

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

STERLING JEWELERS INC.,
Plaintiff,

vs.

ZALE CORPORATION,
Defendant.

Civil Action No.

**COMPLAINT FOR FALSE
ADVERTISING UNDER
LANHAM ACT § 43(a), 15 U.S.C.
§ 1125(a) AND DECEPTIVE
TRADE PRACTICES UNDER
OHIO DECEPTIVE TRADE
PRACTICES ACT, OHIO REV.
CODE CH. 4165**

Plaintiff STERLING JEWELERS INC. (“Sterling”) hereby alleges as follows:

PARTIES

1. Plaintiff Sterling is a Delaware corporation with its principal place of business in Akron, Ohio.
2. On information and belief, Defendant ZALE CORPORATION (“Zales”) is a Delaware corporation with its principal place of business in Irving, Texas.
3. Zales conducts business and manufactures and/or distributes products within the Northern District of Ohio and throughout the United States. For example, according to Zales’s web site, Zales operates at least four retail stores in the Cleveland, Ohio area, three retail stores in the Akron, Ohio area, three retail stores in the Canton, Ohio area, and one retail store in the Youngstown, Ohio area. In addition, on information and belief, consumers in Ohio purchase diamonds and other items through the internet web sites operated by Zales.

JURISDICTION AND VENUE

4. This action arises under 15 U.S.C. § 1125(a) and the statutory law of the state of Ohio. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331

(federal question), 15 U.S.C. § 1121 (Lanham Act claims) and 28 U.S.C. § 1367 (supplemental jurisdiction over pendant state law claim).

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400 because a substantial part of the events or omissions giving rise to the claims occurred in this District.

FACTUAL ALLEGATIONS

6. This action seeks redress for Zales's deliberate and unlawful false and misleading representations regarding its Celebration Fire ("Fire") diamonds, which are cut, marketed and sold by Zales based on the representation that its Fire diamond is the "most brilliant diamond in the world" and are proven by research to be the most brilliant diamond in the world, when, in fact, Fire diamonds are not the most brilliant in the world and the research claimed to prove that Fire diamonds are the most brilliant in the world does not and cannot so prove.

I. STERLING

7. Plaintiff is a specialty jewelry retailer that operates more than 1,300 stores in the United States under several brands, including Kay Jewelers, Jared the Galleria of Jewelry, J. B. Robinson Jewelers, and others, and sells jewelry online through the web sites kay.com and jared.com.

8. Sterling sells diamond jewelry in competition with Zales. Sterling sells diamonds produced by various suppliers under the trademarks LEO, Tolkowsky and Solasfera, among others.

II. ZALES AND ITS FALSE ADVERTISING OF CELEBRATION FIRE DIAMONDS

9. Zales is a jewelry retailer that operates approximately 1,870 retail stores throughout North America under the brands Zales, Gordon's Jewelers, Zales Outlet and others,

and sells jewelry online through the web sites zales.com, gordonsjewelers.com and zalesoutlet.com.

10. On information and belief, Zales cuts or has diamonds cut to its specifications, including the diamonds marketed under the trademark Celebration Fire and others.

11. Zales promotes the Celebration Fire diamond as “the most brilliant diamond in the world” in this District and throughout the United States, including on its web site (Exhibits 1, 2 and 3 hereto), its Facebook page (Exhibit 4 hereto), its Twitter page (Exhibit 5 hereto) and point-of-purchase displays (Exhibit 6 hereto). Zales claims in its holiday catalog that “Only the Celebration Fire shines with more brilliance than any other diamond in the world, based on independent laboratory testing.” *See* Zales 2012 holiday catalog (excerpts, Exhibit 8 hereto).

12. The brilliance of a diamond is a recognized property within the jewelry industry and among jewelry consumers. It is not a statement of subjective opinion but is capable of being systematically, reliably and scientifically measured.

13. In some of its advertising and promotional materials, Zales further claims that its claim that its Fire diamond is “the most brilliant diamond in the world” and “shines with more brilliance than any other diamond in the world” are “[b]ased on independent laboratory testing conducted in 2012 of round-cut diamonds from select leading national jewelry store chains.” *See, e.g.*, Exhibits 1, 8 hereto. This constitutes a distinct claim that the superiority of Fire diamonds over all other diamonds in the world has been proven by competent and reliable scientific evidence, a type of claim known in advertising law as an establishment claim.

14. The Fire diamond is not, in fact, the most brilliant diamond in the world. Zales’s express claim that the Fire diamond is more brilliant than any other cut of diamond in the world is false.

