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8 Attorney for Plaintiff Jacob Scheibe

9  
10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 JACOB SCHEIBE, *individually and on* )  
13 *behalf of all those similarly situated,* )  
14 )  
15 *Plaintiff,* )  
16 )  
17 v. )  
18 )  
19 MUSCLE FEAST, LLC, *an Ohio limited* )  
20 *liability company,* )  
21 )  
22 *Defendant.* )  
23 )  
24 )

No. **'23CV0217 TWR JLB**

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

25  
26 Jacob Scheibe (“Plaintiff”), individually and on behalf of all others similarly situated, by  
27 and through undersigned counsel, hereby brings this action against Muscle Feast, LLC (“Muscle  
28 Feast”), alleging that “8-Hour Energy Pre-Workout” (“the Products”), a dietary supplement  
manufactured, packaged, labeled, advertised, distributed, and sold by Defendant, is misbranded  
and falsely advertised, and upon information and belief and investigation of counsel alleges as  
follows:

**PARTIES**

1. Plaintiff Jacob Scheibe is and at all times relevant was a citizen of the state of  
California, domiciled in San Diego, California.





1           16. For example, a 2018 survey by L.E.K. Consulting found that overwhelming  
2 numbers of consumers were committed or casual adherents to so-called “clean label” food  
3 attributes: “No artificial ingredients” (69 percent); “No preservatives” (67 percent); or “All-  
4 natural” (66 percent). These were the three most attractive attributes in the consumer survey.  
5 Roughly 60 to 70 percent of consumers reported a willingness to pay a price premium for “clean  
6 label” foods. See <https://www.lek.com/insights/ei/next-generation-mindful-food-consumption>.

7  
8           17. This consumer preference has led to an explosion in the category of “clean label”  
9 foods and beverages. Leading analyst Allied Market Research estimated that the “natural foods  
10 and drinks” category would grow by an estimated compound annual growth rate of 13.7 percent  
11 from 2016 to 2023, reaching \$191 billion in annual sales by 2023. See  
12 <https://www.alliedmarketresearch.com/natural-food-and-drinks-market>.

13  
14           18. On or about October 23, 2022, Mr. Scheibe purchased Muscle Feast’s 8-Hour  
15 Energy Pre-Workout powder, “All Natural Peach Mango” flavor, from Amazon.com (Order No.  
16 111-2760641-6152240) for \$43.09 inclusive of tax.

17           19. Mr. Scheibe is a student who has recently sought to lose weight and gain muscle.  
18 He carefully reviews labels, including the Products’ labels, to ensure that he consumes only  
19 natural ingredients and avoids artificial flavors and ingredients.  
20

21 **B. Defendant’s Use of Synthetic Flavorings and Deceptive Labels.**

22           20. Defendant Muscle Feast formulates, manufactures, and sells a dietary supplement  
23 called “8-Hour Energy Pre-Workout.” These dietary supplement powders purport to provide  
24 energy to make workouts more effective and efficient and to speed recovery.

25           21. The front label (or “principal display panel”) of the Products prominently state  
26 they are “All Natural” and “All Natural Flavored – Sweetened – Colored,” with attention drawn  
27 to the claim through use of different colored fonts and graphic elements:  
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1           23. These natural flavoring claims are false. The Products are flavored using an  
2 artificial flavoring, DL malic acid, that is derived from petrochemicals.

3           24. All flavors of the Products state, on the back label, that they contain “malic acid.”

4           25. While there is a naturally occurring form of malic acid, it is extremely expensive  
5 to formulate in large quantities and is almost never used in mass-produced food products.  
6 Instead, testing by an independent third-party laboratory has confirmed that the malic acid that  
7 Defendant uses in these Products is DL malic acid, a synthetic substance derived from  
8 petrochemicals.<sup>1</sup>

9  
10           26. This type of malic acid is manufactured in petrochemical plants from benzene or  
11 butane—components of gasoline and lighter fluid, respectively—through a series of chemical  
12 reactions, some of which involve highly toxic chemical precursors and byproducts.

13  
14           27. Fruit flavors in a food are imparted by the interactions between sugars, acids,  
15 lipids, and various volatile compounds. The sweetness or tartness of a fruit flavor is determined  
16 by the ratio between the sugars (mainly glucose and fructose) and acids, such as citric and malic  
17 acid.

