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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 *Plaintiff,*)

No. '23CV1776 L BLM

15 v.)

CLASS ACTION COMPLAINT

16 CRAFTED BRAND COMPANY, LLC, *a*)
17 *California limited liability company,*)

18 *Defendant.*)

JURY TRIAL DEMANDED

19 _____
20 Jacob Scheibe (“Plaintiff”), individually and on behalf of all other consumers similarly
21 situated throughout the United States, by and through undersigned counsel, hereby brings this
22 action against Crafted Brand Company, LLC (“Crafted”), alleging that Crafted’s Mai Tai and
23 Pina Colada cocktails mixers (“the Products”), which are manufactured, packaged, labeled,
24 advertised, distributed, and sold by Defendant, are misbranded and deceptively labelled because
25 they contain preservatives, and upon information and belief and investigation of counsel alleges
26 as follows:

27 **PARTIES**

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

1 that offers the Products for sale to commercial and individual consumers in this district, as well
2 as offering the Products for sale through third-party e-commerce websites, through both of
3 which commercial and individual consumers residing in this district have purchased the
4 Products.

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6 9. Defendant knowingly directs electronic activity and ships the Products into this
7 district with the intent to engage in business interactions for profit, and it has in fact engaged in
8 such interactions, including the sale of the Products to Plaintiff.

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10 10. Defendant also sells the Products to retailers and wholesalers in this district for
11 the purpose of making the Products available for purchase by individual consumers in this
12 district.

13 11. Plaintiff's losses and those of other Class members were sustained in this district.

14 12. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of
15 the events or omissions giving rise to Plaintiff's claims occurred within this district.

16 13. Venue is also proper pursuant to 28 U.S.C. § 1391(c)(2) because this Court
17 maintains personal jurisdiction over Defendant.

18 **FACTUAL ALLEGATIONS**

19 **A. Consumers Pay A Premium for "Clean Label" Foods Free of Preservatives**

20 14. Across the globe, consumers are increasingly attuned to claims that foods are "all-
21 natural," minimally processed, or otherwise free of artificial flavors or preservatives.

22
23 15. For example, a 2018 survey by L.E.K. Consulting found that overwhelming
24 numbers of consumers were committed or casual adherents to so-called "clean label" food
25 attributes, with 67 percent preferring foods with "No preservatives." (67 percent). These were
26 the three most attractive attributes in the consumer survey. Roughly 60 to 70 percent of
27 consumers reported a willingness to pay a price premium for "clean label" foods. *See*
28 <https://www.lek.com/insights/ei/next-generation-mindful-food-consumption>.

1 16. This consumer preference has led to an explosion in the category of “clean label”
2 foods and beverages. Leading analyst Allied Market Research estimated that the “natural foods
3 and drinks” category would grow by an estimated compound annual growth rate of 13.7 percent
4 from 2016 to 2023, reaching \$191 billion in annual sales by 2023. See
5 <https://www.alliedmarketresearch.com/natural-food-and-drinks-market>.
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7 17. Plaintiff purchased the Products on or about June 2, 2023 from a Walmart in
8 Encinitas, California.

9 18. Scheibe is a student who eats with intentionality and for health. He carefully
10 reviews labels, including the Products’ labels, to ensure that he avoids preservatives.

11 **B. Defendant’s Use of Preservatives.**

12 19. Defendant Crafted formulates, manufactures, and sells various cocktail mixers,
13 including the Products.

14 20. The front label (or “principal display panel”) of the Products state that they contain
15 “No preservatives,” as shown here:
16



1 21. This no preservatives claim is false. The Products contain citric acid, which is a
2 commonly used and recognized preservative in food and beverage products.

3 22. Citric acid in foods, ***including as used in the Products***, is used to preserve foods
4 by increasing acidity and preventing the growth of bacteria and mold when food is stored in
5 cans, jars, or other containers.

6 23. Under federal regulations, citric acid is a chemical preservative because it is a
7 “chemical that, when added to food, tends to prevent or retard deterioration thereof.” 21 C.F.R.
8 § 101.22(a)(5). This remains the case regardless of the subjective purpose for which citric acid
9 is introduced into a food product.

10 24. The United States Food and Drug Administration identifies citric acid as a
11 preservative in “Types of Food Ingredients” at [https://www.fda.gov/food/food-additives-and-](https://www.fda.gov/food/food-additives-and-gras-ingredients-information-consumers/types-food-ingredients)
12 [gras-ingredients-information-consumers/types-food-ingredients](https://www.fda.gov/food/food-additives-and-gras-ingredients-information-consumers/types-food-ingredients) (last viewed September 27,
13 2023).

14 25. Federal regulations also require that where a food contains “any chemical that,
15 when added to food, tends to prevent or retard deterioration,” a “statement of [that] chemical
16 preservative shall be placed on the food [] as may be necessary to render such statement likely
17 to be read by the ordinary person under customary conditions of purchase and use.” 21 C.F.R.
18 §§ 101.22(a)(5), (c).

19 26. Citric acid does not fall within any regulatory exemption to these requirements.

20 27. These federal regulations are independently adopted as substantive state law
21 requirements under the Sherman Law, Cal. Health & Saf. Code § 109875, *et seq.*

22 28. As described above, a preservative as defined by federal regulation is a substance
23 that “tends” to prevent or retard the deterioration of food products. Thus, it is not necessary that
24

1 the substance function as a preservative in every single instance for it to qualify as a preservative,
2 so long as preservation is the general tendency of the substance.

3 29. However, on information and belief, citric acid does in fact function as a
4 preservative in the Products.

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

11 31. Plaintiff reviewed the labels on the Products prior to his purchase, and reviewed
12 the “No preservatives” claim made on those labels. Consumers, including Plaintiff, who viewed
13 the Products’ labels reasonably understood “No preservatives” claim to mean that the Products
14 do not contain preservatives such as citric acid. This representation was false.

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

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

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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, and labeling for Defendant's
4 Products is misleading and deceptive;
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6 b. Whether a reasonable consumer would understand Defendant's label claims to
7 indicate that the Products contained no preservatives, and reasonably relied upon
8 those representations;
9
10 c. Whether Defendant was unjustly enriched at the expense of the Plaintiff and Class
11 members;
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13 d. Whether Defendant breached an express warranty;
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15 e. the proper amount of damages;
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17 f. the proper scope of injunctive relief; and
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19 g. the proper amount of attorneys' fees.

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

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

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

1 45. 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 46. There are no defenses available to Defendant that are unique to the named
6 Plaintiff.

7 47. **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 48. 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.
15

16 49. **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 burden
20 and expense of individual prosecution of the complex and extensive litigation
21 needed to address Defendant’s conduct such that it would be virtually impossible
22 for the Class members individually to redress the wrongs done to them. In fact,
23 they would have little incentive to do so given the amount of damage each member
24 has suffered when weighed against the costs and burdens of litigation;
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- 1 b. the class procedure presents fewer management difficulties than individual
2 litigation and provides the benefits of single adjudication, economies of scale, and
3 supervision by a single Court;
4
5 c. the prosecution of separate actions by individual Class members would create a
6 risk of inconsistent or varying adjudications, which would establish incompatible
7 standards of conduct for Defendant; and
8
9 d. the prosecution of separate actions by individual Class members would create a
10 risk of adjudications with respect to them that would be dispositive of the interests
11 of other Class members or would substantively impair or impede their ability to
12 protect their interests.

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

15 51. Unless a class-wide injunction is issued, Defendant will likely continue to
16 advertise, market, promote, and sell its Products in an unlawful and misleading manner, as
17 described throughout this Complaint, and members of the Class will continue to be misled,
18 harmful, and denied their rights under the law. Plaintiff will be unable to rely on the Products’
19 advertising or labeling in the future, and so will not purchase the Products although he would
20 like to.

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

25 53. Defendant has acted on grounds applicable to the Class as a whole, thereby
26 making appropriate final injunctive and declaratory relief concerning the Class as a whole.
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1 **COUNT 1**
2 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**
3 **CIVIL CODE § 1750 *et seq.***

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

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

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

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

12 58. As alleged herein, Defendant’s business practices are a violation of the CLRA
13 because Defendant deceptively failed to reveal facts that are material in light of the “No
14 preservatives” representations that were made by Defendant on the labels of its Products.

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

- 17
- 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 60. By reason of the foregoing, Plaintiff and the Class have been irreparably harmed,
4 entitling them to injunctive relief, disgorgement, and restitution.

5 61. 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.
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11 62. 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 63. 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 2**
20 **UNJUST ENRICHMENT**

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

23 65. Defendant, through its marketing and labeling of the Products, misrepresented and
24 deceived consumers regarding the use of preservatives in the Products.
25

26 66. Defendant did so for the purpose of enriching itself and it in fact enriched itself
27 by doing so.
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1 67. Consumers conferred a benefit on Defendant by purchasing the Products,
 2 including an effective premium above their true value. Defendant appreciated, accepted, and
 3 retained the benefit to the detriment of consumers.

4 68. Defendant continues to possess monies paid by consumers to which Defendant is
 5 not entitled.

6 69. Under the circumstances it would be inequitable for Defendant to retain the benefit
 7 conferred upon it and Defendant’s retention of the benefit violates fundamental principles of
 8 justice, equity, and good conscience.
 9

10 70. Plaintiff seeks disgorgement of Defendant’s ill-gotten gains and restitution of
 11 Defendant’s wrongful profits, revenue, and benefits, to the extent, and in the amount, deemed
 12 appropriate by the Court, and such other relief as the Court deems just and proper to remedy
 13 Defendant’s unjust enrichment.
 14

15 71. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact as
 16 a result of Defendant’s actions as set forth above.

17 **COUNT 3**
 18 **BREACH OF EXPRESS WARRANTY**

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

21 73. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller,
 22 expressly warranted that the Products contain “No preservatives.”
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24 74. Defendant’s express warranties, and its affirmations of fact and promises made to
 25 Plaintiff and the Class and regarding the Products, became part of the basis of the bargain
 26 between Defendant and Plaintiff and the Class, which creates an express warranty that the
 27 Products would conform to those affirmations of fact, representations, promises, and
 28 descriptions.

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Respectfully submitted,

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

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September 27, 2023

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 (EXCEPT IN U.S. PLAINTIFF CASES)

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

Charles C. Weller, Charles C. Well APC, 11412 Corley Ct., San Diego CA 92126, 858.414.7465

DEFENDANTS

Crafted Brand Company, LLC, a California limited liability company

County of Residence of First Listed Defendant Las Vegas, NV (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'23CV1776 L BLM

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, Labor, etc.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 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 fraud action for misbranded food products pursuant to the Class Action Fairness Act

VII. REQUESTED IN COMPLAINT:

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: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 9/27/2023 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.