15. Zales's separate claim that its Fire diamond is shown to be the most brilliant in the world by competent and reliable scientific evidence also is false. Even without reviewing the study, Zales's 17-word description of the study, on its face, shows that it cannot support the conclusion attributed to it. The "independent laboratory testing" cited by Zales falls short of its claim in that it was limited to "diamonds from select leading national jewelry store chains." Zales's statement indicates that its testing is limited to diamonds carried by "leading national jewelry store chains," meaning that it did not test all diamonds carried by (1) regional jewelry store chains, (2) independent jewelry stores, (3) national jewelry store chains that Zales does not consider "leading" chains, (4) the internet, or (5) any seller of jewelry outside the United States. Further, even within this highly limited category of "leading national jewelry store chains," Zales's statement admits that it tested diamonds only from "select" (i.e., not all) leading national jewelry store chains.

16. Zales's claim that it has proven its Fire diamonds to be more brilliant than any other cut of diamond in the world can be true only if its Fire diamonds have been tested against every other cut of diamond in the world. Zales's admission that it has tested only a "select" sub-set of round-cut diamonds renders this claim false.

17. On information and belief, even as to the limited sub-set of diamonds tested in the tests referenced by Zales, those tests do not constitute competent and reliable scientific evidence that Zales's Fire diamond is the most brilliant diamond in the world. This further renders Zales's claim that it has proven its Fire diamonds to be more brilliant than any other cut of diamond in the world false.

FIRST CLAIM FOR RELIEF

(False Advertising under 15 U.S.C. § 1125(a))

18. Plaintiff incorporates by reference paragraphs 1 through 17 above as though fully set forth herein.

19. Zales has made and distributed in interstate commerce and in this District advertisements that contain false and misleading statements of fact regarding its products. These advertisements contain actual misstatements and/or misleading statements or failures to disclose, specifically the statements (1) that Zales's Celebration Fire diamond is the most brilliant diamond in the world and (2) that competent and reliable scientific evidence proves that Zales's Celebration Fire is the most brilliant diamond in the world.

20. These statements actually deceive, or have a tendency to deceive, a substantial segment of Zales's customers and potential customers. This deception is material in that concerns and inherent quality or characteristic of Zales's product and is likely to influence the purchasing decisions of Zales's customers.

21. Zales's false and misleading advertising statements and omissions injure both consumers and Plaintiff.

22. Zales's false and misleading advertising statements and omissions violate Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

23. Zales has caused, and will continue to cause, immediate and irreparable injury to Plaintiff, including injury to Plaintiff's business, reputation and goodwill, for which there is no adequate remedy at law. Plaintiff is therefore entitled to an injunction under 15 U.S.C. § 1116 restraining Zales, its agents, employees, representatives and all persons acting in concert with Zales from engaging in future acts of false advertising and ordering removal of all of Zales's false advertisements.

24. Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover from Zales the damages sustained by Plaintiff as a result of Zales's acts in violation of 15 U.S.C. § 1125(a). Plaintiff is at present unable to ascertain the full extent of the monetary damages it has sustained by reason of Zales's acts.

25. Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover from Zales the gains, profits and advantages that Zales has obtained as a result of Zales's acts in violation of 15 U.S.C. § 1125(a). Plaintiff is at present unable to ascertain the full extent of the gains, profits and advantages Zales has obtained by reason of Zales's acts.

26. Pursuant to 15 U.S.C. § 1117, Plaintiff is further entitled to recover the costs of this action. Moreover, Plaintiff is informed and believes, and on that basis alleges, that Zales's conduct was undertaken willfully and with the intention of causing confusion, mistake or deception, making this an exceptional case entitling Plaintiff to recover additional damages and reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF

(Deceptive Trade Practices under Ohio Rev. Code Ch. 4165)

27. Plaintiff incorporates by reference paragraphs 1 through 26 above as though fully set forth herein.

28. By falsely claiming that its Fire diamonds are, and are proven to be, the most brilliant diamonds in the world, Plaintiff has used deceptive representations in connection with its goods or services in violation of Ohio Rev. Code § 4165.02(A)(7).

29. Plaintiff has also represented that its goods or services are of a particular standard, quality or grade (i.e., the most brilliant in the world) when in fact they are not, in violation of Ohio Rev. Code § 4165.02(A)(9).

30. Plaintiff has been injured and is likely to be further damaged by these actions in violation of Ohio Rev. Code § 4165.02(A).

