

FDA Clearance to Market PicoSure for Acne.

3. In and after the fourth quarter of 2012, Cynosure made numerous representations to dermatology practices, including Plaintiff, and to the public regarding the efficacy of the PicoSure product to eliminate tattoos. Those representations were disseminated through a variety of means including oral statements by their agents and/or employees, in written statements in product brochures and in web-based and other marketing materials.

4. At no time did Cynosure inform the public, potential customers, customers and users of the PicoSure product of the fact that the PicoSure product *did not eliminate* tattoos as represented; Cynosure instead affirmatively concealed the fact that the product did not eliminate tattoos as represented.

Parties

5. LDGP, LLC d/b/a Hartsough Dermatology is a dermatology clinic located at 7402 Riverside Blvd, Loves Park, IL, 61111 where a board certified dermatologist practices. Dr. Nicole Hartsough is a licensed and board certified dermatologist and principal owner of Hartsough Dermatology.

6. Defendant Cynosure is a corporation incorporated and existing under the law of Delaware with its principal place of business located at 5 Carlisle Road, Westfield Massachusetts. Defendant Cynosure does significant business in the Northern District of Illinois, nationwide and worldwide.

Jurisdiction and Venue

7. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. Section 1332(d), because (a) at least one member of the putative class is a citizen of a state different from Defendant, (b) the amount in controversy exceeds \$5,000,000.00, exclusive

of interest and costs, and (c) none of the exceptions under that subsection apply to this action.

8. The court has personal jurisdiction over this action and venue is proper in the Northern District Western Division under 28 U.S.C. Section 1391 because plaintiff is located in Loves Park, IL and because the improper conduct alleged herein occurred in this District.

Factual Background

9. Cynosure is a corporation which specializes, in part, in the marketing and sale of medical devices including in the field of dermatology. According to the company website for Cynosure's PicoSure product, even dark, stubborn blue and green inks, as well as previously-treated, recalcitrant tattoos can be removed or eliminated by using the PicoSure product.

10. While defendant sells multiple devices for use by dermatologists, one device in particular, the PicoSure product, is the subject of this complaint. Upon information and belief, over the last two years, Cynosure has marketed and sold hundreds of the PicoSure products to, *inter alia*, dermatology clinics and other clinics in the United States, and sold over 50 units in the State of Illinois alone.

11. Cynosure highlights and represents through its marketing materials, website and sales representatives that the PicoSure product eliminates tattoos. For example, Cynosure stated in marketing materials, "this combination of photothermolysis and intense photomechanical impact known as Pressure Waive breaks up the target, e.g. ink or targeted pigment, *into particles that are easily eliminated from the body*" and "the world's first and only picosecond laser for *tattoo removal*". At all relevant times, these statements and representations were intentionally false and misleading at the time they were written.

12. Cynosure used photographs and YouTube video clips in its marketing materials to demonstrate the purported efficacy and purported results of the PicoSure product in removing

tattoos. Specifically, and by way of example only, Cynosure marketed the PicoSure product using the marketing brochure attached to this complaint as Exhibit A which shows the prospective purchaser and prospective patients a “before and after” photo showing the complete elimination of the tattoo. (Exhibit A, Cynosure brochure).

13. Cynosure directly markets and advertises its products, including the PicoSure product, through websites, YouTube video clips, marketing materials, brochures and representations made by Cynosure sales representatives that call on dermatology clinics and other clinics across the United States. These prospective consumers relied on and purchased the PicoSure product based upon these false misrepresentations. Substantial evidence exists that Cynosure employed a policy to intentionally misrepresent to consumers that the PicoSure product would remove tattoos.

14. Cynosure made no disclaimers available to the prospective customers that the product would not perform as Cynosure had falsely represented or that results may vary from those portrayed in Exhibit A.

15. Upon the purchase of the PicoSure product, a purchaser enters into a written contract agreement to purchase the product. Upon information and belief, the written contract agreement to purchase the PicoSure product was the same contract that Cynosure provided to all of the purchasers.

16. Nowhere in the written documents incorporated into the contract, or the contract itself is there any disclosure to the prospective customer that the PicoSure product would not perform as Cynosure represented. To the contrary, as detailed below, the brochures and other materials sold to the customer by Cynosure as part of the purchase of the PicoSure product contained false representations about the product.

