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7 Attorneys for Plaintiff

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10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 DENISE KELLER, an individual, on behalf of ) Case No. **'11CV0629 WQHPOR**  
herself and all others similarly situated, )  
13 )  
Plaintiff, ) **COMPLAINT**  
14 ) **CLASS ACTION**  
v. )  
15 )  
16 CEC ENTERTAINMENT, INC., a Kansas ) **JURY TRIAL DEMAND**  
corporation, and DOES 1-10, )  
17 Defendants. )  
18 )  
19 )  
20 )

21 Plaintiff Denise Keller (“Keller” or “Plaintiff”), by and through her attorneys, on behalf  
22 of herself and all others similarly situated, alleges, upon personal knowledge as to herself and her  
23 acts, and as to all other matters upon information and belief based upon, *inter alia*, the  
24 investigations made by her attorneys, as follows:

25 **I.**  
26 **NATURE OF THE ACTION**

27 1. CEC Entertainment, Inc. (“CEC”) owns and operates hundreds of Chuck E.  
28 Cheese’s family restaurants that feature games, rides, prizes, food and entertainment for children.

1 Most of the games require Chuck E. Cheese's tokens which can be purchased for \$.25 per token  
2 and offer children a chance to win tickets after the game is finished. Children exchange the  
3 tickets they collect during the visit for prizes. Unfortunately, many games found at Chuck E.  
4 Cheese's restaurants are illegal gambling devices that require little or no skill and are  
5 predominantly games of chance, much like a roulette wheel. With rare exception (none of which  
6 exist here), gambling is illegal in California. Plaintiff brings this action on behalf of a class of  
7 persons who have played these illegal devices at Chuck E. Cheese's restaurants in California.  
8 She seeks restitution from CEC and an injunction prohibiting it from offering these devices to its  
9 customers in the future.

10 **II.**  
11 **JURISDICTION AND VENUE**

12 1. Jurisdiction is proper under 28 U.S.C. §1332(d) as the amount in controversy  
13 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and at least one member  
14 of the plaintiff class is a citizen of a different state than at least one defendant. The state law  
15 claim raised herein is subject to this Court's supplemental jurisdiction pursuant to 28 U.S.C. §  
16 1367.

17 2. Venue in this district is proper under 28 U.S.C. § 1391 as the CEC transactions at  
18 issue emanated from San Diego County, California and CEC is subject to personal jurisdiction in  
19 this district.

20 **III.**  
21 **PARTIES**

22 3. Plaintiff Denise Keller is and was at all relevant times, a California citizen,  
23 domiciled in San Diego, California. She is the mother to two girls, Kylie (3 years old) and  
24 Mackenzie (5 years old).

25 4. Defendant CEC Entertainment, Inc. is and was at all relevant times, a Kansas  
26 corporation with its principal place of business in Irving, Texas, operating and conducting  
27 business throughout California including in San Diego county. It is a publicly-traded corporation  
28 whose shares trade on the New York Stock Exchange under the ticker symbol "CEC." It is the  
owner and operator of 507 Chuck E. Cheese's restaurants in forty-eight states.



1 description of a few of the illegal games at the Chuck E. Cheese's restaurant at Grossmont  
2 Center in La Mesa, California:

3 a) *Thunderation* consists of a vertical spinning wheel with numerous prongs protruding  
4 from it. The customer inserts a token at the top of the machine and lets the token drop  
5 onto the spinning wheel. The token then randomly bounces off of the spinning prongs  
6 until it is eventually dropped into one of the buckets at the bottom of the wheel.  
7 Depending on which bucket the token lands in, the customer receives a set number of  
8 tickets.

9 b) *Wheel of Fortune* is a coin-pusher machine. The customer deposits a token in a slot  
10 near the top of the machine and the token slides down a chute where it rolls and bounces  
11 to a resting position on a tray below. The machine has an automated pusher arm that  
12 sweeps back and forth on the tray. The tray contains hundreds of other tokens that have  
13 piled up near a ledge. Based on where the token lands, there is a possibility that the  
14 newly-deposited token will cause the pusher arm to push one or more of the other tokens  
15 over the ledge and into a collection tray. The number of tokens that fall into the collection  
16 tray determine the amount of tickets the player receives. There is no ability to control or  
17 predict whether tokens will fall into the collection tray.