31. Zales has caused, and will continue to cause, immediate and irreparable injury to Plaintiff, including injury to Plaintiff's business, reputation and goodwill, for which there is no adequate remedy at law. Plaintiff is therefore entitled to an injunction under Ohio Rev. Code § 4165.03(A)(1) restraining Zales, its agents, employees, representatives and all persons acting in concert with Zales from engaging in future acts of false advertising and ordering removal of all of Zales's false advertisements.

32. Pursuant to Ohio Rev. Code § 4165.03(A)(2), Plaintiff is further entitled to recover from Zales the damages sustained by Plaintiff as a result of Zales's acts in violation of Ohio Rev. Code § 4165.02(A). Plaintiff is at present unable to ascertain the full extent of the monetary damages it has sustained by reason of Zales's acts.

33. Pursuant to Ohio Rev. Code § 4165.03(B), Plaintiff is further entitled to recover its reasonable attorneys' fees in connection with this action. Moreover, Plaintiff is informed and believes, and on that basis alleges, that Zales's conduct was undertaken willfully and with the intention of causing confusion, mistake or deception, making this an exceptional case entitling Plaintiff to recover additional damages and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Zales as follows:

1. For temporary, preliminary and permanent injunctive relief prohibiting Zales, its agents, or anyone working for, in concert with or on behalf of Zales from engaging in false or misleading advertising with respect to its Celebration Fire diamond and/or violating Section 43(a) of the Lanham Act and/or the Ohio Deceptive Trade Practices Act, which relief includes

but is not limited to removal of all false or misleading advertisements and corrective advertising to remedy the effects of Zales's false advertising;

2. For an order requiring Zales to correct any erroneous impression persons may have derived concerning the nature, characteristics or qualities of its Celebration Fire diamond, including without limitation the placement of corrective advertising and providing written notice to the public;

3. That Zales be adjudged to have violated 15 U.S.C. § 1125(a) by unfairly competing against Plaintiff by using false, deceptive or misleading statements of fact that misrepresent the nature, quality and characteristics of its Celebration Fire diamonds;

4. That Zales be adjudged to have violated Ohio Rev. Code ch. 4165 by engaging in deceptive trade practices and injuring Plaintiff by using deceptive representations in connection with its goods or services;

