

1 Warren Postman (#330869)  
wdp@kellerpostman.com  
2 **KELLER POSTMAN LLC**  
1100 Vermont Avenue, N.W., 12<sup>th</sup> Floor  
3 Washington, DC 20005  
Phone: (202) 918-1123  
4 Facsimile: (312) 971-3502

5 *Attorney for Plaintiffs*

6  
7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**

9 LIBIER CAMARGO, INDIVIDUALLY ) Case No.: 3:22-cv-5454  
10 AND AS MOTHER, GENERAL GUARDIAN ) **COMPLAINT**  
OF J.L., A MINOR, )  
11 ) **(Jury Trial Demanded)**  
*Plaintiffs,* )

12 )  
13 v. )

14 TARGET CORPORATION )  
15 )  
*Defendant.* )

**COMPLAINT**

1  
2 Plaintiff Libier Camargo and Plaintiff J.L., pursuant to Fed. R. Civ. P. 17(c)(1)(A), by and  
3 through their undersigned counsel, bring this Complaint for damages against Defendant Target  
4 Corporation, (hereinafter, “Target” or “Defendant”) and in support state the following:

5 1. This is an action brought on behalf of Plaintiffs, Libier Camargo (hereinafter,  
6 “Plaintiff Mother”), the mother and guardian of J.L. (hereinafter, “Plaintiff Child”), a minor,  
7 arising out of the failure of Defendant to warn about the dangers of prenatal exposure to  
8 Paracetamol, also known as Acetaminophen (hereinafter “APAP”) and its propensity to cause  
9 autism spectrum disorder (hereinafter, “ASD”) and attention-deficit/hyperactivity disorder  
10 (hereinafter, “ADHD”) in children. As a result, Plaintiffs have suffered permanent injuries and  
11 significant pain and suffering, emotional distress, lost wages and earning capacity, and diminished  
12 quality of life. Plaintiffs respectfully seek all damages to which they may be legally entitled.

13 2. Defendant entirely failed its duty to adequately warn of the hazards of prenatal  
14 exposure to APAP, which was a direct and proximate cause of Plaintiffs’ injuries and associated  
15 damages.

**STATEMENT OF PARTIES**

16  
17 3. At all material times Plaintiffs have been citizens and residents of Oakland,  
18 California, and the United States.

19 4. Target is incorporated in Minnesota, with its principal place of business also in  
20 Minnesota.

21 5. Target is a multinational company involved in the research, development, testing,  
22 manufacture, labeling, production, marketing, promotion, and/or sale of APAP through its over-  
23 the-counter store brand Up & Up (hereinafter, the “Up & Up APAP”).

24 6. Target is individually, and jointly and severally liable to Plaintiffs for damages they  
25 suffered, arising from Defendant’s design, manufacture, marketing, labeling, distribution, sale, and  
26 placement of the defective Up & Up APAP into the market, effectuated directly and indirectly  
27  
28

1 through its agents, servants, employees, and/or owners, all acting within the course and scope of  
2 its agencies, services, employments, and/or ownership.

3 7. Target is vicariously liable for the acts and/or omissions of its employees and/or  
4 agents, who were at all material times acting on behalf of Target and within the scope of its  
5 employment or agency.

6 **VENUE AND JURISDICTION**

7 8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1332(a), based on  
8 complete diversity of citizenship between Plaintiffs and Defendant. *See supra* ¶¶ 3–4.

9 9. The amount in controversy exceeds \$75,000.

10 10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events or  
11 omissions giving rise to Plaintiffs’ claims occurred in this judicial district.

12 11. Defendant has and continues to conduct substantial business in the State of  
13 California and in this District, distributes the Up & Up APAP in this District, receives substantial  
14 compensation and profits from sales of the Up & Up APAP in this District, and has made material  
15 omissions and misrepresentations and breaches of warranties in this District, so as to subject  
16 Defendant to in personam jurisdiction in this District.

17 12. Defendant is registered to transact business in California.

18 13. This matter is properly assigned to the San Francisco or Oakland Division of this  
19 District pursuant to Civil Local Rules 3-2(c) and 3-2(d) because Defendants maintain retail stores  
20 in Alameda County and other counties within the San Francisco or Oakland Division, and Plaintiffs  
21 reside in Alameda County. Therefore, because Defendants maintain retail stores in Alameda  
22 County, a substantial part of the events or omissions that give rise to the claims occurred within  
23 this Division within the meaning of Civil Local Rule 3-2(c), and are properly assigned to this  
24 Division pursuant to Civil Local Rule 3-2(d).

25 **FACTS COMMON TO ALL COUNTS**

26 **APAP Is Marketed as the Safe Pain Reliever for Pregnant Women,**  
27 **but APAP Can Cause Neurodevelopment Disorders in Children, such as ASD and ADHD**

28 14. APAP was initially discovered in the late 1800’s.

1 15. APAP is sold in billions of units annually in North America alone.

2 16. APAP is widely used by pregnant women to relieve pain during the term of their  
3 pregnancy.

4 17. APAP was introduced to the US market in 1955 as the first aspirin-free pain  
5 reliever.

6 18. APAP has long been marketed as the safest, and the only appropriate, over-the-  
7 counter pain relief drug on the market for pregnant women.

8 19. More than 65% of women in the United States use APAP during pregnancy.

9 20. Based upon information and belief, a majority of women who use APAP during  
10 pregnancy do so electively for the treatment of headaches, muscle pain, back pain, and infection.

11 21. These pregnant women electively choose to take APAP because Defendant has  
12 marketed APAP as a safe pain reliever for pregnant women.

13 22. However, increasing experimental and epidemiological research shows that  
14 prenatal exposure to APAP alters fetal development, which significantly increases the risks of  
15 neurodevelopmental disorders, including but not limited to, ASD and ADHD.