18 c) *Big Bass Wheel* closely resembles the wheel featured on the *Price Is Right* television  
19 game show. Customers deposit a token into the game and then turn a crank as fast as  
20 they can. The crank spins a large wheel that has numbers printed on it. The customer  
21 wins an amount of tickets equal to the number on which the wheel stops. There is no  
22 ability to control or predict where the wheel will rest.

23 10. CEC owns, stores, possesses, leases, and permits the operation, placement,  
24 maintenance, and keeping of "slot machines" as that term is defined in Penal Code § 330b(d) in  
25 violation of Penal Code § 330b(a). While Section 330b(f) provides an exception for games that  
26 are "predominantly games of skill," this exception does not apply to many games found at Chuck  
27 E. Cheese's restaurants including the games identified above and many others. Unlike many  
28 arcade games (e.g. Pac-Man, racing games, Skee-ball, etc.) which require hand-eye coordination,

1 concentration, and physical skill, the outcome of operation of many games at Chuck E. Cheese's  
2 is based entirely or predominantly on chance or hazard. In other words, the players have no  
3 ability to control the outcome.

4 11. Upon information and belief, the illegal games are highly profitable for CEC  
5 because they last only a few seconds and the chance to win dozens of tickets entice children to  
6 play repeatedly, much like a casino slot machine. Machine gambling is one of the most addictive  
7 forms of gambling. These games are highly addictive, involve rapid-restaking, and encourage  
8 the players to chase their losses. Young people are especially vulnerable to the attractions of  
9 gambling.

10 12. Gambling addiction is a serious and devastating problem for many adults.  
11 According to a recent study by the University of Buffalo's Research Institute on Addiction,  
12 problem gambling is more common among adults than alcohol dependence. Children who start  
13 gambling early in childhood are at increased risk for developing a gambling problem later in life.  
14 Placing illegal gambling devices in arcades ostensibly created for amusement perpetuates  
15 confusion between play and dangerous habit-forming activities. The fact that the stakes are  
16 relatively low is of no consequence to a child, whose allowance or allotted tokens provided by  
17 his parents are at stake on a visit to Chuck E. Cheese's; the games create the same highs and  
18 lows experienced by adults who gamble their paychecks or mortgage payment.

19 13. Keller and her children have paid for tokens and played these illegal games on  
20 numerous occasions at the Grossmont Center Chuck E. Cheese's. One of the reasons they  
21 played these games was for an opportunity to win tickets in order to redeem the tickets for prizes.  
22 Keller recently realized that some of the games her children were playing involved little or no  
23 skill. Had Keller known that the machines were gambling devices, she would not have  
24 exchanged her money for Chuck E. Cheese's token and allowed her children to participate in  
25 gambling activities. The prizes that Plaintiff and her children ultimately acquired in exchange  
26 for the tickets they received were worth far less than the value of the tokens they inserted into the  
27 machines.





1 Defendant's conduct outweighs any utility of such conduct and such conduct offends public  
2 policy, is immoral, unscrupulous, unethical, deceitful and offensive, and causes substantial injury  
3 to consumers, including Plaintiff and class members. In addition, Defendant's conduct  
4 specifically violates public policies tethered to laws that were designed to protect the public  
5 welfare against the deleterious effects of gambling.

6 28. Defendant has engaged in "unlawful" business practices by violating California  
7 Penal Code §§ 330a and 330b. Defendant's unlawful and unfair acts and practices are ongoing  
8 and continue to the date of this filing. Defendant has failed to publicly acknowledge the  
9 wrongful nature of its actions and has not corrected its unfair practice.

