

1 PACIFIC TRIAL ATTORNEYS  
A Professional Corporation  
2 Scott J. Ferrell, Bar No. 202091  
sferrell@pacifictrialattorneys.com  
3 David W. Reid, Bar No. 267382  
dreid@pacifictrialattorneys.com  
4 Victoria C. Knowles, Bar No. 277231  
vknowles@pacifictrialattorneys.com  
5 4100 Newport Place Drive, Ste. 800  
Newport Beach, CA 92660  
6 Tel: (949) 706-6464  
Fax: (949) 706-6469

7 Attorneys for Plaintiff and Proposed Class  
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9

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12

13 RUTH MARTIN, individually and on  
behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 FOOT LOCKER RETAIL, INC., a New  
17 York corporation; and DOES 1 through 25,  
inclusive,

18 Defendants.  
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Case No. 3:23-cv-00319

**CLASS ACTION COMPLAINT FOR  
VIOLATION OF PENAL CODE § 631**

1 **INTRODUCTION**

2 **Defendant (1) covertly wiretaps the personal conversations of all visitors**  
3 **who utilize the chat feature at [www.footlocker.com](http://www.footlocker.com); and (2) allows at least one**  
4 **third party to eavesdrop on such communications in real time and during**  
5 **transmission to harvest data from the transcripts for financial gain.**

6 **Defendant does not obtain visitors’ consent to either the wiretapping or the**  
7 **eavesdropping. As a result, Defendant has violated the California Invasion of**  
8 **Privacy Act (“CIPA”) in numerous ways.**

9 **JURISDICTION AND VENUE**

10 1. This Court has subject matter jurisdiction of this action pursuant to 28  
11 U.S.C. Section 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100  
12 or more class members, (ii) there is an aggregate amount in controversy exceeding  
13 \$5,000,000, exclusive of interest and costs, and (iii) there is at least minimal diversity  
14 because at least one Plaintiff and Defendant are citizens of different states. Indeed,  
15 based upon the information available to Plaintiff, there are believed to be at least 5,000  
16 class members, each entitled to \$5,000 in statutory damages, thus making the amount in  
17 controversy at least \$25,000,0000 exclusive of interests and costs.

18 2. Pursuant to 28 U.S.C. § 1391, venue is proper because a substantial part of  
19 the acts and events giving rise to the claims occurred in this District.

20 3. Defendant is subject to personal jurisdiction because it has sufficient  
21 minimum contacts with California and it does business with California residents.

22 **PARTIES**

23 4. Plaintiff is a resident and citizen of California.

24 5. Defendant is a New York corporation that owns, operates, and/or controls  
25 the above-referenced website.

26 6. The above-named Defendant, along with its affiliates and agents, are  
27 collectively referred to as “Defendants.” The true names and capacities of the  
28 Defendants sued herein as DOE DEFENDANTS 1 through 25, inclusive, are currently

1 unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of  
2 the Defendants designated herein as a DOE is legally responsible for the unlawful acts  
3 alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the  
4 true names and capacities of the DOE Defendants when such identities become known.

5 7. Plaintiff is informed and believes that at all relevant times, every  
6 Defendant was acting as an agent and/or employee of each of the other Defendants and  
7 was acting within the course and scope of said agency and/or employment with the full  
8 knowledge and consent of each of the other Defendants.

9 8. Plaintiff is informed and believe that each of the acts and/or omissions  
10 complained of herein was made known to, and ratified by, each of the other Defendants.