16 23. Undisturbed development of the human brain in utero is vital to the health and  
17 wellness of a child's development. The human brain is vulnerable and extremely sensitive in utero.

18 24. During this sensitive time-period in utero, certain chemicals have been found to  
19 cause permanent brain injury at low exposure levels.

20 25. Once ingested by the mother, APAP is known to readily cross the placenta and  
21 blood-brain barrier.

22 26. ASD is a serious neurological and developmental disorder that affects how people  
23 interact with others, communicate, learn, and behave.

24 27. There are three functional levels of ASD, with Level 1 requiring support with  
25 activities of daily living, Level 2 requiring substantial support with activities of daily living, and  
26 Level 3 requiring very substantial support with activities of daily living.

1 28. Treatments for ASD include behavioral management therapy, cognitive behavior  
2 therapy, joint attention therapies, medications, occupational therapy, physical therapy, social skill  
3 training, and speech-language therapy. Treatment for ASD lasts a lifetime, as there is no cure.

4 29. ADHD is a chronic neurodevelopmental disorder resulting in attention difficulty,  
5 hyperactivity, and impulsiveness.

6 30. ADHD begins in childhood and persists through adulthood. ADHD contributes to  
7 low self-esteem, troubled relationships, and difficulty with school, work, and familial  
8 relationships.

9 31. Treatments for ADHD, include, but are not limited to, chronic medication usage  
10 and various therapies. Treatment for ADHD lasts a lifetime, as there is no cure.

11 32. Adults with childhood ADHD are expected to earn \$1.25 million less than adults  
12 without ADHD over their lifetime, potentially reaching retirement with up to a 75 percent lower  
13 net worth.

14 33. In or around 2018, the Center for Disease Control and Prevention (“CDC”) found  
15 that 1 in 44 (2.3%) 8-year-old children have been diagnosed with ASD.

16 34. This represents an increase from a prior CDC finding that 1 in 68 U.S. children  
17 born in 2002 have ASD, which already represented a more than a 100% increase compared with  
18 children born a decade prior.

19 35. As of 2019, 8.8% of children had been diagnosed with ADHD, or roughly 325,000  
20 children per year.

21 36. Parental awareness and changes in diagnoses do not account for the rapid rise in  
22 these diagnoses of neurodevelopmental disorders.

23 37. Rather, neurotic exposures, such as prenatal APAP exposure, explain a trending  
24 increase in diagnosis.

25 38. For years, the scientific community has published studies showing that prenatal  
26 ingestion of APAP can cause ASD and ADHD.

1           39. For instance, since 2013, there have been six European birth cohort studies,  
2 examining over 70,000 mother-child pairs, showing the association between prenatal use of APAP  
3 and ASD and ADHD.

4           40. At this time, the overall body of scientific evidence shows that prenatal use of  
5 APAP can cause ASD and ADHD in the child.

6           41. During all relevant times herein, Defendant was engaged in the business of  
7 manufacturing and selling the Up & Up APAP in the United States, and the weight of the scientific  
8 evidence available showed prenatal exposure to APAP significantly increases the risk of  
9 neurodevelopmental disorders in children exposed to APAP prenatally, including but not limited  
10 to ASD and ADHD.

11           42. The scientific evidence regarding the risks of in utero exposure of APAP was  
12 available to Defendant, and Defendant knew or should have known that prenatal use of APAP can  
13 cause ASD and ADHD.

14           43. Based on information and belief, Defendant has concealed the prenatal APAP  
15 exposure-neurodevelopmental link from consumers, like Plaintiff Mother, in part by not reporting  
16 the link to the FDA, which relies on drug manufacturers to bring new information about a drug to  
17 the agency's attention.

18           44. Moreover, despite knowing that prenatal use of APAP can cause ASD and ADHD,  
19 Defendant continues to market the Up & Up APAP as the safe pain reliever for pregnant women,  
20 making mothers believe they are choosing a safe drug for even minor aches, pains, and headaches.

21                           **Plaintiff Mother Took Up & Up APAP while Pregnant,**  
22                           **and It Caused ASD and ADHD in Plaintiff Child**

23           45. Plaintiff Mother began using the Up & Up APAP in or around May 2012, when she  
24 was pregnant with Plaintiff Child, through January 2013 when Plaintiff Child was born.

25           46. Throughout the second and third trimesters of Plaintiff Mother's pregnancy, she  
26 took the Target APAP multiple times per week to treat headaches and body aches.

27           47. These were aches and pains Plaintiff Mother associated with her pregnancy.  
28

1 48. Plaintiff Mother purchased and took the Up & Up APAP in Alameda County,  
2 California.

3 49. Plaintiff Mother electively took the Up & Up APAP while pregnant.

4 50. Plaintiff Mother believed it was safe for her to take the Up & Up APAP during her  
5 pregnancy.

6 51. There is no warning on the Up & Up APAP labels specifically addressing the risks  
7 of a child developing ASD or ADHD if a mother ingests APAP while pregnant.

8 52. Had Plaintiff Mother known of the risk of taking APAP while pregnant, specifically  
9 that it could cause ASD and ADHD in her child, she would not have taken the Up & Up APAP.

10 53. Plaintiff Child was born on January 26, 2013.

11 54. Plaintiff Mother started to have concerns about Plaintiff Child's development when  
12 he was around one year old.

13 55. Plaintiff Child was ultimately diagnosed with ASD and ADHD.

14 56. Plaintiff Child has behavioral issues and trouble learning because of his ASD and  
15 ADHD.

16 57. These issues have a huge impact on Plaintiff Mother and Plaintiff Child.

17 58. Plaintiff Child's ASD and ADHD has placed an incredible mental, physical,  
18 emotional, and financial strain on Plaintiff Mother.

