

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MELISSA A. WILSON

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CIVIL NO. 5:18-cv-1056

V.

TESSMER LAW FIRM, PLLC,
AND HEATHER C. TESSMER

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Plaintiff Melissa Ann Wilson (“Wilson” or “Plaintiff”) files this Original Complaint against Tessmer Law Firm, PLLC, and Heather Clement Tessmer (collective “Tessmer” or “Defendants”), and in support thereof alleges the following:

Parties

1. Plaintiff is an individual who resides in Lakeland, Florida.
2. Defendant Tessmer Law Firm, PLLC is a professional limited liability company organized under the laws of Texas with its principal place of business at 7800 IH-10 West STE 830, San Antonio, Texas 78230, and may be served by serving its registered agent Heather Clement Tessmer at the company’s registered address, 8000 Fair Oaks Parkway, Suite 205, Fair Oaks Ranch, Texas 78015, at the company’s principal place of business, or wherever she may be found.
3. Defendant Heather Clement Tessmer is an individual, who based on information and belief, resides at 30541 Ralph Fair Road, Fair Oaks Ranch, Texas 78015, and may be served

at her residence, place of business 7800 IH-10 West STE 830, San Antonio, Texas 78230, or wherever she may be found.

Jurisdiction and Venue

4. This is an action for trademark infringement and unfair competition pursuant to the Federal Lanham Act, Title 15 U.S.C. § 1051 *et seq.* This Court has jurisdiction pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338.

5. Venue is proper in this District under 28 U.S.C. §1391 because both Defendants reside in, or are located within, this District and a substantial number of events giving rise to the claim occurred within this district.

Facts

6. Plaintiff is an attorney and founder of Advocate Law Firm, P.A., based in Bartow, Florida.

7. Plaintiff has continuously used the trademark EVER ARGUED WITH A WOMAN? (the “Mark”) in conjunction with providing and advertising legal services since at least as early as September 12, 2007.

8. Plaintiff has continuously developed and maintained common law trademark rights in the Mark for providing and advertising legal services since at least as early as September 12, 2007.

9. Plaintiff filed U.S. trademark application Serial No. 85/496797 with the United States Patent and Trademark Office (“USPTO”) on December 15, 2011 for the mark EVER ARGUED WITH A WOMAN? for legal services.

10. Plaintiff’s U.S. trademark application Serial No. 85/496797 registered on the USPTO Principal Register as U.S. Trademark Registration No. 4,570,573 on July 22, 2014 for

EVER ARGUED WITH A WOMAN? for “legal services, namely providing counseling, advice and litigation services in all areas of the law.” A copy of Plaintiff’s Registration Certificate for the Mark is attached as **Exhibit 1**.

11. Plaintiff owns U.S. trademark Reg. No. 4,570,573 and all associated trademark rights in the Mark.

12. Plaintiff’s legal services provided using the Mark have received national attention, awards, and consumer satisfaction, resulting in a significant amount of goodwill associated with Plaintiff’s Mark.

13. Plaintiff has diligently enforced her trademark rights in the Mark.

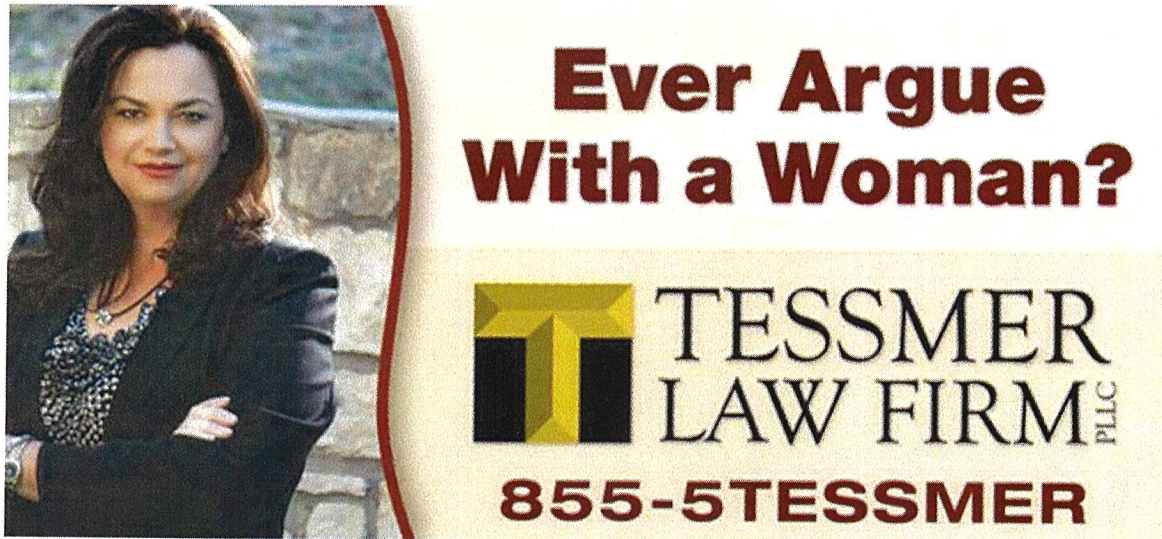
14. Plaintiff has licensed use of the Mark to licensees in New York, Connecticut, Pennsylvania, and the Washington District of Columbia. Plaintiff’s licensees use the Mark to provide legal services.

15. Plaintiff is currently negotiating with a potential licensee in Texas to use the Mark to provide legal services.

16. Plaintiff has concrete plans to enter the Texas legal market by licensing the Mark to a licensee in the state of Texas.

17. Defendant Heather Clement Tessmer is the principal attorney and owner of Defendant Tessmer Law Firm, PLLC.

18. Defendants have been using the phrase EVER ARGUE WITH A WOMAN? (the “Infringing Mark”) since at least as early as 2014 to advertise and provide legal services in San Antonio, Texas and surrounding area. An example of Defendants’ use of the Infringing Mark is depicted in the following on-line advertisement:



19. Defendants are also using the Infringing Mark on *inter alia* billboards, the website <https://tessmerlawfirm.com/>, business cards, and promotional material at legal events.

20. Plaintiff first discovered Defendants were using the Infringing Mark around April 2014, when she began receiving website and telephone inquiries from confused members of the public inquiring about whether Plaintiff had an office in San Antonio, Texas or was otherwise affiliated with the Defendants.

21. Plaintiff sent Defendant Heather Tessmer an email on or around July 8, 2014 notifying Defendants of Plaintiff's trademark rights in the Mark and objecting to Defendants' use of the confusingly similar infringing mark.

22. Attorneys representing Plaintiff spoke with Defendant Tessmer's assistant on or around July 9, 2014 and were informed Defendant Tessmer was unavailable. Plaintiff's representatives made additional attempts to contact Defendants in 2014.

23. Defendant Tessmer Law Firm, PLLC filed a trademark application with the Texas Secretary of State on April 2, 2018 for EVER ARGUE WITH A WOMAN? with "Legal services; representing clients in civil litigation and other matters" as the services.

24. Defendant Tessmer Law Firm, PLLC's application issued as Texas Trademark Registration No. 802981081 on May 23, 2018 ("Defendants' Registration").

25. Defendants' Registration indicates Defendants first used the EVER ARGUE WITH A WOMAN? mark in January 2012.

26. In order to acquire Defendants' Registration, Defendant Heather Tessmer signed a Declaration claiming that Tessmer Law Firm, PLLC "is the owner of the [EVER ARGUE WITH A WOMAN?] mark . . . and that to the knowledge of the person verifying the application, no other person has registered the mark, either federally or in this state, or is entitled to use the mark in this state, either in the identical form used by applicant or in a form that is likely, when used on or in connection with the goods or services of the other person, to cause confusion or mistake, or to deceive, because of its resemblance to the mark."

27. Defendant Heather Tessmer signed the declaration described above despite having actual knowledge of Plaintiff's prior use and ownership of the Mark for legal services.

28. Defendant Tessmer Law Firm, PLLC's Registration No. 802981081 for EVER ARGUE WITH A WOMAN? is invalid and should be cancelled based on Plaintiff's prior use and ownership of the EVER ARGUED WITH A WOMAN? mark and ownership of U.S. Registration No. 4,570,573 for EVER ARGUED WITH A WOMAN?.

29. Defendants contacted Plaintiff's potential licensee, Stephanie May, claiming to own trademark rights in the Mark and threatened to sue Ms. May for trademark infringement.

Count I – Trademark Infringement Pursuant to Lanham Act

30. The allegations set forth above in Paragraphs 1 through 29 are incorporated by reference and fully set forth herein.

31. Plaintiff is the owner and senior user of the trademark EVER ARGUED WITH A WOMAN? for legal services.

32. Plaintiff owns U.S. trademark registration no. 4,570,573 for EVER ARGUED WITH A WOMAN? in class 45 for “Legal services, namely, providing counseling, advice and litigation services in all areas of the law.”

33. Defendant is using the confusingly similar trademark EVER ARGUE WITH A WOMAN? to provide legal services.

34. Plaintiff has concrete plans to enter the Texas legal market, resulting in a likelihood of entry into Defendants’ market.

35. Plaintiff has already experienced actual confusion caused by Defendants’ use of the EVER ARGUE WITH A WOMAN? mark.

36. Defendants’ use of the mark EVER ARGUE WITH A WOMAN? is causing, and will continue to cause, confusion, mistake, or deception on the public as to an affiliation, sponsorship, or approval between Plaintiff and Defendants’ legal services.

37. Defendants’ acts constitute trademark infringement under the Lanham Act.

38. Defendants have continued to infringe Plaintiff’s Mark for four years despite notice of Plaintiff’s trademark rights and Plaintiff’s objection to Defendants’ use of their confusingly similar Infringing Mark.

39. Plaintiff has invested significant time and resources into developing the goodwill associated with the Mark. The goodwill of the Mark is of substantial value to Plaintiff, and Plaintiff has and will continue to suffer irreparable harm should trademark infringement by Defendants be allowed to continue.

40. Pursuant to 15 U.S.C. §1114 and §1116, Plaintiff is entitled to preliminary and permanent injunctive relief to restrain Defendants' infringement of the Mark, including but not limited to any and all use of the Infringing Mark.

41. Defendants' acts of trademark infringement have damaged Plaintiff in an amount not yet determined. Pursuant to 15 U.S.C. §1117, Plaintiff seeks Defendants' profits, actual damages, costs of this action, and such additional relief as may be deemed appropriate and awarded by this Court.

42. Defendants' acts of trademark infringement have been, and continue to be, deliberate and willful therefore warranting an award of enhanced damages. Accordingly, Plaintiff is entitled to and seeks a finding that this case is exceptional and warrants an award of attorney fees pursuant to 15 U.S.C. §1117(a).

Count II – Unfair Competition Pursuant to the Lanham Act

43. The allegations set forth above in Paragraphs 1 through 42 are incorporated by reference and fully set forth herein.

44. Plaintiff is the owner and senior use of the trademark phrase EVER ARGUED WITH A WOMAN? to provide and advertise legal services.

45. Defendants are using the confusingly similar EVER ARGUE WITH A WOMAN? to provide and advertise legal services in San Antonio, Texas and the surrounding area.

46. Based on information and belief, Defendants are making false claims regarding ownership of the trademark EVER ARGUE WITH A WOMAN?

47. Plaintiff has concrete plans to enter the Texas market, and is currently negotiating with a licensee in the area.

48. Defendants' use of EVER ARGUE WITH A WOMAN? and false claims regarding ownership thereof are likely to cause confusion, mistake, or deception on the public as to the affiliation, connection, association, or approval between Plaintiff and Defendants' services.

49. Defendants' use of EVER ARGUE WITH A WOMAN? and false claims of ownership thereof have already caused confusion, mistake and deception on the public as to an affiliation between Plaintiff and Defendant's services.

50. Defendants' use of EVER ARGUE WITH A WOMAN and false claims of ownership thereof constitute unfair competition pursuant to 15 USC §1125(a).

51. Plaintiff has invested significant time and resources into developing the goodwill associated with the Mark. The goodwill of the Mark is of substantial value to Plaintiff, and Plaintiff has and will continue to suffer irreparable harm should unfair competition by Defendants be allowed to continue.

52. Pursuant to 15 U.S.C. §1116, Plaintiff is entitled to preliminary and permanent injunctive relief to restrain Defendants' unfair competition, including but not limited to any and all use of the Infringing Mark.

53. Defendants' acts of unfair competition have damaged Plaintiff in an amount not yet determined. Pursuant to USC §1117 Plaintiff is entitled to and seeks Defendants' profits, actual damages, costs of this action, and such additional relief as may be deemed appropriate and awarded by this Court.

54. Defendants' acts of unfair competition have been, and continue to be, deliberate and willful therefore warranting an award of enhanced damages. Accordingly, Plaintiff is entitled

to and seeks a finding that this case is exceptional and warrants an award of attorney fees pursuant to 15 U.S.C. §1117(a).

Jury Demand

Plaintiff hereby demands a trial by jury for all triable issues alleged in this Complaint.

Prayer

WHEREFORE, Plaintiff Melissa A. Wilson respectfully prays that this Court enter judgement as follows:

(a) Defendants, and all other persons in active concert and/or participation with Defendants, be permanently enjoined from engaging in the acts of trademark infringement and unfair competition complained of herein, including but not limited to, ceasing use of EVER ARGUE WITH A WOMAN?, EVER ARGUED WITH A WOMAN?, and/or any confusingly similar mark;

(b) Defendants pay Plaintiffs all profits Defendants generated from Defendants' trademark infringement and unfair competition and all actual damages suffered by Plaintiff as a result of Defendants' trademark infringement and unfair competition;

(c) Defendant Tessmer Law Firm, PLLC expressly abandon Texas Trademark Reg. No. 802981081;

(d) Finding this case is an exceptional case and awarding Plaintiff enhanced damages and attorney fees;

(e) Awarding Plaintiff prejudgment and post-judgment interest;

(f) Awarding Plaintiff costs of Court; and

(g) For such other and further relief to which Plaintiff shows itself to be justly entitled.

Dated: October 8, 2018

Respectfully Submitted

GUNN, LEE & CAVE, P.C.
300 Convent St., Suite 1080
San Antonio, Texas 78205
(210) 886-9500 Telephone
(210) 886-9883 Facsimile

By: /s/ John C. Cave
John C. Cave
Texas Bar No. 00783812
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Brandon T. Cook
Texas Bar No. 24084166
bcook@gunn-lee.com

ATTORNEYS FOR PLAINTIFF

Exhibit 1

United States of America

United States Patent and Trademark Office

Ever Argued With A Woman?

Reg. No. 4,570,573

Registered July 22, 2014

Int. Cl.: 45

SERVICE MARK

PRINCIPAL REGISTER

WILSON, MELISSA ANN (UNITED STATES INDIVIDUAL)
4412 OLD ROAD 37
LAKELAND, FL 33813

FOR: LEGAL SERVICES, NAMELY, PROVIDING COUNSELING, ADVICE AND LITIGATION SERVICES IN ALL AREAS OF THE LAW, IN CLASS 45 (U.S. CLS. 100 AND 101).

FIRST USE 9-12-2007; IN COMMERCE 10-3-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-496,797, FILED 12-15-2011.

ANDREW LEASER, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

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 PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <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	<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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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 Constitutionality of State Statutes
REAL PROPERTY <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	CIVIL RIGHTS <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 PRISONER PETITIONS 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			

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.