

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

CHRISTINE KRUMM, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

KITTRICH CORPORATION,

Defendant.

CASE NO. 4:19-cv-00182

CLASS ACTION COMPLAINT

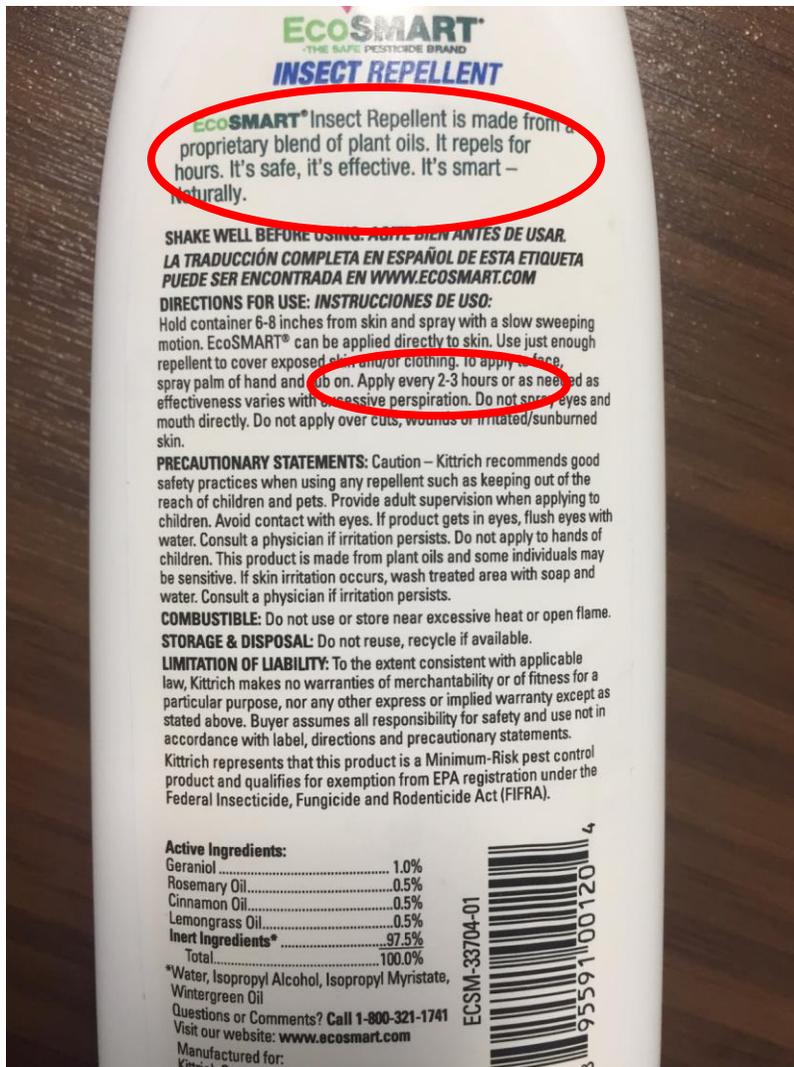
JURY TRIAL DEMANDED

Plaintiff Christine Krumm (“Plaintiff”), by and through her attorneys, makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to allegations specifically pertaining to herself and her counsel, which are based on personal knowledge, against Defendant Kittrich Corporation (“Defendant”).

FACTUAL ALLEGATIONS

1. This is a class action lawsuit on behalf of purchasers of Ecosmart Insect Repellent (the “Product” or “EcoSmart”) in the United States.
2. Defendant represents that the Product is an “insect repellent” that “keeps away mosquitoes” and “repels for hours.” The instructions direct users to “apply every 2-3 hours.”





3. Unfortunately for consumers however, the Product is a complete sham. Scientific evidence shows that the Product does not repel mosquitoes. The product is ineffective and worthless. For example, in 2015, Consumer Reports conducted independent arm-in-cage testing which showed that the Product provided little to no efficacy whatsoever against mosquitoes. This led to Consumer Reports ranking the Product “poor” against repelling mosquitoes. Consumer Reports also commissioned independent testing in 2016, and again, the Product was ranked “poor” in repelling mosquitoes. This led to Consumer Reports assigning the Product an overall effectiveness rating of 5 out of 100.

