

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARcare, Inc., an Arkansas Corporation, on)
behalf of itself and all others similarly)
situated)
)
Plaintiff,)
v.)
)
Alere, Inc.; and Alere Home Monitoring,)
Inc.)
)
Defendant.)

No.
CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, ARcare, Inc. (“Plaintiff”), on behalf of itself and all others similarly situated, brings this Complaint against Defendant Alere, Inc. and Defendant Alere Home Monitoring, Inc. (collectively “Defendants”) for violations of the federal Telephone Consumer Protection Act. Plaintiff seeks certification of its claims against Defendants as a class action. In support, Plaintiff states as follows:

INTRODUCTION

1. This case challenges Defendant’s policy and practice of faxing advertisements without providing an adequate opt-out notice as required by law.

2. Congress enacted the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, to regulate the fast-growing expansion of the telemarketing industry. As is pertinent here, the TCPA and its implementing regulations prohibit persons within the United States from sending advertisements via fax without including a detailed notice that allows recipients to expeditiously opt out of receiving future solicitations.

3. Junk faxes disrupt recipients’ peace, drain recipients’ paper, ink, and toner, and cause recipients tangible damages. Junk faxes also cause recipients to waste valuable time retrieving and discerning the purpose of the faxes; prevent fax machines from receiving and

sending authorized faxes; and cause undue wear and tear on recipients' fax machines. Plaintiff offers pharmaceutical services and must use its fax machine to receive communications about patients. That purpose is impeded when Plaintiff's fax machine is invaded by junk faxes.

4. The TCPA provides a private right of action and statutory damages of \$500 per violation, which may be trebled when the violation is willing or knowing.

5. On behalf of itself and all others similarly situated, Plaintiff brings this case under the TCPA to recover declaratory relief, damages for violations of the TCPA, and an injunction prohibiting Defendants from future TCPA violations.

JURISDICTION AND VENUE

6. This Court has personal jurisdiction over Defendants because they operate their businesses in Massachusetts.

7. This Court has subject-matter jurisdiction over Plaintiff's TCPA claim pursuant to 28 U.S.C. § 1331.

8. Venue in this district is proper because this is the district in which Defendants resides

PARTIES

9. Plaintiff ARcare is an Arkansas non-profit corporation located in Augusta, Arkansas.

10. Defendant Alere, Inc. is a company that is a global diagnostic device and service provider. It has its principal place of business in Waltham, Massachusetts, and is organized under the laws of Delaware.

11. Defendant Alere Home Monitoring, Inc. is a company that provides home anticoagulation monitoring services and related products. It has its principal place of business in Waltham, Massachusetts, and is organized under the laws of Delaware.

FACTS

12. During the Class Period, Defendants sent an unsolicited advertisement to Plaintiff's ink-and-paper facsimile machine. The fax advertises Defendants' home INR monitoring program. The fax informs the recipient that "Our home INR monitoring program makes managing warfarin **simple** and **convenient** for you and your patients."(emphasis in original). The fax implores the recipient to receive further information about the service: "**Call us at 877.262.4669, option 4** to provide your Verbal Order and a representative will explain next steps. Alere Home Monitoring takes care of the rest." (emphasis in the original). A copy of this facsimile is attached hereto and marked as Exhibit A.

13. Exhibit A is an exemplary of the junk faxes Defendants send.

14. Upon information and belief, Plaintiff has received multiple fax advertisements from Defendants similar to Exhibit A.

15. Defendants also sent two other faxes advertising their home INR monitoring program during the Class Period. These faxes have been attached as Exhibit B.

16. Defendants did not have Plaintiff's prior express invitation or permission to send advertisements to Plaintiff's fax machine.

17. Defendants' faxes do not contain opt-out notices that comply with the requirements of the TCPA.

CLASS ALLEGATIONS

18. In accordance with Fed. R. Civ. P. 23, Plaintiff brings this action on behalf of the following class of persons (the “Class”):

All persons and entities who held telephone numbers that received one or more telephone facsimile transmissions that (1) promoted the commercial availability or quality of property, goods or services offered by “Alere” and (2) did not state on the first page that the fax recipient may make a request to the sender not to send any future ads and that the sender’s failure to comply, within 30 days, with such a request is unlawful.

19. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is proper, as more information is gleaned in discovery.

20. Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of Defendants, as well as the officers, directors, agents, servants, or employees of Defendants and the immediate family members of any such person. Also excluded are any judge who may preside over this case and any attorneys representing Plaintiff or the Class.

21. Numerosity [Fed. R. Civ. P. 23(a)(1)]. The Members of the Class are so numerous that joinder is impractical. Upon information and belief, Defendants have sent illegal fax advertisements to hundreds if not thousands of other recipients.

22. Commonality [Fed. R. Civ. P. 23(a)(2)]. Common questions of law and fact apply to the claims of all Class Members and include (but are not limited to) the following:

a. Whether Defendants sent faxes promoting the commercial availability or quality of property, goods, or services;

b. The manner and method Defendants used to compile or obtain the list(s) of fax numbers to which they sent the faxes attached as Exhibit A and Exhibit B to Plaintiff’s Class Action Complaint and other unsolicited fax advertisements;

- c. Whether Defendants faxed advertisements without first obtaining the recipient's express permission or invitation;
- d. Whether Defendants' advertisements contained the opt-out notices required by the law;
- e. Whether Defendants sent fax advertisements knowingly or willfully;
- f. Whether Defendants violated 47 U.S.C. § 227;
- g. Whether Plaintiff and the other Class members are entitled to statutory damages;
- h. Whether the Court should award trebled damages; and
- i. Whether Plaintiff and the other Class Members are entitled to declaratory, injunctive, or other equitable relief.

23. Typicality [Fed. R. Civ. P. 23(a)(3)]. Plaintiff's claims are typical of the claims of all Class Members. Plaintiff received unsolicited fax advertisements without adequate opt-out notices from Defendants during the Class Period. Plaintiff makes the same claims that it makes for the Class Members and seeks the same relief that it seeks for the Class Members. Defendants have acted in the same manner toward Plaintiff and all Class Members.

24. Fair and Adequate Representation [Fed. R. Civ. P. 23(a)(4)]. Plaintiff will fairly and adequately represent and protect the interests of the Class. It is interested in this matter, has no conflicts, and has retained experienced class counsel to represent the Class.

25. Predominance and Superiority [Fed. R. Civ. P. 23(b)(3)]. For the following reasons, common questions of law and fact predominate and a class action is superior to other methods of adjudication:

- (a) Proof of Plaintiff's claims will also prove the claims of the Class without the need for separate or individualized proceedings;
- (b) Evidence regarding defenses or any exceptions to liability that Defendants may assert will come from Defendants' records and will not require individualized or separate inquiries or proceedings;
- (c) Defendants have acted and continue to act pursuant to common policies or practices in the same or similar manner with respect to all Class Members;
- (d) The amount likely to be recovered by individual Members of the Class does not support individual litigation. A class action will permit a large number of relatively small claims involving virtually identical facts and legal issues to be resolved efficiently in one proceeding based on common proofs;
- (e) This case is inherently well-suited to class treatment in that:
 - (i) Defendants identified persons or entities to receive their fax transmissions, and it is believed that Defendants' computer and business records will enable Plaintiff to readily identify Class Members and establish liability and damages;
 - (ii) Common proof can establish Defendants' liability and the damages owed to Plaintiff and the Class;
 - (iii) Statutory damages are provided for in the statutes and are the same for all Class Members and can be calculated in the same or a similar manner;
 - (iv) A class action will result in an orderly and expeditious administration of claims, and it will foster economies of time, effort, and expense;

- (v) A class action will contribute to uniformity of decisions concerning Defendants' practices; and
- (vi) As a practical matter, the claims of the Class are likely to go unaddressed absent class certification.

