



3. Further, the policies represent to refund Plaintiffs for the cost of their ski pass minus the applicable daily rate or pro-rata reduction for each day that Plaintiff used their ski pass during the 2019/2020 ski season.

4. Defendant is in material breach of the policy by failing to refund Plaintiffs who were unable to use their ski passes for reasons related to the COVID-19 pandemic.

5. Defendant has caused material harm to Plaintiffs by improperly failing to make payment.

6. As a result, Plaintiffs now bring this action against USIC for its failure to honor its obligations under the insurance policies issued to Plaintiffs. Plaintiffs seek to recover compensatory damages as well as declaratory and injunctive relief.

#### **PARTIES**

6. Plaintiff Lee Tourgee is a citizen of the United States domiciled in Austin, Texas in Travis County. Mr. Tourgee purchased a policy from Defendant in the 2019-2020 ski season for ski pass insurance.

7. Defendant USIC is a property casualty insurance company incorporated under the laws of the State of Delaware with its principal place of business in the State of Delaware at 160 Greentree Drive, Suite 101, Dover, DE 19904. Defendant conducts substantial business throughout the United States, and specifically in the state of Texas.

#### **JURISDICTION AND VENUE**

8. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2), because this is a class action in which at least one member of the class is a citizen of a state different from Defendant, the amount in controversy exceeds \$5 million exclusive of interest and costs, and the

proposed class contains more than 100 members.

9. This Court has personal jurisdiction over USIC pursuant to the “long arm statute” because USIC has submitted to jurisdiction in this state by: (a) Defendant conducts substantial business throughout the United States, and specifically transacting business in the state of Texas; (b) contracting to insure a person located within Texas at the time of contracting; and (c) making a contract substantially connected with Texas. In addition, USIC exercises significant, substantial, systematic, pervasive and continuous contacts with Texas by doing business in Texas, serving insureds in Texas and seeking additional business in Texas.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this District and a substantial part of the events or omission giving rise to Plaintiffs’ claims took place within this District.

### **CLASS ACTION ALLEGATIONS**

11. Pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), 23(b)(2), 23(b)(3) and/or 23(c)(4), Plaintiff brings this action on behalf of himself and all others similarly situated, and seeks to represent the following class:

12. All persons who purchased both an Epic Pass for the 2019/2020 ski season and purchased from Defendant pass insurance on their Epic Pass, but were denied coverage for the loss of use of their passes after the resorts closed on March 15, 2020 due to no fault of their own.

13. Excluded from the class is Defendant, any entity in which Defendant has a controlling interest, any of the officers, directors, or employees of the Defendant, the legal representatives, heirs, successors, and assigns of the Defendant, anyone employed with Plaintiffs’ counsels’ firms, any Judge to whom this case is assigned, and his or her immediate family.

14. Plaintiffs’ claims satisfy the numerosity, typicality, adequacy, commonality and

superiority requirements under Federal Rule of Civil Procedure 23, as set forth more fully herein.

15. The persons who fall within the class number in at least the hundreds and most likely thousands, and thus the numerosity standard is satisfied. Because class members are geographically dispersed across the country, joinder of all class members in a single action is impracticable. Defendants have hundreds of thousands of customers nationwide that purchased insured ski passes that have not been refunded. Accordingly, members of the Class are so numerous that their individual joinder herein is impracticable.

16. Class members are readily ascertainable from information and records in Defendant's possession, custody, or control. Notice of this action can readily be provided to the class.