19 **ESTOPPEL AND TOLLING OF STATUTE OF LIMITATIONS**

20 59. Due to Defendant's acts of fraudulent concealment, Defendant is estopped from  
21 relying on any statutes of limitations or repose. Such acts include Defendant's intentional  
22 concealment from Plaintiff Mother and the general public that APAP is defective when there is  
23 prenatal exposure, while continuing to market the Up & Up APAP with the adverse effects  
24 described in this Complaint.

25 60. Given Defendant's affirmative actions of concealment by failing to disclose  
26 information about the defects known to them but not the public—information over which  
27 Defendant had exclusive control—and because Plaintiff Mother could not reasonably have known  
28

1 that the Up & Up APAP was defective, Defendant is estopped from relying on any statutes of  
2 limitations that might otherwise be applicable to the claims asserted in this Complaint.

3 **COUNT I: STRICT LIABILITY – FAILURE TO WARN**

4 61. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

5 62. At the time of Plaintiffs’ injuries, the Up & Up APAP was defective and  
6 unreasonably dangerous to foreseeable consumers, including Plaintiff Mother, because they lacked  
7 an adequate warning.

8 63. At all relevant times, Defendant engaged in the business of testing, developing,  
9 designing, manufacturing, marketing, labeling, selling, distributing, and promoting the Up & Up  
10 APAP, which was defective and unreasonably dangerous to consumers, including Plaintiff Mother,  
11 because they did not contain adequate warnings or instructions concerning the dangerous  
12 characteristics of ingesting APAP during pregnancy. These actions were under the ultimate  
13 control and supervision of Defendant. At all relevant times, Defendant registered, researched,  
14 manufactured, distributed, marketed, labeled, promoted, and sold the Up & Up APAP within this  
15 District and aimed the marketing at the ultimate consumer. Defendant was at all relevant times  
16 involved in the retail and promotion of the Up & Up APAP marketed and sold in this District.

17 64. Defendant had a duty to warn of the risks associated with the use of the Up & Up  
18 APAP.

19 65. The Up & Up APAP ingested by Plaintiff Mother during pregnancy was in the same  
20 or substantially similar condition as it was when it left possession of the Defendant.

21 66. Defendant expected and intended the Up & Up APAP to reach users such as  
22 Plaintiff Mother in the condition in which the Up & Up APAP was sold.

23 67. Plaintiff Mother did not materially alter the Up & Up APAP prior to ingestion.

24 68. Plaintiff Mother ingested the Up & Up APAP as indicated on the Up & Up APAP  
25 labels.

1           69. Plaintiff Mother was unaware of the defects and dangers of the Up & Up APAP  
2 and was unaware that prenatal exposure increases the risk of brain and behavioral development of  
3 children in utero.

4           70. The labels on the Up & Up APAP to consumers lack any warning specific to  
5 pregnant women. The information that Defendant did provide or communicate failed to contain  
6 relevant warnings, hazards, and precautions that would have enabled consumers such as Plaintiff  
7 Mother to utilize the products safely and with adequate protection, or decide to not ingest the Up  
8 & Up APAP at all.

9           71. This alleged failure to warn is not limited to the information contained on the Up  
10 & Up APAP labeling. Defendant was able, in accord with federal law, to comply with relevant  
11 state law by disclosing the known risks associated with APAP through other non-labeling  
12 mediums, i.e., promotion, advertisements, public service announcements, and/or public  
13 information sources. But Defendant did not disclose these known risks through any medium.

14           72. At all relevant times, Defendant had a duty to properly test, develop, design,  
15 manufacture, inspect, package, label, market, promote, sell, distribute, maintain, and supply the  
16 Up & Up APAP; provide proper warnings for the Up & Up APAP; and take such steps as necessary  
17 to ensure the Up & Up APAP did not cause users and consumers, and their children, to suffer from  
18 unreasonable and dangerous risks. Defendant had a continuing duty to warn Plaintiff Mother of  
19 dangers associated with APAP. Defendant, as a manufacturer, seller, and/or distributor of  
20 pharmaceutical medication, is held to the knowledge of an expert in the field.

21           73. At the time of manufacture, Defendant could have provided the warnings or  
22 instructions regarding the full and complete risks of the Up & Up APAP because Defendant knew  
23 or should have known of the unreasonable risks of ASD and ADHD associated with prenatal  
24 exposure to and/or the use of such products.

25           74. At all relevant times, Defendant failed and deliberately refused to investigate,  
26 study, test, or minimize the dangers to consumers of the Up & Up APAP and to those who would  
27 foreseeably use or be harmed by the Up & Up APAP, including Plaintiffs.  
28

1           75. Defendant failed to adequately warn consumers, like Plaintiff Mother, about the  
2 significant increased risk of neurodevelopmental disorders in children exposed to APAP  
3 prenatally, including but not limited to ASD and ADHD.

4           76. Defendant failed to adequately inform reasonably foreseeable consumers, like  
5 Plaintiff Mother, of the proper usage of the Up & Up APAP.

6           77. Even though Defendant knew or should have known that APAP posed a grave risk  
7 of harm to Plaintiff Child, Defendant failed to exercise reasonable care to warn of the dangerous  
8 risks associated with use and prenatal exposure.

9           78. Plaintiff Mother was exposed to the Up & Up APAP without knowledge of their  
10 dangerous characteristics.

11           79. At all relevant times, Plaintiff Mother used and/or was exposed to the use of the Up  
12 & Up APAP while using them for their intended or reasonably foreseeable purposes, without  
13 knowledge of their dangerous characteristics.