18           28. The quality and consumer acceptability of fruit flavors is based on their perceived  
19 sweetness and tartness, which in turn is driven by the ratio between sugars and acids. Fruits such  
20 as peaches and mangoes have their own natural ratio of sugars and acids.

21           29. The DL malic acid used in the Products is used to create, simulate, and/or reinforce  
22 the sweet and tart taste that consumers associate with the fruit flavors stated on the labels.

23           30. Defendant uses the petrochemical-derived DL malic acid in its Products to create  
24 a sweet and tart flavor but pretends otherwise, conflating natural and artificial flavorings,  
25 misbranding the Products and deceiving consumers.  
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<sup>1</sup> DL malic acid is also called d-hydroxybutanedioic acid or (R)-(+)-2-Hydroxysuccinic acid.

1           31. The ingredients on the Products’ label are declared in a way that is misleading and  
2 contrary to law, because Defendant designates the ingredient by its generic name, “malic acid,”  
3 instead of by its specific name, “DL malic acid.”

4 **C. Requirements for Labelling**

5           32. Federal regulations promulgated pursuant to the Food, Drug, and Cosmetic Act  
6 (“FDCA”) require that a food’s label accurately describe the nature of the food product and its  
7 characterizing flavors. 21 C.F.R. § 102.5(a).

8           33. Artificial flavor is defined as “any substance, the function of which is to impart  
9 flavor, which is not derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible  
10 yeast, herb, bark, bud, root, leaf or similar plant material, meat, fish, poultry, eggs, dairy  
11 products, or fermentation products thereof.” 21 C.F.R § 101.22(a)(1).

12           34. Natural flavor is defined as “essential oil, oleoresin, essence or extractive, protein  
13 hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the  
14 flavoring constituents” from fruits or vegetables, “whose significant function in food is flavoring  
15 rather than nutritional.” 21 C.F.R § 101.22(a)(3).

16           35. Any recognizable primary flavor identified directly or indirectly on the front label  
17 of a food product, whether by word, vignette, depiction of a fruit, or other means is referred to  
18 as a “characterizing flavor.” 21 C.F.R. § 101.22.

19           36. Here, the Products’ labels both state the characterizing flavors (peaches and  
20 mangoes) and reinforce the claim that this characterizing flavor is achieved by using only natural  
21 flavors through use of fonts and graphic elements.

22           37. If a food product’s characterizing flavor is not created exclusively by the named  
23 flavor ingredient, the product’s front label must state that the product’s flavor was simulated or  
24 reinforced with either natural or artificial flavorings or both. If any artificial flavor is present  
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1 which “simulates, resembles or reinforces” the characterizing flavor, the front label must  
2 prominently inform consumers that the product is “Artificially Flavored.” 21 C.F.R. §  
3 101.22(i)(2).

4 38. A food product’s label also must include a statement of the “presence or absence  
5 of any characterizing ingredient(s) or component(s) . . . when the presence or absence of such  
6 ingredient(s) or component(s) in the food has a material bearing on price or consumer  
7 acceptance . . . and consumers may otherwise be misled about the presence or absence of the  
8 ingredient(s) or component(s) in the food.” 21 C.F.R. § 102.5.

9 39. Such statement must be in boldface print on the front display panel and of  
10 sufficient size for an average consumer to notice.

11 40. California’s Sherman Food, Drug, and Cosmetic Law, Cal. Health & Saf. Code §  
12 109875, *et seq.*, incorporates all food flavoring and additive regulations of the FDCA.

13 41. By changing the ratio between sugars and acids that is naturally found in fruits  
14 such as peaches and mangoes, the DL malic acid used in the Products reinforces, simulates, or  
15 creates the characterizing flavors, regardless of any other effect it may have or purpose for which  
16 it was included.

17 42. DL malic acid is not a “natural flavor” as this term is defined by federal and state  
18 regulations and is not derived from a fruit or vegetable or any other natural source. The Products  
19 therefore contain artificial flavorings.

20 43. Because the Products contain artificial flavoring, California law requires the  
21 Products to display both front- and back-label disclosures to inform consumers that the Products  
22 are artificially flavored.