### 11 **FACTUAL ALLEGATIONS**

12 9. The California Invasion of Privacy Act (“CIPA”) prohibits both  
13 wiretapping and eavesdropping of electronic communications without the consent of all  
14 parties to the communication. Compliance with CIPA is easy, and the vast majority of  
15 website operators comply by conspicuously warning visitors when their conversations  
16 are being recorded or if third parties are eavesdropping on them.<sup>1</sup>

17 10. Unlike most companies, Defendant *ignores* CIPA. Instead, Defendant both  
18 *wiretaps* the conversations of all website visitors and allows a third party to *eavesdrop*  
19 on the conversations in real time during transmission. Why? Because, as one industry  
20 expert notes, “*Live chat transcripts are the gold mines of customer service. At your*  
21 *fingertips, you have valuable customer insight. . .When people are chatting, you have*  
22 *direct access to their exact pain points.*”). See [https://www.ravience.co/post/improve-](https://www.ravience.co/post/improve-marketing-roi-live-chat-transcripts)  
23 [marketing-roi-live-chat-transcripts](https://www.ravience.co/post/improve-marketing-roi-live-chat-transcripts) (last downloaded January 2023).

24 11. Defendant’s wiretapping and eavesdropping are not incidental to the act of  
25 facilitating e-commerce, nor are they undertaken in the ordinary course of business. To  
26

27  
28 <sup>1</sup> See [www.leechtishman.com/insights/blog](http://www.leechtishman.com/insights/blog) (“CIPA Compliance is not difficult. A business must take certain steps. . .with a chat feature. . .to ensure that it obtains valid consent consistent with the holdings of courts interpreting CIPA.”) (last downloaded October 2022).

1 the contrary, Defendant’s actions violate both industry norms and the legitimate  
2 expectations of consumers.<sup>2</sup>

3 12. To enable the *wiretapping*, Defendant has covertly embedded code into its  
4 chat feature that automatically records and creates transcripts of all such conversations.  
5 To enable the *eavesdropping*, Defendant allows at least one independent third-party  
6 vendor (on information and belief, Smooch and/or Zendesk) to secretly intercept  
7 (during transmission and in real time), eavesdrop upon, and store transcripts of  
8 Defendant’s chat communications with unsuspecting website visitors.

9 13. Defendant neither informed visitors of this conduct nor obtained their  
10 consent to these intrusions.

11 14. Given the nature of Defendant’s business, visitors often share highly  
12 sensitive personal data with Defendant via the website chat feature. As noted above,  
13 visitors would be shocked and appalled to know that Defendant secretly records those  
14 conversations, and would be even more troubled to learn that Defendant allows a third  
15 party to eavesdrop on the conversations in real time to harvest data from the chat  
16 transcripts under the guise of “data analytics.”

17 15. Defendant’s conduct is illegal, offensive, and contrary to visitor  
18 expectations: indeed, a recent study conducted by the Electronic Privacy Information  
19 Center, a respected thought leader regarding digital privacy, found that: (1) nearly 9 in  
20 10 adults are “very concerned” about data privacy, and (2) 75% of adults are unaware of  
21 the extent to which companies gather, store, and exploit their personal data.

22 16. Plaintiff is a consumer privacy advocate with dual motivations for  
23 initiating a conversation with Defendant. First, Plaintiff was genuinely interested in  
24 learning more about the goods and services offered by Defendant. Second, Plaintiff is a  
25 “tester” who works to ensure that companies like Defendant abide by the strict privacy  
26

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27 <sup>2</sup> According to a recent poll, nearly eight in ten Americans believe that companies do not collect or share consumer data  
28 gathered online, while about seven in ten believe that they remain anonymous when engaged in online activities like web  
browsing and chatting. See <https://www.ipsos.com/en-us/news-polls/data-privacy-2022> (last downloaded January 2023).

1 obligations imposed upon them by California law. As someone who advances  
2 important public interests at the risk of vile personal attacks, Plaintiff should be “praised  
3 rather than vilified.” *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 954 (7th Cir.  
4 2006).<sup>3</sup>

5 17. In enacting CIPA, the California legislature intentionally chose to extend  
6 its protections to all “persons” utilizing public telephone lines. Indeed, because they  
7 expressly extend protection to persons beyond “bona fide patrons” or individuals who  
8 suffer pecuniary loss, statutes like CIPA are largely enforced by “testers” such as  
9 Plaintiff. *See Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109 (9<sup>th</sup> Cir. 2014)  
10 (explaining why testers have Article III standing and generally discussing value and  
11 importance of testers in enforcement of consumer protection and civil rights statutes).

