

**IN THE UNITED DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

PAMELA M. UTLEY)
6085 Arlyne Lane)
Medina, OH 44256)
On behalf of herself and all those)
similarly situated)

CASE NO.:

JUDGE:

And)

PLAINTIFFS' CLASS ACTION COMPLAINT

ANDREA UTLEY)
6085 Arlyne Lane)
Medina, OH 44256)
On behalf of herself and all those)
similarly situated)

JURY DEMAND ENDORSED HEREON

And)

ALEXANDRA C. SCHROCK)
6020 Arlyne Lane)
Medina, OH 44256)
On behalf of herself and all those)
similarly situated)

Plaintiffs,)

v.)

UNITED AIRLINES HOLDINGS,)
INC. AND UNITED AIRLINES, INC.)
233 South Wacker Drive)
Chicago, IL 60606)

Also Serve – Statutory Agent)

CT CORP.)
1300 E. 9th Street)
Cleveland, OH 44114)

Defendant.

Now come Plaintiffs, Pamela M. Utley (“Utley”), Andrea Utley (“AU”) and Alexandra C. Schrock (“Schrock”) (also referred to herein at times collectively as (“Plaintiffs”), by and

through their undersigned counsel, for their Class Action Complaint against Defendants United Airlines Holdings, Inc. and United Airlines, Inc. (collectively referred to hereinafter as “United” or “Defendant”) for breach of contract, and as grounds therefore allege as follows:

THE PARTIES

1. This is a claim for breach of contract and monetary relief for damages exceeding \$5,000,000.00 exclusive of all interest, costs, and attorney's fees. Plaintiffs also seek injunctive relief.

2. Plaintiff Utley is an Ohio resident. During the Class Period, Plaintiff Utley purchased airfare directly from United for travel within the United State of America and internationally, including airfare for travel between Ohio and Paris, France. Plaintiff Utley was injured as a result of the allegations alleged herein.

3. Plaintiff AU is an Ohio resident. During the Class Period, Plaintiff AU purchased airfare directly from United for travel within the United States of America and internationally, including airfare for travel between Ohio and Paris, France. Plaintiff AU was injured as a result of the allegations herein.

4. Plaintiff Schrock is an Ohio resident. During the Class Period, Plaintiff Schrock purchased airfare directly from United for travel within the United States of America and internationally, including airfare for travel between Ohio and Paris, France. Plaintiff Schrock was injured as a result of the allegations alleged herein.

5. Defendant, United, is a Delaware corporation with its principal place of business located at 233 South Wacker Drive Chicago, Illinois 60606. United is one of the largest commercial airlines in the world and conducts air passenger services throughout the United States of America, including flights to and from this District.

6. At all material times and during the acts alleged herein, Defendant United acted by and through its officers, agents, and employees including, and whose acts and conduct alleged herein were known to, authorized, and ratified by Defendant United.

JURISDICTION AND VENUE

7. As a result of regularly conducting business, promoting and/or selling, either directly or indirectly through third parties or related entities to consumers throughout the State of Ohio, Defendant obtained the benefits of the laws of Ohio

8. This Court has subject matter jurisdiction over the claims alleged herein pursuant to 28 U.S.C. § 1332(d)(2), because there are at least 100 Class Members in the proposed Class and/or sub-classes, the combined claims of the proposed Class Members, upon information and belief, exceeds \$5,000,000.00, exclusive of interests and costs, and this is a class action in which certain of the Class Members and Defendants are citizens of different states.

9. Venue is proper in this judicial District pursuant to 28 U.S.C. § 1391, because Defendant conducts business throughout this District, and a substantial part of the events or omissions giving rise to Plaintiffs' claims took place within this District.

FACTUAL BACKGROUND

10. On or about January 6, 2020 Plaintiffs Utley, AU and Schrock purchased airline tickets from United under Confirmation Number EMR4TP.

11. Plaintiffs were scheduled to depart Cleveland, Ohio on Sunday May 3, 2020 and arrive in Paris, France on May 4, 2020. In between, Plaintiffs had scheduled layover stops in Toronto, Canada.

12. Plaintiffs were scheduled to return on May 16, 2020, departing from Dublin, Ireland and arriving in Cleveland, Ohio.

13. The total amount paid by Plaintiffs was \$12,343.34.

14. United has cancelled and/or effectively cancelled and/or caused Plaintiffs and Class Members to incur such significant delays regarding their contracted flights that United must provide Plaintiffs and Class Members with full and immediate refunds for the unused portion(s) of their respective flight tickets, but United refuses to offer and/or provide said full and immediate refunds.

15. COVID-19 is a world-wide pandemic.

16. On January 31, 2020, under §319 of the Public Health Service Act (42 U.S.C.247d), The Secretary of Health and Human Services (“HHS”) declared a public health emergency in response to COVID-19.

17. On March 11, 2020, the World Health Organization (“WHO”) announced that COVID-19 outbreak represented a pandemic.

18. On March 13, 2020 the President of the United States of America, Donald J. Trump, issued the *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (“Proclamation”)*, proclaiming the COVID-19 outbreak constituted a national emergency in the United States, beginning March 1, 2020 .¹

19. Various states, including the State of Ohio have issued and implemented mandatory Stay-At-Home Orders.² They are:

¹ See:<https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

² Upon information and belief, all but nine (9) states have ordered and are currently under mandatory stay-at-home orders.

- Alabama, effective April 3, 2020
- Alaska, effective March 28, 2020
- Arizona, effective March 31, 2020
- California, effective March 19, 2020
- Colorado, effective March 26, 2020
- Connecticut, effective March 23, 2020
- Delaware, effective March 24, 2020
- District of Columbia, effective March 30, 2020
- Florida, effective April 3, 2020
- Georgia, effective April 3, 2020
- Hawaii, effective March 25, 2020
- Idaho, effective March 25, 2020
- Illinois, effective March 21, 2020
- Indiana, effective March 24, 2020
- Kansas, effective March 30, 2020
- Kentucky, effective March 26, 2020
- Louisiana, effective March 23, 2020
- Maine, effective April 2, 2020
- Maryland, effective March 30, 2020
- Massachusetts, effective March 24, 2020
- Michigan, effective March 24, 2020
- Minnesota, effective March 27, 2020

- Mississippi, effective April 3, 2020
- Missouri, effective April 3, 2020
- Montana, effective March 28, 2020
- Nevada, effective April 1, 2020
- New Hampshire, effective March 27, 2020
- New Jersey, effective March 21, 2020
- New Mexico, effective March 24, 2020
- New York, effective March 22, 2020
- North Carolina, effective March 30, 2020
- Ohio, effective, March 23, 2020
- Oklahoma, effective March 24, 2020
- Oregon, effective March 23, 2020
- Pennsylvania, effective April 1, 2020
- Rhode Island, effective March 28, 2020
- Tennessee, effective April 2, 2020
- Texas, effective April 2, 2020
- Virginia, effective March 30, 2020
- Vermont, effective March 25, 2020
- Washington, effective March 23, 2020
- West Virginia, effective March 24, 2020
- Wisconsin, effective March 25, 2020

20. On March 29, 2020 President Donald J. Trump announced the extension of his Administration's social distancing guidelines until April 30, 2020.

21. On March 31, 2020 the United States Department of State issued a Global Level 4 Health Advisory to not travel.³

22. Upon information and belief, all the states listed above have only extended their respective Stay-At-Home Orders; none have been lifted.