Facts Relating to Plaintiff LDGP, LLC, d/b/a Hartsough Dermatology

17. Plaintiff Hartsough Dermatology purchased a PicoSure product on November 22, 2013, pursuant to a written agreement with Cynosure, Inc.

18. Cynosure included a number of items as a part of this written agreement including, but not limited to: manuals, DVD, patient brochures and table tents, electronic support for posters, ad slicks, postcards, “before and after” photos (of purported patients), web graphics, and customizable materials on-line.

19. Plaintiff Hartsough Dermatology purchased and continued to use the PicoSure product because of the false representations and inducement which it received by Cynosure about the PicoSure product, before purchasing the product. **Specifically, Plaintiff purchased the product because of Cynosure’s false representation that the PicoSure product removes and eliminates tattoos.** At all times relevant, the Plaintiff relied upon the deceptive advertising practices to purchase and use the PicoSure product, and to market the PicoSure product to its customers.

20. The contract signed by the plaintiff concerning the purchase of the PicoSure product specifically states: “Cynosure grants no right of return”. As such, according to the contract, the plaintiff had no right at any time to return the product.

21. After purchasing the PicoSure product, Hartsough Dermatology entered into a business to consumer relationship with Cynosure.

22. After Plaintiff purchased the product and administered the treatment as directed to numerous patients, none of the patient’s tattoos were removed or eliminated, contrary to Cynosure’s promises. The fact that the tattoos were not removed or eliminated is objective and not subjective.

23. After purchasing the PicoSure product, plaintiff had numerous questions and eventual concerns about the efficacy and safety of the product. As a result, plaintiff and its staff raised these questions and concerns on numerous occasions with representatives of Cynosure over the telephone, in emails and in person.

24. Before, during and after the purchase of the PicoSure product, Cynosure representatives made numerous false representations to plaintiff regarding the PicoSure product's ability to remove tattoos, which included the statement:

“Plus, you can now make sure they [patients] do get full clearance even on harder tattoos”.

25. In contrast to Cynosure's false and fraudulent representations, the scientific community has determined that no single laser can remove all tattoo colors.

26. After receiving numerous complaints that the PicoSure product did not perform as represented, Cynosure installed a “software upgrade” to the product at, *inter alia*, the plaintiff's clinic purportedly to address these problems. These problems were not corrected by the upgrade.

27. Cynosure's representatives made the above-referenced software “upgrade” to the PicoSure product in an ostensible attempt to correct the aforementioned problems, which the plaintiff and other consumers had experienced. The fact that Cynosure created and installed this “software update” is an admission by Cynosure that the PicoSure product did not eliminate or remove tattoos.

28. The first upgrade installed by Cynosure's representatives failed to correct the problem, but instead caused burns to some patients. Cynosure represented that it would provide a second software upgrade, which to date has not occurred.

29. The PicoSure product does not, nor has it ever, removed or eliminated tattoos.
30. Plaintiff was injured and lost money in the following respects:
 - a. the fee paid to purchase the PicoSure product;
 - b. by paying more for the product than plaintiff would have paid, had it known that the PicoSure product did not remove tattoos; and
 - c. by paying for a purported tattoo removal machine that did not remove tattoos.

Class Allegations

31. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), on behalf of itself and a class of similarly situated individuals (the “Class”) defined as follows:

All individuals and entities in the United States who purchased a PicoSure Picosecond Aesthetic Workstation.

Excluded from the Class are: (1) Defendant, its legal representatives, assigns, and successors, and any entity in which Defendant has a controlling interest, (2) the Judge or Magistrate Judge to whom this case is assigned and the Judge’s or Magistrate Judge’s immediate family, (3) persons who execute and file a timely request for exclusion, (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released, and (5) the legal representatives, successors, or assigns of any such excluded person.

32. **Numerosity:** The exact number of Class members is unknown and not available to Plaintiff, but on information and belief since receiving FDA clearance in the fourth quarter of 2012, Defendant has sold the PicoSure product to well over 200 Class members throughout the country, making joinder of each individual member impracticable. On information and belief, defendant has sold over 50 units in Illinois. Ultimately, Class members can be identified through Defendant’s records.

