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8   UNITED STATES DISTRICT COURT

9   NORTHERN DISTRICT OF CALIFORNIA

10   SAN JOSE DIVISION

11 WILLIAM B.COTTRELL, Individually and on   ) Case No.: 5:15-cv-05205
    Behalf of All Others Similarly Situated,   )
12   )   **CLASS ACTION COMPLAINT:**
                       Plaintiff,   )
13   ) **(1) CALIFORNIA UNFAIR
                       v.   ) COMPETITION LAW (Cal. Bus. &
14   ) Prof. Code § 17200, et seq.)**
    APPLE, INC, a California Corporation,   )
15   ) **(2) CALIFORNIA FALSE
                       Defendants.   ) ADVERTISING LAW (Cal. Bus. &
16   ) Prof. Code § 17500, *et seq.*); and**
)
17   ) **(3) NEGLIGENT
) MISREPRESENTATION**
18   )
) **DEMAND FOR JURY TRIAL**
19   )

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Class Action Complaint

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CLASS ACTION COMPLAINT

2   Plaintiff WILLIAM B. COTTRELL ("Plaintiff"), individually and on behalf of all

3 others similarly situated, brings this class action against Defendant Apple, Inc. ("Apple" or

4 Defendant"). Plaintiff alleges the following upon information and belief, based upon, *inter alia*,

5 an investigation conducted by his attorneys, except as to those allegations pertaining to himself

6 personally, which he alleges upon personal knowledge:

7

SUMMARY OF THE ACTION

8   1.   In mid-September 2015, Apple introduced and released the iOS 9 operating

9 system, which includes "Wi-Fi Assist," a feature that keeps consumers' internet connections

10 alive when internet via a wireless local area network ("Wi-Fi") is compromised. The feature

11 automatically switches consumers to a cellular connection if it senses that the Wi-Fi signal is

12 too weak.

13   2.   The purpose of the feature is to boost smartphone speeds. Unfortunately, the

14 setting does so at the expense of data usage. Apple's software engineers prioritized one over

15 the other.   Because the Wi-Fi Assist is left in activated mode, consumers' iPhones

16 automatically use cellular data upon determining that a Wi-Fi router signal is weak. While this

17 results in faster network connections for iPhone users, it eats up the data allotted by cell phone

18 carriers to consumers, except those who possess unlimited data cell phone plans, thereby

19 causing millions of consumers economic losses in the nature of excess data usage charges or

20 fees.

21   3.   The matter arises from Defendant's failure to adequately and timely disclose to

22 consumers –putative class members– that this automatic switch to cellular data caused by an

23 activated Wi-Fi Assist (the default setting) can result in exceeding the data capacity allowed

24 under consumers' phone plans, with consequent economic harm. Defendant only disclosed this

25 problem and harm after it was compelled to say something in the wake of third party

26 revelations amid consumer complaints.

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1 – Class Action Complaint

JURISDICTION AND VENUE

4.   This Court has original jurisdiction by reason of 28 U.S.C. §1332 and pursuant to 28 U.S.C. §1332(d)(11) because there are one hundred or more persons whose individual claims are being brought herein; Plaintiff is a citizen of a different state than Defendant; and the overall amount in controversy exceeds $5,000,000.00, exclusive of costs, interest, and attorneys' fees. The individual claims can be tried jointly in that they involve common questions of fact and law.

5.   This Court has personal jurisdiction over the Defendant because it conducts substantial and continuous business in California.

6.   Venue is proper in this district pursuant to 28 U.S.C. §1391(a) and (b) because part of the events or omissions that give rise to the claims occurred in California and this District, and because Defendant is both headquartered and conducts a substantial part of its business in Cupertino, California, which is in this District.

PARTIES

7.   Plaintiff William B. Cottrell is a resident of Little Rock, Arkansas and is an owner of an Apple iPhone with the new iOS 9 operating system. Plaintiff was unaware that this iOS 9 upgrade automatically activated Wi-Fi Assist on his device, which ultimately resulted in his absorbing data overuse charges by his cellular service provider.

8.   Defendant Apple, Inc. is a corporation organized under the laws of the State of California, and has its principal place of business in Cupertino, Santa Clara County, California.