23 44. The Products have none of the required disclosures regarding the use of artificial  
24 flavors.

1           45. Plaintiff reserves the right to amend this Complaint to add further products that  
2 contain similar label misrepresentations as testing continues.

3           49. Labels are the chief means by which food product manufacturers convey critical  
4 information to consumers, and consumers have been conditioned to rely on the accuracy of the  
5 claims made on these labels. As the California Supreme Court stated in a case involving alleged  
6 violations of the UCL and FAL, “Simply stated: labels matter. The marketing industry is based  
7 on the premise that labels matter, that consumers will choose one product over another similar  
8 product based on its label.” *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 328 (2011).

9           50. Plaintiff reviewed the label on the Products prior to his purchase, and reviewed  
10 the natural flavoring claims being made there and on the company’s Amazon storefront.  
11 Consumers such as Plaintiff who viewed the Products’ labels reasonably understood  
12 Defendant’s “All Natural” and “All Natural Flavored” statements, as well as its failure to  
13 disclose the use of artificially derived malic acid, to mean that the Products contain only natural  
14 flavorings. This representation was also false.

15           51. Consumers including Plaintiff reasonably relied on Defendant’s statements such  
16 that they would not have purchased the Products from Defendant if the truth about the Products  
17 was known, or would have only been willing to pay a substantially reduced price for the Products  
18 had they known that Defendant’s representations were false and misleading.

19           52. In the alternative, because of its deceptive and false labelling statements,  
20 Defendant was enabled to charge a premium for the Products relative to key competitors’  
21 products, or relative to the average price charged in the marketplace.

22           53. Consumers including Plaintiff especially rely on label claims made by food  
23 product manufacturers such as Muscle Feast, as they cannot confirm or disprove those claims  
24 simply by viewing or even consuming the Products.

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1 predominate over any questions that affect only individual Class members. Common legal and  
2 factual questions and issues include but are not limited to:

- 3 a. Whether the marketing, advertising, packaging, labeling, and other  
4 promotional materials for Defendant’s Products is misleading and deceptive;  
5  
6 b. Whether a reasonable consumer would understand Defendant’s “All Natural”  
7 and “All Natural Flavored” claims to indicate that the Products contained only  
8 natural flavorings, and reasonably relied upon those representations;  
9  
10 c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and  
11 Class members;  
12  
13 d. the proper amount of damages and disgorgement or restitution;  
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15 e. the proper scope of injunctive relief; and  
16  
17 f. the proper amount of attorneys’ fees.

18  
19 61. Defendant engaged in a common course of conduct in contravention of the laws  
20 Plaintiff seeks to enforce individually and on behalf of the Class. Similar or identical violations  
21 of law, business practices, and injuries are involved. Individual questions, if any, pale by  
22 comparison, in both quality and quantity, to the numerous common questions that predominate  
23 this action. The common questions will yield common answers that will substantially advance  
24 the resolution of the case.

25 62. In short, these common questions of fact and law predominate over questions that  
26 affect only individual Class members.

27 63. **Typicality – Rule 23(a)(3):** Plaintiff’s claims are typical of the claims of the Class  
28 members because they are based on the same underlying facts, events, and circumstances  
relating to Defendant’s conduct.

1           64. Specifically, all Class members, including Plaintiff, were harmed in the same way  
2 due to Defendant’s uniform misconduct described herein; all Class members suffered similar  
3 economic injury due to Defendant’s misrepresentations; and Plaintiff seeks the same relief as  
4 the Class members.

5           65. There are no defenses available to Defendant that are unique to the named  
6 Plaintiff.

7           66. **Adequacy of Representation – Rule 23(a)(4):** Plaintiff is a fair and adequate  
8 representative of the Class because Plaintiff’s interests do not conflict with the Class members’  
9 interests. Plaintiff will prosecute this action vigorously and is highly motivated to seek redress  
10 against Defendant.  
11

12           67. Furthermore, Plaintiff has selected competent counsel who are experienced in  
13 class action and other complex litigation. Plaintiff and Plaintiff’s counsel are committed to  
14 prosecuting this action vigorously on behalf of the Class and have the resources to do so.  
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16           68. **Superiority – Rule 23(b)(3):** The class action mechanism is superior to other  
17 available means for the fair and efficient adjudication of this controversy for at least the  
18 following reasons