33. **Typicality:** Plaintiff’s claims are typical of the claims of the other members of

the Class, as Plaintiff and the other members sustained damages arising from Defendant's uniform wrongful conduct, based upon the same types of transactions that were made repeatedly with Plaintiff and the members of the Class; and because Defendant sold the PicoSure product to each member of the class for the same price, more or less. Each member of the class suffered the same injury by purchasing the PicoSure product. The misrepresentations that Cynosure made to all customers are the same, namely that the PicoSure product would remove and eliminate tattoos, when in fact it would not.

34. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in complex litigation, including class actions. Plaintiff has no interest antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

35. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Class. All of the claims made by the class arise out of the same act or purchase of the same product and same course of conduct, namely the misrepresentations that the PicoSure product would remove or eliminate tattoos.

36. Those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- a) Whether Defendant intentionally or negligently misrepresented and/or concealed the fact that the PicoSure product does not completely remove or eliminate tattoos;
- b) Whether Defendant's advertisement of the PicoSure product negligently or intentionally misled, or tended to mislead, consumers into believing that the PicoSure product completely removed and/or eliminated tattoos;

- c) Whether Defendant failed to warn consumers that the PicoSure product does not eliminate tattoos as represented;
- d) Whether Defendant's conduct described herein resulted in unjust enrichment to Defendant;
- e) Whether Defendant's conduct in misrepresenting the capabilities of the PicoSure product constituted tortious interference with a business relationship; and
- f) Whether Defendant breached the contract it entered into with each class member.

37. **Superiority:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Cynosure's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to independently obtain effective relief from Cynosure's misconduct. Even if members of the Class could sustain such piece meal litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

38. **Policies Generally Applicable to the Class:** This class action is also appropriate for certification because Cynosure has acted or refused to act on grounds generally applicable to the Class, thereby requiring the Court's imposition of uniform relief to ensure

compatible standards of conduct toward the members of the Class, and making final injunctive relief appropriate with respect to the Class as a whole. Cynosure's fraudulent representations challenged herein apply and affect members of the Class uniformly and Plaintiff's challenge of these misrepresentations hinges on Cynosure's conduct with respect to the Class as a whole, not on facts or law applicable only to Plaintiff. Cynosure has acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward members of the Class.

39. Plaintiff reserves the right to revise the foregoing "Class Allegations" based on facts learned in discovery.

FIRST CAUSE OF ACTION

Negligent Misrepresentation

40. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

41. The representations made by Cynosure that the PicoSure product would remove and eliminate tattoos were false statements of material facts. Defendant made further false statements of material facts that the PicoSure product would have the characteristic and benefit of being able to remove or eliminate tattoos with less treatments and less expense to the patients.

42. The representations were known to be false by the defendant at the time that they were made. Specifically, the representations made by Defendant that the PicoSure product would remove or eliminate tattoos was known by Cynosure to be false.

43. Defendant made the aforementioned representations with the intent that

consumers would rely upon them to induce them to purchase the PicoSure product.

44. Defendant's misrepresentations were such that reasonable consumers considered them in deciding whether to purchase Defendant's PicoSure product. At all relevant times, Plaintiff and the Class relied on these statements in purchasing the PicoSure product. Had Plaintiff and the Class known of the PicoSure product's inability to remove or eliminate tattoos, they would not have purchased the PicoSure product, would have returned their PicoSure product for a refund, would have paid substantially less for it, **or would have purchased a similarly functioning product for substantially less.**

45. As Plaintiff's PicoSure product, including the software upgrade provided by Cynosure, cannot eliminate tattoos at all, Defendant's representations were false and misleading, and constitute negligent misrepresentation.

46. As a direct and proximate result of the aforesaid negligent misrepresentation, plaintiff and each class member have suffered harm in the form of monies paid to Defendant.

47. As a direct and proximate result of Defendant's misconduct, Plaintiff and the Class have suffered actual damages in the form of monies paid to purchase the PicoSure product, as well as the difference in value between a PicoSure product and one that truly eliminated tattoos.

Second Cause of Action

Fraudulent/Intentional Misrepresentation

48. Plaintiff incorporates by reference paragraph 1 through 37.

49. Defendant made the aforementioned representations that the PicoSure product

would eliminate and remove tattoos.