14           80. Plaintiff Mother could not have reasonably discovered the defects and risks  
15 associated with the Up & Up APAP prior to or at the time of Plaintiff consuming APAP. Plaintiff  
16 Mother relied upon the skill, superior knowledge, and judgment of Defendant to know about and  
17 disclose serious health risks associated with using the Up & Up APAP.

18           81. If Plaintiff Mother had been properly warned of the defects, dangers, and risks  
19 associated with prenatal exposure to APAP, Plaintiff Mother would have decided to not ingest the  
20 Up & Up APAP while pregnant.

21           82. Defendant is liable to Plaintiffs for injuries caused by Defendant's negligent or  
22 willful failure, as described above, to provide adequate warnings or other relevant information and  
23 data regarding the appropriate use of the Up & Up APAP and the risks associated with the use of  
24 APAP.

25           83. As a direct and proximate result of Defendant placing defective Up & Up APAP  
26 into the stream of commerce, and Plaintiff Mother's ingestion of the Up & Up APAP during  
27  
28

1 pregnancy, Plaintiff Child was exposed to APAP prenatally, causing him to develop ASD and  
2 ADHD.

3 84. As a direct and proximate result of Defendant placing defective Up & Up APAP  
4 into the stream of commerce, Plaintiffs have suffered permanent injuries, significant pain and  
5 suffering, emotional distress, lost wages and earning capacity, and diminished quality of life.  
6 Plaintiffs respectfully seek all damages to which they may be legally entitled.

7 **COUNT II: NEGLIGENCE**

8 85. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

9 86. Although Defendant had a duty to use reasonable care in testing, developing,  
10 designing, manufacturing, marketing, labeling, selling, distributing, promoting, and preparing  
11 written instructions and warnings for the Up & Up APAP, Defendant failed to do so.

12 87. Defendant, directly or indirectly, caused the Up & Up APAP to be sold, distributed,  
13 packaged, labeled, marketed, promoted, and/or used by Plaintiff Mother. At all relevant times,  
14 Defendant registered, researched, manufactured, distributed, marketed, promoted, and sold the Up  
15 & Up APAP within this district and aimed at a consumer market within this district.

16 88. Defendant knew, or in the exercise of reasonable care should have known, that the  
17 Up & Up APAP was defectively and unreasonably designed and/or manufactured, and/or  
18 marketed, and was unreasonably dangerous and likely to injure persons that were prenatally  
19 exposed to them. Defendant knew or should have known that Plaintiff Mother was unaware of the  
20 dangers and defects inherent in the Up & Up APAP when she was ingesting them during her  
21 pregnancy with Plaintiff Child.

22 89. At all relevant times, Defendant had a duty to exercise reasonable care in the  
23 marketing, advertisement, promotion, and sale of the Up & Up APAP. Defendant's duty of care  
24 owed to consumers and the general public included providing accurate, true, and correct  
25 information concerning the risks of using APAP during pregnancy and appropriate, complete, and  
26 accurate warnings concerning the potential adverse effects of APAP and, in particular, the  
27  
28

1 significantly increased risk of causing neurodevelopmental disorders in children through prenatal  
2 exposure to APAP.

3 90. At all relevant times, Defendant knew or, in the exercise of reasonable care, should  
4 have known of the hazards and dangers of APAP ingestion while pregnant and, specifically, the  
5 significantly increased risk of causing neurodevelopmental disorders in children through prenatal  
6 exposure to APAP.

7 91. Defendant failed to provide any kind of warning to pregnant consumers, like  
8 Plaintiff Mother, about the significantly increased risk of causing neurodevelopmental disorders  
9 in children through prenatal exposure to APAP.

10 92. Accordingly, at all relevant times, Defendant knew or, in the exercise of reasonable  
11 care, should have known that use of the Up & Up APAP could cause Plaintiffs' injuries, and thus,  
12 create a dangerous and unreasonable risk of injury to the users of these products, including  
13 Plaintiffs.

14 93. As such, Defendant breached its duty of reasonable care and failed to exercise  
15 ordinary care in the design, research, development, manufacture, testing, marketing, labeling,  
16 supply, promotion, advertisement, packaging, sale, and distribution of the Up & Up APAP, in that  
17 Defendant manufactured and produced defective Up & Up APAP, which carry the significantly  
18 increased risk of causing neurodevelopmental disorders in children through prenatal exposure to  
19 APAP; knew or had reason to know of the defects inherent in the Up & Up APAP; knew or had  
20 reason to know that a user's or consumer's use of the Up & Up APAP created a significant risk of  
21 harm and unreasonably dangerous side effects; and failed to prevent or adequately warn of these  
22 risks and injuries.

23 94. Defendant had a duty to disclose the truth about the risks associated with APAP in  
24 its promotional efforts outside of the context of labeling. Defendant was negligent in its promotion  
25 of APAP outside of the labeling context by failing to disclose material risk information as part of  
26 its promotion and marketing of the Up & Up APAP, including through the internet, television, and  
27 print advertisements.

1           95.     Despite Defendant’s ability and means to investigate, study, and test the Up & Up  
2 APAP and to provide adequate warnings, Defendant failed to do so. Indeed, Defendant wrongfully  
3 concealed information and further made false and/or misleading statements concerning the safety  
4 and use of APAP.