SUBSTANTIVE ALLEGATIONS

9.   Wi-Fi Assist, which was introduced to iOS with the release of iOS 9.0, uses data to supplement a spotty Wi-Fi connection – an unfortunate and ironic twist for people taking advantage of Wi-Fi to save on data usage. Wi-Fi Assist automatically connects to a cellular network to boost connectivity whenever a Wi-Fi signal is weak. Defendant's decision to ensure that Wi-Fi Assist's default setting was activated unfairly subjected Plaintiff and other unsuspecting consumers to overuse charges and/or early usage of available data leading to

1 incurring new charges to increase data allotment or loss of ability to use their device as usual.

2 As a result consumer users with limited data plans collectively tallied up a significant amount

3 of overage fees arising from their phones constantly using the feature.

4   10. Defendant intentionally chose to have the default setting of the Wi-Fi Assist as

5 activated, while at the same time choosing not to advertise the likelihood of data overcharges

6 to consumers that do not have an unlimited data plan.

7   11. Nor did Apple disclose to, or warn consumers about, the inherent problem with

8 respect to its Wi-Fi Assist feature and its consequent threat of increased phone charges. Any

9 warning or disclosure to consumers ultimately arose in and through the internet or media. For

10 example, on September 29, 2015, Fortune.com cautioned:

11

12   If Wi-Fi Assist is left activated, your iPhone will automatically use cellular data

13   whenever it finds that a Wi-Fi router signal is weak. This results in faster network

14   connections for your phone, but it will eat up the data allotted by your cell phone

15   plan. If you don't have an unlimited data plan, this could be a big problem when

16   your next phone bill arrives. That's right, extra fees.[1]

17

18   12. The Washington Post published an article on September 29, 2015, warning

19 consumers of the Wi-Fi Assist's capability to silently switch a phone to cellular data:

20

21   The setting, called "Wi-Fi Assist," automatically switches your phone over to the

22   cellular network when you're in a place with spotty Wi-Fi. The feature is on by

23   default in iOS 9, meaning that your iPhones and iPads will seek out cell networks

24   unless you tell them not to — and could potentially eat up your data plan without

25   you realizing it.[2]

26
[1] http://fortune.com/2015/09/29/wifi-assist-apple-iphone-setting/

27
[2] https://www.washingtonpost.com/news/the-switch/wp/2015/09/29/apples-wifi-assist-gets-blamed-for-
28 surprisespikes-in-data-use/

3 – Class Action Complaint

1   13.   Confronted with the fact that the problem caused by the Wi-Fi Assist feature

2 had been publicly exposed, Apple belatedly made some effort to warn consumers, albeit in an

3 inadequate, watered down fashion. On October 2, 2015, commenting on Wi-Fi Assist, Apple

4 stated: "Because you'll stay connected to the [i]nternet over cellular when you have a poor Wi-

5 Fi connection, you might use more cellular data."

6   14.   Apple's warning failed to address or account for the reality that normal usage by

7 iPhone consumers includes streaming music and videos, and running various applications – all

8 of which use significant data. The problem created by Wi-Fi Assist was far more significant

9 than Apple confessed. As CEO Tim Cook has acknowledged, more than half of Apple's mobile

10 device users downloaded the new operating system. Millions of innocent consumers have been

11 harmed by virtue of Apple's lack of a prior, clear and adequate warning. Collectively, excess

12 cell phone charges for data usage consumers otherwise would not have absorbed exceeds

13 $5,000,000.00 and is an amount to be determined after the benefit of discovery and according

14 to proof at trial.

15   15.   Plaintiff was unaware that Wi-Fi Assist would likely result in data overuse

16 charges if not disabled. Plaintiff has suffered data overuse charges far exceeding the data

17 allowable on his iPad under his plan with his cellular provider.

18   16.   There have been a stream of complaints regarding class members who have

19 suffered significant increased data usage and consequent materially cellular phone charges:[3]

20 The following consumer complaint is just one example, among others:

21

22   … iOS 9 has one seemingly innocuous feature: Wi-Fi Assist, enabled by default,

23   which will switch to cellular data when your Wi-Fi sucks. This would be great, if

24   I had an unlimited data plan. I don't, but now I do have a very expensive cell

25   phone bill.