50. Defendant knew that its statements regarding the PicoSure product were false and misleading at the time that it made them.

51. Defendant made the aforesaid representations with the specific intent to induce consumers to purchase the PicoSure product.

52. Plaintiff and the class relied upon these false representations and as a result were induced to purchase a PicoSure product which did not function as represented.

53. Defendant engaged in advertising and marketing to the public, and offered for sale the PicoSure product on a nationwide basis. Defendant publicly represented and advertised that the PicoSure product would eliminate tattoos. Defendant did so with the intent to induce Plaintiff and the Class to purchase and continue using the PicoSure product.

54. Defendant's advertising and marketing statements were and are untrue and misleading and likely to deceive members of the public in that they portrayed the existence of a technical ability to eliminate tattoos and benefit the patient, which Defendant knew or should have known it was unwilling or unable to deliver.

55. Defendant's representations that the PicoSure product would eliminate patients' tattoos, when in fact it would not, is deceptive conduct that created confusion and misunderstanding for Plaintiff and the Class.

56. As a direct and proximate result of Defendant's intentional misrepresentations, Plaintiff and each Class member have suffered harm in the form of monies paid to Defendant. Plaintiff, on behalf of itself and the Class, seeks an order (1) requiring Defendant to cease the unfair practices described herein; (2) awarding damages, interest, and reasonable attorneys'

fees, expenses, and costs to the extent allowable; and/or (3) requiring Defendant to restore to Plaintiff and each Class member any money acquired by means of unfair competition/deceptive conduct (restitution).

THIRD CAUSE OF ACTION

Fraud by Omission

57. Plaintiff incorporates by reference paragraphs 1 through 37 as if fully set forth herein.

58. Based on Defendant's misrepresentations and omissions, Plaintiff and the Class reasonably expected the PicoSure product to eliminate tattoos. This is a reasonable and objective consumer expectation for Defendant's tattoo removal product, the PicoSure product.

59. Defendant knew that the PicoSure product was unable to remove or eliminate tattoos.

60. Defendant concealed from and failed to disclose to Plaintiff and the Class the inability of the PicoSure product to remove or eliminate tattoos.

61. Defendant was under a duty to Plaintiff and the Class to disclose that the PicoSure product did not eliminate tattoos as it represented, because:

- a) Defendant was in a superior position to know the true state of facts about the inability of the PicoSure product to eliminate tattoos;
- b) Plaintiff and the Class could not reasonably have been expected to learn or discover that Defendant PicoSure's product was unable to eliminate tattoos;
- c) Defendant knew that Plaintiff and the Class could not reasonably have been expected to learn or discover the inability of the PicoSure product to

function as defendant represented;

- d) Defendant directly marketed and communicated with Plaintiff and the Class through its websites, and specifically engaged Plaintiff and the Class for the purpose of inducing prospective customers to purchase the PicoSure product; and
- e) Defendant's omissions made through its websites, emails and sales representations were meant to result in the sale of the PicoSure product.

62. The facts concealed or not disclosed by Defendant to Plaintiff and the Class are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase Defendant's PicoSure product, whether to attempt return an already purchased PicoSure product for a refund (although not allowed), or whether to pay a lesser price for it.

63. Had Plaintiff and the Class known of the PicoSure product's inability to eliminate tattoos, they would not have purchased the PicoSure product or would have paid substantially less for it.

64. Defendant concealed or failed to disclose the inability of the PicoSure product to function as defendant represented.

65. Plaintiff and the Class justifiably relied on Defendant's misrepresentations and omissions to their detriment by purchasing the PicoSure product and/or not paying a lesser price for it.

66. As a direct and proximate result of Defendant's misconduct, Plaintiff and the Class have suffered actual damages in the form of monies paid to purchase the PicoSure

product, as well as the difference in value between a PicoSure product and one that truly eliminated tattoos.

FOURTH CAUSE OF ACTION

Restitution/Unjust Enrichment

67. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

68. Plaintiff and the Class have conferred a benefit upon Defendant. Defendant has received and retained money belonging to Plaintiff and the Class as a result of its unlawful and deceptive practices alleged herein.

69. Defendant appreciates or has knowledge of said benefit.

70. Under principles of equity and good conscience, Defendant should not be permitted to retain the money belonging to Plaintiff and the Class that it unjustly received as result of its actions.

71. Plaintiff and the Class have suffered financial loss as a direct result of Defendant's conduct.

72. Plaintiff, on his own behalf and on behalf of the Class, seeks restitution and disgorgement of the monies Defendant received as a result of its conduct described herein, as well as interest, to the extent allowable.

FIFTH CAUSE OF ACTION

Negligence/Failure to Warn

73. Plaintiff hereby incorporates paragraph 1 through 37.

74. On and prior to November 1, 2013, Cynosure owed a duty to its consumers to warn of known defects, hazards or unreasonably dangerous conditions arising out of the use of

the PicoSure product.

75. Defendant at no time warned its potential buyers that the PicoSure product does not perform as represented. Specifically, Defendant did not warn consumers in any way that the PicoSure product did not remove or eliminate tattoos, or could cause burns when used as directed.

76. As a direct and proximate result of the Defendant's failure to warn, Plaintiff and each Class member have suffered harm in the form of monies paid to Defendant. Plaintiff, on behalf of itself and the Class, seeks an order: (1) requiring Defendant to cease the unfair practices described herein; (2) awarding damages, interest, and reasonable attorneys' fees, expenses, and costs to the extent allowable; and/or (3) requiring Defendant to restore to Plaintiff and each Class member any money acquired by means of unfair competition/ deceptive conduct (restitution).

SIXTH CAUSE OF ACTION

Breach of Contract

77. Plaintiff hereby incorporates paragraph 1 through 37

78. Plaintiff and other class members entered into a form contract with Defendant at the time they purchased their PicoSure Picosecond Aesthetic Workstation. The terms of the contract include the promises and affirmations of fact made by Defendant to each class member in the form of the written advertising materials including, but not limited to, the document attached as Exhibit A.

79. Plaintiff's and the other Class members' PicoSure Picosecond Aesthetic Workstations did not perform as promised.

80. Defendant breached the terms of the contract with Plaintiff and other Class members by not providing PicoSure Picosecond Aesthetic Workstation with capabilities and

functionality as advertised in the PicoSure documents which were incorporated into the contract.

81. As the foreseeable and actual result of Defendant's breach of contract, Plaintiff and the other Class members were damaged in an amount that was paid to purchase the PicoSure product, as well as the difference in value between a PicoSure product and one that truly eliminated tattoos.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff LDGP, LLC, d/b/a Hartsough Dermatology, on behalf of itself and the Class, respectfully requests that this Court issue an order:

- A) Certifying this case as a class action on behalf of the Class defined above, appointing plaintiff as class representative, and appointing his counsel as class counsel;
- B) Declaring that Defendant's actions, as set out above, negligently and intentionally misrepresented the PicoSure product; that defendants committed fraud by omission; that defendants were unjustly enriched and/or failed to warn consumers of its products;
- C) Awarding Plaintiff and the Class all appropriate damages;
- D) Awarding the injunctive relief necessary to ensure that Defendant's conduct alleged herein does not continue into the future;
- E) Awarding Plaintiff and the Class restitution in the form of complete disgorgement of all revenue derived from sales of the PicoSure product;
- F) Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;
- G) Awarding Plaintiff and the Class pre- and post-judgment interest, to the

extent allowable;

- H) Entering such other injunctive and/or declaratory relief as necessary to protect the interests of Plaintiff and the Class; and
- I) Awarding such other and further relief as equity and justice may require.

JURY TRIAL

Plaintiff demands a trial by jury for all issues so triable.

Respectfully Submitted,

s/Devon C. Bruce
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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

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

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

DEFENDANTS

County of Residence of First Listed Defendant (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 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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 (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

VII. Previous Bankruptcy Matters (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

IX. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

X. This case (check one box) Is not a refiling of a previously dismissed action is a refiling of case number previously dismissed by Judge

DATE

SIGNATURE OF ATTORNEY OF RECORD

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

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

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.

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

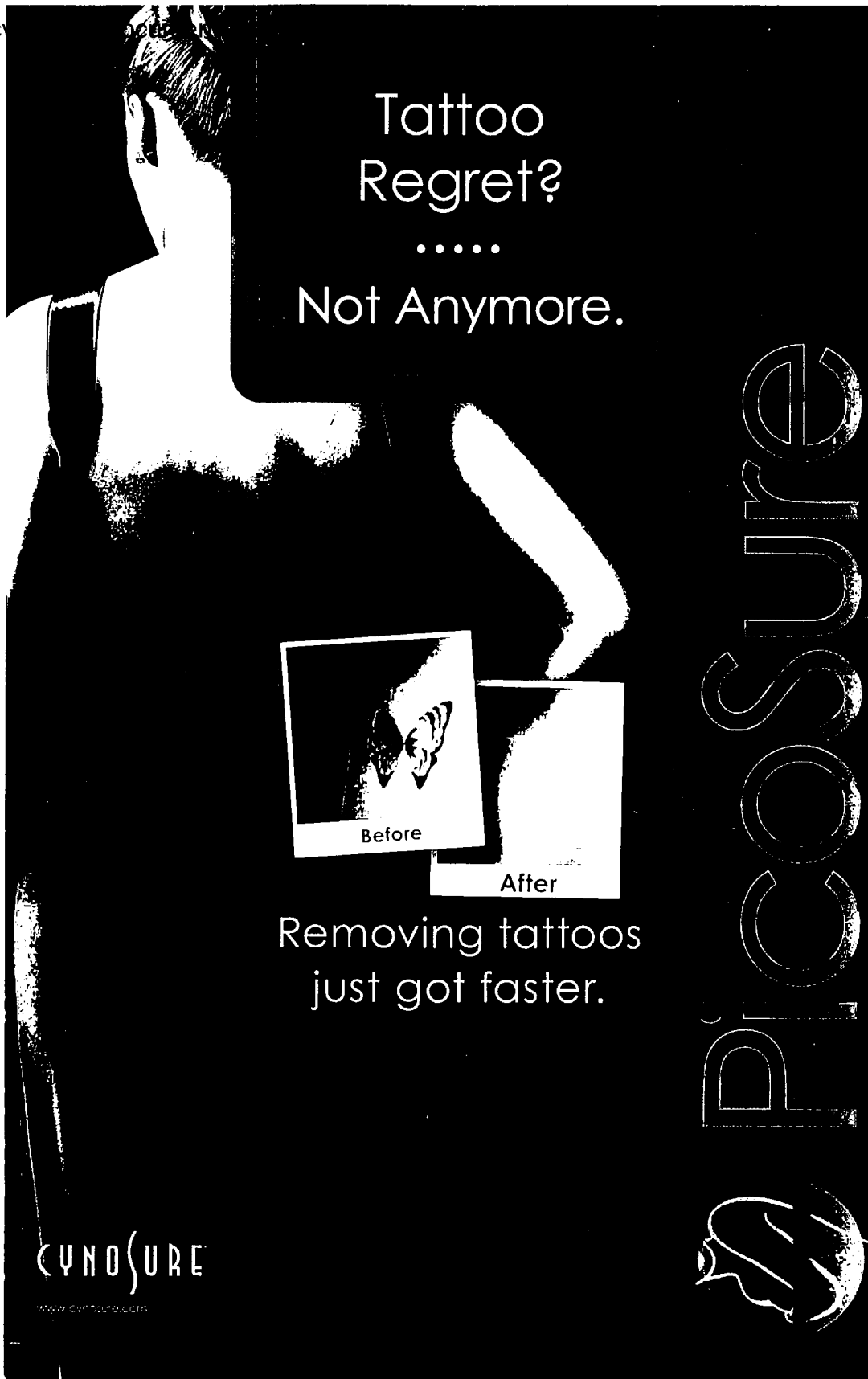
VII. Previous Bankruptcy Matters For nature of suit 422 and 423 enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this court. Use a separate attachment if necessary.

VIII. 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.

IX. 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.

X. Refiling Information. Place an "X" in one of the two boxes indicating if the case is or is not a refiling of a previously dismissed action. If it is a refiling of a previously dismissed action, insert the case number and judge.

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



Tattoo
Regret?
.....
Not Anymore.

Before

After

Removing tattoos
just got faster.

CYNOSURE

www.cynosure.com

PICOOSURE




EXHIBIT
A

Stamberg No. 5208