4. Furthermore, independent laboratory testing commissioned by Plaintiff’s counsel in early 2018 revealed that the Product was ineffective in repelling *Aedes* mosquitoes and *Culex* mosquitoes – the two most worrisome and common species of mosquitoes found in the United States. Defendant’s Product failed the laboratory testing almost immediately. All of the test subjects were bitten by both species of mosquitoes within the first testing interval—half an hour. This is a stark contrast from Defendant’s representation that the Product should be applied “every 2-3 hours.” Photographs of some of the Product’s test subjects being bitten by mosquitoes shortly after application of the Product are shown below:





5. Upon information and belief, Defendant has sold hundreds of thousands of units of the Product by promising consumers an effective bug repellent.

6. Plaintiff is a purchaser of the Product who asserts claims on behalf of herself and similarly situated purchasers of the Product for violations of the consumer protection laws of Missouri, violation of the Magnuson-Moss Warranty Act, unjust enrichment, breaches of express and implied warranty, and fraud.

PARTIES

7. Plaintiff Christine Krumm, is, and at all times relevant to this action has been, a resident of St. Louis, Missouri. Ms. Krumm purchased the Product from a Shop ‘n Save store in St. Louis, Missouri in or about the Summer of 2016 for approximately \$6. Prior to purchase, Ms. Krumm carefully read the Product’s labeling, including representations that the Product is an “insect repellent” that “keeps away mosquitoes” and “repels for hours.” Ms. Krumm believed these statements to mean the Product would keep away mosquitoes and relied on them in that she

would not have purchased the Product at all, or would have only been willing to pay a substantially reduced price for the Product, had she known that these representations were false and misleading. Ms. Krumm used the Product according to its directions and the Product was ineffective to repel mosquitos.

8. Defendant Kittrich Corporation is a Missouri corporation with its principal place of business at 1585 W. Mission Boulevard, Pomona CA 91766.

9. Defendant manufactures, markets, and distributes the Product throughout the United States.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a citizen of a state different from one Defendant.

11. This Court has personal jurisdiction over Defendant Kittrich Corporation because Defendant's principal place of business is in this District and because Defendant conducts substantial business within Missouri such that Defendant has significant, continuous, and pervasive contacts with the State of Missouri.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant does substantial business in this District and a substantial part of the events giving rise to Plaintiff's claims took place within this District (e.g., Plaintiff purchased and used the Product within this District, resides in within this District, and was exposed to Defendant's misleading representations within this District).

CLASS REPRESENTATION ALLEGATIONS

13. Ms. Krumm seeks to represent a class defined as all persons in the United States who purchased EcoSmart Insect Repellent (the “Class”). Excluded from the Class are persons who made such purchase for purpose of resale.

14. Ms. Krumm also seeks to represent a subclass defined as all Class members who purchased EcoSmart Insect Repellent in Missouri (the “Missouri Subclass”).

15. Members of the Class and Missouri Subclass are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class and Missouri Subclass number in the millions. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendant and third-party retailers and vendors.

16. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to whether Defendant’s labeling, marketing and promotion of the Product is false and misleading.

17. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff was exposed to Defendant’s false and misleading marketing and promotional materials and representations, purchased the Product, and suffered a loss as a result of that purchase.

18. Plaintiff is an adequate representative of the Class and Missouri Subclass because her interests do not conflict with the interests of the Class members she seeks to represent, she has retained competent counsel experienced in prosecuting class actions, and she intends to

prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

19. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I

Violation of Missouri Merchandising Practices Act (Mo. Rev. Stat. § 407)

20. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

21. Plaintiff Krumm brings this claim individually and on behalf of the Missouri Subclass against Defendant.

22. The conduct of Defendant as set for herein constitutes unfair or deceptive acts or practices, including, but not limited to, Defendant's manufacture and sale of EcoSmart Insect Repellent that is ineffective to repel mosquitos, which Defendant failed to adequately investigate, disclose, and remedy these misrepresentations.

23. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

24. Defendant's actions impact the public interest because Plaintiff was injured in exactly the same way as thousands of others purchasing EcoSmart Insect Repellent as a result of Defendant's generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendant's business.

25. Plaintiff and the Missouri Subclass were injured as a result of Defendant's conduct. Plaintiff did not receive the benefit of her bargain in that EcoSmart Insect Repellent is ineffective to repel mosquitos.

26. Defendant's conduct proximately caused the injured to Plaintiff and the Missouri Subclass.

27. Defendants is liable to Plaintiff and the Missouri Subclass for damages in amounts to be proven at trial, including attorneys' fees, costs, and damages.

COUNT II

(Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.*)

28. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

29. Plaintiff brings this case individually and on behalf of the members of the proposed Class against Defendant.

30. EcoSmart is a consumer product as defined in 15 U.S.C. § 2301(1).

31. Plaintiff and Class members are consumers as defined in 15 U.S.C. § 2301(3).

32. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4) and (5).

33. In connection with the sale of EcoSmart, Defendant issued written warranties as defined in 15 U.S.C. § 2301(6), which warranted that it was an "insect repellent" that "keeps away mosquitoes" and "repels for hours." The period for effectiveness of the product was also stated in the directions: "apply every 2-3 hours."

34. In fact, EcoSmart is ineffective to repel mosquitoes.

35. By reason of Defendant's breach of warranty, Defendant violated the statutory rights due to Plaintiff and Class members pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, et seq., thereby damaging Plaintiff and Class members.

36. Plaintiff and Class members were injured as a direct and proximate result of Defendant's violation because (a) they would not have purchased EcoSmart if they had known that EcoSmart was ineffective to repel mosquitos, and (b) they overpaid for EcoSmart on account of its misrepresentation that it is an "insect repellent" that "keeps away mosquitoes" and "repels for hours."

COUNT III

(Breach of Express Warranty)

37. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

38. Plaintiff brings this claim individually and on behalf of the members of the proposed Class and Missouri Subclass against Defendant.

39. In connection with the sale of the Product, Defendant, as the designers, manufacturers, marketers, distributors, and/or sellers, issued written warranties by representing that the Product was an "insect repellent" that "keeps away mosquitoes" and "repels for hours."

40. In fact, the Product does not conform to the above-referenced representations because the Product is ineffective at repelling mosquitoes.

41. Plaintiff and Class members were injured as a direct and proximate cause of Defendant's breach of express warranty because they would not have purchased the Product if they knew the truth about the product and its inability to repel mosquitoes, or would have only been willing to pay a substantially reduced price for the Product had they known the product was ineffective at repelling mosquitoes.

COUNT IV

(Breach of Implied Warranty of Merchantability)

42. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

43. Plaintiff brings this claim individually and on behalf of the members of the proposed Class and Missouri Subclass against Defendant.

44. Defendant, as the designer, manufacturer, marketer, distributor, and/or seller, impliedly warranted that that EcoSmart is merchantable as an insect repellent.

45. Defendant breached the warranty implied in the contract for the sale of EcoSmart because it could not “pass without objection in the trade under the contract description,” the goods were not “of fair average quality within the description,” the goods were not “adequately contained, packaged, and labeled as the agreement may require,” and the goods did not “conform to the promise or affirmations of fact made on the container or label.” See U.C.C. § 2-314(2) (listing requirements for merchantability). As a result, Plaintiff and Class members did not receive the goods as impliedly warranted by Defendant to be merchantable.

46. Plaintiff and Class members purchased EcoSmart in reliance upon Defendant’s skill and judgment in properly packaging and labeling EcoSmart.

47. The products were not altered by Plaintiff or Class members.

48. The products were defective when they left the exclusive control of Defendant.

49. Defendant knew that EcoSmart would be purchased and used without additional testing by Plaintiffs and Class members.

50. EcoSmart was defectively designed and unfit for its intended purpose and Plaintiff and Class members did not receive the goods as warranted.

51. As a direct and proximate cause of Defendant’s breach of the implied warranty, Plaintiff and Class members have been injured and harmed because they would not have

purchased EcoSmart if they knew the truth about the product and the product they received was worth substantially less than the product they were promised and expected.

COUNT V

(Unjust Enrichment)

52. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

53. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendant.

54. Plaintiff and Class members conferred benefits on Defendant by purchasing the Product.

55. Defendant has knowledge of such benefits.

56. Defendant has been unjustly enriched in retaining the revenues derived from Plaintiff's and Class members' purchases of the Product. Retention of those moneys under these circumstances is unjust and inequitable because Defendant misrepresented that the Product is an "insect repellent" that "keeps away mosquitoes" and "repels for hours."

57. Because Defendant's retention of the non-gratuitous benefits conferred on them by Plaintiff and Class members is unjust and inequitable, Defendant must pay restitution to Plaintiff and Class members for its unjust enrichment, as ordered by the Court.

COUNT VI

(Fraud)

58. Plaintiff incorporates by reference and re-alleges herein all paragraphs alleged above.

59. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendant.

60. As discussed above, Defendant misrepresented on the Product's labeling that it is an "insect repellent" that "keeps away mosquitoes" and "repels for hours."

61. The false and misleading representations and omissions were made with knowledge of their falsehood. Nonetheless, Defendant continues to sell their ineffective and worthless Product to unsuspecting consumers.

62. The false and misleading representations were made by Defendant, upon which Plaintiff and members of the proposed Class and Missouri Subclass reasonably and justifiably relied, and were intended to induce and actually induced Plaintiff and members of the Class and Missouri Subclass to purchase the Product.

63. The fraudulent actions of Defendant caused damage to Plaintiff and members of the Class and Missouri Subclass, who are entitled to damages and other legal and equitable relief as a result.

RELIEF DEMANDED

64. WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- a. For an order certifying the nationwide Class and the Subclass under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Subclass and Plaintiff's attorneys as Class Counsel to represent members of the Class and Subclass;
- b. For an order declaring that Defendant's conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiff, the nationwide Class, and the Subclass on all counts asserted herein;
- d. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;

- g. For an order enjoining Defendant from continuing the illegal practices detailed herein and compelling Defendant to undertake a corrective advertising campaign; and
- h. For an order awarding Plaintiff and the Class and Subclass their reasonable attorneys' fees and expenses and costs of suit.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all claims so triable.

Dated: February 5, 2019

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Yitzchak Kopel
Yitzchak Kopel

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Tel: (646) 837-7150
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Attorneys for Plaintiff

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act		
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 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 - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

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

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 _____

FOR OFFICE USE ONLY

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

)	
)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
)	
Defendant,)	
)	

ORIGINAL FILING FORM

THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY WHEN INITIATING A NEW CASE.

THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER _____ AND ASSIGNED TO THE HONORABLE JUDGE _____.

THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS _____ AND THAT CASE WAS ASSIGNED TO THE HONORABLE _____. THIS CASE MAY, THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING.

NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE MAY BE OPENED AS AN ORIGINAL PROCEEDING.

The undersigned affirms that the information provided above is true and correct.

Date: _____

Signature of Filing Party

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

UNITED STATES DISTRICT COURT

for the

_____ District of _____

_____)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No.
)	
_____)	
<i>Defendant</i>)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

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:

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 \$ _____.

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:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

_____)	
Plaintiff (s),)	
)	
v.)	Case No.
)	
)	
_____)	
Defendant(s).)	

NOTICE OF INTENT TO USE
PROCESS SERVER

Comes now _____ and notifies the court of the intent to use
(Plaintiff or Defendant)

(name and address of process server)

To serve: _____ in the
(name of defendants to be served by this process server)

above-styled cause. The process server listed above possesses the
requirements as stated in Rule 4 of the Federal Rules of Civil Procedure.

The undersigned affirms the information provided above is true and correct.

(date)

(attorney for Plaintiff)

(attorney for Defendant)