26

27

28 [3]   http://www.techinsider.io/apple-wifi-assist-feature-vs-battery-life-2015-10

4 – Class Action Complaint

1   I've been using Wi-Fi Assist on my iPhone for a few months … since

2   downloading the iOS 9 beta that introduced Wi-Fi assist, I've used around a third

3   more data a month (4GB vs my regular-as-clockwork 3GB).[4]

4   17.   Chris Mills, a writer for technology site *Gizmodo,* has noted that since he started

5   testing the beta version of iOS 9, his data usage increased by around a third.

6   **CLASS ACTION ALLEGATIONS**

7   18.   Plaintiff brings this action on his own behalf and on behalf of the following

8   Classes:

9

10   **iOS 9 Class:** All persons or entities in the United States who purchased an iPhone or

11   iPad with a cellular data plan with iOS 9 pre-installed for purposes other than resale

12   or distribution, or who upgraded an iPhone or iPad with a cellular data plan to iOS 9.

13

14   **iOS 9 California Claims Class**: All persons or entities who purchased an iPhone or

15   iPad with a cellular data plan with iOS 9 pre-installed for purposes other than resale

16   or distribution or upgraded an iPhone or iPad with a cellular data plan to iOS 9 with

17   respect to California Business & Professions Code 17200 claims.

18   19.   This action is properly maintainable as a class action under Rule 23 of the

19   Federal Rules of Civil Procedure.

20   20.   **Numerosity.** The Class is so numerous that joinder of all members is

21   impracticable. Upon information and belief, there are thousands of Class members throughout

22   the United States.

23   21.   **Commonality.** There are questions of law and fact which are common to the

24   Class. The common questions, which are each separate issues, which should be certified for

25   classwide resolution pursuant to Fed. R. Civ. P. 23(c)(4), include, but are not limited to:

26

27

28   [4]   http://reviews.gizmodo.com/ios-9s-wi-fi-assist-is-eating-my-cell-data-1733513159

5 – Class Action Complaint

a.   Whether electing to allow the default setting for Wi-Fi Assist to be activated was an unfair and deceptive business act;

b.   Whether Defendant owed a duty of care to the Class;

c.   Whether Defendant's advertising, marketing, product packaging, and other promotional materials were untrue, misleading, or reasonably likely to deceive.

d.   Whether Defendant knew that its representations and/or omissions regarding the Wi-Fi Assist were false or misleading, but continued to make them;

e.   Whether Apple committed misconduct as set forth in this Complaint and thereby engaged in unfair or unlawful business practices pursuant to Cal. Bus. & Prof. Code § 17200, et seq. and violated the Cal. Bus. & Prof. Code § 17500, et seq.;

f.   Whether Defendant was unjustly enriched; and

g.   Whether Plaintiff and the Class members are entitled to actual, statutory, and punitive damages.

22.   **Typicality.** Plaintiff's claims are typical of the claims of the other Class members and Plaintiff does not have any interests adverse to the Class. Specifically, Plaintiff and all the Class members sustained damages arising out of Defendant's wrongful course of conduct. The harms suffered by Plaintiff are typical harms suffered by the Class members, and Plaintiff and other Class members have an interest in preventing Defendant from engaging in such conduct in the future.

23.   **Adequacy.** Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature and will fairly and adequately protects the interests of the Class.

24.   **Superiority and Manageability.** The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with

6 – Class Action Complaint

1 respect to individual Class members which would establish incompatible standards of conduct

2 for the party opposing the Class. Plaintiff anticipates that there will be no difficulty in the

3 management of this litigation. A class action is superior to other available methods for the fair

4 and efficient adjudication of this controversy. In addition, certification of specific issues such

5 as Defendant's liability is appropriate.

6   **COUNT I**

7   **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

8   **(Cal. Bus. & Prof. Code §§ 17200, et seq.)**

9   25.   Plaintiff realleges the foregoing paragraphs as if fully set forth herein.

10   26.   Plaintiff brings this claim on behalf of himself and the proposed Class.

11   27.   The California Unfair Competition Law ("UCL") prohibits acts of unfair

12 competition, including any "unlawful, unfair or fraudulent business act or practice."

13   28.   The UCL imposes strict liability. Plaintiff does not have to prove Defendant

14 intentionally or negligently engaged in unlawful, unfair or fraudulent business acts or practices.

15 Instead, Plaintiff only has to prove such acts or practices occurred.

16   29.   Defendant engaged in unlawful business acts and practices in violation of the

17 UCL by engaging in unfair, unlawful and fraudulent business acts or practices as described

18 herein, including but not limited to, failing to disclose that Wi-Fi Assist's default setting could

19 cause significant data overuse charges.

20   30.   Defendant's practices are likely to deceive, and have deceived, members of the

21 public.

22   31.   Defendant knew, or should have known, that its misrepresentations, omissions,

23 failure to disclosure and/or partial disclosures omit material facts and are likely to deceive a

24 reasonable consumer.

25   32.   Defendant continued to make such misrepresentations despite the fact that it

26 knew or should have known that its conduct was misleading and deceptive.

27

28

1   33.   By engaging in the above-described acts and practices, Defendant committed

2   one or more acts of unfair competition within the meaning of the UCL.

3   34.   Defendant's misrepresentations, business practices and false and misleading

4   advertising regarding Wi-Fi Assist constitute "unfair" business acts and practices because such

5   conduct is immoral, unscrupulous, and offends public policy.

6   35.   Defendant's misrepresentations, business practices and its false and misleading

7   advertising regarding Wi-Fi Assist constitute "fraudulent" business acts and practices because

8   members of the consuming public, including Plaintiff and the Class members, were and are

9   likely to be deceived thereby.

10   36.   The harm to Plaintiff and members of the public outweighs the utility, if any, of

11   Defendant's acts and practices described above and therefore Defendant's acts and practices

12   constitute an unfair business act or practice.

13   37.   Defendant's acts and practices have detrimentally impacted competition and

14   caused substantial harm to Plaintiffs, the Class members, and the consuming public. Plaintiff

15   and the Class members were misled and suffered injuries and lost money or property as a direct

16   and proximate result of Defendant's unlawful business acts and practices.

17   38.   Defendant knew or reasonably should have known its misleading business

18   practices of ensuring the Wi-Fi Assist was activated and failing to provide real-time notice that

19   the phone switched to cellular data was likely to deceive reasonable consumers. Likewise,

20   Defendant knew or reasonably should have known its misrepresentations and omissions

21   regarding Wi-Fi Assist's capabilities and functions were and are likely to deceive reasonable

22   consumers.

23   39.   Defendant's misrepresentations and its false and misleading business practices

24   present a continuing threat to consumers in that such advertising will continue to mislead

25   consumers.

26   40.   Plaintiff reserves the right to identify additional provisions of law violated by

27   Defendant as further investigation and discovery warrants.

28

41.   By reason of the foregoing, Defendant should be required to pay damages and/or make restitution to Plaintiff and the Class Members and pay for Plaintiff's and the Class members' attorneys' fees.

COUNT II

VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW

(Cal. Bus. & Prof. Code §§ 17500, et seq.)

42.   Plaintiff realleges the foregoing paragraphs as if fully set forth herein.

43.   Plaintiff brings this claim on behalf of himself and the proposed Class.

44.   Defendant Apple is a California company disseminating advertising from its Cupertino, California headquarters throughout the United States.

45.   California's False Advertising Law ("CAFAL") provides that "[i]t is unlawful for any . . . corporation . . . with intent . . . to dispose of . . . personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading . . . ."

46.   When Defendant disseminated the advertising, it knew, or by the exercise of reasonable care should have known, that the statements concerning Wi-Fi Assist capacity were untrue or misleading, or omitted to state the truth about the Wi-Fi Assist impact on data usage, in violation of CAFAL. Specifically, Defendant failed to disclose that the default setting for Wi-Fi Assist was "activated" and that Wi-Fi Assist provides no notice when it switches to cellular data. Likewise, Defendant knew or reasonably should have known its misrepresentations and omissions regarding Wi-Fi Assist's capabilities and functions were and are likely to deceive reasonable consumers.

9 – Class Action Complaint

1 47.   Plaintiffs and the Class members were misled and suffered injuries and lost

2 money or property as a direct and proximate result of Defendant's misrepresentations and its

3 false and misleading advertising regarding Wi-Fi Assist in violation of the CAFAL.

4 48.   As a result of Defendant's wrongful conduct, Plaintiffs and the Class are entitled

5 to restitution and an order for the disgorgement of the funds by which Defendant was unjustly

6 enriched.

7 49.   Pursuant to Cal. Bus. & Prof. Code §§ 17203 & 17535, Plaintiff and the

8 members of the Class seek an order of this Court enjoining Defendant from continuing to

9 engage, use, or employ the above-described practices as they pertain to the promotion of Wi-Fi

10 Assist and iOS 9.

11 50.   Likewise, Plaintiff seeks an order requiring Defendant to make full corrective

12 disclosures to correct its prior misrepresentations, omissions, failures to disclose, and partial

13 disclosures.

14 51.   On information and belief, Defendant has failed and refused, and in the future

15 will fail and refuse, to cease its deceptive advertising practices, and will continue to do those

16 acts unless this Court orders Defendant to cease and desist pursuant to Cal. Bus. & Prof. Code

17 § 17535. The corrective statement by Apple did not fully address all misrepresentations.

18 52.   Plaintiff, individually and on behalf of the Class, seeks restitution,

19 disgorgement, injunctive relief, and all other relief allowable under the FAL.

20 **COUNT III**

21 **NEGLIGENT MISREPRESENTATION**

22 53.   Plaintiff realleges the foregoing paragraphs as if fully set forth herein.

23 54.   Plaintiff brings this claim on behalf of himself and the proposed Class.

24 55.   Defendant had a duty to timely, fully and adequately disclose to Plaintiff and

25 Class members that the default setting for Wi-Fi Assist was "activated" and that Wi-Fi Assist

26 provides no notice when it switches to cellular data. Defendant also had a duty to disclose the

27 true nature of Wi-Fi Assist's capabilities and functions.

28

10 – Class Action Complaint

56.   Defendant negligently and/or carelessly misrepresented, omitted and concealed from consumers material facts relating to Wi-Fi Assist's capabilities and functions.

57.   These misrepresentations and omissions were material and concerned the specific characteristics and Wi-Fi Assist that a reasonable consumer would consider in choosing to allow the application to run on their device.

58.   As a result of Defendant's misstatements and omissions, it was under a duty to disclose the additional facts necessary to avoid any misrepresentation or confusion. Further, Defendant knew of its misrepresentations and omissions because Defendant designed and controlled how Wi-Fi Assist would be uploaded on a device – including that the default setting would be "activated."

59.   At the time Defendant failed to disclose, concealed, suppressed and/or omitted material information, Defendant knew, or by the exercise of reasonable care should have known, that the statements were false and misleading to reasonable consumers.

60.   Plaintiff and Class members justifiably relied upon Defendant's misrepresentations and omissions about the Wi-Fi Assist. Plaintiffs and Class members were unaware of the falsity of Defendant's misrepresentations and omissions and, as a result, justifiably relied on them in allowing Wi-Fi Assist to run as activated on their devices. Had Plaintiff and Class members been aware of the true nature and quality of Wi-Fi Assist, they would not have deactivated it to avoid data overuse charges.

61.   As a direct and proximate result of Defendant's misrepresentations and omissions of material fact, Plaintiff and Class members have suffered and will continue to suffer damages and losses as alleged herein in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Apple with respect to their Complaint as follows:

1.   Certifying the Class as defined herein;

1   2.   Awarding damages, including compensatory, exemplary, and statutory damages

2 to Plaintiffs and all members of the Class;

3   3.   Issuing and mandating, ordering or awarding injunctive and declaratory relief,

4   as claimed herein;

5   4.   Awarding Plaintiff and the Class punitive damages;

6   5.   Awarding Plaintiff and the Class their reasonable attorneys' fees and

7 reimbursement of all costs for the prosecution of this action; and

8   6.   Such other and further relief as this Court may deem just and proper.

9   **DEMAND FOR JURY TRIAL**

10   Plaintiff demands a trial by jury on all issues so triable.

11

12 DATED: November 13, 2015   Respectfully submitted,
                                      BARRACK, RODOS & BACINE
                                      STEPHEN R. BASSER
13   SAMUEL M. WARD

14

15   /s/ STEPHEN R. BASSER
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23

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12 – Class Action Complaint

JS 44 (Rev. 12/12) cand rev (1/15/13)

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

DEFENDANTS

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

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.

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

Attorneys *(If Known)*

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

❒ 1   U.S. Government
       Plaintiff

❒ 3   Federal Question
       (U.S. Government Not a Party)

❒ 2   U.S. Government
       Defendant

❒ 4   Diversity
       (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff*
(For Diversity Cases Only)   *and One Box for Defendant)*

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

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
❒ 110 Insurance ❒ 120 Marine ❒ 130 Miller Act ❒ 140 Negotiable Instrument ❒ 150 Recovery of Overpayment & Enforcement of Judgment ❒ 151 Medicare Act ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ❒ 153 Recovery of Overpayment of Veteran's Benefits ❒ 160 Stockholders' Suits ❒ 190 Other Contract ❒ 195 Contract Product Liability ❒ 196 Franchise	**PERSONAL INJURY** ❒ 310 Airplane ❒ 315 Airplane Product Liability ❒ 320 Assault, Libel & Slander ❒ 330 Federal Employers' Liability ❒ 340 Marine ❒ 345 Marine Product Liability ❒ 350 Motor Vehicle ❒ 355 Motor Vehicle Product Liability ❒ 360 Other Personal Injury ❒ 362 Personal Injury - Medical Malpractice	**PERSONAL INJURY** ❒ 365 Personal Injury - Product Liability ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability ❒ 368 Asbestos Personal Injury Product Liability **PERSONAL PROPERTY** ❒ 370 Other Fraud ❒ 371 Truth in Lending ❒ 380 Other Personal Property Damage ❒ 385 Property Damage Product Liability	❒ 625 Drug Related Seizure of Property 21 USC 881 ❒ 690 Other	❒ 422 Appeal 28 USC 158 ❒ 423 Withdrawal 28 USC 157 **PROPERTY RIGHTS** ❒ 820 Copyrights ❒ 830 Patent ❒ 840 Trademark **SOCIAL SECURITY** ❒ 861 HIA (1395ff) ❒ 862 Black Lung (923) ❒ 863 DIWC/DIWW (405(g)) ❒ 864 SSID Title XVI ❒ 865 RSI (405(g))	❒ 375 False Claims Act ❒ 400 State Reapportionment ❒ 410 Antitrust ❒ 430 Banks and Banking ❒ 450 Commerce ❒ 460 Deportation ❒ 470 Racketeer Influenced and Corrupt Organizations ❒ 480 Consumer Credit ❒ 490 Cable/Sat TV ❒ 850 Securities/Commodities/ Exchange ❒ 890 Other Statutory Actions ❒ 891 Agricultural Acts ❒ 893 Environmental Matters ❒ 895 Freedom of Information Act ❒ 896 Arbitration
			LABOR	**FEDERAL TAX SUITS**	❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
REAL PROPERTY	**CIVIL RIGHTS**	**PRISONER PETITIONS**	❒ 710 Fair Labor Standards Act ❒ 720 Labor/Management Relations ❒ 740 Railway Labor Act ❒ 751 Family and Medical Leave Act ❒ 790 Other Labor Litigation ❒ 791 Employee Retirement Income Security Act	❒ 870 Taxes (U.S. Plaintiff or Defendant) ❒ 871 IRS—Third Party 26 USC 7609	❒ 950 Constitutionality of State Statutes
❒ 210 Land Condemnation ❒ 220 Foreclosure ❒ 230 Rent Lease & Ejectment ❒ 240 Torts to Land ❒ 245 Tort Product Liability ❒ 290 All Other Real Property	❒ 440 Other Civil Rights ❒ 441 Voting ❒ 442 Employment ❒ 443 Housing/ Accommodations ❒ 445 Amer. w/Disabilities - Employment ❒ 446 Amer. w/Disabilities - Other ❒ 448 Education	**Habeas Corpus:** ❒ 463 Alien Detainee ❒ 510 Motions to Vacate Sentence ❒ 530 General ❒ 535 Death Penalty **Other:** ❒ 540 Mandamus & Other ❒ 550 Civil Rights ❒ 555 Prison Condition ❒ 560 Civil Detainee - Conditions of Confinement	**IMMIGRATION** ❒ 462 Naturalization Application ❒ 465 Other Immigration Actions		

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)*:

Brief description of cause:

VII. 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

VIII. RELATED CASE(S) IF ANY

(See instructions):   JUDGE _____   DOCKET NUMBER _____

DATE   SIGNATURE OF ATTORNEY OF RECORD

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)   ( ) SAN FRANCISCO/OAKLAND   ( ) SAN JOSE   ( ) EUREKA

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 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.   **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.