points to secure them. Upon information and belief, the retail value of the tickets Plaintiff purchased totaled approximately \$18,000.

5. After the flights had been cancelled by the airline, Plaintiff was finally able to reach a representative of Defendant by phone after numerous attempts and hour upon hour of wait time, but was provided inaccurate and incomplete information in separate calls. She was also hung up on, told that her claim was “under review” and told that she would be “hearing from someone shortly”, but none of what she was told by the Capital One representatives came to fruition.

6. Like other Capital One Venture Card members, Plaintiff was refused everything other than a voucher that was of no practical use as she only purchased the tickets to visit her child while she was studying abroad. There was no desire, plan or intention to travel for any other purpose in the future and there was no desire to create a travel plan in the future simply to make use of a travel voucher.

7. Further, since the cancellation of the flight, the outlook for overseas travel is at best uncertain and unknown, and fraught with health risks, incubation requirements and with many destinations either unable or unwilling to state when and if foreign travelers will be permitted. All of these factors make a travel voucher worth even less than it otherwise might be.

8. Defendant’s conduct has caused Plaintiff and all similarly-situated persons to either accept a voucher for travel that is impractical, unwanted or unneeded, non-transferable and worth far less than what was purchased or receive nothing at all. Defendant’s actions have resulted in substantial monetary and other actual losses, including loss of rewards points, time and effort spent trying to reach Defendant’s travel department and other deprivation of card member rights and benefits.

9. Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to the allegations specifically

pertaining to herself, which are based on personal knowledge.

## **II. JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), because this case is a class action where the aggregate claims of all members of the proposed Class are in the excess of \$5,000,000.00, exclusive of interest and costs.

11. This Court has general jurisdiction over Defendant, which conducts substantial business within New Jersey, and thus has significant, continuous, and pervasive contacts with the State.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff's claims occurred within this federal judicial district and because Plaintiff suffered the alleged harm in this district.

## **III. PARTIES**

13. Plaintiff, Ellen Fensterer, is a citizen and resident of Voorhees, Camden County, New Jersey.

14. Defendant is a corporation with national headquarters located at 1680 Capital One Drive McLean Virginia, 22101.

## **IV. FACTS CONCERNING THE PARTIES**

15. On January 9, 2020, Plaintiff purchased three (3) airline tickets for travel to occur on April 3, 2020, returning April 13, 2020, traveling to Athens, Greece to visit Plaintiff's daughter while she studied abroad. The travel was to be on British Airways originating from New York, with a connecting flight in London.

16. The tickets were purchased through Capital One Venture Card Rewards. Plaintiff

applied Reward Miles on her account and charged \$4,906.31 to her Capital One Venture Card to make the purchase.

17. On March 11, 2020, United States President Donald Trump instituted a travel ban for flights from Europe to start on March 13, 2020 and continue for thirty (30) days.

18. On March 12, 2020, Plaintiff called the Capital One Venture Travel customer service number and was instructed to wait two (2) more weeks to see if her flights would be cancelled and if so, a refund would be automatically be issued by British Airways.

19. Plaintiff called Capital One Venture Travel again on March 25, 2020, and due to wait times, spent the next thirteen (13) hours waiting for a representative. When one finally answered, Plaintiff was told that British Airways was only offering travel vouchers which were only valid through January 9, 2021.

20. On April 3, 2020, Plaintiff called British Airways directly and was told that assistance could not be offered because the tickets were purchased through Capital One, not the airline directly. Plaintiff had learned during this call that purchases through the airline itself are refunded for cancelled flights, even if only one leg was cancelled.

21. Plaintiff then contacted Capital One again but learned that neither her rewards points nor credit card charges for the tickets would be refunded.

22. Plaintiff checked the terms and conditions listed on Capital One's website but saw that the only relevant information concerned ticket purchases made directly with the airlines and not the travel services. The pages provided contact information for the airlines and set forth a dispute procedure only.

23. Capital One has received substantial consideration for Plaintiff's purchases and has charged her for flights later cancelled by the airline because of the COVID19 Pandemic.

24. Capital One handled flight cancellation services poorly for card members, so much so that consumers, including Plaintiff, have been left without either travel and without a refund and/or reversal of charges and return of Rewards points. In short, Capital One Venture Card has received a windfall of from consumers that it has neither returned nor expressed any intention of returning in the future, entitling Plaintiff and other similarly-situated individuals to seek damages for recovery of same.

#### V. CLASS ALLEGATIONS

25. Plaintiff brings this claim on behalf of a class, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), b(3).

26. This claim is brought on behalf of a Class consisting of all Capital One Venture Card holders in the state of New Jersey who purchased airline travel using their Capital One Venture Card for travel on flights that later were cancelled as a result of COVID-19 travel restrictions.