- 19           a. the damages individual Class members suffered are small compared to the  
20 burden and expense of individual prosecution of the complex and extensive  
21 litigation needed to address Defendant’s conduct such that it would be  
22 virtually impossible for the Class members individually to redress the wrongs  
23 done to them. In fact, they would have little incentive to do so given the  
24 amount of damage each member has suffered when weighed against the costs  
25 and burdens of litigation;  
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- b. the class procedure presents fewer management difficulties than individual litigation and provides the benefits of single adjudication, economies of scale, and supervision by a single Court;
- c. the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for Defendant; and
- d. the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would be dispositive of the interests of other Class members or would substantively impair or impede their ability to protect their interests.

69. Unless the Class is certified, Defendant will retain monies received as a result of its unlawful and deceptive conduct alleged herein.

70. Unless a class-wide injunction is issued, Defendant will likely continue to advertise, market, promote, and sell its Products in an unlawful and misleading manner, as described throughout this Complaint, and members of the Class will continue to be misled, harmed, and denied their rights under the law.

71. **Ascertainability.** To the extent ascertainability is required, the Class members are readily ascertainable from Defendant’s records and/or its agents’ records of retail and online sales, as well as through public notice.

72. Defendant has acted on grounds applicable to the Class as a whole, thereby making appropriate final injunctive and declaratory relief concerning the Class as a whole.

1 **COUNT 1**  
2 **VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT (“OCSPA”),**  
3 **OHIO REV. CODE § 1345.01 *et seq.***  
4 **Nationwide Class**

5 73. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
6 extent necessary, pleads this cause of action in the alternative.

7 74. Plaintiff purchased dietary supplements from Defendant for personal, family, or  
8 household purposes.

9 75. Plaintiff’s purchase of the Products was a “consumer transaction” within the  
10 meaning of OCSPA.

11 76. Defendant is a “supplier” within the meaning of OCSPA.

12 77. Defendant is required by federal regulations to specifically perform certain  
13 actions, *i.e.*, state the source of its flavoring accurately, in order to avoid committing an unfair  
14 and deceptive act.

15 78. Defendant’s acts and practices, as alleged in this complaint, violate the OCSPA  
16 because they were an unfair or deceptive act or practice in connection with a consumer  
17 transaction—namely, the sale of mislabelled and/or deceptively labelled dietary supplements as  
18 set forth herein. This conduct was intended to result and did result in the sale of these goods to  
19 consumers. This conduct includes but is not limited to:

- 20
- 21 a. Representing that the Products have sponsorship, approval, performance  
22 characteristics, accessories, uses, or benefits that they do not have;
  - 23 b. Representing that the Products were of a particular standard, quality, grade, style,  
24 prescription, or model when they were actually of another;
  - 25 c. Advertising goods or services with intent not to sell them as advertised; and
  - 26 d. Engaging in other fraudulent or deceptive conduct creating a likelihood of  
27 confusion or misunderstanding.  
28









1 **COUNT 6**  
2 **VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT,**  
3 **CAL. CIV. CODE § 1750 *ET SEQ.***  
4 **California Subclass**

5 46. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
6 extent necessary, pleads this cause of action in the alternative.

7 47. Plaintiff is a “consumer” within the meaning of the Consumer Legal Remedies  
8 Act (“CLRA”), Cal. Civ. Code § 1761(d).

9 48. The sale of Defendant’s Products to Plaintiff and Class members was a  
10 “transaction” within the meaning of the CLRA, Cal. Civ. Code § 1761(e).

11 49. The Products purchased by Plaintiff and Class members are “goods” within the  
12 meaning of the CLRA, Cal. Civ. Code § 1761(a).

13 50. As alleged herein, Defendant’s business practices are a violation of the CLRA  
14 because Defendant deceptively failed to reveal facts that are material in light of the flavoring  
15 representations that were made by Defendant on the labels of its Products.