17. There are questions of law and fact common to the claims of Plaintiff and the class that predominate over any questions affecting only individual class members. The questions of law and fact arising from Defendant's actions that are common to the class include, without limitation:

- A) Whether the order and directive from the CEO for Vail Resorts closing all its resorts in the United States constituted a quarantine under the terms of the Policy because it was "an unforeseen event, occurrence, or circumstance" that restrained class-members from entering upon and using the facilities of Destination Resorts for the purposes permitted by the Epic Pass;
- B) Whether governmental orders applicable to class members were an "unforeseen event, occurrence, or circumstance" that constituted a quarantine by restraining class members from traveling to Destination Resorts, engaging in activities, and using the Epic Pass for its intended purpose;
- C) Whether Defendant breached the terms of the Class Policies;
- D) Whether the class sustained damages as a result of Defendant's breaches of contract;
- E) Whether the class is entitled to damages, restitution, and/or other equitable relief; and

F) Whether the class, or a subset of the class, is entitled to declaratory relief stating the proper construction and/or interpretation of the Class Policies.

18. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the claims asserted herein.

19. Plaintiff's claims are typical of the claims of the class in that Plaintiff and the class members all purchased ski pass insurance policies containing the same or similar terms including, in particular, what constitutes a Covered Peril.

20. Plaintiff will fairly and adequately protect and represent the interests of the proposed class, because his interests are aligned with, and not antagonistic to, those of the proposed class, and she is represented by counsel who are experienced and competent in the prosecution of class action litigation, and have particular expertise with class action litigation on behalf of purchasers of insurance policies.

21. Maintenance of this action as a class action is a fair and efficient method for adjudicating this controversy. It would be impracticable and undesirable for each member of the class to bring a separate action. Because of the relatively small size of individual class members' claims, absent a class action, most class members would likely find the cost of litigating their claims prohibitively high and would have no effective remedy. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

## FACTUAL BACKGROUND

### Introduction

22. Defendant USIC provides season ski pass insurance coverage whereby it promises its insureds coverage against loss of use of the insured's season ski pass.

23. Upon information and belief, Defendant USIC provides this insurance service to customers of Vail Corporation d/b/a Vail Resorts Management Company ("Vail Resorts"), a North American company that operates more than 34 ski resorts throughout the United States. Vail Resorts sells "Epic Passes" directly to consumers promising access to skiing and snowboarding at its resorts. Customers can purchase annual, weekly, or daily Epic Passes in advance.

24. Vail Resorts offered Epic Pass insurance through Defendant USIC for customers that wished to mitigate the risk that they may be unable to realize the full use of their Epic Pass for reasons outside of their control. Upon information and belief, thousands of customers purchased optional pass insurance through USIC.

25. Prior to the 2019/2020 ski season, Class Plaintiff Lee Tourgee purchased an Epic Pass and Epic Pass insurance through Defendant. Plaintiff purchased the Epic pass with the understanding that he would be able to access Vail Resorts from October 2019 through the end of the season. To ensure he would be able to get a refund if he was unable to use the pass, Mr. Tourgee opted to pay an additional fee for pass insurance.

26. On March 15, 2020, Vail Resorts announced that it was closing all of its mountain resorts indefinitely. Subsequently, Vail Resorts announced that its "North American resorts and retail stores will remain closed for the 2019-20 winter ski season."<sup>1</sup> Rob Katz, chairman and chief executive officer of Vail Resorts, explained the company was ending the skiing season early due

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<sup>1</sup> <https://www.snow.com/info/covid-19-update> (last accessed May 14, 2020).

to the fast-moving situation involving COVID-19. *Id.*

27. The COVID-19 outbreak devastated millions of citizens across the nation. The President of the United States, the Governor of Texas and other states all issued various orders, limiting human contact and restricting travel and activities to only those considered essential. Skiing and snowboarding are considered non-essential activities.

28. As a result of the closures and quarantine related restrictions, Plaintiff was restrained from entering upon and using the facilities of any of the Vail Resort properties and deprived of the use of his Epic Pass.

29. On June 9<sup>th</sup> 2020, Plaintiff timely provided notice and made a claim to American Claims Management, Inc. (“ACM”), the third-party claims administrator for the Pass Insurance Program.

30. As of the date of this filing, ACM still has not issued Plaintiff a formal denial letter for his claim. ACM has not reached out to Plaintiff requesting any additional documentation. Neither ACM nor USIC has responded to Plaintiff regarding his insurance claim and request for reimbursement.