27. Excluded from the Class are the Defendant, the officers and directors of the Defendant at all relevant times, members of the Defendant's immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendant has or had a controlling interest.

28. Plaintiff reserves the right to amend or modify the Class definition with greater specificity or further division into subclasses or limitations to particular issues, as discovery and the orders of this Court warrant.

29. The identities of all class members are readily ascertainable from the Capital One's records.

30. Plaintiff's claims are typical of the class members, as all are based on the same

facts and legal theories.

31. The Plaintiff will fairly and adequately protect the interests of the Class defined in this complaint. The Plaintiff has retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiff nor her attorneys have any interests, which might cause them not to vigorously pursue this action.

32. This action has been brought, any may be properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- a. Numerosity: Under Rule 23(a)(1), Class Members are so numerous and geographically dispersed that their individual joinder of all Class Members is impracticable. The total number of members of the proposed Class is greater than 100 and exceeds the number required for jurisdiction under 28 U.S.C. § 1332(d)(2) and (d)(5)(B). Given the thousands of flight cancellations made as a result of COVID-19, that number greatly exceeds the number to make joinder possible. Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.
- b. Common Questions Predominate: Common questions of law and fact exist to all Class Members and predominate over questions affecting only individual Class members. Common legal and factual questions include but are not limited to, whether Defendant has refused to offer refunds and whether it has breached its contract with its customers or otherwise acted unlawfully.
- c. Typicality: The claims of the named Plaintiff are typical of the claims of the Class

in that the named Plaintiff was charged fees and suffered losses. Plaintiff and all Class Members have claims arising out of the Defendant's common uniform course of conduct complained of herein.

- d. Adequacy: The Plaintiff will fairly and adequately protect the interests of the class members insofar as Plaintiff has no interests that are averse to the absent class members. The Plaintiff is committed to vigorously litigating this matter. Plaintiff has also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this class action lawsuit.
- e. Superiority: The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of the Class Members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent and contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

33. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Class predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

34. Based on discovery and further investigation, Plaintiff may, in addition to moving for class certification, use modified definitions of the class, class claims, and the class period, and/or seek class certification only as to particular issues as permitted under Fed. R. Civ. P. 23(c)(4). Such modified definitions may be more expansive to include consumers excluded from the foregoing definitions.

**VI. FIRST CAUSE OF ACTION  
VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT,  
N.J. STAT. ANN. § 56:8, *et seq.***

35. Plaintiff restates, re-alleges, and incorporates herein by reference the preceding paragraphs as it fully set forth herein.

36. Defendant made intentional misrepresentations to Plaintiff and the Class Members regarding their inability to receive refunds for their cancelled travel and that the airline was only able to give travel vouchers.

37. Said misrepresentation by Defendant was an unconscionable consumer practice.

38. Plaintiff and the Class Members reasonably relied on Defendant's intentional misrepresentations.

39. Defendant's representations proximately caused damage to Plaintiff and the Class Members.

40. By misrepresenting that Plaintiff and the Class Members were only entitled to travel vouchers, Defendant financially damaged Plaintiff and members of the Class.

41. The actions of Defendant entitle Plaintiff and other Class Members to a full refund of all consideration paid, plus interest and attorney fees and costs.

42. Further, as a result of the foregoing, Plaintiff and Class Members suffered and will continue to suffer ascertainable losses and other damages as described in detail in paragraphs 15 through 24 of this Class Action Complaint, and are entitled to treble damages as provided by N.J.S.A. § 56:18-19.

**VII. SECOND CAUSE OF ACTION  
UNJUST ENRICHMENT**

43. Plaintiff restates, re-alleges, and incorporates herein by reference the preceding paragraphs as it fully set forth herein.

44. Capital One has benefitted from its unlawful acts by retaining the payments used to purchase travel tickets which have been cancelled. Retentions of those monies under these circumstances is unjust and inequitable because Capital One charged consumers full price for travel and fees for travel that they can now not take due to a global pandemic.

45. Because Defendant's retention of the non-gratuitous benefits conferred by Plaintiff and other members of this Class is unjust and inequitable, Defendant must pay restitution to Plaintiff and members of the Class for their unjust enrichment, as ordered by the Court.

**VIII. THIRD CAUSE OF ACTION  
CONVERSION**

46. Plaintiff restates, re-alleges, and incorporates herein by reference the preceding paragraphs as it fully set forth herein.

47. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendant.

48. Defendant had wrongfully exercised control over and/or intentionally interfered with the rights of Plaintiff and members of the class by limiting passengers on cancelled flights to a travel voucher which must be used within one (1) year while Defendant has unlawfully retained the monies Plaintiff and the Class Members paid for tickets on cancelled flights.

49. Defendant deprived Plaintiff and the other members of the Class of the value they paid for the tickets on cancelled flights as well as their right to a refund.