16 51. Defendant’s ongoing failure to provide material facts about its Products on its  
17 labels violates the following subsections of Cal. Civ. Code § 1770(a) in these respects:

- 18 a. Defendant’s acts and practices constitute misrepresentations that its Products have  
19 characteristics, benefits, or uses which they do not have;
- 20 b. Defendant misrepresented that its Products are of a particular standard, quality,  
21 and/or grade, when they are of another;
- 22 c. Defendant’s acts and practices constitute the advertisement of goods, without the  
23 intent to sell them as advertised;
- 24 d. Defendant’s acts and practices fail to represent that transactions involving its  
25 Products involve actions that are prohibited by law, particularly the use of  
26 misleading nutritional labelling; and  
27  
28

1 e. Defendant's acts and practices constitute representations that its Products have  
2 been supplied in accordance with previous representations when they were not.

3 52. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed,  
4 entitling them to injunctive relief, disgorgement, and restitution.

5 53. Pursuant to Cal. Civ. Code § 1782, Plaintiff notified Defendant in writing of the  
6 particular violations of the CLRA described herein and demanded Defendant rectify the actions  
7 described above by providing complete monetary relief, agreeing to be bound by their legal  
8 obligations and to give notice to all affected customers of their intent to do so. Plaintiff sent this  
9 notice by certified mail to Defendant, at least 30 days before the filing of this Complaint.  
10

11 54. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff and the Class are entitled  
12 to recover actual damages sustained as a result of Defendant's violations of the CLRA. Such  
13 damages include, without limitation, monetary losses and actual, punitive, and consequential  
14 damages, in an amount to be proven at trial.  
15

16 55. Pursuant to Cal. Civ. Code §§ 1770 and 1780, Plaintiff is entitled to enjoin  
17 publication of misleading and deceptive nutritional labels on Defendant's Products and to  
18 recover reasonable attorneys' fees and costs.

19 **COUNT 7**  
20 **UNJUST ENRICHMENT**  
21 **Nationwide Class**

22 56. Plaintiff realleges the preceding paragraphs as if fully set forth herein and, to the  
23 extent necessary, pleads this cause of action in the alternative.

24 57. Defendant, through its marketing and labeling of the Products, misrepresented and  
25 deceived consumers regarding the flavoring in the Products.

26 58. Defendant did so for the purpose of enriching itself and it in fact enriched itself  
27 by doing so.  
28





- 1 d. Ordering an awarding of injunctive relief as permitted by law or equity, including  
2 enjoining Defendant from continuing the unlawful practices as set forth herein, and  
3 ordering Defendant to engage in a corrective advertising campaign;  
4  
5 e. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff;  
6  
7 f. Ordering Defendant to pay both pre- and post-judgment interest on any amounts  
8 awarded; and  
9  
10 g. Such other relief as the Court may deem just and proper.

TRIAL BY JURY IS DEMANDED ON ANY COUNTS SO TRIABLE.

11 /s/ Charles C. Weller  
12 Charles C. Weller (Cal. SBN: 207034)  
13 Attorney for Plaintiff

14 CHARLES C. WELLER, APC  
15 11412 Corley Court  
16 San Diego, California 92126  
17 Tel: 858.414.7465  
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19 February 6, 2023  
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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
Jacob Scheibe, individually and on behalf of those similarly situated
(b) County of Residence of First Listed Plaintiff San Diego, CA (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
Charles C. Weller, CHARLES WELLER APC, 11412 Corley Ct., San Diego CA 92126, (858) 414-7465

DEFENDANTS
Muscle Feast, LLC
County of Residence of First Listed Defendant Nashport, Ohio (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known) '23CV0217 TWR JLB

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)
PTF DEF
Citizen of This State [X] 1 [ ] 1
Citizen of Another State [ ] 2 [ ] 2
Citizen or Subject of a Foreign Country [ ] 3 [X] 3
Incorporated or Principal Place of Business In This State [ ] 4 [ ] 4
Incorporated and Principal Place of Business In Another State [ ] 5 [X] 5
Foreign Nation [ ] 6 [ ] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes categories like Personal Injury, Real Property, Labor, Intellectual Property Rights, etc.

V. ORIGIN (Place an "X" in One Box Only)
[X] 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. section 1332
Brief description of cause:
Consumer protection claim for misbranded dietary supplements

VII. REQUESTED IN COMPLAINT:
[X] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000
CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 2/6/2023 SIGNATURE OF ATTORNEY OF RECORD /s/ Charles C. Weller

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.