4. That Plaintiff be awarded damages Plaintiff has sustained in consequence of Zales's conduct;

5. That Plaintiff be awarded Zales's profits obtained by Zales as a consequence of Zales's conduct;

6. That Plaintiff recover its costs and attorney fees;

7. That all of Zales's misleading and deceptive materials be removed and destroyed pursuant to 15 U.S.C. § 1118;

8. That Plaintiff be granted prejudgment and post-judgment interest; and

9. That Plaintiff have such other and further relief as the Court deems just and proper.

Dated: November 13, 2012

Respectfully submitted,

/s/ Robert Ware
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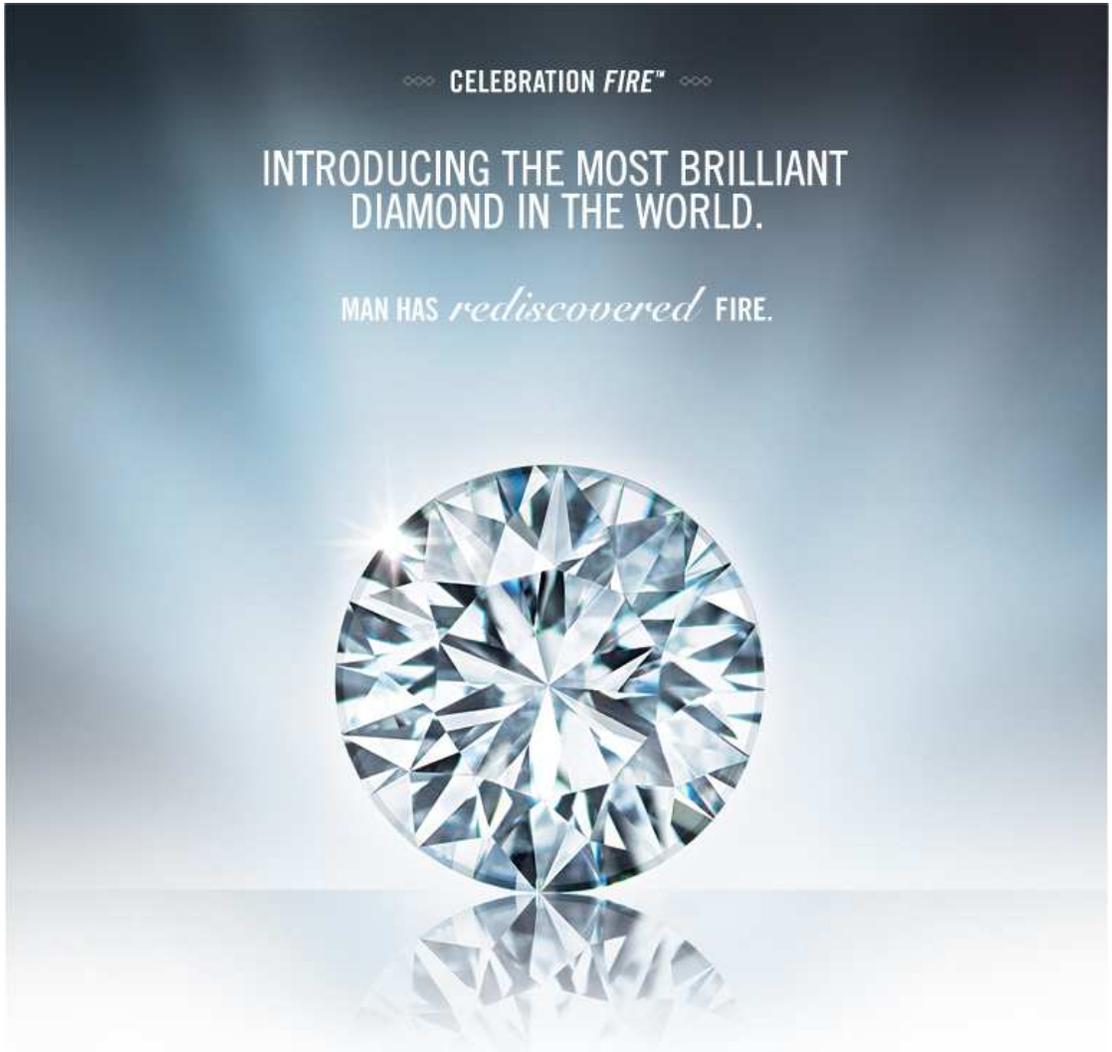
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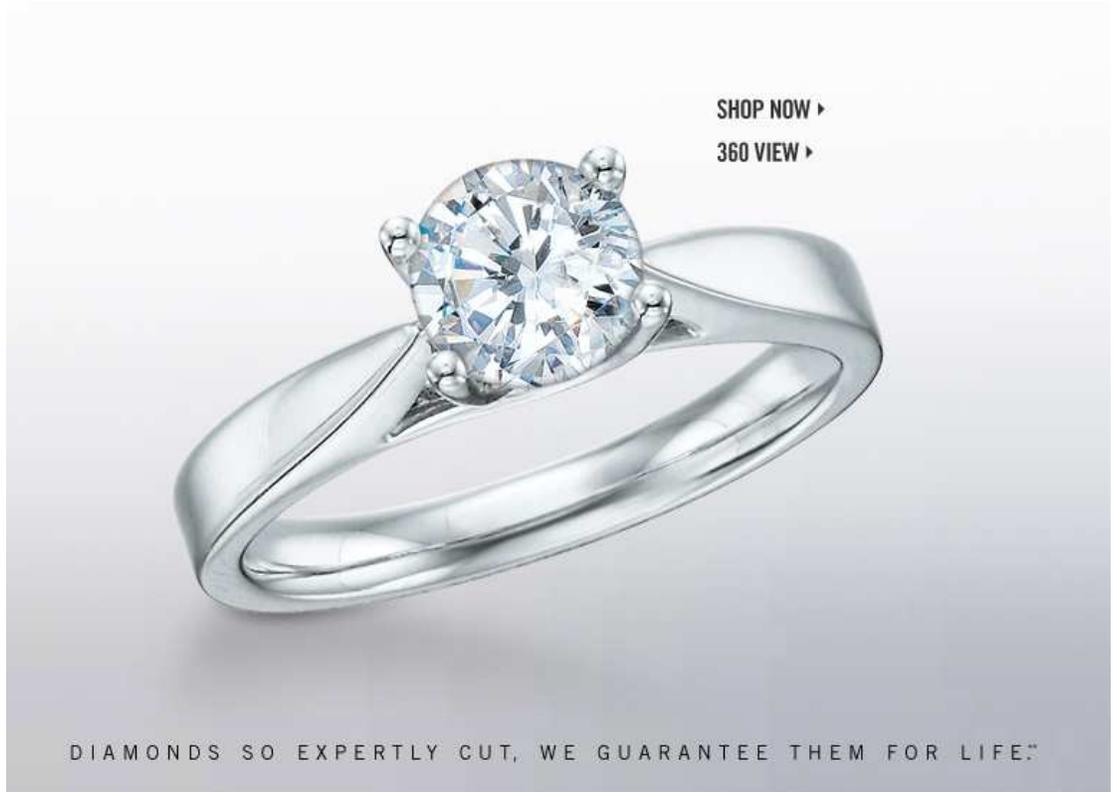
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ONLINE ONLY EARLY BLACK FRIDAY SPECIALS - JUST REVEALED > NEW SPECIALS REVEALED EVERY FRIDAY AT 8:00 ET THROUGH NOVEMBER 23RD

