# IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

ROBERT BERG, Individually and On Behalf of All Others Similarly Situated,	)	
•	)	
Plaintiff,	)	Case No3:17-CV-582-DJH
V.	)	
	)	JURY TRIAL DEMANDED
PHARMERICA CORPORATION,	)	
GEOFFREY G. MEYERS, GREGORY S.	)	CLASS ACTION
WEISHAR, FRANK E. COLLINS, W.	)	
ROBERT DAHL, JR., MARJORIE W.	)	
DORR, BOB OAKLEY, PATRICK G.	)	
LEPORE, PHOENIX PARENT HOLDINGS	)	
INC., and PHOENIX MERGER SUB INC.,	)	
	)	
Defendants.	)	

### **COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934**

Plaintiff, by his undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

### **NATURE OF THE ACTION**

- 1. This action stems from a proposed transaction announced on August 2, 2017 (the "Proposed Transaction"), pursuant to which PharMerica Corporation ("PharMerica" or the "Company") will be acquired by Phoenix Parent Holdings Inc. ("Parent") and Phoenix Merger Sub Inc. ("Merger Sub," and together with Parent, "Phoenix"), which are affiliates of private equity firm Kohlberg Kravis Roberts & Co. L.P. ("KKR"). At the closing of the Proposed Transaction, Walgreens Boots Alliance, Inc. ("WBA") will acquire a minority ownership interest in Parent.
  - 2. On August 1, 2017, PharMerica's Board of Directors (the "Board" or "Individual

Defendants") caused the Company to enter into an agreement and plan of merger (the "Merger Agreement") with Phoenix. Pursuant to the terms of the Merger Agreement, shareholders of PharMerica will receive \$29.25 in cash for each share of PharMerica they own.

- 3. On September 6, 2017, defendants filed a Preliminary Proxy Statement (the "Proxy Statement") with the United States Securities and Exchange Commission ("SEC") in connection with the Proposed Transaction.
- 4. The Proxy Statement omits material information with respect to the Proposed Transaction, which renders the Proxy Statement false and misleading. Accordingly, plaintiff alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") in connection with the Proxy Statement.

### **JURISDICTION AND VENUE**

- 5. This Court has jurisdiction over the claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.
- 6. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.
- 7. Venue is proper under 28 U.S.C. § 1391(b) because a substantial portion of the transactions and wrongs complained of herein occurred in this District.

### **PARTIES**

8. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of PharMerica common stock.

- 9. Defendant PharMerica is a Delaware corporation and maintains its headquarters at 1901 Campus Place, Louisville, Kentucky 40299. PharMerica's common stock is traded on the NYSE under the ticker symbol "PMC."
- 10. Defendant Geoffrey G. Meyers ("Meyers") has served as a director of PharMerica since 2009, and has served as Chairman of the Board of the Company since 2011.
- 11. Defendant Gregory S. Weishar ("Weishar") is a director and has served as Chief Executive Officer ("CEO") of PharMerica since 2007.
- 12. Defendant Frank E. Collins ("Collins") has served as a director of PharMerica since 2007.
- 13. Defendant W. Robert Dahl, Jr. ("Dahl") has served as a director of PharMerica since 2008.
- 14. Defendant Marjorie W. Dorr ("Dorr") has served as a director of PharMerica since 2009.
- 15. Defendant Bob Oakley ("Oakley") has served as a director of PharMerica since 2008.
- 16. Defendant Patrick G. LePore ("LePore") has served as a director of PharMerica since 2013.
- 17. The defendants identified in paragraphs 10 through 16 are collectively referred to herein as the "Individual Defendants."
  - 18. Defendant Parent is Delaware corporation and a party to the Merger Agreement.
- 19. Defendant Merger Sub is a Delaware corporation, a wholly-owned subsidiary of Parent, and a party to the Merger Agreement.

#### **CLASS ACTION ALLEGATIONS**

- 20. Plaintiff brings this action as a class action on behalf of himself and the other public stockholders of PharMerica (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.
  - 21. This action is properly maintainable as a class action.
- 22. The Class is so numerous that joinder of all members is impracticable. As of August 29, 2017, there were 31,118,849 shares of PharMerica common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.
- 23. Questions of law and fact are common to the Class, including, among others: (i) whether defendants violated the 1934 Act; and (ii) whether defendants will irreparably harm plaintiff and the other members of the Class if defendants' conduct complained of herein continues.
- 24. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.
- 25. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

26. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

### **SUBSTANTIVE ALLEGATIONS**

### Background of the Company

27. Formed in 2006, PharMerica is an institutional pharmacy services company that services healthcare facilities, provides pharmacy management services to hospitals, provides specialty infusion services to patients outside a hospital setting, and offers the only national oncology pharmacy in the United States. PharMerica is the second largest institutional pharmacy services company in the United States based on revenues and customer licensed beds under contract, operating 99 institutional pharmacies, 19 specialty infusion centers, and 4 specialty oncology pharmacies in 45 states. The Company's customers are typically institutional healthcare providers, such as skilled nursing facilities, assisted living facilities, hospitals, individuals receiving in-home care, and patients with cancer.

### The Proxy Statement Omits Material Information, Rendering It False and Misleading

- 28. Defendants filed the Proxy Statement with the SEC in connection with the Proposed Transaction.
- 29. The Proxy Statement omits material information with respect to the Proposed Transaction, which renders the Proxy Statement false and misleading.
- 30. First, the Proxy Statement omits material information regarding PharMerica's financial projections and the valuation analyses performed by the Company's financial advisors, UBS Securities LLC ("UBS") and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("BofA Merrill Lynch").

- 31. The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion. Moreover, when a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.
- 32. With respect to PharMerica's financial projections, the Proxy Statement discloses five different sets of projections (referred to as the "2015 Projections," "April 2016 Projections," "September 2016 Projections," "April 2017 Projections," and "July 2017 Projections") that generally include projections of the Company's expected revenue, gross profit, adjusted EBITDA, and adjusted earnings per share. The Proxy Statement, however, fails to provide stockholders with the line item projections for the non-GAAP projections of adjusted EBITDA and adjusted earnings per share, or otherwise reconcile the non-GAAP projections to the most comparable GAAP measures. Indeed, defendants admit in the Proxy Statement that "certain metrics included in the Projections are non-GAAP measures, and the Projections do not include footnote disclosures as may be required by GAAP." To avoid misleading stockholders with non-GAAP financial measures in business combinations such as the Proposed Transaction, publicly traded companies must provide a reconciliation of the differences between the non-GAAP financial measures with the most comparable financial measures calculated and presented in accordance with GAAP.
- 33. Further, the Proxy Statement fails to disclose important projections that were used by UBS and BofA Merrill Lynch in their respective Discounted Cash Flow Analyses of

PharMerica. Specifically, the Proxy Statement generally states that each of UBS and BofA Merrill Lynch performed their analyses by using the Company's unlevered free cash flows that PharMerica was forecasted to generate from July 1, 2017 through December 31, 2021. The Proxy Statement, however, fails to, but must, disclose to stockholders the Company's projected unlevered free cash flows through year 2021, which were a key input in each of the financial advisors' valuation analyses.

- 34. With respect to UBS's Discounted Cash Flow Analysis, the Proxy Statement fails to disclose: (i) the standalone, unlevered, free cash flows that PharMerica was forecasted to generate from July 1, 2017 through December 31, 2021, as used by UBS in its analysis, as well as the corresponding definition and constituent line items; (ii) whether UBS's analysis accounted for any potential synergies or net operating loss carryforwards, and if not, the reason for failing to do so; (iii) the inputs and assumptions underlying the discount rate range of 8% to 9%; and (iv) the perpetuity growth rates implied from UBS's analysis.
- 35. With respect to UBS's Selected Public Companies Analysis, the Proxy Statement fails to disclose the individual multiples and financial metrics for each of the selected companies observed by UBS in its analysis.
- 36. With respect to UBS's Selected Transactions Analysis, the Proxy Statement fails to disclose the individual multiples and financial metrics for each of the selected transactions observed by UBS in its analysis.
- 37. With respect to BofA Merrill Lynch's Discounted Cash Flow Analysis, the Proxy Statement fails to disclose: (i) the standalone unlevered, after-tax free cash flows that the Company was forecasted to generate from the third fiscal quarter of 2017 through calendar year 2021, as used by BofA Merrill Lynch in its analysis, as well as the corresponding definition

and constituent line items; (ii) the inputs and assumptions underlying the discount rate range of 7.5% to 8.5%; and (iv) the perpetuity growth rates implied from BofA Merrill Lynch's analysis.

- 38. The omission of this material information renders the Proxy Statement false and misleading, including, *inter alia*, the following sections of the Proxy Statement: (i) "Opinions of the Company's Financial Advisors;" and (ii) "Projected Financial Information."
- 39. Second, the Proxy Statement omits material information regarding potential conflicts of interest of the Company's officers.
- 40. The Proxy Statement states that, "[p]rior to and since the announcement of the merger, KKR and WBA have had discussions with certain executive officers of the Company regarding potential post-closing employment and retention arrangements, and may enter into definitive agreements with them regarding their employment and related compensation and benefits following the closing of the merger." The Proxy Statement, however, fails to disclose the timing and nature of all communications regarding future employment of PharMerica's officers, including who participated in all such communications.
- 41. Communications regarding post-transaction employment during the negotiation of the underlying transaction must be disclosed to stockholders. This information is necessary for stockholders to understand potential conflicts of interest of management and the Board, as that information provides illumination concerning motivations that would prevent fiduciaries from acting solely in the best interests of the Company's stockholders.
- 42. The omission of this material information renders the Proxy Statement false and misleading, including, *inter alia*, the following sections of the Proxy Statement: (i) "Background of the Merger;" and (ii) "Interests of the Company's Directors and Executive Officers in the Merger."

- 43. Third, the Proxy Statement omits material information regarding potential conflicts of interest of UBS.
- 44. Specifically, the Proxy Statement indicates that UBS "had investment banking relationships with PharMerica" prior to the Proposed Transaction, but the Proxy Statement fails to disclose the timing and nature of the services that UBS has provided to the Company, as well as the compensation that UBS has earned from PharMerica in the past.
- 45. Full disclosure of investment banker compensation and all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives.
- 46. The omission of this material information renders the Proxy Statement false and misleading, including, *inter alia*, the following sections of the Proxy Statement: (i) "Background of the Merger;" and (ii) "Opinions of the Company's Financial Advisors."
- 47. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to PharMerica's stockholders.

#### COUNT I

# Claim for Violation of Section 14(a) of the 1934 Act and Rule 14a-9 Promulgated Thereunder Against the Individual Defendants and PharMerica

- 48. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.
- 49. The Individual Defendants disseminated the false and misleading Proxy Statement, which contained statements that, in violation of Section 14(a) of the 1934 Act and Rule 14a-9, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not materially false or misleading. PharMerica is liable as the issuer of these statements.
  - 50. The Proxy Statement was prepared, reviewed, and/or disseminated by the

Individual Defendants. By virtue of their positions within the Company, the Individual Defendants were aware of this information and their duty to disclose this information in the Proxy Statement.

- 51. The Individual Defendants were at least negligent in filing the Proxy Statement with these materially false and misleading statements.
- 52. The omissions and false and misleading statements in the Proxy Statement are material in that a reasonable stockholder will consider them important in deciding how to vote on the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available in the Proxy Statement and in other information reasonably available to stockholders.
- 53. The Proxy Statement is an essential link in causing plaintiff and the Company's stockholders to approve the Proposed Transaction.
- 54. By reason of the foregoing, defendants violated Section 14(a) of the 1934 Act and Rule 14a-9 promulgated thereunder.
- 55. Because of the false and misleading statements in the Proxy Statement, plaintiff and the Class are threatened with irreparable harm.

### **COUNT II**

## Claim for Violation of Section 20(a) of the 1934 Act Against the Individual Defendants and Phoenix

- 56. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.
- 57. The Individual Defendants and Phoenix acted as controlling persons of PharMerica within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as officers and/or directors of PharMerica and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the

Proxy Statement, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading.

- 58. Each of the Individual Defendants and Phoenix was provided with or had unlimited access to copies of the Proxy Statement alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.
- 59. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Proxy Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly in the making of the Proxy Statement.
- 60. Phoenix also had direct supervisory control over the composition of the Proxy Statement and the information disclosed therein, as well as the information that was omitted and/or misrepresented in the Proxy Statement.
- 61. By virtue of the foregoing, the Individual Defendants and Phoenix violated Section 20(a) of the 1934 Act.
- 62. As set forth above, the Individual Defendants and Phoenix had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the 1934 Act. As a direct and proximate result of defendants' conduct, plaintiff and the Class are

threatened with irreparable harm.

**PRAYER FOR RELIEF** 

**WHEREFORE**, plaintiff prays for judgment and relief as follows:

A. Preliminarily and permanently enjoining defendants and all persons acting in

concert with them from proceeding with, consummating, or closing the Proposed Transaction;

B. In the event defendants consummate the Proposed Transaction, rescinding it and

setting it aside or awarding rescissory damages;

C. Directing the Individual Defendants to disseminate a Proxy Statement that does

not contain any untrue statements of material fact and that states all material facts required in it

or necessary to make the statements contained therein not misleading;

D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the 1934 Act, as

well as Rule 14a-9 promulgated thereunder;

E. Awarding plaintiff the costs of this action, including reasonable allowance for

plaintiff's attorneys' and experts' fees; and

F. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff respectfully requests a trial by jury on all issues so triable.

Dated: September 20, 2017

**GRAY & WHITE LAW** 

By: /s/ Jacob Levy

Mark K. Gray

Jacob E. Levy GRAY & WHITE

713 E. Market St. #200

Louisville, KY 40202

(502) 805-1800

Attorneys for Plaintiff

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## **OF COUNSEL: (Pro Hac Pending)**

# RIGRODSKY & LONG, P.A.

Brian D. Long Gina M. Serra 2 Righter Parkway, Suite 120 Wilmington, DE 19803 (302) 295-5310

# RM LAW, P.C.

Richard A. Maniskas 1055 Westlakes Drive, Suite 300 Berwyn, PA 19312 (484) 324-6800 JS 44 (Rev. 06/17)

## **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 rurross of initiating the givil deelect clerk.

provided by local rules of court purpose of initiating the civil de				1974, is required for the use of	the Clerk of Court for the			
I. (a) PLAINTIFFS			DEFENDANTS	DEFENDANTS				
Robert Berg,			Pharmerica corpo	Pharmerica corporation, et. al.				
(b) County of Residence of First Listed Plaintiff Milwaukee County, WI  (EXCEPT IN U.S. PLAINTIFF CASES)			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.					
(c) Attorneys (Firm Name, 2	Address, and Telephone Number	r)	Attorneys (If Known)					
Jacob E. Levy Gray & White Law								
II. BASIS OF JURISDI	ICTION (Place an "X" in O	ne Box Only)	I. CITIZENSHIP OF P	PRINCIPAL PARTIES	(Place an "X" in One Box for Plaintif			
☐ 1 U.S. Government Plaintiff	■ 3 Federal Question (U.S. Government)	Not a Party)		TF DEF				
☐ 2 U.S. Government Defendant	☐ 4 Diversity (Indicate Citizenshi	ip of Parties in Item III)	Citizen of Another State	of Business In T  2 Incorporated and I of Business In 2	Principal Place			
	Determant (Indicate Citizenship sy Farmes in Item 111)		Citizen or Subject of a Foreign Country	Citizen or Subject of a 3 3 Foreign Nation 6 6				
IV. NATURE OF SUIT			FORFEITURE/PENALTY	Click here for: Nature of BANKRUPTCY	of Suit Code Descriptions. OTHER STATUTES			
□ 110 Insurance □ 120 Marine □ 130 Miller Act □ 140 Negotiable Instrument □ 150 Recovery of Overpayment & Enforcement of Judgment □ 151 Medicare Act □ 152 Recovery of Defaulted Student Loans (Excludes Veterans) □ 153 Recovery of Overpayment of Veteran's Benefits □ 160 Stockholders' Suits □ 190 Other Contract □ 195 Contract Product Liability □ 196 Franchise    REAL PROPERTY □ 210 Land Condemnation □ 220 Foreclosure □ 230 Rent Lease & Ejectment □ 240 Torts to Land □ 245 Tort Product Liability □ 290 All Other Real Property	PERSONAL INJURY  310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle Product Liability 360 Other Personal Injury 360 Personal Injury Medical Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities - Employment 446 Amer. w/Disabilities - Other 448 Education	PERSONAL INJURY  365 Personal Injury - Product Liability  367 Health Care/ Pharmaceutical Personal Injury Product Liability  368 Asbestos Personal Injury Product Liability  PERSONAL PROPERTY  370 Other Fraud  371 Truth in Lending  380 Other Personal Property Damage Product Liability  PRISONER PETITIONS  Habeas Corpus:  463 Alien Detainee  510 Motions to Vacate Sentence  530 General  535 Death Penalty Other:  540 Mandamus & Other  550 Civil Rights  555 Prison Condition  560 Civil Detainee - Conditions of Confinement	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157  PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark  SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g))  FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	□ 375 False Claims Act □ 376 Qui Tam (31 USC □ 3729(a)) □ 400 State Reapportionment □ 410 Antitrust □ 430 Banks and Banking □ 450 Commerce □ 460 Deportation □ 470 Racketeer Influenced and Corrupt Organizations □ 480 Consumer Credit □ 490 Cable/Sat TV □ 850 Securities/Commodities/ Exchange □ 890 Other Statutory Actions □ 891 Agricultural Acts □ 893 Environmental Matters □ 895 Freedom of Information Act □ 896 Arbitration □ 899 Administrative Procedure Act/Review or Appeal of Agency Decision □ 950 Constitutionality of State Statutes			
	Cite the U.S. Civil Sta 15 U.S.C. §§ 78n Brief description of ca Violations of Sect CHECK IF THIS UNDER RULE 2	Appellate Court  tute under which you are fi (a), 78t(a), and SEC F use: tions 14(a) and 20(a) or IS A CLASS ACTION	Reinstated or Reopened 5 Transf Anoth (specify)  lling (Do not cite jurisdictional state Rule 14a-9, 17 C.F.R. 24th of the Securities Exchange DEMAND \$	er District Litigation Transfer  tutes unless diversity): 0.14a-9  ge Act of 1934	Litigation - Direct File  rif demanded in complaint:			
IF ANY	(See instructions):	JUDGE		DOCKET NUMBER	_			
DATE September 20, 2017 FOR OFFICE USE ONLY	signature of attorney of record s/ Jacob Levy							
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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 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 statue.
- 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: <a href="PharMerica">PharMerica</a>, Others Face Securities Class Action Over Proposed Merger