50. Plaintiff and members of the Class have requested and/or demanded that Defendant issue refunds for cancelled flights.

51. This interference with the rights and services for which Plaintiff and the members of the Class paid damaged Plaintiff and the members of the Class, in that they purchased tickets, and, as such, Defendant has deprived Plaintiff and members of the Class of the right to their property, in this case, the amounts paid for tickets on cancelled flights.

52. Plaintiff and members of the Class are entitled to a refund of the full amount paid for tickets on cancelled flights.

**IX. FOURTH CAUSE OF ACTION  
FRAUDULENT MISREPRESENTATION**

53. Plaintiff restates, re-alleges, and incorporates herein by reference the preceding paragraphs as it fully set forth herein.

54. During the COVID19 Pandemic, Defendant has intentionally allowed wait times on hold to increase to unreasonable levels and instructed customer service representatives speaking to consumers (“Class Members”) to furnish misleading information in hopes of confusing consumers and reducing and/or avoiding issuance of refunds to which the consumers are entitled for all flights cancelled as a result of the COVID19 Pandemic.

55. Defendant intentionally misrepresented to Plaintiff and Class Members that

passengers on cancelled flights are limited to rebookings or travel vouchers when no such limitation existed at the time of purchase.

56. Defendant's representations were made with the intent that Plaintiff and Class Members rely upon the misstatements in accepting rebookings instead of pressing for a refund.

57. Plaintiff and the Class Members relied on Defendant's representations.

58. The reliance by Plaintiff and the Class Members on Defendant's representations was reasonable.

59. Defendant's representations proximately caused damage to Plaintiff and the Class Members.

60. By misrepresenting that Plaintiff and the Class Members were only entitled to travel vouchers, Defendant financially harmed Plaintiff and Class Members, causing damages.

**X. FIFTH CAUSE OF ACTION  
BREACH OF CONTRACT**

61. Plaintiff restates, re-alleges, and incorporates herein by reference the preceding paragraphs as it fully set forth herein.

62. Defendant and Class Members, including Plaintiff, entered into valid contracts for Defendant to provide airline travel tickets via third parties and in exchange Plaintiff and Class Members would pay money and/or travel reward points and/or a combination of the two, to complete the transaction.

63. Defendant's services carried with it the obligation to refund all consideration paid by Plaintiff and Class Members should flights be cancelled as a result of unforeseen world events, specifically the COVID19 Pandemic.

64. Plaintiff and the Class Members purchased tickets for travel services with the Defendant in reliance that cancelled flights would entitle them to a full refund.

65. Defendant breached its obligations owed to Plaintiff and Class Members by failing after-the-fact to provide a full refund for travel cancelled because of the COVID-19 Pandemic.

66. As a result of Defendant's failure to perform the contract, Plaintiff and other Class Members have been damaged and did not receive the paid for benefits, refund, and/or performance to which they each and all were entitled.

67. As a result, Plaintiff and the Class Members are entitled to fair compensation in the form of full refunds for all tickets, fees, taxes, and interest that Defendant charged and/or collected..

#### **PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff and the Class Members request that the Court enter and order or judgment against Defendant including:

- 1) A certification of the action as a class action under Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, appointment of Plaintiff as Class Representative, and appointment of his counsel as Class Counsel;
- 2) Damages and refunds in the amount of all consideration paid, in cash, points or a combination of both as may be, for airline travel using the Capital One Venture Travel Card;
- 3) Actual damages, statutory damages, punitive or treble damages, and such other relief as provided by the statutes cited;
- 4) Pre-judgement and post-judgement interest on such monetary relief;
- 5) Injunctive relief, including an order enjoining Defendant from retaining refunds for cancelled flights;

- 6) The cost of bringing this suit, including reasonable attorney's fees; and
- 7) All other relief to which Plaintiff and members of the Class may be entitled by law or in equity.

**JURY DEMAND**

Plaintiff hereby demands that this case be tried before a Jury.

**CERTIFICATION PURSUANT TO L. CIV. R. 11.2**

I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not the subject of any other action pending in any court, arbitration or administrative proceeding.

Dated: May 5, 2020

By: /s/ Amy L.B. Ginsburg  
Amy L.B. Ginsburg, Esq.  
Kimmel & Silverman, P.C.  
30 East Butler Pike  
Ambler, PA 19002  
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*Attorneys for Plaintiff, Ellen Fensterer, and all others  
similarly situated*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

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

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

DEFENDANTS

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

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

Attorneys (If Known)

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

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

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

- 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. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

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

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE, SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

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

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**

for the

\_\_\_\_\_ District of \_\_\_\_\_

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

**SUMMONS IN A CIVIL ACTION**

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

A lawsuit has been filed against you.

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

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

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

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

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

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

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

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

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify):* \_\_\_\_\_.

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

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

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: