

1 David E. Bower SBN 119546
2 MONTEVERDE & ASSOCIATES PC
3 600 Corporate Pointe, Suite 1170
4 Culver City, CA 90230
5 Telephone: (213) 446-6652
6 Facsimile: (212) 601-2610

7 *Attorneys for Plaintiffs*

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 WILLIAM BAKER, Individually and on Behalf
11 of All Others Similarly Situated,

12 Plaintiff,

13 vs.

14 MIDLAND CREDIT MANAGEMENT, INC.,
15 MIDLAND FUNDING, LLC, and ENCORE
16 CAPITAL GROUP, INC.

17 Defendants.

Case No.: **'16CV2768 H JLB**

CLASS ACTION COMPLAINT

Jury Trial Demanded

18 Plaintiff William Baker (“Plaintiff”), individually and on behalf of all others similarly
19 situated, alleges on personal knowledge with respect to himself, and upon information and belief
20 based upon, *inter alia*, the investigation of his counsel as to all other allegations herein, as follows:

21 **NATURE OF ACTION**

22 1. Plaintiff brings this action for damages, and other legal and equitable remedies,
23 resulting from the illegal actions of defendants, Midland Credit Management, Inc., Midland
24 Funding, LLC and Encore Capital Group, Inc. (collectively, “Defendants”), in contacting Plaintiff
25 and Class members on their cellular telephones without their prior express consent within the
26 meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (hereinafter referred to
27 as the “TCPA”).

1 9. MCM is engaged in the business of a collection agency, using the mails and
2 telephone to collect charged off consumer debts originally owed to others. It is a subsidiary of
3 Defendant Encore Capital Group, Inc. (“Encore”).

4 10. MCM is engaged in the business of collecting debts owed to others and incurred for
5 personal, family or household purposes. MCM is a debt collector as defined in the Fair Debt
6 Collection Practices Act, 15 U.S.C. § 1692a (“FDCPA”).

7 11. Defendant Midland Funding LLC, (“Midland Funding”) is a Delaware limited
8 liability company with its principal place of business located at 8875 Aero Drive, Suite 200, San
9 Diego, CA, 92123.

10 12. Midland Funding is engaged in the business of taking title to charged-off consumer
11 debts, including credit card, auto deficiency and telecom receivables purchased from national
12 financial institutions, major retail credit corporations, telecom companies and resellers of such
13 portfolios. (Encore’s SEC filing on form 10-Q, Aug. 8, 2008).

14 13. Midland Funding’s affiliate MCM attempts to collect the alleged debts via
15 correspondence and telephone calls. Midland Funding also frequently files lawsuits to collect the
16 debts. Since 2006, Midland Funding has filed over 3,100 lawsuits in Waukesha County, Wisconsin,
17 which has a population of approximately 400,000.

18 14. MCM and Midland Funding Corporation are under common ownership.

19 15. Both are direct or indirect subsidiaries of Encore Capital Group, Inc., a publicly
20 traded Delaware corporation, with offices at 8875 Aero Drive, Suite 200, San Diego, CA 92123.

21 16. Encore raises money in public securities markets to acquire the debts which are
22 transferred to Midland Funding or other similar entities and collected by MCM. Encore also is
23 responsible for the overall collection strategies used to collect the accounts.

24 17. Encore’s webpage states:

25 If you are one of our consumers, you probably know us as Midland Credit
26 Management (or MCM). Midland Credit Management, a subsidiary of Encore
Capital Group, works with consumers to resolve past-due obligations. MCM services
accounts after the originating creditor has charged-off the account.

27 ...

1 If you have heard from MCM, your obligation to a lender is now your obligation to
2 Midland Funding, LLC. Please give us a call at 1-877-240-2377 or visit online to
learn about your options or discuss your account.

3 Please understand that Midland Credit Management is a debt collector. Midland
4 Credit Management's communications with consumers are an attempt to collect a
debt. Any information we obtain will be used for that purpose.

5 18. Encore is one of the largest debt buyers and debt collectors in the industry, with
6 consumer debt portfolios in the hundreds of millions of dollars. Encore's 2013 10-K filing states
7 that Encore has "one of the industry's largest financially distressed consumer databases." (Form 10-
8 K, 12/31/13, p. 2).

9 19. Encore purchased similar amounts of U.S. consumer credit card accounts in 2012
10 and 2011 and has purchased similar amounts each year from 2013 to the present.

11 20. Encore describes itself as "a leading accounts receivable management firm" (Encore
12 Capital Group Inc., Exhibit 99.1, filed with the SEC on March 15, 2006) and a "purchaser and
13 manager of charged-off consumer receivables portfolios" (Encore Capital Group Inc., Form 424B3,
14 filed March 1, 2011, prospectus summary).

15 21. On March 10, 2005, Encore stated to public investors that it is a "50 year old
16 purchaser and manager of consumer receivables portfolios" (Form 8-K filed by Encore with the
17 SEC on March 10, 2005).

18 22. Encore further stated: "From inception through December 31, 2010, we have
19 invested approximately \$1.8 billion to acquire 33.0 million consumer accounts with a face value of
20 approximately \$54.7 billion." (Form 10-K filed by Encore with the SEC for the year ending
21 December 31, 2010, p. 1).

22 23. Encore states that it is responsible for developing collection strategies. Its Form 10-
23 K for the year ending December 31, 2010 states: "We expand and build upon the insight developed
24 during our purchase process when developing our account collection strategies for portfolios we
25 have acquired. Our proprietary consumer-level collectability analysis is the primary determinant of
26 whether an account is actively serviced post-purchase. Throughout our ownership period, we
27
28

1 periodically refine this analysis to help determine the most effective collection strategy to pursue for
2 each account." (*Id.*, page 4).

3 24. Among these strategies is outbound telephone calls. "During 2010, we called
4 approximately 8.6 million unique consumers, of which 1.8 million, or 21%, made contact with us."
5 (Encore Capital Group, Inc. report on SEC Form 10-K for the year ending December 31, 2010,
6 original page 4).

7 25. Similarly, in its Prospectus filed with the SEC on March 1, 2011 ("Prospectus
8 Summary"), Encore Capital Group, Inc., stated:

9 We are a systems-driven purchaser and manager of charged-off consumer receivable
10 portfolios . . . We acquire receivable portfolios at deep discounts from their face
11 values using our proprietary valuation process that is based upon an analysis of the
12 individual consumer attributes of the underlying accounts. Based upon our ongoing
13 analysis of these accounts, we employ a dynamic mix of collection strategies to
14 maximize our return on investment. . . . Acquisitions of receivable portfolios are
15 financed from operating cash flows and borrowings from third parties. . . .

16 We have been in the collection business for 56 years and started purchasing
17 portfolios for our own account approximately 19 years ago. . . .

18 We have established certain relationships with credit card issuers, other lenders and
19 resellers that allow us to purchase portfolios directly through negotiated transactions,
20 and we participate in the auction-style purchase processes that typify our industry. In
21 addition, we enter into "forward flow" arrangements in which we agree to buy
22 receivables that meet agreed upon parameters over the course of the contract term.

23 We evaluate each portfolio for purchase using the proprietary valuation and
24 underwriting processes developed by our in-house team of statisticians. Unlike many
25 of our competitors, which we believe primarily base their purchase decisions on
26 numerous aggregated portfolio-level factors, including the originator, the type of
27 receivables to be purchased, or the number of collection agencies the accounts have
28 been placed with previously, we base our purchase decisions primarily on our
analysis of the specific accounts included in a portfolio. Based upon this analysis, we
determine a value for each account, which we aggregate to produce a valuation of the
entire portfolio. We believe this capability allows us to perform more accurate
valuations of receivable portfolios. We have successfully applied this methodology
to receivables across multiple asset classes.

After we purchase a portfolio, we continuously refine our analysis of the accounts to
determine the best strategy for collection. As with our purchase decisions, our
collection strategies are based on account level criteria. Our collection strategies
include: . . .

* outbound calling, driven by proprietary, predictive software, by our own collection
workforce located at our three domestic call centers and our international call center
in India;

1 26. According to Encore’s 2013 Form 10-K, Encore *spent* more than \$525 million to
2 purchase consumer credit card accounts in the U.S. The face value of those accounts is in the tens of
3 billions of dollars.

4 27. Moreover, Encore acquires portfolios for an average of approximately four cents on
5 the dollar.

6 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

7 **(TCPA), 47 U.S.C. § 227**

8 28. In 1991, Congress enacted the TCPA, in response to a growing number of consumer
9 complaints regarding certain telemarketing practices.

10 29. The TCPA regulates, among other things, the use of automated telephone equipment,
11 or “autodialers.” Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of
12 autodialers to make any call to a wireless number in the absence of an emergency or the prior
13 express consent of the called party.

14 30. According to findings by the FCC, the agency Congress vested with authority to
15 issue regulations implementing the TCPA, such calls are prohibited because, as Congress found,
16 automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live
17 solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that
18 wireless customers are charged for incoming calls whether they pay in advance or after the minutes
19 are used.

20 31. On February 15, 2012, the FCC released a Declaratory Ruling wherein it clarified
21 that a party must obtain *prior express written consent* from the recipient prior to making automated
22 telemarketing calls to the recipient’s cellular telephone. *In the Matter of Rules and Regulations*
23 *Implementing the Telephone Consumer Protection Act of 1991* (“2012 FCC Declaratory Ruling”),
24 27 F.C.C.R. 1830, 27 FCC Rcd. 1830, 55 Communications Reg. (P&F) 356, 2012 WL 507959 (Feb,
25 15, 2012), at ¶ 2.

26 32. Upon information and belief, MCM knew that Plaintiff’s cellular phone number was,
27 in fact, assigned to Plaintiff. Even if it did not know, after MCM’s first call to Plaintiff’s wireless
28

1 phone, MCM had actual or constructive knowledge that Plaintiff's wireless telephone number was
2 assigned to Plaintiff and not another person.

3 33. The TCPA Omnibus Declaratory Ruling and Order, FCC 15-72 at 40, states:

4 We clarify, however, that callers who make calls without knowledge
5 of reassignment and with a reasonable basis to believe that they have
6 valid consent to make the call should be able to initiate one call after
7 reassignment as an additional opportunity to gain actual or
8 constructive knowledge of the reassignment and cease future calls to
the new subscriber. If this one additional call does not yield actual
knowledge of reassignment, we deem the caller to have constructive
knowledge of such.

9 34. The Court is bound by all of the FCC's final orders relating to the TCPA.
10 *Balschmiter v. TD Auto Fin. LLC*, 303 F.R.D. 508, footnote 4 (E.D. Wis. 2014) citing *CE Design,*
11 *Ltd. v. Prism Bus. Media, Inc.*, 606 F.3d 443, 446 (7th Cir. 2010) (holding that under the Hobbs
12 Act, the FCC's TCPA orders are binding); *Media, Inc.*, 606 F.3d 443, 446 (7th Cir. 2010) (holding
13 that under the Hobbs Act, the FCC's TCPA orders are binding).

14 **FACTUAL ALLEGATIONS**

15 35. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47
16 U.S.C. § 153(39).

17 36. Defendants sought to collect a debt that arose from a transaction incurred allegedly
18 for personal, family or household purposes; specifically, a consumer credit card.

19 37. Plaintiff only had personal, non-business credit card accounts. Plaintiff opened and
20 used credit cards for personal use, namely, purchases of household goods and services.

21 38. Upon information and belief, the original creditor sold Plaintiff's account to MCM's
22 related company, Midland Funding, after the account was in default.

23 39. MCM uses at least one "automatic telephone dialing system" which is defined as
24 "equipment which has the capacity--(A) to store or produce telephone numbers to be called, using a
25 random or sequential number generator; and (B) to dial such numbers." 47 U.S.C. § 227(a)(1).

26 40. MCM uses at least one "Predictive Dialer" as defined by the Federal Commutation
27 Commission ("FCC").

1 41. On information and belief, MCM's Predictive Dialer is capable of dialing telephone
2 numbers without human intervention.

3 42. MCM's Predictive Dialer is capable of delivering an automated prerecorded message.

4 43. Upon a phone call being answered by a live person, MCM's Predictive Dialer has the
5 capability of transferring that phone call to a live operator.

6 44. Plaintiff has a cellular telephone assigned the telephone number XXX-XXX-9932.
7 The first six digits of Plaintiff's cellular telephone number are redacted for privacy considerations.

8 45. Plaintiff is the regular user of the cellular telephone and it is generally carried on his
9 person.

10 46. Plaintiff did not provide his cellular phone number to the original creditor of the debt
11 MCM was attempting to collect – Citibank, N.A.

12 47. Plaintiff obtained the new telephone number, ending in 9932 after his Sears-branded
13 Citibank credit card account was charged off and sold to Midland Funding.

14 48. Plaintiff never provided his new cellular telephone number, ending in 9942, to
15 MCM, Midland Funding, Encore or to the original creditor or any agent or employee of any of these
16 entities.

17 49. Plaintiff never provided MCM with express consent to receive prerecorded or
18 automated calls by Defendants on his cellular telephone.

19 50. Plaintiff did not provide his cellular telephone number to Sears or Citibank “during
20 the transaction that resulted in the debt owed” because Plaintiff had a different telephone number at
21 the time he applied for the credit card.

22 51. Beginning in or around July 2016, MCM began calling Plaintiff's cellular telephone
23 in connection with an alleged debt owed to Defendants. These calls were made to Plaintiff's cellular
24 telephone number, and consisted of repeated autodialed and/or prerecorded calls.

25 52. MCM's calls were placed from 800-201-8370 and 877-209-4493.

26 53. Defendant MCM called Plaintiff's cellular phone at the following dates and times,
27 attempting to collect an alleged debt allegedly owed to Midland Funding:

1 July 2, 2016, 8:10 AM
2 July 3, 2016, 8:07 AM
3 July 5, 2016, 8:20 AM
4 July 6, 2016, 9:38 AM
5 September 8, 2016, 8:32 AM
6 September 9, 2016, 10:07 AM

7 54. Each Defendant is, and at all times mentioned herein was, a “person”, as defined by
8 47 U.S.C. § 153(39) (“The term ‘person’ includes an individual, partnership, association, joint-stock
9 company, trust, or corporation.”).

10 55. All telephone contact by Defendants to Plaintiff on his cellular telephone occurred
11 via an “automatic telephone dialing system,” as defined by 47 U.S.C. § 227(a)(1), and/or used “an
12 artificial or prerecorded voice” as described in 47 U.S.C. § 227(b)(1)(A).

13 56. The telephone number that Defendants used to contact Plaintiff, with an “artificial or
14 prerecorded voice” and/or made by an “automatic telephone dialing system,” was assigned to a
15 cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

16 57. On information and belief, each phone call placed to Plaintiff by MCM was with the
17 use of a Predictive Dialer, without a human hand manually dialing the telephone number.

18 58. Plaintiff did not provide “prior express consent” allowing Defendants to place
19 telephone calls to Plaintiff’s cellular phone utilizing an “artificial or prerecorded voice” or placed
20 by an “automatic telephone dialing system,” within the meaning of 47 U.S.C. § 227(b)(1)(A).

21 59. Upon information and belief, MCM obtained Plaintiff’s cellular telephone number
22 through skip-tracing.

23 60. Defendants’ telephone calls to Plaintiff’s cellular phone were not “for emergency
24 purposes” as described in 47 U.S.C. § 227(b)(1)(A).

25 61. Defendants’ telephone calls to Plaintiff’s cellular phone utilizing an “artificial or
26 prerecorded voice” or placed by an “automatic telephone dialing system” for non-emergency
27 purposes and in the absence of Plaintiff’s prior express consent violated 47 U.S.C. § 227(b)(1)(A).

1 All persons within the United States who, between September 1, 2014 and the date that this
2 class is certified, inclusive, received a non-emergency telephone call from or on behalf of
3 MCM to a cellular telephone through the use of an automatic telephone dialing system or an
4 artificial or prerecorded voice, and who either did not provide their cellular telephone
5 number to the alleged creditor or who revoked prior express consent to contact the person's
6 cellular phone.

7 Plaintiff represents, and is a member of, the Class. Excluded from the Class are Defendant and any
8 entities in which Defendant has a controlling interest; Defendants' agents and employees; any Judge
9 to whom this action is assigned and any member of such Judge's staff and immediate family.

10 79. Plaintiff does not know the exact number of members in the Class, but Plaintiff
11 reasonably believes that Class members number at minimum in the hundreds for each Class.

12 80. Plaintiff and all members of each Class have been harmed by the acts of Defendants.

13 81. This Class Action Complaint seeks injunctive relief and money damages.

14 82. The joinder of all Class members is impracticable due to the size and relatively
15 modest value of each individual claim. The disposition of the claims in a class action will provide
16 substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits. The Class
17 can be identified easily through records maintained by Defendants and/or its agents.

18 83. There are well defined, nearly identical, questions of law and fact affecting all
19 parties. The questions of law and fact involving the Class claims predominate over questions which
20 may affect individual Class members. Those common questions of law and fact include, but are not
21 limited to, the following:

22 a. Whether Defendants and/or their agents made non-emergency calls to Plaintiff's and
23 Class members' cellular telephones using an automatic telephone dialing system and/or an artificial
24 or prerecorded voice;

25 b. Whether Defendants and/or their agents utilized "skip tracing" methods to locate the
26 cellular telephone numbers of non-customers;

27 c. Whether Defendants can meet their burden of showing they obtained prior express
28 consent (*i.e.*, consent that is clearly and unmistakably stated), to make such calls;

d. Whether Defendants' conduct was knowing and/or willful;

1 e. Whether Defendants sent Plaintiff and other members of each Class an initial
2 collection letter containing the validation notice required by 15 U.S.C. § 1692g, within five days
3 after the first telephone communication from MCM.

4 f. Whether Defendants are liable for damages, and the amount of such damages;

5 g. Whether Defendants should be enjoined from engaging in such conduct in the future;

6 and

7 h. Plaintiff asserts claims that are typical of each Class member. Plaintiff will fairly and
8 adequately represent and protect the interests of the Class, and has no interests which are
9 antagonistic to any member of the Class.

10 84. Plaintiff has retained counsel experienced in handling class action claims involving
11 violations of federal and state consumer protection statutes, including claims under the TCPA.

12 85. A class action is the superior method for the fair and efficient adjudication of this
13 controversy. Class-wide relief is essential to compel Defendants to comply with the TCPA. The
14 interest of Class members in individually controlling the prosecution of separate claims against
15 Defendants is small because the statutory damages in an individual action for violation of the TCPA
16 are small. Management of these claims is likely to present significantly fewer difficulties than are
17 presented in many class claims because the calls at issue are all automated and the Class members,
18 by definition, did not provide the prior express consent required under the statute to authorize calls
19 to their cellular telephones.

20 86. Defendants have acted on grounds generally applicable to the Class, thereby making
21 final injunctive relief and corresponding declaratory relief with respect to the Class as a whole
22 appropriate. Moreover, on information and belief, Plaintiff alleges that the TCPA violations
23 complained of herein are substantially likely to continue in the future if an injunction is not entered.

24 **JURY DEMAND**

25 87. Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff and all Class members the following relief against Defendants:

A. Injunctive relief prohibiting such violations of the TCPA by Defendants in the future;

B. As a result of Defendants' willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member treble damages, as provided by statute, of up to \$1,500.00 for each and every call that violated the TCPA;

C. As a result of Defendants' violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages for each and every call that violated the TCPA;

D. An award of attorneys' fees and costs to counsel for Plaintiff and the Class;

E. An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing appropriate Classes and any Subclasses the Court deems appropriate, finding that Plaintiff is a proper representative of the Classes, and appointing the lawyers and law firms representing Plaintiff as counsel for the Classes;

F. Such other relief as the Court deems just and proper.

Dated: November 9, 2016

Respectfully submitted,

<p>Juan E. Monteverde Miles D. Schreiner MONTEVERDE & ASSOCIATES PC The Empire State Building 350 Fifth Avenue, 59th Floor New York, NY 10018 Telephone: (212) 971-1341 Facsimile: (212) 601-2610 jmonteverde@monteverdelaw.com mschreiner@monteverdelaw.com</p> <p><i>of Counsel for Plaintiff</i></p>	<p>By: <u>/s/ David E Bower</u> David E. Bower MONTEVERDE & ASSOCIATES PC 600 Corporate Pointe, Suite 1170 Culver City, CA 90230 Tel: (310) 446-6652 Fax: (212) 601-2610 Email: dbower@monteverdelaw.com</p> <p>Counsel for plaintiffs</p>
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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

William Baker, Individually and on Behalf of All Others Similarly Situated

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

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

David E Bower SBN 119546
Monteverde & Associates PC 600 Corporate Pointe # 1170
Culver City, CA 90230 213-446-6652

DEFENDANTS

Midland Credit Management, Inc., Midland Funding LLC and Encore Capital Group, Inc.

County of Residence of First Listed Defendant San Diego (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'16CV2768 H JLB

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

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

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, 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
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 USC § 227 et seq.
Brief description of cause: Violation of 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 Michael M. Anello DOCKET NUMBER 3:11-md-02286

DATE 11/09/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ David E. Bower

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Debt Collection Companies Dinged with TCPA Class Action](#)