5           96.     Defendant’s negligence included:

- 6           a.     Manufacturing, producing, promoting, formulating, creating, developing,  
7                 designing, selling, and/or distributing the Up & Up APAP while negligently and/or  
8                 intentionally concealing and failing to disclose the results of trials, tests, and studies  
9                 of APAP and the significantly increased risk of causing neurodevelopmental  
10                disorders in children through prenatal exposure to APAP, and, consequently, the  
11                risk of serious harm associated with human use of APAP during pregnancy;
- 12           b.     Failing to undertake sufficient studies and conduct necessary tests to determine  
13                 whether or not the Up & Up APAP were safe for its intended consumer use and  
14                 unborn children;
- 15           c.     Failing to provide adequate instructions, guidelines, and safety precautions to those  
16                 persons Defendant could reasonably foresee would use the Up & Up APAP;
- 17           d.     Failing to disclose to Plaintiff Mother, users, consumers, and the general public that  
18                 use of APAP during pregnancy presents severe risks of neurodevelopmental  
19                 disorders in children exposed to APAP prenatally;
- 20           e.     Failing to warn Plaintiff Mother, users, consumers, and the general public that the  
21                 Up & Up APAP’s risk of harm was unreasonable and that there were safer and  
22                 effective alternative medications or treatments available to Plaintiff Mother and  
23                 other users and/or consumers;
- 24           f.     Representing that the Up & Up APAP were safe for their intended purposes for  
25                 pregnant women when, in fact, Defendant knew or should have known the Up &  
26                 Up APAP was not safe for their intended purposes;
- 27  
28

- 1 g. Declining to make or propose any changes to the Up & Up APAP labeling or other  
2 promotional materials that would alert users, consumers, and the general public of  
3 the risks of APAP, including to pregnant women;
- 4 h. Advertising, marketing, and recommending the use of the Up & Up APAP, while  
5 concealing and failing to disclose or warn of the dangers known by Defendant to  
6 be caused by the use of or exposure to APAP;
- 7 i. Continuing to disseminate information to its consumers and the general public,  
8 which indicates or implies that the Up & Up APAP are not unsafe for pregnant  
9 consumer use; and
- 10 j. Continuing the manufacture and sale of the Up & Up APAP with the knowledge  
11 that the Up & Up APAP was unreasonably unsafe and dangerous.

12 97. Defendant knew and/or should have known that it was foreseeable that children  
13 such as Plaintiff Child would suffer injuries as a result of Defendant's failure to exercise ordinary  
14 care in the manufacturing, marketing, labeling, distribution, and sale of the Up & Up APAP to  
15 consumers, like Plaintiff Mother.

16 98. Plaintiff Mother did not know the nature and extent of the injuries that could result  
17 in her child from the intended use of and/or exposure to APAP prenatally.

18 99. Defendant's negligence was the proximate cause of Plaintiffs' injuries, i.e., absent  
19 Defendant's negligence, Plaintiff Child would not have developed ASD and ADHD.

20 100. Defendant's conduct, as described above, was reckless. Defendant regularly risked  
21 exposing Plaintiff Mother to the Up & Up APAP while pregnant with Plaintiff Child, with full  
22 knowledge of the dangers of the Up & Up APAP and that it could cause ASD and ADHD in  
23 Plaintiff Child. Defendant made conscious decisions not to redesign, re-label, warn, or inform the  
24 unsuspecting public, including Plaintiff Mother. Defendant's reckless conduct therefore warrants  
25 an award of punitive damages.

26 101. As a direct and proximate result of Defendant placing the defective Up & Up APAP  
27 into the stream of commerce, Plaintiffs have suffered permanent injuries, significant pain and  
28

1 suffering, emotional distress, lost wages and earning capacity, and diminished quality of life.  
2 Plaintiffs respectfully seek all damages to which they may be legally entitled.

3 **COUNT III: BREACH OF EXPRESS WARRANTY**

4 102. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

5 103. At all material times, Defendant manufactured, marketed, sold, distributed, and  
6 otherwise placed into the stream of commerce the Up & Up APAP. These actions were under the  
7 ultimate control and supervision of Defendant.

8 104. In advertising, marketing, and promoting the Up & Up APAP to consumers, like  
9 Plaintiff Mother, Defendant expressly warranted that the Up & Up APAP was safe for use and  
10 reasonably fit for their intended purposes. In advertising, marketing, and otherwise promoting the  
11 Up & Up APAP, Defendant intended for pregnant consumers to rely upon its representations  
12 regarding safety and fitness, in an effort to induce them to purchase and consume the Up & Up  
13 APAP during pregnancy to relieve pain.

14 105. Defendant expressly warranted to Plaintiff Mother and pregnant consumers that the  
15 Up & Up APAP was safe for ingestion during pregnancy.

16 106. Defendant had a duty to exercise reasonable care in the research, development,  
17 design, testing, packaging, manufacture, inspection, labeling, distributing, marketing, promotion,  
18 sale, and release of the Up & Up APAP, including a duty to:

- 19 a. ensure that the Up & Up APAP did not cause users and their unborn children  
20 unreasonably dangerous side effects;
- 21 b. warn of dangerous and potentially incurable side effects; and
- 22 c. disclose adverse material facts, such as the true risks associated with the use of and  
23 exposure to APAP during pregnancy, when making representations to users,  
24 consumers, and the general public, including Plaintiff Mother.

25 107. Defendant had the ability to properly disclose the risks associated with APAP usage  
26 during pregnancy through multiple channels, not just labeling.

1           108. At all relevant times, Defendant expressly represented and warranted to the  
2 purchasers of the Up & Up APAP, by and through statements made by Defendant in labels,  
3 publications, brochures, and other written materials intended for consumers and the general public,  
4 that the Up & Up APAP was safe to human health and the environment, effective, fit, and proper  
5 for their intended use. Defendant advertised, labeled, marketed, and promoted the Up & Up APAP,  
6 representing the quality to consumers and the public in such a way as to induce their purchases or  
7 use, thereby making an express warranty that the Up & Up APAP would conform to the  
8 representations.

9           109. The representations about the Up & Up APAP, as set forth herein, contained or  
10 constituted affirmations of fact or promises made by the seller to the buyer, which related to the  
11 goods and became part of the basis of the bargain, creating an express warranty that the goods  
12 would conform to the representations.

13           110. Defendant breached express representations and warranties made to Plaintiff  
14 Mother, with respect to the Up & Up APAP, including the following:

- 15           a. Defendant represented through its labeling, advertising, and marketing materials  
16 that the Up & Up APAP was safe, and intentionally withheld and concealed  
17 information about the risks of serious injury associated with use of APAP and by  
18 expressly limiting the risks associated with use within its warnings and labels; and  
19           b. Defendant represented that the Up & Up APAP was safe for use and intentionally  
20 concealed information that demonstrated that APAP carries the significantly  
21 increased risk of causing neurodevelopmental disorders in children through  
22 prenatal exposure to APAP, and that the Up & Up APAP, therefore, was not safer  
23 than alternatives available on the market.

24           111. Plaintiff Mother detrimentally relied on the express warranties and representations  
25 of Defendant concerning the safety and/or risk profile of APAP in deciding to purchase the Up &  
26 Up APAP. Plaintiff Mother reasonably relied upon Defendant to disclose known defects, risks,  
27 dangers, and side effects of APAP. Plaintiff Mother would not have purchased or used the Up &  
28

1 Up APAP had Defendant properly disclosed the risks associated with the Up & Up APAP, either  
2 through advertising, labeling, or any other form of disclosure.

3 112. Plaintiff Mother had no knowledge of the falsity or incompleteness of Defendant's  
4 statements and representations concerning the Up & Up APAP.

5 113. Plaintiff Mother used and/or was exposed to APAP as researched, developed,  
6 designed, tested, manufactured, inspected, labeled, distributed, packaged, marketed, promoted,  
7 sold, or otherwise released into the stream of commerce by Defendant.

8 114. Had the warnings, labels, advertisements, or promotional material for the Up & Up  
9 APAP accurately and adequately set forth the true risks associated with the use of such products,  
10 including Plaintiffs' injuries, rather than expressly excluding such information and warranting that  
11 the Up & Up APAP was safe for their intended use, Plaintiffs could have avoided the injuries  
12 complained of herein.

13 115. As a direct and proximate result of Defendant's breach of express warranty,  
14 Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress, lost  
15 wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages  
16 to which they may be legally entitled.

17 **COUNT IV: BREACH OF IMPLIED WARRANTY**

18 116. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

19 117. At all material times, Defendant manufactured, marketed, sold, distributed, and  
20 otherwise placed the Up & Up APAP into the stream of commerce.

21 118. At all material times, Defendant intended for the Up & Up APAP to be consumed  
22 and ingested by pregnant women, like Plaintiff Mother; and Defendant impliedly warranted that  
23 the Up & Up APAP and its component parts were of merchantable quality, safe, fit for such use,  
24 and adequately tested.

25 119. Defendant was aware that consumers, including Plaintiff Mother, would consume  
26 and ingest the Up & Up APAP as directed by the products' labels and promotional materials.  
27 Therefore, Plaintiff Mother was a foreseeable user of the Up & Up APAP.  
28

1           120. But Defendant failed to disclose that APAP has dangerous propensities when used  
2 as intended and that use of the Up & Up APAP carries an increased risk of developing severe  
3 injuries, including Plaintiff Child's injuries.

4           121. The Up & Up APAP was expected to reach, and did in fact reach consumers,  
5 including Plaintiff Mother, without substantial change in the condition in which they were  
6 manufactured and sold by Defendant.

7           122. Plaintiff Mother was an intended beneficiary of the implied warranties made by  
8 Defendant to purchasers of the Up & Up APAP.

9           123. In reliance upon Defendant's implied warranties, Plaintiff Mother used the Up &  
10 Up APAP as indicated, and in the foreseeable manner normally intended, recommended,  
11 promoted, and marketed by Defendant.

12           124. Defendant breached its implied warranties to Plaintiffs in that the Up & Up APAP  
13 was not of merchantable quality, nor were they safe or fit for their intended use or adequately  
14 tested.

15           125. The harm caused by the Up & Up APAP far outweighed their benefit, rendering  
16 the Up & Up APAP more dangerous than an ordinary consumer or user would expect and more  
17 dangerous than alternative products.

18           126. As a direct and proximate result of Defendant's breach of express warranty,  
19 Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress, lost  
20 wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages  
21 to which they may be legally entitled.

22           **COUNT V: VIOLATION OF CONSUMER PROTECTION LAWS**

23           127. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

24           128. Plaintiff Mother purchased and used the Up & Up APAP for primarily personal use  
25 and pain relief during pregnancy, thereby suffering ascertainable losses as a result of Defendant's  
26 actions in violation of the consumer protection laws.

1           129. Had Defendant not engaged in the deceptive conduct described in this Complaint,  
2 Plaintiff would not have purchased and/or paid for the Up & Up APAP, and Plaintiffs would not  
3 have incurred related injury medical costs.

4           130. Defendant engaged in wrongful conduct while at the same time obtaining under  
5 false pretenses moneys from Plaintiff for the Up & Up APAP. Those moneys would not have been  
6 paid had Defendant not engaged in unfair and deceptive conduct.

7           131. Defendant engaged in the following unfair methods of competition or deceptive  
8 acts or practices, which are proscribed by law:

- 9           A. representing that goods or services have characteristics, ingredients, uses,  
10           benefits, or qualities they do not have;
- 11           B. advertising goods or services with the intent not to sell them as advertised;  
12           and
- 13           C. engaging in fraudulent or deceptive conduct creating a likelihood of  
14           confusion or misunderstanding.

15           132. Plaintiffs were injured by the cumulative nature of Defendant's conduct. The  
16 cumulative effect, directed at patients, physicians, and consumers, was to create demand for and  
17 sell the Up & Up APAP. Each aspect of Defendant's conduct combined to artificially create sales  
18 of the Up & Up APAP.