CLAIMS FOR RELIEF

COUNT ONE

**Violations of the Telephone Consumer Protection Act
47 U.S.C. § 227(b)(1)(C) and 47 C.F.R. § 64.1200(a)(4)**

26. Plaintiff hereby incorporates by reference each of the preceding paragraphs as though fully set forth herein.

27. The TCPA provides strict liability for sending fax advertisements in a manner that does not comply with the statute. Recipients of fax advertisements have a private right of action to seek an injunction or damages for violations of the TCPA and its implementing regulations. 47 U.S.C. § 227(b)(3).

28. The TCPA makes it unlawful to send any "unsolicited advertisement" via fax unless certain conditions are present. 47 U.S.C. § 227(b)(1)(C). "Unsolicited advertisement" is defined as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise." 47 U.S.C. § 227(a)(5).

29. Unsolicited faxes are illegal if the sender and recipient do not have an "established business relationship." 47 U.S.C. § 227(b)(1)(C)(i). "Established business relationship" is defined as "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the business or

residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.” 47 U.S.C. § 227(a)(2); 47 C.F.R. § 64.1200(f)(6).

30. Regardless of whether the sender and recipient have an established business relationship, and regardless of whether the fax is unsolicited, a faxed advertisement is illegal unless it includes an opt-out notice on its first page that complies with the TCPA’s requirements. *See* 47 U.S.C. § 227(b)(1)(C)(iii); 47 C.F.R. § 64.1200(a)(4)(iv). To comply with the law, an opt-out notice must (1) inform the recipient that the recipient may opt out of receiving future faxes by contacting the sender; (2) provide both a domestic telephone number and a facsimile machine number—one of which must be cost-free—that the recipient may contact to opt out of future faxes; and (3) inform the recipient that the sender’s failure to comply with an opt-out request within thirty days is a violation of law. *See* 47 U.S.C. § 227(b)(2)(D); 47 CFR § 64.1200(a)(4)(iii).

31. Defendants faxed unsolicited advertisements to Plaintiff that did not have compliant opt-out notices, in violation of 47 U.S.C. § 227(b)(1)(C) and 47 C.F.R. § 64.1200(a)(4).

32. Defendants knew or should have known (a) that Plaintiff had not given express invitation or permission for Defendants to fax advertisements about their services and products; (b) that Defendants faxes did not contain a compliant opt-out notice; and (c) that Exhibit A and Exhibit B are advertisements.

33. Defendants’ actions caused actual damage to Plaintiff and the Class Members. Defendants’ junk faxes caused Plaintiff and the Class Members to lose paper, toner, and ink consumed in the printing of Defendants’ faxes through Plaintiff’s and the Class Members’ fax machines. Defendants’ faxes cost Plaintiff and the Class Members time that otherwise would have been spent on Plaintiff’s and the Class Members’ business activities.

34. In addition to statutory damages (and the trebling thereof), Plaintiff and the Class are entitled to declaratory and injunctive relief under the TCPA.

REQUEST FOR RELIEF

WHEREFORE Plaintiff, individually and on behalf of all others similarly situated, respectfully requests that this Court:

- a) Determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure;
- b) Declare Defendants' conduct to be unlawful under the TCPA;
- c) Award \$500 in statutory damages under the TCPA for each violation, and if the Court determines the violations were knowing or willful then treble those damages;
- d) Enjoin Defendants from additional violations;
- e) Award Plaintiff and the Class their attorney's fees and costs;
- f) Grant such other legal and equitable relief as the Court may deem appropriate.

JURY DEMAND

Plaintiff and the Members of the Class hereby request a trial by jury.

DATED: October 19, 2016 Respectfully submitted,

By: /s/ Alan L. Cantor

Alan L. Cantor
SWARTZ & SWARTZ, P.C.
10 Marshall Street
Boston, MA 02108
Telephone: (617) 742-1900
Fax: (617) 367-7193

and

Randall K. Pulliam, Esq. (pro hac vice to be submitted)
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CARNEY BATES & PULLIAM, PLLC

519 West 7th Street

Little Rock, Arkansas 72201

Telephone: (501) 312-8500

Facsimile: (501) 312-8505



Alere Home Monitoring, Inc.
6465 National Drive
Livermore, CA 94550
Office: 1.877.262.4669
Fax: 1.925.606.6978
alerecoag.com

FAX

Dear Health Care Provider:

For over 15 years, Alere Home Monitoring has offered a variety of medical devices for Patient Self-Testing. Today, our Patient Self-testers use the Roche CoaguChek® XS meter – the same easy-to-use meter technology that healthcare professionals trust to give fast, accurate INR test results in office.

You are receiving this letter because a voluntary withdrawal has been issued for one of the home INR meters we offered in the past. Details regarding the voluntary withdrawal are available at www.inr-care.com. We are not aware of any patients that you have currently using the device subject to the voluntary withdrawal. Please contact us if this is not the case.

The Roche CoaguChek® XS is not impacted by the voluntary withdrawal and Alere Home Monitoring is not making any change to our services. Patients may continue to use the Roche CoaguChek® XS meter as prescribed by their physician.

Our home INR monitoring program makes managing warfarin **simple** and **convenient** for you and your patients, plus it is **proven** to improve results for patients on anticoagulation therapy.¹

Enrolling patients is easy: **Call us at 877.262.4669, option 4** to provide your Verbal Order and a representative will explain next steps. Alere Home Monitoring takes care of the rest. We will verify insurance coverage, advise the patient of any potential out-of-pocket cost, and arrange for their Face-2-Face® training on the meter.

Please call us today with any questions. Knowing now matters.™

Regards,

Alere Home Monitoring, Inc.

Confidential Notice: The information contained in this facsimile transmission is privileged and confidential, intended for the use of the addressee listed on this cover page. The authorized recipient of this information is prohibited from disclosing this information to any other party and is required to destroy the information after its stated need has been fulfilled. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or action taken in reliance on the contents of these documents is strictly prohibited (Federal Regulation 42CFR, Part 2 and 45CFR, Part 160).

1. Am J Manag Care. 2014;20(3):202-209.

CONTRACT ANNOUNCEMENT

Alere Home Monitoring, Inc.



We are pleased to announce **UnitedHealthcare** is now contracted with Alere Home Monitoring for the provision of INR home monitoring services.

UnitedHealthcare members who meet medical coverage criteria may qualify for PT/INR self-testing services of the Alere™ Home INR Monitoring program.

To refer a patient, please call **1.877.262.4669** or fax to **925.606.6978**.



Alere Home Monitoring, Inc.
PTINR.com®

Alere™ Home INR Monitoring Physician Form

1. PATIENT INFORMATION

First Name, M.I., Last Name _____ Date of Birth _____

Patient Phone Number(s) _____ / _____ Patient Email _____

Additional Patient information attached

Warfarin Start Date:
_____/_____/_____
Month Day Year

2. TARGET INR RANGE _____ TO _____

Alere Home Monitoring, Inc. will receive test results directly from patient and Fax ALL Results and Call for All Values <1.5 and >5.0 until Physician Office Preferences are on file. Patient will communicate INR test results based on Physician Office Preferences.

3. PHYSICIAN INFORMATION

Prescribing Physician Name _____ NPI # _____

Address (Prescribing Physician) _____

Group Practice or Hospital Name (Prescribing Physician) _____ Prescribing Office phone _____ Office fax _____

Managing Physician, Practice or Clinic Name _____ Managing Office phone _____ Office fax _____

INR MONITORING SYSTEM

Patient will be provided an INR Meter and strips approved for home use. Available meters do not have approval for pediatric use.

5. TEST FREQUENCY

- Weekly
*Medicare will cover up to 52 tests per year
- 2-4 Times Per Month

6. TRAINING PREFERENCE

- Face-2-Face® Training arranged by Alere Home Monitoring
- My staff will train the patient
(requires current Training Service Agreement)
- Physician confirms that this patient has received training on the prescribed monitor and home INR testing

Physician can determine Office Preferences for Monitor type, Reporting instructions and Training Preference with an Alere Home Monitoring Sales Representative.

4. DIAGNOSIS* (check up to four)

ICD-10-CM CODE	Description
<input type="checkbox"/> Z95.2	Presence of Prosthetic Heart Valve
<input type="checkbox"/> I48.2	Chronic atrial fibrillation
<input type="checkbox"/> I48.0	Paroxysmal atrial fibrillation
<input type="checkbox"/> I82.501	Chronic, unspecified VTE in deep veins of right lower extremity
<input type="checkbox"/> I82.502	Chronic, unspecified VTE in deep veins of left lower extremity
<input type="checkbox"/> I82.503	Chronic, unspecified VTE in deep veins lower extremity bilateral
<input type="checkbox"/> Z86.718	Personal History of other venous thrombosis and embolism
<input type="checkbox"/> I26.89	Other Pulmonary Embolism without acute cor pulmonale
<input type="checkbox"/> D68.51	Activated protein C resistance, primary
<input type="checkbox"/> Z79.01	Long term (current) use of anticoagulants

Other: _____

7. STATEMENT OF MEDICAL NECESSITY/ PRESCRIPTION

This form serves as an order for Home INR Monitoring equipment, supplies, and related services. Equipment and supplies may be provided by either Alere or its third party vendors. Incomplete items will revert to Physician Office Preferences.

I certify that it is medically necessary for the patient to self-test frequently in order to maintain a stable INR, optimize its therapeutic effects and avoid the complications identified on warfarin's product labeling.

ITEMS PRESCRIBED: One (1) Home INR Monitoring System, and related testing materials (i.e. Test Strips and Lancets).

DURATION: Patient shall continue Home INR Monitoring as prescribed for as long as he/she remains capable and compliant with my instructions, but in no case for less than one year, unless otherwise noted. Other:

Medical Necessity: I further certify that the patient's medical record contains supporting documentation to substantiate this medical need. I certify that this patient has been on warfarin therapy for >90 days. I certify that the patient will undergo a training program which include the Face-2-Face® training protocols to ensure that he/she is capable of self-testing. The patient or their caregiver has no condition that makes self-testing unsafe (e.g. cognitive disorders). I agree to notify Alere if the patient or their caregiver develops a condition that makes self-testing unsafe.

8. PHYSICIAN SIGNATURE: (In compliance with CMS Pub. 100-06, Transmittal 327, Section 8098.3. Stamped Signatures are not acceptable.)

Date _____

FAX COMPLETED FORM AND PATIENT INFORMATION TO 1.925.606.6978

Alere Home Monitoring, Inc. • 6465 National Drive • Livermore, CA 94550 • Phone 1.877.262.4669 • ptinr.com
Submit your prescription electronically with e-Prescribe at alerecoag.com



Knowing now matters.™

A/C # _____

UH1606

*Listed codes from CMS Manual System PUB 100-20 Medicare Claims Processing. Coverage determination is based on specific health plan guidelines.
© 2016 Alere. All rights reserved. The Alere Logo, Alere, Face-2-Face and Knowing now matters are trademarks of the Alere group of companies.
All trademarks referenced are trademarks of their respective owners. PN:1611091-08 3/16

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) ARcare, Inc. v. Alere, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.

II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.

III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Alan L. Cantor, Esq.

ADDRESS Swartz & Swartz, P.C., 10 Marshall Street, Boston, MA 02108

TELEPHONE NO. 617-742-1900

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

ARcare, Inc.

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Swartz & Swartz 617-742-1900 10 Marshall Street Boston, MA 02108

DEFENDANTS

Alere, Inc. and Alere Home Monitoring, Inc.

County of Residence of First Listed Defendant Middlesex, MA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and codes.

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, 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): 47 U.S.C. Section 227

Brief description of cause: Violation of the Telephone Consumer Protection Act

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 10/18/2016 SIGNATURE OF ATTORNEY OF RECORD /s Alan L. Cantor

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.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [TCPA Class Action Filed Against Alere, Inc.](#)