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Only the Celebration Fire™ shines with more brilliance than any other diamond in the world, based on independent laboratory testing. This revolutionary improvement on the ideal cut requires such precision that only 20 master craftsmen worldwide can cut the Celebration Fire diamond. Their exacting technique creates 71 facets and an exquisitely perfect symmetry that reveals 10 hearts and arrows — along with more sparkling light than the world has ever seen in a diamond. Only 0.1% of diamonds are chosen to become Celebration Fire™ diamonds, making their brilliance even more rare. This unrivaled radiance also comes with a stunning guarantee — one that lasts for life.*



*Only center stone is Celebration Fire™. Merchandise enlarged to show detail and may not always be exactly as pictured. Merchandise may not be available in all stores or on Zales.com. *Based on independent laboratory testing conducted in 2012 of round cut diamonds from select leading national jewelry store chains. **When you make a diamond purchase, visit Zales, Gordon's or Zales Outlet for regular diamond inspections, and if your diamond unfortunately should lose its beauty by being chipped, broken or lost from its original setting, it is eligible for replacement by Zales, Gordon's or Zales Outlet at no charge to you.*

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CELEBRATION FIRE™
 The Most Brilliant Diamond in the World.*



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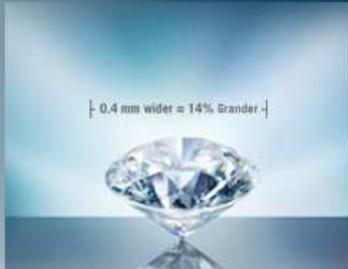
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 Nearly Twice the Facets for Substantially More Sparkle.



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 A Diamond that Shines Bigger and Brighter.

0.4 mm wider = 14% Grander

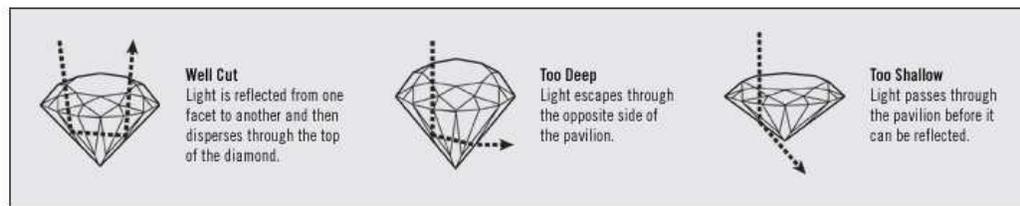


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IT TAKES 3.5 BILLION YEARS TO CREATE A DIAMOND.
 IT DESERVES A CUT THAT'S EQUALLY *well conceived.*

Nature creates diamonds. Over millennia, under extreme pressure, they form. In this alchemy, three of their characteristics are made: Color, Clarity and Carat. These aspects dictate a diamond's rarity and value. Only one aspect of a diamond's beauty is determined by man — how well it is cut.

Cut is the key factor in revealing a diamond's individual brilliance, fire and beauty. This is where Zales expertise and exacting standards become critically important. Cut well and a diamond explodes with light. Cut poorly and its beauty is lost. So why aren't all diamonds cut to exacting standards?



**WHEN CAPTURING LOVE'S LIGHT,
 WE DIDN'T WASTE A *single drop.***



When a diamond is cut, up to half the original stone weight, or carat size, is lost. And carat size affects price. So every diamond manufacturer is faced with a choice — do you cut to maximize carat weight or maximize beauty? There is no question at Zales.

Every diamond in the Zales Celebration Diamond Collection is cut to exacting standards — to maximize brilliance and beauty, not to preserve weight or bump up the price. Every Zales diamond is so expertly cut, it's guaranteed for life. What nature took so long in making, we take great pride in celebrating. Zales. The*



DIAMOND CERTIFICATION

Celebration Diamonds are individually certified and detailed on their own personal certification card. This card is the diamond's birth certificate, identifying all the qualities that make it unique. The card also contains important light performance rating information that is performed on the diamond by a gem grading company.

LASERGUARD PROTECTION

Each Celebration Diamond in this exclusive collection larger than 1/7 carat receives a unique certification number, and the name of the collection is laser-inscribed on the girdle of the diamond for extra security. This number also appears on the diamond certification card.

CELEBRATION ENGRAVING

Only the diamonds that meet our exacting standards will receive the Celebration logo engraving on the inside of the ring.

DIAMONDS SO EXPERTLY CUT, WE GUARANTEE THEM FOR LIFE.*

*Based on independent laboratory testing conducted in 2012 of round-cut diamonds from select leading national jewelry store chains. **When you make a diamond purchase, visit Zales, Gordon's or Zales Outlet for regular diamond inspections, and if your diamond unfortunately should lose its beauty by being chipped, broken or lost from its original setting, it is eligible for replacement by Zales, Gordon's or Zales Outlet at no charge to you.

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* Based on independent laboratory testing conducted in 2012 of round cut diamonds from select leading national jewelry store chains.

PRICE

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- [\\$750 - \\$999](#) (1)
- [\\$1,000 - \\$1,999](#) (1)
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Celebration Fire™ 1/3 CT. T.W. Certified Diamond Wedding Band in 14K White Gold (H-I/SI1-SI2)
\$849.99
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Celebration Fire™ 7/8 CT. T.W. Certified Diamond Engagement Ring in 14K White Gold (H-I/SI1-SI2)
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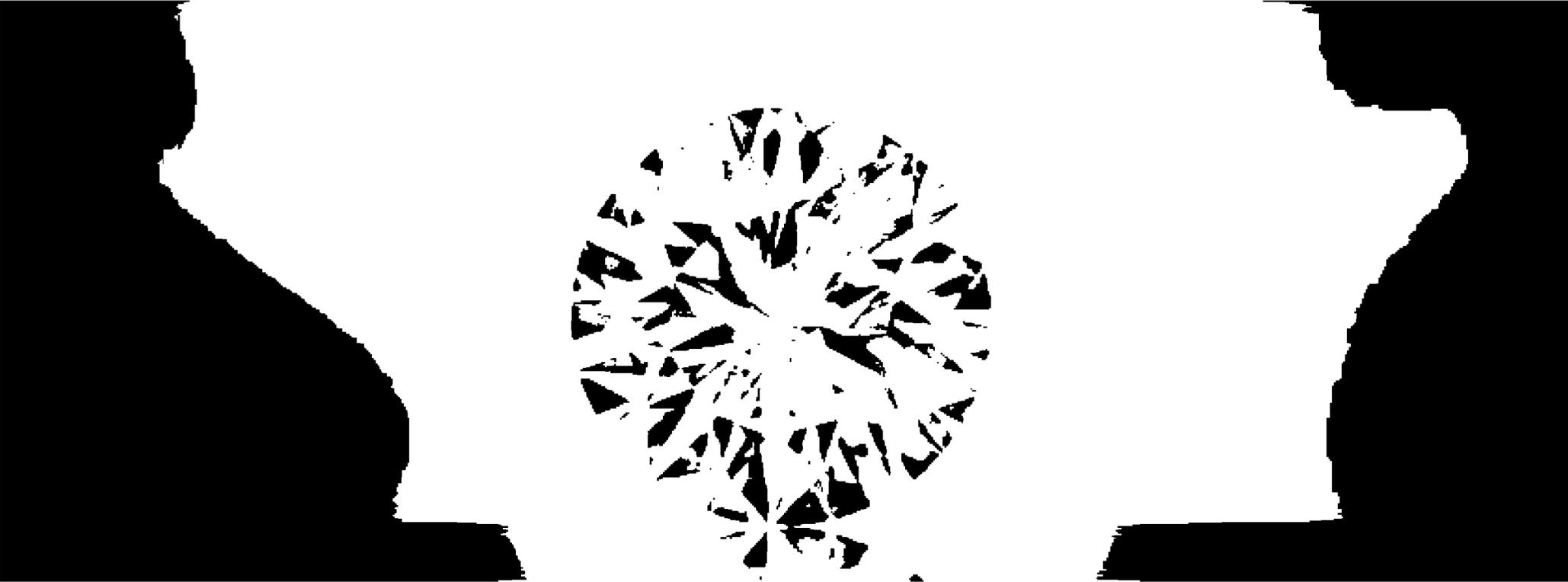
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ZALES Zales [diamonds](#) cover photo
10/11/12

It takes 3.5 billion years to create a diamond. It deserves a cut that's equally well conceived. The most brilliant diamond in the world: <http://bit.ly/RrmuEi> by Kristen Leigh



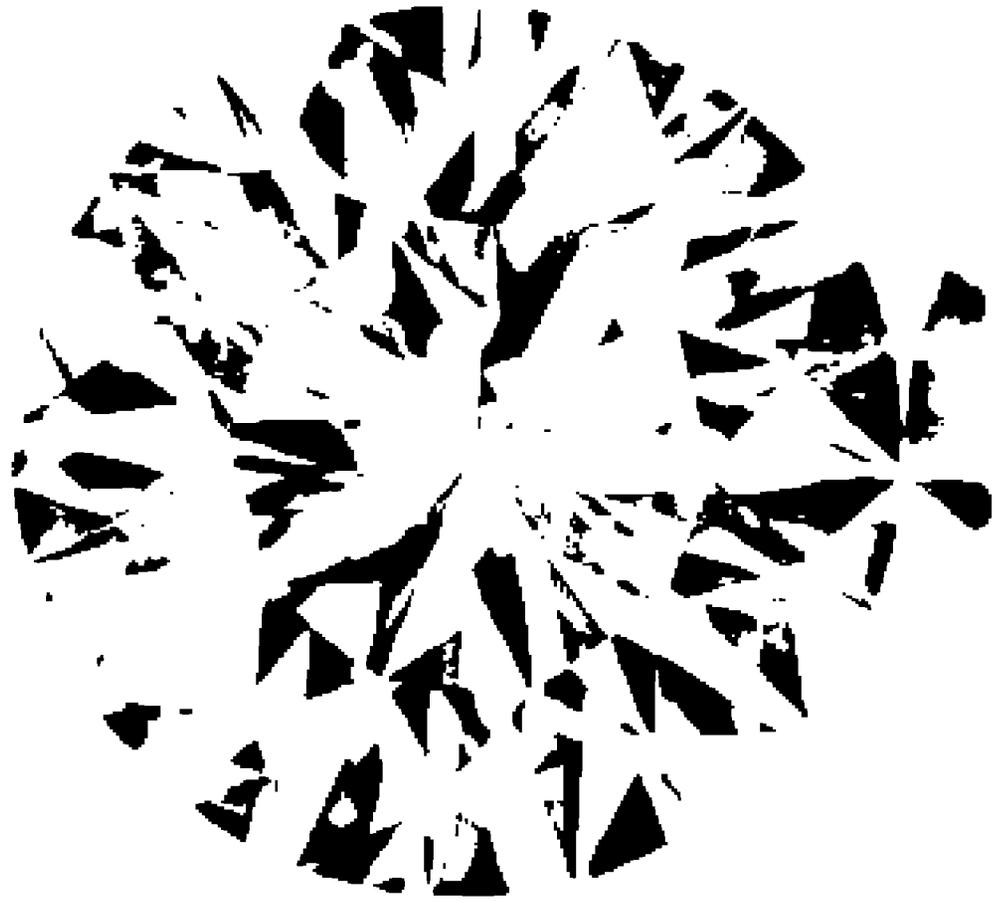
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ZALES: Introducing the most brilliant diamond in the world: the Celebration Fire. [Instagram: GetHocX-Eng](#)

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Introducing the most brilliant #diamond in the world: the Celebration...

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8 1





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THE ZALES
DIFFERENCE**

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Order online at zales.com and your order ships FREE if you pick it up at your local store.

100-Day Happiness Guarantee

Surprise them with the perfect gift. If they absolutely don't love it, you have 100 days to return your purchase. See store for details.

Our Lifetime Commitment To You

Lose your diamond? We'll replace it at no charge with our Lifetime Jewelry Protection Plan. That's our promise to you. See store for details.

Upgrade At Any Time

If you ever wish to upgrade your Zales diamond ring, we will let you apply the original purchase price toward your new diamond. Your new purchase must be at least twice the price you paid for your original diamond purchase. See store for details.

Be Dazzled 24/7

Shop our largest diamond store online at zales.com. You have access 24/7 to over 14,000 styles, high-resolution product photos, detailed product descriptions and customer reviews. Free shipping offered on all online purchases of \$149 or more.

Love In Ten Easy Payments

Put 10% down and pay the rest in ten equal payments. That's jewelry buying made easy. See store for details.

Zales Makes It E-Z

Our affordable credit plans make it easy to buy the jewelry you want. See a Jewelry Consultant or visit zales.com for financing options and start shopping today!

Look In Store for **BRILLIANT VALUES™**

Classic and Timeless Designs
with **EXTRAORDINARY VALUE**



bead
dazzling.

beads and charms starting at \$20
bracelets starting at \$45
For more from our collection, see page 20

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A 1 Carat center,
2 CT. T.W.
in 14K gold.
See page 38.
\$799⁹⁹
Will Be \$1429
B 5/8 CT. T.W.▼
See page 3.
\$799⁹⁹
Will Be \$1149
C 3/4 CT. T.W.▼
See page 5.

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NO MONTHLY INTEREST IF PAID IN FULL WITHIN 12 MONTHS**

on purchases of \$1000 or more made from October 11, 2012 to December 31, 2012. Interest will be charged to your account from the purchase date if the purchase balance (including premiums for optional credit insurance) is not paid in full within 12 months or if you make a late payment. No Down Payment Required. Minimum Payments Required. \$9.95 Transaction Fee Required.

**With credit approval for qualifying purchases made on the Zales Credit Card. As of October 8, 2012, APR for purchases: Variable 23.73% to 28.99% (see your card agreement for APR applicable to you), except when your account is at the penalty rate, which is up to 29.99% APR. Minimum interest charge up to \$2.99. See card agreement for details. Offer valid for consumer accounts in good standing; is subject to change without notice; see store for details. May not be combined with any other credit promotion offer.

*Prices shown reflect additional savings and are valid through January 2, 2013. In-store signed items already reflect additional savings. Original prices may not have resulted in actual sales. Intermediate markdowns may have been taken. Advertised items may be offered in future sales events. Merchandise selection at each store may vary and all styles may not be available on zales.com. Diamond carat weights (CT) represent the approximate total weight (T.W.) of all diamonds in each setting and may vary no more than .07 below the stated weight. ▼Gemstones and colored diamonds may have been treated or enhanced by heating (generally), diffusion (sapphires), oiling or waxing (opals) or irradiation (blue topaz). Treated opals require special care in cleaning. †Denotes 10K gold. Typographic errors subject to correction. Merchandise enlarged to show detail and may not always be exactly as pictured. All advertised prices are subject to the addition of applicable fees and state, local and other taxes. Persona and Inspiring Style are trademarks of Persona Limited. Sirena Collection® is a federally registered trademark of Merit Diamond Corporation. The Cherished Promise Collection® is a registered trademark of the Sandeep Diamond Corporation. © 2012 Zale Corporation



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

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

Sterling Jewelers Inc.

Plaintiff

v.

Zale Corporation

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Zale Corporation
c/o THE PRENTICE-HALL CORPORATION SYSTEM, INC.
2711 CENTERVILLE ROAD SUITE 400
WILMINGTON, DE 19808

A lawsuit has been filed against you.

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

Robert F. Ware
THOMPSON HINE
3900 Key Center
127 Public Square
Cleveland, OH 44114-1291
216-566-5500

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

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil coversheet 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

Sterling Jewelers Inc.

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Robert F. Ware, Thompson Hine LLP 127 Public Square, 3900 Key Center, Cleveland, Ohio 44114 216.566.5783

DEFENDANTS

Zale Corporation

County of Residence of First Listed Defendant Dallas Cty., Texas (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

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

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 USC 1125(a)

Brief description of cause: False Advertising

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE, DOCKET NUMBER

DATE: 11/13/2012 SIGNATURE OF ATTORNEY OF RECORD: /s/ Robert F. Ware

FOR OFFICE USE ONLY

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

- 1. General Civil
- 2. Administrative Review/Social Security
- 3. Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is **RELATED** to another **PENDING** civil case. This action is **REFILED** pursuant to **LR 3.1**.

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY: Summit Cty., Ohio

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY:

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

- AKRON** (Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)
- CLEVELAND** (Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)
- YOUNGSTOWN** (Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

- TOLEDO** (Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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