10 29. As a direct and proximate result of these acts, Plaintiff and the Plaintiff Class  
11 have suffered injury in fact and have lost money and property in the form of money that was  
12 used to purchase Chuck E. Cheese's tokens. Defendant received and continues to hold monies  
13 belonging to Plaintiff and the Class.

14 30. Plaintiff and the Plaintiff Class, pursuant to Bus. & Prof. Code § 17203, seek an  
15 order and/or judgment from the Court to enjoin Defendant from engaging in practices which  
16 constitute unfair competition and which may be necessary to restore to the Class, all monies  
17 wrongfully acquired by defendant by means of such practices, plus interest and attorneys' fees.

18 **SECOND CLAIM FOR RELIEF**  
19 **Rescission of Contract**  
20 **(Against CEC and DOES 1-10)**

21 31. Plaintiff incorporates by reference each of the preceding allegations as though  
22 fully set forth herein.

23 32. Plaintiff and Defendant entered into a contract wherein Plaintiff paid Defendant  
24 money for tokens and the opportunity to win tickets at Chuck E. Cheese's restaurants.

25 33. California Civil Code Section 1667 provides that a contract is unlawful if it is  
26 contrary to an express provision of law. The contracts were illegal and unenforceable in that  
27 they violate California Penal Code §§ 330a and 330b.

28 34. Plaintiff seeks to void the contract and to obtain restitution of all sums paid  
thereon.





1 D. Damages, restitution and/or disgorgement in an amount to be determined at trial  
2 but not less than \$5 million;

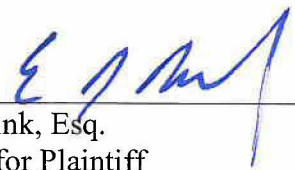
3 E. A judicial declaration that the gaming machines are illegal;

4 F. The expenses and disbursements incurred by Plaintiff in connection with this  
5 action, including reasonable attorneys' fees as permitted by law; and

6 G. Such other relief as the Court deems just and proper.  
7

8  
9 Dated: March 29, 2011

KRAUSE KALFAYAN BENINK &  
SLAVENS, LLP

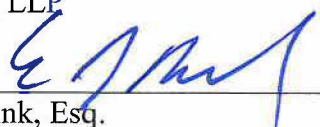
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Eric J. Benink, Esq.  
Attorneys for Plaintiff  
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DEMAND FOR JURY TRIAL

Plaintiff Denise Keller hereby demands a jury trial pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: March 29, 2011

KRAUSE KALFAYAN BENINK &  
SLAVENS, LLP

  
Eric J. Benink, Esq.  
Attorneys for Plaintiff

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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 THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**  
 DENISE KELLER, an individual, on behalf of herself and all others similarly situated,  
**(b)** County of Residence of First Listed Plaintiff San Diego  
 (EXCEPT IN U.S. PLAINTIFF CASES)  
**(c)** Attorney's (Firm Name, Address, and Telephone Number)  
 KRAUSE KALFAYAN BENINK & SLAVENS, LLP.  
 625 Broadway, Ste. # 635, San Diego, CA 92101 (619) 232-0331

**DEFENDANTS**  
 CEC ENTERTAINMENT, INC., a Kansas corporation, and DOES 1 -10,  
 County of Residence of First Listed Defendant \_\_\_\_\_  
 (IN U.S. PLAINTIFF CASES ONLY)  
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  
 Attorneys (If Known)  
**'11CV0629 WQHPOR**

**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)  
 (For Diversity Cases Only)  

<b>Citizen of This State</b>	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State 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  
 7 Appeal to District Judge from Magistrate Judgment

**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(d) 28-1391  
 Brief description of cause:  
The California Unfair Competition Law.

**VII. REQUESTED IN COMPLAINT:**  
 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
 DEMAND \$ 5,000,000.00  
 CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**  
 (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE March 29, 2011 SIGNATURE OF ATTORNEY OF RECORD  
Eric J. Benink, Esq.

FOR OFFICE USE ONLY  
 RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

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

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.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; 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 clerks 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 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. (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.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**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 dollar amount (in thousands of dollars) 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.