12 18. Within the statute of limitations period, Plaintiff visited Defendant’s  
13 Website. Plaintiff used a smart phone (a cellular telephones with an integrated  
14 computer to enable web browsing) and had a conversation with Defendant. As such,  
15 Plaintiff’s communications with Defendant were transmitted from a “cellular radio  
16 telephone” as defined by CIPA.

17 19. By definition, Defendant’s chat communications from its website are  
18 transmitted to website visitors by telephony subject to the mandates of CIPA. *See*  
19 <https://www.britannica.com/technology/Internet> (“*The Internet works through a series*  
20 *of networks that connect devices around the world through telephone lines.*”) (last  
21 downloaded January 2023).

22 20. Defendant did not inform Plaintiff or Class Members that Defendant was  
23 secretly recording their conversations or allowing, aiding, and abetting a third party to  
24 intercept and eavesdrop on them in real time. Plaintiff did not learn that Defendant

25 <sup>3</sup> American civil rights hero Rosa Parks was acting as a litigation “tester” when she initiated the Montgomery Bus  
26 Boycott in 1955, as she voluntarily subjected herself to an unlawful practice in order to obtain standing to challenge the  
27 practice. *See* [https://www.naacpldf.org/press-release/ldf-pays-tribute-to-rosa-parks-on-the-sixtieth-anniversary-of-her-](https://www.naacpldf.org/press-release/ldf-pays-tribute-to-rosa-parks-on-the-sixtieth-anniversary-of-her-courageous-stand-against-segregation/)  
28 [courageous-stand-against-segregation/](https://www.naacpldf.org/press-release/ldf-pays-tribute-to-rosa-parks-on-the-sixtieth-anniversary-of-her-courageous-stand-against-segregation/) (“*Contrary to popular myth, Rosa Parks was not just a tired seamstress who merely*  
*wanted to sit down on a bus seat that afternoon. She refused to give up her seat on principle. Parks had long served as the*  
*secretary of the Montgomery branch of the NAACP. Challenging segregation in Montgomery’s transportation system was*  
*on the local civil rights agenda for some time.*”) (last downloaded October 2022).

1 secretly recorded the conversations or allowed a third party to eavesdrop upon it until  
2 after the conversation was completed and additional, highly technical research was  
3 completed.

4 21. Defendant did not obtain Class Members' express or implied consent to  
5 wiretap or allow third parties to eavesdrop on visitor conversations, nor did Class  
6 Members know at the time of the conversations that Defendant was secretly wiretapping  
7 them and allowing third parties to eavesdrop on them.

8 **CLASS ALLEGATIONS**

9 22. Plaintiff brings this action individually and on behalf of all others similarly  
10 situated (the "Class") defined as follows:

11 **All persons within California who: (1) visited Defendant's**  
12 **website, and (2) whose electronic communications using**  
13 **Defendant's chat feature were recorded, stored, and/or shared**  
14 **by Defendant or third parties without prior express consent**  
15 **within the statute of limitations period.**

16 23. NUMEROSITY: Plaintiff does not know the number of Class Members  
17 but believes the number to be in the tens of thousands, if not more. The exact identities  
18 of Class Members may be ascertained by the records maintained by Defendant.

19 24. COMMONALITY: Common questions of fact and law exist as to all Class  
20 Members, and predominate over any questions affecting only individual members of the  
21 Class. Such common legal and factual questions, which do not vary between Class  
22 members, and which may be determined without reference to the individual  
23 circumstances of any Class Member, include but are not limited to the following:

24 a. Whether Defendant caused Plaintiff's and the Class's electronic  
25 communications with the Website to be recorded, intercepted and/or monitored;

26 b. Whether Defendant violated CIPA based thereon;

27 c. Whether Plaintiff and Class Members are entitled to statutory damages  
28 pursuant to Cal. Penal Code § 631(a);

1 d. Whether Plaintiff and Class Members are entitled to punitive damages  
2 pursuant to Cal. Civil Code § 3294; and

3 e. Whether Plaintiff and Class Members are entitled to injunctive relief.

4 25. TYPICALITY: As a person who visited Defendant’s Website and whose  
5 electronic communication was recorded, intercepted and monitored, Plaintiff is  
6 asserting claims that are typical to the Class.

7 26. ADEQUACY: Plaintiff will fairly and adequately protect the interests of  
8 the members of The Class. Plaintiff has retained attorneys experienced in the class  
9 action litigation. All individuals with interests that are actually or potentially adverse to  
10 or in conflict with the class or whose inclusion would otherwise be improper are  
11 excluded.

12 27. SUPERIORITY: A class action is superior to other available methods of  
13 adjudication because individual litigation of the claims of all Class Members is  
14 impracticable and inefficient. Even if every Class Member could afford individual  
15 litigation, the court system could not. It would be unduly burdensome to the courts in  
16 which individual litigation of numerous cases would proceed.

17 **FIRST CAUSE OF ACTION**

18 **Violations of the California Invasion of Privacy Act**

19 **Cal. Penal Code § 631**

20 28. Section 631(a) of California’s Penal Code imposes liability upon any entity  
21 that “by means of any machine, instrument, contrivance, or in any other manner,” (1)  
22 “intentionally taps, or makes any unauthorized connection, whether physically,  
23 electrically, acoustically, inductively, or otherwise, with any telegraph or telephone  
24 wire, line, cable, or instrument, including the wire, line, cable, or instrument of any  
25 internal telephonic communication system,” or (2) “willfully and without the consent of  
26 all parties to the communication, or in any unauthorized manner, reads, or attempts to  
27 read, or to learn the contents or meaning of any message, report, or communication  
28 while the same is in transit or passing over any wire, line, or cable, or is being sent



1 from, or received at any place within this state” or (3) “uses, or attempts to use, in any  
2 manner, or for any purpose, or to communicate in any way, any information so  
3 obtained, or who aids, agrees with, employs, or conspires with any person or persons to  
4 unlawfully do, or permit, or cause to be done any of the acts or things mentioned above  
5 in this section”. Here, Defendant does all three.

6 29. Section 631 of the California Penal Code applies to internet  
7 communications and thus applies to Plaintiff’s and the Class’s electronic  
8 communications with Defendant’s Website. “Though written in terms of wiretapping,  
9 Section 631(a) applies to Internet communications. It makes liable anyone who ‘reads,  
10 or attempts to read, or to learn the contents’ of a communication ‘without the consent of  
11 all parties to the communication.’ *Javier v. Assurance IQ, LLC*, 2022 WL 1744107, at  
12 \*1 (9th Cir. 2022).

13 30. The software embedded on Defendant’s Website to record and eavesdrop  
14 upon the Class’s communications qualifies as a “machine, instrument, contrivance, or  
15 ... other manner” used to engage in the prohibited conduct alleged herein.

16 31. At all relevant times, Defendant intentionally caused the internet  
17 communication between Plaintiff and Class Members with Defendant’s Website to be  
18 recorded. Defendant also aided, abetted at least one third party to eavesdrop upon such  
19 conversations during transmission and in real time.

20 32. Plaintiff and Class Members did not expressly or impliedly consent to any  
21 of Defendant’s actions.

22 33. Defendant’s conduct constitutes numerous independent and discreet  
23 violations of Cal. Penal Code § 631(a), entitling Plaintiff and Class Members to  
24 injunctive relief and statutory damages.

## 25 **SECOND CAUSE OF ACTION**

### 26 **Violations of the California Invasion of Privacy Act**

#### 27 **Cal. Penal Code § 632.7**

28



1           34. Section 632.7 of California’s Penal Code imposes liability upon anyone  
2 “who, without the consent of all parties to a communication, intercepts or receives and  
3 intentionally records, or assists in the interception or reception and intentional  
4 recordation of, a communication transmitted between two cellular radio telephones, a  
5 cellular radio telephone and a landline telephone, two cordless telephones, a cordless  
6 telephone and a landline telephone, or a cordless telephone and a cellular radio  
7 telephone.” As summarized by the California Supreme Court in *Smith v. Loanme*,  
8 under section 632.7(a) it is a crime when a person intercepts or records “a  
9 communication transmitted between a cellular or cordless telephone and another  
10 telephone.” Stated differently, only one party to the conversation needs to be using a  
11 cellular phone for the prohibitions of Section 632.7 to apply.

12           35. Section 632.7 defines “Communication” exceptionally broadly –  
13 including not only voice communication, but also communications transmitted by “data,  
14 or image, including facsimile.” Text messages sent from a smart phone to a computer  
15 or internet, like the messages at issue here, are considered data transmissions via  
16 cellular telephony to landline telephony, thus subject to Section 632.7. *See*  
17 <https://www.techtarget.com/searchmobilecomputing/definition/texting> (“Text  
18 messaging is the act of sending short, alphanumeric communications between  
19 cellphones, pagers or other hand-held devices, as implemented by a wireless carrier. . .  
20 **Users can also send text messages from a computer to a hand-held device. Web**  
21 **texting, as it's called, is made possible by websites called SMS gateways.**”) (last  
22 downloaded October 2022).

23           36. The prohibitions set forth in Section 637.2 “apply to all communications,  
24 not just confidential communications.” *Kearney v. Salomon Smith Barney, Inc.* (2006)  
25 39 Cal.4th 95, 122.

26           37. Plaintiff and the class members communicated with Defendant using  
27 telephony subject to the mandates and prohibitions of Section 632.7.  
28

1 38. Defendant’s communication from the chat feature on its website is  
2 transmitted via telephony subject to the mandates and prohibitions of Section 632.7.

3 39. As set forth above, Defendant recorded telephony communication without  
4 the consent of all parties to the communication in violation of Section 632.7.

5 40. As set forth above, Defendant also aided and abetted a third party in the  
6 interception, reception, and/or intentional recordation of telephony communication in  
7 violation of Section 632.7.

8 41. Defendant’s conduct constitutes numerous independent and discreet  
9 violations of Cal. Penal Code § 632.7, entitling Plaintiff and Class Members to  
10 injunctive relief and statutory damages.

11 **PRAAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for the following relief against Defendant:

- 13 1. An order certifying the Class, naming Plaintiff as the representative of the
- 14 Class and Plaintiff’s attorneys as Class counsel;
- 15 2. An order declaring Defendant’s conduct violates CIPA;
- 16 3. An order of judgment in favor of Plaintiff and the Class and against
- 17 Defendant on the causes of action asserted herein;
- 18 4. An order enjoining Defendant’s conduct as alleged herein and any other
- 19 injunctive relief that the Court finds proper;
- 20 5. Statutory damages pursuant to CIPA;
- 21 6. Punitive damages;
- 22 7. Prejudgment interest;
- 23 8. Reasonable attorneys’ fees and costs; and
- 24 9. All other relief that would be just and proper as a matter of law or equity,
- 25 as determined by the Court.

26 Dated: January 23, 2023

PACIFIC TRIAL ATTORNEYS, APC

27 By:   
28 Scott. J. Ferrell  
Attorneys for Plaintiff

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

RUTH MARTIN, individually and on behalf of all others similarly situated,

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

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

Scott J. Ferrell, Bar No. 202091
PACIFIC TRIAL ATTORNEYS, A Professional Corporation
4100 Newport Place Drive, Ste. 800, Newport Beach, CA 92660

DEFENDANTS

FOOT LOCKER RETAIL, INC., a New York corporation; and DOES 1 through 25, inclusive,

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

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

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

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

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005

Brief description of cause: Violations of the California Invasion of Privacy Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 01/23/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ Scott J. Ferrell

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44**

**Authority For Civil Cover Sheet.** The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 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.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no 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 Federal Rule of Civil Procedure 23. 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.