31. However, Vail resorts have changed their entire insurance coverage for the 2020/2021 ski pass season, calling the new coverage “Epic Coverage.”<sup>2</sup> Epic is also attempting to offer partial credits to 2019/2020 ski pass purchasers but only on the condition they purchase a 2020/2021 ski pass.<sup>3</sup>

### **The Class Policy**

32. Plaintiffs purchased insurance from Defendant to protect against the risk of not

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<sup>2</sup> <https://www.epicpass.com/info/epic-coverage.aspx>

<sup>3</sup> <https://www.epicpass.com/info/2019-2020-pass-holder-credit.aspx>

being able to use the ski passes. A true and accurate copy of the Certificate of Season Ski Pass Insurance (“Certificate” or “Policy”) is attached hereto as **Exhibit A** and is incorporated herein by reference.

33. The terms of the Policy were not subject to individual negotiation, and upon information and belief are materially the same for all policy owners (“Class Policy”).

34. Plaintiffs are the owners of a Class Policy, which was in force at the time of the alleged loss.

35. Defendant is the liable insurer under the Class Policy.

#### **Terms of the Policy**

36. The Policy and Class Policy offers the following coverage:

##### **PROPERTY INSURED AND COVERAGE LIMITS:**

We cover the Season Ski Pass Cost you paid. We cover you against the risk of not being able to use your Season Ski Pass due to a covered peril. We will reimburse you for the Season Ski Pass Cost minus the applicable Daily Rate or Pro- Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that you have used your Season Ski Pass during the Ski/Snowboard Season.

37. The Policy and Class Policy defines a “Covered Peril” as follows:

**PERILS INSURED AGAINST:** Subject to the Exclusions and Coverage Limits, the Insured has coverage against Loss of use of your Season Ski Pass if caused by any one of the following unforeseen perils occurring after the effective date of coverage:

- a) Sickness, Injury or death of you or a family member;
- b) You have a Pregnancy or Childbirth verified by medical records; coverage is included for pregnant Season Ski Pass Holder’s spouse of domestic partner and minor child;
- c) Your primary residence being made Uninhabitable by Natural Disaster;
- d) The Destination Resort closes indefinitely due to a Natural Disaster;
- e) You are subpoenaed, required to serve on a jury, hijacked, **quarantined** or your travel visa is denied; (perils f – j omitted) (emphasis added)

38. The Policy does contain a definition section, but the Policy fails to define “quarantined.” A quarantine is generally defined as “to isolate from normal relations or



communication,”<sup>4</sup> and “a restriction on the movement of people and goods which is intended to prevent the spread of disease or pests. It is often used in connection to disease and illness, preventing the movement of those who may have been exposed to a communicable disease, but do not have a confirmed medical diagnosis.”<sup>5</sup>

39. The Policy contains no applicable exclusions for viruses, pandemics, related government orders or actions taken by Vail Resorts, independently or pursuant to such government orders.

40. The Policy defines a Loss as follows:

**LOSS:** Means your inability to use your season Ski Pass due to an unforeseen event, occurrence or circumstance.

## **CAUSES OF ACTION**

### **Count I: Breach of Contract**

41. The preceding paragraphs 1 – 40 are incorporated by reference herein.

42. Plaintiff and the proposed class members purchased ski pass insurance from Defendant.

43. Each Policy and Class Policies are valid and enforceable contracts between the Defendant and Plaintiff and proposed class members. Under these policies, Defendant was paid monies in exchange for its promise to reimburse Plaintiff should he not be able to use his ski pass the entire season.

44. Plaintiff and the proposed class members substantially performed their obligations pursuant to the terms of the Policy and Class Policies. Plaintiff and the proposed class members complied with all applicable provisions of the Policies, including payment, and yet Defendant has

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<sup>4</sup> <https://www.merriam-webster.com/dictionary/quarantine>

<sup>5</sup> <https://en.wikipedia.org/wiki/Quarantine>

abrogated his obligations for reimbursement.

45. Plaintiff and the proposed class members suffered a Loss from a Covered Peril as they are defined under the Policy and Class Policies.

46. Defendant has failed to compensate Plaintiff and proposed class members for their respective Losses as required by the Policy and Class Policies. By failing to compensate Plaintiff and the proposed class members for their respective Losses, Defendant has breached its obligations under the contract.

47. As a direct and proximate result of Defendant's breaches, Plaintiff and the proposed class members have sustained damages that are continuing in nature in an amount to be determined at trial.

**Count II: Noncompliance with Texas Insurance Code: Unfair Settlement Practices**

48. The preceding paragraphs 1 – 47 are incorporated by reference herein.

49. Defendant's conduct constitutes multiple violations of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE § 541.060(a). All violations under this article are made actionable by TEX. INS. CODE § 541.151.

50. Defendant's unfair settlement practice, as described above, of failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the claim, even though USIC's liability under the Policy was reasonably clear, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(2)(A).

51. Defendant's unfair settlement practice, as described above, of failing to promptly provide Plaintiff with a reasonable explanation of the basis in the Policy, in relation to the facts or applicable law, for its offer of a compromise settlement of the claim, constitutes an unfair method

of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(3).

52. Defendant's unfair settlement practices, as described above, of failing within a reasonable time to affirm or deny coverage of the claim to Plaintiff, or to submit a reservation of rights to Plaintiff, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(4).

53. Defendant's unfair settlement practice, as described above, of refusing to pay Plaintiffs' claim without conducting a reasonable investigation, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE § 541.060(a)(7).

**Count III: Noncompliance with Texas Insurance Code:  
Prompt Payment of Claims Statute**

54. The preceding paragraphs 1 – 53 are incorporated by reference herein.

55. Plaintiff is entitled to 18% interest and attorney fees under TEX. INS. CODE §542.060 for violating the Texas Insurance Code, Prompt Payment of claims TEX. INS. CODE §542.051 et. seq.

56. Defendant failed to acknowledge receipt of Plaintiff's claim, commence investigation of the claim, and request from Plaintiffs all items, statements, and forms that it reasonably believed would be required within the applicable time constraints under TEX. INS. CODE §542.055.

57. Defendant failed to notify Plaintiff in writing of its acceptance or rejection of the claim within applicable time constraints under TEX. INS. CODE §542.056.

58. Defendant delayed the payment of Plaintiff's claim following its receipt of all items, statements, and forms reasonably requested and required, longer than the amount of time

provided for under TEX. INS. CODE §542.058.

59. For noncompliance with Texas Insurance Code, Prompt Payment of Claims, Plaintiffs are entitled to the amount of the claim, as well as 18% (eighteen percent) interest per annum on the amount of such claim as damages, together with attorney's fees. TEX. INS. CODE § 542.060.

**Count IV: Breach of the Duty of Good Faith and Fair Dealing with Knowledge**

60. The preceding paragraphs 1 – 59 are incorporated by reference herein.

61. Defendant breached the duty of good faith and fair dealing by failing to adequately and reasonably investigate and evaluate Plaintiff's claim while it knew or should have known, by the exercise of reasonable diligence, that its liability was reasonably clear.

62. Each of the acts described above, together and singularly, were done "knowingly" as that term is used in the Texas Insurance Code.

63. For noncompliance with the Texas Insurance Code, Unfair Settlement Practices, Plaintiffs are entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policy, court costs, and attorney's fees. For knowing conduct of the acts described above, Plaintiffs ask for three times their actual damages. TEX. INS. CODE § 541.152.

**Count V: Declaratory and Injunctive Relief**

64. The preceding paragraphs 1 – 63 are incorporated by reference herein.

65. An actual controversy has arisen and now exists between Plaintiff and the class, on the one hand, and Defendant, on the other, concerning the respective rights and duties of the parties under the Policy and Class Policies.

66. Each ski pass is a contract under which Defendant was paid monies in exchange for services with a caveat that Plaintiff would be reimbursed monies should Plaintiff not be able to use

his ski pass the entire season. Plaintiff and the class have complied with all applicable provisions of the Policies, including payment in exchange for performance. Plaintiff contends that Defendant has arbitrarily and without justification refused to reimburse Plaintiffs for their respective Losses by reimbursing each member of the class for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that the member has used his/her Season Ski Pass during the Ski/Snowboard Season. Defendant breached the Policy and Class Policies by failing to timely pay Class Members for their respective Losses by reimbursing each member of the class for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that the member has used his/her Season Ski Pass during the Ski/Snowboard Season.

67. The actual case or controversy exists regarding Plaintiffs' rights and Defendant's obligations under the contract to reimburse Plaintiff and the class their respective Losses by reimbursing each member of the class for the Season Ski Pass Cost minus the applicable Daily Rate or Pro-Rata reduction (for the Epic Day Pass) for each day (or portion thereof) that the member has used his/her Season Ski Pass during the Ski/Snowboard Season. Plaintiff, therefore, seeks a declaration of the parties' respective rights and duties under the Policy and Class Policies and requests the Court to declare the aforementioned conduct of Defendant unlawful and in material breach of the Policy and Class Policies so that future controversies may be avoided in accordance with 28 U.S.C. § 2201.

68. Pursuant to a declaration of the parties' respective rights and duties under the Policy and Class Policies, Plaintiff further seeks an injunction enjoining Defendant (1) from continuing to engage in conduct in breach of the Policy and Class Policies; and (2) ordering Defendant to comply with the terms of the Policy and Class Policies including payment of all amounts due.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury.

**CONCLUSION AND PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, requests relief and judgment against Defendant as follows:

- (a) That the Court enter an order certifying the class, appointing Plaintiff as a representative of the class, appointing Plaintiff's counsel as class counsel, and directing that reasonable notice of this action, as provided by Federal Rule of Civil Procedure 23(c)(2), be given to the class;
- (b) For a judgment against Defendant for the causes of action alleged against it;
- (c) For compensatory damages in an amount to be proven at trial;
- (d) For a declaration that Defendant's conduct as alleged herein is unlawful and in material breach of the Policy and Class Policies;
- (e) For appropriate injunctive relief, enjoining Defendant from continuing to engage in conduct related to the breach of the Policy and Class Policies;
- (f) For pre-judgment and post-judgment interest at the maximum rate permitted by law;
- (g) For treble damages under the Texas Insurance Code.
- (h) For Plaintiffs' attorney's fees;
- (i) For Plaintiffs' costs incurred; and
- (j) For such other relief in law or equity as the Court deems just and proper.

Dated: August 28, 2020

Respectfully submitted,

BURNETT LAW FIRM

*Karen H. Beyea-Schroeder*

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Karen H. Beyea-Schroeder  
Texas Bar No. 24054324  
3737 Buffalo Speedway, 18th Floor  
Houston, Texas 77089  
Karen.schroeder@rburnettlaw.com  
Telephone: (832) 413-4410

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

Lee Tourgee

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

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

Karen Beyea-Schroeder, Burnett Law Firm, 3737 Buffalo Speedway, Ste. 1850, Houston, TX 77098

DEFENDANTS

United Specialty Insurance Company

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

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

Attorneys (If Known)

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

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

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

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

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

Click here for: Nature of Suit Code Descriptions.

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

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (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): 28 U.S.C. § 1332(d)(2)(A)

Brief description of cause: Class Action Fairness Act of 2005; breach of insurance contract

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 08/28/2020

SIGNATURE OF ATTORNEY OF RECORD

Karen N. Beyea-Schroeder

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.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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- 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.  
 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN 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 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.