19           133. Defendant had a statutory duty to refrain from unfair or deceptive acts or trade  
20 practices in the design, labeling, development, manufacture, promotion, and sale of the Up & Up  
21 APAP.

22           134. Defendant's deceptive, unconscionable, or fraudulent representations and material  
23 omissions to consumers, including Plaintiff Mother, constitute unfair and deceptive acts and trade  
24 practices in violation of the federal and state consumer protection statutes listed below.

25           135. Defendant's actions, as complained of in this Complaint, constitute unfair  
26 competition or unfair, unconscionable, deceptive, or fraudulent acts or trade practices in violation  
27 of the federal and state consumer protection statutes listed below.

1           136. Defendant has engaged in unfair competition, or unfair or deceptive acts or trade  
2 practices, or has made false representations under the following statutes:

- 3           • 15 U.S.C. §§ 2301–12 (1982);
- 4           • Cal. Bus & Prof. Code § 17200, *et seq.* (Unfair Competition Law (“UCL”));
- 5           • Cal. Civ. Code § 17500 (False Advertising Law (“FAL”)); and
- 6           • Cal. Civ. Code § 1750 *et seq.* (Consumer Legal Remedies Act (“CLRA”)).

7           137. To protect consumers against unfair, deceptive, fraudulent, and unconscionable  
8 trade and business practices, and false advertising, Defendant, as the supplier, manufacturer,  
9 advertiser, and seller, is subject to liability under the above legislation enacted against unfair,  
10 deceptive, fraudulent, and unconscionable consumer sales practices.

11           138. By knowingly and falsely representing that the Up & Up APAP was fit to be used  
12 for the purposes for which they were intended—when in fact they were defective and dangerous—  
13 and by other acts alleged, Defendant violated the above statutes, enacted to protect consumers  
14 against unfair, deceptive, fraudulent, and unconscionable trade and business practices, and false  
15 advertising. The UCL prohibits “any unlawful, unfair, or fraudulent business act or practice and  
16 unfair, deceptive, untrue, or misleading advertising and any act prohibited by” Section 17500 of  
17 the California Business and Professions Code. Section 17500, in turn, prohibits any untrue or  
18 misleading statements made in connection with the sale of goods. The CLRA defines as statutorily  
19 unlawful certain unfair methods of competition and unfair or deceptive practices. Cal. Civ. Code  
20 § 1750 *et seq.*

21           139. By knowingly and falsely representing that the Up & Up APAP was fit to be used  
22 for the purposes for which they were intended—when in fact they were defective and dangerous  
23 when used during pregnancy—and by other acts alleged, Defendant violated the above statutes,  
24 enacted to protect consumers against unfair, deceptive, fraudulent, and unconscionable trade and  
25 business practices, and false advertising.

26           140. Defendant’s actions and omissions are uncured or incurable, deceptive acts under  
27 the above legislation.

1           141. Defendant had actual knowledge of the defective and dangerous conditions of the  
2 Up & Up APAP but failed to take any action to cure such defective and dangerous conditions.

3           142. Plaintiff Mother relied upon Defendant’s misrepresentations and omissions in  
4 determining which Up & Up APAP (if any) to ingest.

5           143. Defendant’s deceptive, unconscionable, or fraudulent representations and material  
6 omissions to consumers constituted unfair and deceptive acts and practices.

7           144. By reason of the unlawful acts in which Defendant engaged, and as a direct and  
8 proximate result thereof, Plaintiffs have suffered ascertainable losses and damages.

9           145. As a direct and proximate result of Defendant’s violations of the above-listed  
10 legislation, Plaintiffs have sustained economic losses and other damages and are entitled to  
11 statutory and compensatory damages in an amount to be proven at trial.

12                           **COUNT VI: NEGLIGENT MISREPRESENTATION**

13           146. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

14           147. Defendant had a duty to accurately and truthfully represent to consumers, including  
15 Plaintiff Mother, and the public that the Up & Up APAP had not been adequately tested and found  
16 to be a safe and effective treatment for pregnant women. Defendant breached that duty as its  
17 representations were false.

18           148. Defendant failed to exercise ordinary care in the representations concerning the Up  
19 & Up APAP while Defendant was involved in its manufacture, sale, testing, quality assurance,  
20 quality control, and distribution in interstate commerce, because Defendant negligently  
21 misrepresented the Up & Up APAP’s high risk of unreasonable and dangerous adverse side effects.

22           149. Defendant also breached its duty in representing to Plaintiff Mother that the Up &  
23 Up APAP had no serious side effects when ingested during pregnancy.

24           150. As a foreseeable, direct, and proximate result of Defendant’s negligent  
25 misrepresentations, Defendant knew or had reason to know that the Up & Up APAP had been  
26 insufficiently tested or had not been tested at all; and that they lacked adequate and accurate  
27 warnings, and created a high risk, or a higher than acceptable reported and represented risk, of  
28

1 adverse side effects. Those side effects include neurodevelopmental disorders in children, such as  
2 ASD and ADHD.

3 151. As a direct and proximate result of Defendant's breach of express warranty,  
4 Plaintiffs have suffered permanent injuries, significant pain and suffering, emotional distress, lost  
5 wages and earning capacity, and diminished quality of life. Plaintiffs respectfully seek all damages  
6 to which they may be legally entitled.

7 **PUNITIVE DAMAGES**

8 152. Plaintiffs incorporate by reference the allegations in all prior paragraphs.

9 153. Defendant failed to adequately test and study the Up & Up APAP to determine and  
10 ensure that the Up & Up APAP was safe and effective prior to releasing them for sale for human  
11 consumption.

12 154. Further, Defendant continued to manufacture and sell the Up & Up APAP after  
13 obtaining knowledge and information that they were defective and unreasonably unsafe in that  
14 they did not include adequate warnings.

15 155. Defendant was aware of the probable consequences of the dangerous and defective  
16 product, including the risk of neurodevelopmental disorders in children, such as ASD and ADHD,  
17 when they suffered prenatal exposure.

18 156. At all material times, Defendant knew or should have known that the Up & Up  
19 APAP was inherently dangerous with respect to the following: the risk of neurodevelopmental  
20 disorders in children, such as ASD and ADHD, when they suffered prenatal exposure; pain and  
21 suffering; loss of life's enjoyment; and unsuccessful treatments to cure the conditions proximately  
22 related to the use of the Up & Up APAP, as well as the other permanent and lasting severe personal  
23 injuries.

24 157. Defendant's misrepresentations included knowingly withholding material  
25 information from consumers and the public, including Plaintiff Mother, concerning the safety and  
26 efficacy of the Up & Up APAP, which deprived Plaintiff Mother of vitally necessary information  
27 with which to make a fully informed decision about whether to use the Up & Up APAP.  
28

1           158. At all material times, Defendant also knew and recklessly and/or intentionally  
2 disregarded the fact that the Up & Up APAP can cause debilitating and life-altering side effects  
3 with greater frequency than safer alternative methods, products, and/or treatments. But Defendant  
4 recklessly failed to advise the medical community and the general public, including Plaintiff  
5 Mother, of that fact.

6           159. At all material times, Defendant intentionally misstated and misrepresented data;  
7 and Defendant continues to misrepresent data so as to minimize the perceived risk of injuries and  
8 the rate of complications caused by or associated with the Up & Up APAP.

9           160. Notwithstanding the foregoing and the growing body of knowledge and  
10 information regarding the true and defective nature of the Up & Up APAP, with its increased risk  
11 of side effects and serious complications, Defendant continues to aggressively market the Up &  
12 Up APAP to consumers, including the pregnant community at large, without disclosing the true  
13 risk of the complications and side effects.

14           161. When Plaintiff Mother consumed the Up & Up APAP and since then, Defendant  
15 has known the Up & Up APAP was defective and unreasonably dangerous without an adequate  
16 warning. But Defendant continued to manufacture, produce, assemble, market, distribute, and sell  
17 the Up & Up APAP to the pregnant community so as to maximize sales and profits at the expense  
18 of the health and safety of expecting mothers in a conscious, reckless, and/or intentional disregard  
19 of the likely and foreseeable harm caused by the Up & Up APAP to members of the public,  
20 including Plaintiffs.

21           162. At all material times, Defendant has concealed and/or failed to disclose to the public  
22 the serious risks and the potential complications associated with the Up & Up APAP, so as to  
23 ensure continued and increased sales and profits and to the detriment of the public, including  
24 Plaintiffs.

25           163. Defendant's acts and omissions are of such character and nature so as to entitle  
26 Plaintiffs to an award of punitive damages in accordance with applicable statutory and common  
27 law. Defendant's conduct shows willful misconduct, malice, fraud, wantonness, oppression, or  
28

1 that entire want of care, raising the presumption of conscious indifference to consequences, thereby  
2 justifying an award of punitive damages.

3 WHEREFORE, Plaintiffs demand judgment against Defendant individually, and jointly  
4 and severally. Plaintiffs also request compensatory damages, punitive damages, or enhanced  
5 compensatory damages, together with interest, costs of suit, attorneys' fees, and such further relief  
6 as the Court deems equitable and just.

7 **PRAYER FOR RELIEF**

8 Plaintiffs demand judgment against Defendant, individually, and jointly and severally, and  
9 prays for the following relief in accordance with applicable law and equity:

- 10 i. Compensatory damages to Plaintiffs for past, present, and future damages,  
11 including pain and suffering for severe and permanent personal injuries  
12 sustained by Plaintiffs, permanent impairment, mental pain and suffering,  
13 loss of enjoyment of life, health and medical care costs, economic damages,  
14 together with interest and costs as provided by law;
- 15 ii. Restitution and disgorgement of Defendant's profits;
- 16 iii. Applicable statutory penalties;
- 17 iv. Punitive or enhanced compensatory damages;
- 18 v. Reasonable attorneys' fees as provided by law;
- 19 vi. Past and future costs of all proceedings;
- 20 vii. All ascertainable economic damages;
- 21 viii. Prejudgment interest on all damages as allowed by law; and
- 22 ix. Such other and further relief as this Court deems just and proper.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiffs hereby demands a trial by jury on all issues so triable.

25 Dated: September 23, 2022

Respectfully submitted,

26 /s/ Warren Postman

27 Warren Postman (#330869)  
28 wdp@kellerpostman.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**KELLER POSTMAN LLC**  
1100 Vermont Avenue, N.W., 12<sup>th</sup> Floor  
Washington, DC 20005  
Phone: (202) 918-1123  
Facsimile: (312) 971-3502

*Attorney for Plaintiffs*

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

LIBIER CAMARGO, INDIVIDUALLY AND AS MOTHER, GENERAL GUARDIAN OF J.L., A MINOR,

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

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

Warren D. Postman (#330869), KELLER POSTMAN LLC, 1100 Vermont Avenue, N.W., 12th Floor Washington, D.C. 20005, 312-741-5220

DEFENDANTS

TARGET CORPORATION

County of Residence of First Listed Defendant Hennepin County, M.N. (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 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 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 options: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, 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(a)

Brief description of cause: Personal injuries due to a defective product

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 75,001.00

CHECK YES only if demanded in complaint: JURY DEMAND: X 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) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/23/2022

SIGNATURE OF ATTORNEY OF RECORD

/s Warren Postman

## 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.