23. On April 3, 2020, the United States Department of Transportation ("DOT") issued an *Enforcement Notice Regarding Refunds By Carriers Given The Unprecedented Impact Of The COVID-19 Public Health Emergency On Air Travel* ("Notice") advising airlines, including United, to issue prompt refunds to customers whose flights are/were canceled or changed significantly by the airline during the COVID-19 crisis.⁴ The Notice states, in part, as follows:

"The Department is receiving an increasing number of complaints and inquiries from ticketed passengers, including many with non-refundable tickets, who describe having been denied refunds for flights that were cancelled or significantly delayed. In many of these cases, the passengers stated that the carrier informed them that they would receive vouchers or credits for future travel. But many airlines are dramatically reducing their travel schedules in the wake of the COVID-19 public health emergency. As a result, passengers are left with cancelled or significantly delayed flights and vouchers and credits for future travel that are not readily usable.

Carriers have a longstanding obligation to provide a prompt refund to a ticketed passenger when the carrier cancels the passenger's flight or makes a significant change in the flight schedule and the passenger chooses not to accept the alternative offered by the carrier. The longstanding obligation of carriers to provide refunds for flights that carriers cancel or significantly delay does not cease when the flight disruptions are outside the carrier's control (e.g. a result of government restrictions). The focus is not whether the flight disruptions are within or outside the carrier's control, but rather on the fact that the cancellation is through no fault of the passenger.

³ See: <https://travel.state.gov/content/travel/en/traveladvisories/ea/travel-advisory-alert-global-level-4-health-advisory-issue.html>

⁴ See Notice at:

https://www.transportation.gov/sites/dot.gov/files/202004/Enforcement%20Notice%20Final%20April%203%202020_0_0.pdf.

24. United's Contract of Carriage⁵ provides, in relevant part, that:

*"This Contract of Carriage is subject to applicable laws, regulations, rules, and security directives imposed by governmental agencies, including but not limited to those imposed during or as a result of a national emergency, war, civil unrest or terrorist activities. In the event of a conflict between the Rules contained herein and such government laws, regulations, rules, security directives and their corresponding effects on UA's operation, the latter shall prevail."*⁶

*"Unless specifically stated otherwise herein or where any limitation would expressly violate any applicable law, UA shall not be liable for any consequential, compensatory, indirect, incidental or punitive damages arising out of or in connection with the performance of its obligations under these rules."*⁷

25. Any attempt by United to invoke the *Force Majeure* provision of the Contract of Carriage and/or any similar provision that United uses, has used, or attempts to use to avoid a full and immediate refund to Plaintiffs and the Class Members directly conflicts with the DOT's Notice to promptly provide customers full refunds as a result of the COVID-19 public health emergency and, therefore, is void *ab initio* and/or otherwise unenforceable against the Plaintiffs and Class Members.

26. Plaintiffs and the Class Members have fully complied with their obligations under the Contract of Carriage, but the various national and state guidelines, laws, rules and regulations, etc. have made it impossible for the Plaintiffs and Class Members to use their airline tickets to travel to their intended destinations.

27. Moreover, the various national and state guidelines, laws, rules and regulations, etc. have frustrated Plaintiffs' and Class Members' ability to benefit from the Contract of Carriage and ability to travel, thus making domestic and/or foreign air travel impracticable.

⁵ See United's Contract of Carriage at: <https://www.united.com/ual/en/us/fly/contract-of-carriage.html#tcm:76-6593>

⁶ Contract of Carriage - Rule 3 Application of Contract at ¶ B.

⁷ Contract of carriage – Rule 3 Application of Contract at ¶ I.

28. Moreover, United has engaged in an intentional scheme to confuse customers related to its refund policy – which so far has not resulted in the required immediate refunds,

29. Initially, Pre-Pandemic, if United changed a flight time by more than two hours, passengers were entitled to a full refund.

30. However, on March 7, 2020, the same day the WHO reported in excess of 100,000 COVID-19 cases in 94 countries, United altered its policy to require a flight time change of at least 25 hours to receive a refund.

31. Thereafter, on March 10, 2020, United instituted a policy offering refunds only if “departure or arrival time significantly changes.”

32. Next, on March 14, 2020 United instituted its current policy of providing credits – not refunds – until one year passes from the original date of purchase, at which time a refund “may” be issued.

33. United is refusing and/or failing to provide required full and immediate refunds to Plaintiffs and Class Members and required under the Contract of Carriage.

CLASS ACTION ALLEGATIONS

34. Plaintiffs hereby restate the allegations and averments contained in the preceding paragraphs of this Complaint, as if fully rewritten herein, and further state as follows:

35. Plaintiffs bring this action both on behalf of themselves, and as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), on behalf of the following class (the “Class”):

“All persons and entities who purchased airline tickets from United or its affiliates between January 1, 2020 to the present and whose flights were cancelled either voluntarily, or involuntarily by United, due to the inability to travel domestically, internationally, or both as a result of the COVID-19 pandemic, and who sought and/or are owed a refund.

36. Excluded from the Class are United's employees, officers, directors, legal representatives, successors, and assigns; any entity in which United has a controlling interest; any Judge to whom the litigation is assigned; all members of the Judge's family; and all persons who timely and validly request exclusion from the Class. Plaintiffs reserve the right to modify the Class Definition throughout the course of this litigation to conform with the evidence and facts as they develop.

37. This action has been brought as a class action, and may properly be maintained, pursuant to Rule 23(B)(1), (2) and (3) of the Federal Rules of Civil Procedure and case law thereunder.

38. **Numerosity**: Plaintiffs do not know the exact number of the Members of the Class because such information is in the exclusive control of Defendant. Due to the nature of the trade and commerce involved, however, Plaintiffs believe that Class Members number at least in the many thousands and possibly millions and are sufficiently numerous and geographically dispersed throughout the United States of America so that joinder of all Class Members is impracticable.

39. **Typicality**: The Plaintiffs' claims are typical of the Class Members' claims. Like other Class Members, Plaintiffs are customers of United who purchased airline tickets that were either voluntarily or involuntarily cancelled by United due to the COVID-19 pandemic National Health Crisis. United treated Plaintiffs consistently with other Class Members with regard to the wrongful and illegal policy of refusing an immediate refund. United's imprudent, unfair, wrongful, illegal and unjustified bad faith decisions affected all Plaintiffs and Class Members similarly.

40. **Adequacy**: Plaintiffs will fairly and adequately protect the interests of the Class.

Plaintiffs' interests are aligned with the Class that they seek to represent, and Plaintiffs have retained counsel experienced in complex class action litigation and who has previously been appointed lead and/or co-lead class action counsel in several previous class action matters. Plaintiffs do not have any conflicts of interest with any Class Members that would impair or impede their ability to fully and adequately represent such Class Members.

41. **Commonality**: Common questions of law and fact exist as to all Class Members and predominate over any questions solely affecting individual Class Members, including but not limited to:

- a. Whether United owes Plaintiffs and the Class Members a full and immediate refund;
- b. Whether United failed to comply with DOT regulations and guidelines related to COVID-19, as it voluntarily expressed that it would in the Contract of Carriage;
- c. Whether United breached its contract with Plaintiffs and the Class Members;
- d. Whether United breached the implied duty of good faith and fair dealing, thus damaging Plaintiffs and Class Members;
- e. Whether, and to what extent, the conduct of Defendant caused injury to Plaintiffs and Members of the Class, and, if so, the appropriate measure of damages.
- f. Whether Plaintiffs and Class Members are entitled to injunctive and/or equitable relief as a result of Defendants' wrongful conduct;
- g. The proper form of equitable and injunctive relief;

42. Class certification is appropriate under Ohio Civ. R. Proc. 23(b)(1)(A) because prosecuting separate actions against Defendant would create a risk of inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible

standards of conduct for Defendant.

43. Class certification is also appropriate under Ohio Civ. R. Proc. 23(b)(1)(B) because adjudications with respect to individual Class Members, as a practical matter, would be dispositive of the interests of the other persons not parties to the individual adjudications or would substantially impair or impeded their ability to protect their interests.

44. Class certification is also appropriate under Ohio Civ. R. Proc. 23(b)(2), because separate and distinct from the damages caused by Defendants' wrongful conduct, final injunctive and declaratory class-wide relief is also appropriate because Defendants have acted or refused to act on grounds generally applicable to the Class.

45. Class certification is also appropriate under Ohio Civ. R. Proc. 23(b)(3) because questions of law and fact common to the Class predominate over any questions affecting only individual Class Members, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendant's conduct as described in this Complaint applies uniformly to all Members of the Class. Class Members do not have an interest in pursuing separate actions against Defendant, as the amount of each Class Members' individual claim is relatively small compared to the expense and burden of individual prosecution, and Plaintiffs are unaware of any similar claims brought against Defendants by any Class Members on an individual basis. Class certification also will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendants' practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interest of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Class Members' claims in a single forum.

46. Further, and in the alternative, Fed. R. Civ. Proc. 23(c)(4) permits an action to be maintained as a class action with respect to only particular issues, and the common questions of law and fact set forth above raise issues which are appropriate for class treatment pursuant to Fed. R. Civ. Proc. 23(c)(4).

COUNT ONE
COMMON LAW BREACH OF CONTRACT

47. Plaintiffs hereby restate the allegations and averments contained in the preceding paragraphs of this Complaint, as if fully rewritten herein, and further states as follows:

48. Plaintiffs and Class Members, and United, entered into a Contract of Carriage for air travel.

49. United has an affirmative obligation and duty to perform its contractual obligations.

50. Plaintiffs and Class Members complied with all terms and conditions precedent under the terms and conditions of the subject contract and, therefore, were and are entitled to all benefits contracted for under the terms and conditions of the contract.

51. By no fault of their own, Plaintiffs and the Class Members cannot use the airline tickets purchased by them from United, due to the various federal and state governmental laws, guidelines, rules and regulations, etc., thus resulting in both forced cancellations by United and/or voluntary cancellations by Plaintiffs and the Class Members whose travel became impossible, impracticable and/or otherwise frustrated.

52. Plaintiffs and the Class Members have lost the benefit of their bargain.

53. On April 3, 2020 the DOT issued its Notice to all airlines, including United, wherein it advised that Plaintiffs and Class Members subject to travel cancellations or significantly

delayed flights must promptly be provided full refunds by United; and that credits and/or vouchers that United was providing and/or attempting to provide Plaintiffs and Class Members in lieu of a full and prompt refund violated carriers' "longstanding obligations to provide prompt refund to a ticketed passenger when the carrier cancels the passenger's flight or makes a significant change in the flight schedule and the passenger chooses not to accept the alternative offered by the carrier."

54. Plaintiffs and Class Members have chosen not to accept United's alternative offerings and demand a full and immediate refund of their ticket costs.

55. The United Contract of Carriage specifically provides that:

*"This Contract of Carriage is subject to applicable laws, regulations, rules, and security directives imposed by governmental agencies, including but not limited to those imposed during or as a result of a national emergency, war, civil unrest or terrorist activities. In the event of a conflict between the Rules contained herein and such government laws, regulations, rules, security directives and their corresponding effects on UA's operation, the latter shall prevail."*⁸

56. United's contractual language providing that governmental laws, regulations, rules, etc. that conflict with its own Rules, "*shall prevail*," is a self-imposed undertaking by United grounded solely in the terms of the Contract of Carriage, which United is failing to comply with regarding the provision of full and immediate refunds related to the COVID-19 national public health emergency.

57. United has refused and/or failed to fully and immediately refund and/or offer immediate refunds to Plaintiffs and Class Members in accordance with both its Contract of Carriage and the DOT Notice, which expressly prevails over the terms and conditions set forth in United's Contract of Carriage, and which United is contractually obligated to comply with.

58. In addition, United has violated the implied duty of good faith and fair dealing.

⁸ Contract of Carriage - Rule 3 Application of Contract at ¶ B.

Nonetheless, even absent the application of the implied covenant of good faith and fair dealing, United still violated the express terms of the Contract of Carriage.

59. Plaintiffs' and Class Members' breach of contract claim as asserted herein does not undermine the purpose of the Airline Deregulation Act ("ADA") to promote competition in the airline industry and, therefore, is not preempted.

60. As a direct and proximate cause of said breach, Plaintiffs and Class Members have incurred monetary and other damages in excess of Five-Million Dollars (\$5,000,000.00), subject to escalation and to be more fully ascertained at trial.

COUNT TWO
(INJUNCTIVE RELIEF)

61. Plaintiffs incorporate by reference all of the foregoing allegations as if fully rewritten herein.

62. At the time of filing of Plaintiffs' Complaint, United is still misrepresenting and/or failing to disclose to its customers the true and accurate refund policy and requirement that full and immediate refunds must be offered and/or administered to Plaintiffs and Class Members.

63. Plaintiffs and the putative Class Members do not have a plain, speedy, and adequate remedy at law to stop or correct United's unlawful conduct.

64. United has acted or refused to act on grounds that apply generally to the Plaintiffs and the Class Members, as outlined in this herein Complaint, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

65. Accordingly, separate and apart from any damages awarded to Plaintiffs and the Class Members as a result of United's unlawful conduct, Plaintiffs seek an order requiring United to: (1) disclose the true refund policy related to COVID-19 that is consistent with the DOT Notice; (2) provide its customers with an offer of and/or full and immediate refund for the unused portion

of their airline tickets within the Class Period; (3) agree to pay all United Customers who had their flights cancelled, had to voluntarily cancel their flights, or had significant delays in their flight plans resulting in involuntary and/or voluntary cancellation an immediate and full refund of the costs of Plaintiffs' and Class Members' airline tickets within the Class Period.

WHEREFORE, Plaintiffs respectfully requests of this Court the following relief, on behalf of themselves and all others similarly situated:

a. An Order certifying the proposed Class herein pursuant to Rule 23(B)(1), (2), and (3) or, alternatively, 23(c)(4) of the Federal Rules of Civil Procedure and appointing Plaintiffs and their counsel of record to represent the Class;

b. An Order awarding Plaintiffs and Class Members damages resulting from Defendant's wrongful conduct;

c. Restitution and reimbursement of all moneys paid by Plaintiffs and Class Members because of Defendant's wrongful conduct;

d. An Order of Declaratory and injunctive relief pursuant to Fed. R. Civ Proc. 23(b)(2);

e. An award of any additional, compensatory, consequential, and incidental damages and costs suffered by Plaintiffs and Class Members because of Defendants' wrongful conduct;

f. Pre-judgment and post-judgment interest;

g. Plaintiff's costs of suit, including, without limitation, their attorney's fees, expert fees, and actual incurred and costs; and

h. Such other further relief, at law or in equity, as the Court deems just and proper.

JURY DEMAND

Pursuant to Federal Civil Rule 38, Plaintiff requests a jury trial of all issues alleged herein.

Respectfully submitted,

/s/ Thomas J. Connick
Thomas J. Connick (0070527)
CONNICK LAW, LLC
25550 Chagrin Blvd., Suite 101
Beachwood, OH 44122
PH: 216-364-0512 | FX: 216-609-3446
Email: tconnick@connicklawllc.com

Attorney for Plaintiffs

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

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

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

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

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

CASE NUMBER: _____

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

This action: is **RELATED** to another **PENDING** civil case is a **REFILED** case was **PREVIOUSLY REMANDED**

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

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

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

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

COUNTY:

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

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

COUNTY:

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

COUNTY:

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

EASTERN DIVISION

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

WESTERN DIVISION

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

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:

Civil Action No. _____

PROOF OF SERVICE

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

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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: