



## PRELIMINARY STATEMENT

1  
2 1. This is a class action against Defendants, arising from the popular *Pokémon Go*  
3 mobile game, developed by Niantic and based on a media franchise co-owned by Nintendo and  
4 marketed and licensed by Pokémon Co., with millions of players worldwide.  
5

6 2. *Pokémon Go* is the latest iteration of the immensely popular Pokémon media  
7 franchise, which consists in large part of a series of video games in which players take on the role  
8 of “trainers” with the goal of capturing and collecting fantasy creatures called Pokémon. Released  
9 on July 6, 2016 in the United States, *Pokémon Go* is an “augmented reality” game in which players  
10 use their smart phones to “catch” Pokémon in the players’ real-world surroundings by utilizing the  
11 GPS, camera, and gyroscope features on users’ mobile devices. When a player comes in close  
12 proximity to GPS coordinates determined by a Niantic algorithm, the game uses the phone’s  
13 camera mode and gyroscope to display the image of a Pokémon, superimposed over the real-world  
14 image displayed on the player’s phone screen, as though the Pokémon existed in the real world.  
15 (See Figure 1.) By swiping their phone screens, players may then attempt to “catch” the Pokémon  
16 to add it to their virtual collections.  
17  
18



Figure 1

1           3.       When the game detects, via GPS, that players are in the vicinity of certain real-  
2 world locations, the GPS coordinates of which were selected and programmed into the mobile  
3 application by Niantic and known to *Pokémon Go* players as “Pokéstops” and “Pokémon gyms,”  
4 the players gain access to potentially vital in-game items, which they can use to catch Pokémon,  
5 among other purposes, or gain the opportunity to engage in virtual “battles” with other *Pokémon*  
6 *Go* players.  
7

8           4.       *Pokémon Go* was an immediate success. As of July 23, *Pokémon Go* had been  
9 downloaded more than 30 million times and had earned more than \$35 million in revenue.  
10 According to Apple, Inc. (“Apple”), owner of the App Store (a digital distribution platform for  
11 mobile applications), *Pokémon Go* was downloaded more times in its first week than any other  
12 mobile application in history. At the time this complaint was filed, mobile users were spending  
13 more time playing *Pokémon Go* than using other popular applications such as Facebook and  
14 Twitter.  
15

16           5.       However, within days of the game’s release, it became clear that a number of the  
17 GPS coordinates that Defendants had designated as Pokéstops and Pokémon gyms were, in fact,  
18 on or directly adjacent to private property, and that Defendants had placed these Pokéstops and  
19 Pokémon gyms *without the consent of the properties’ owners*.  
20

21           6.       Plaintiff discovered as much when, during the week of *Pokémon Go*’s release,  
22 strangers began lingering outside of his home with their phones in hand. At least five individuals  
23 knocked on Plaintiff’s door and asked for access to Plaintiff’s backyard in order to “catch”  
24 Pokémon that the game had placed at Plaintiff’s residence in West Orange, New Jersey—*without*  
25 Plaintiff’s permission.  
26  
27  
28



**PARTIES**

1  
2 11. Plaintiff Jeffrey Marder is a resident of West Orange, New Jersey. As described  
3 *supra* at ¶ 6, Defendant Niantic’s placement of Pokémon on or near Plaintiff’s property caused  
4 *Pokémon Go* players to interfere with Plaintiff’s use and enjoyment of his property.  
5

6 12. Defendant Niantic, Inc. is a software development company headquartered in San  
7 Francisco, California 94105. The company was formed in 2002 as Niantic Labs, an internal startup  
8 at Google Inc., and spun off as an independent entity in October 2015. Niantic is the developer  
9 and publisher of *Pokémon Go*. Niantic receives a percentage of all revenues generated by *Pokémon*  
10 *Go* mobile application.  
11

12 13. Defendant The Pokémon Company is responsible for marketing and licensing the  
13 Pokémon franchise. Pokémon Co. is headquartered in Tokyo, Japan, and was established as a joint  
14 venture by Nintendo and the two other companies holding the copyright on Pokémon (Game Freak  
15 and Creatures). Defendant Nintendo holds a 32% ownership stake in Pokémon Co. Pokémon Co.  
16 receives a percentage of all revenues generated by the *Pokémon Go* mobile application.  
17

18 14. Defendant Nintendo Co., Ltd. is a multinational consumer and electronics software  
19 company headquartered in Kyoto, Japan. Founded in 1889 as a playing card company, Nintendo  
20 entered the video game industry in the 1970s and today is the world’s largest video game company  
21 by revenue. Nintendo is the publisher of the popular Pokémon video game series and, as described  
22 *supra* at ¶ 13, owns a 32% stake in Defendant Pokémon Co. Nintendo receives a percentage of all  
23 revenues generated by the *Pokémon Go* mobile application.  
24  
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1 gyms.” At Pokéstops, players gain access to potentially vital in-game items, which they can use  
2 to catch Pokémon. In Pokémon gyms, players gain the opportunity to engage in virtual battles  
3 with other *Pokémon Go* players, success in which advances the player’s progress through the  
4 game.  
5

6 19. *Pokémon Go* was an immediate success and has been highly profitable for  
7 Defendants. As of July 23, 2016, *Pokémon Go* had been downloaded more than 30 million times  
8 and had earned more than \$35 million in revenue. According to Apple, *Pokémon Go* was  
9 downloaded more times in its first week than any other mobile application in history. At the time  
10 this complaint was filed, mobile users were spending more time playing *Pokémon Go* than using  
11 other popular applications such as Facebook and Twitter.  
12

#### 13 **Placement of Pokéstops and Pokémon Gyms on Private Property**

14 20. Within days of the game’s release, it became clear that a number of the GPS  
15 coordinates that Defendants had designated as Pokéstops and Pokémon gyms were, in fact, on or  
16 near private property, and that Defendants had placed these Pokéstops and Pokémon gyms *without*  
17 *the consent of the properties’ owners*.  
18

19 21. In the days following the U.S. release of *Pokémon Go*, Plaintiff became aware that  
20 strangers were gathering outside of his home, holding up their mobile phones as if they were taking  
21 pictures. At least five individuals knocked on Plaintiff’s door, informed Plaintiff that there was a  
22 Pokémon in his backyard, and asked for access to Plaintiff’s backyard in order to “catch” the  
23 Pokémon.  
24

25 22. Plaintiff’s experience is not unique. In a series of tweets on July 9, 2016, Boon  
26 Sheridan, a resident of Holyoke, Massachusetts, reported that Niantic had placed a Pokémon gym  
27 in his home. (*See Figure 2.*)  
28

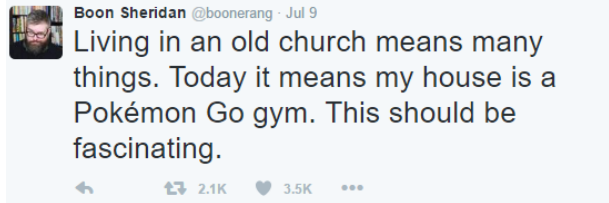


Figure 2

23. By mid-afternoon that day, Sheridan reported that “I’ve counted 15 people stopping by and lingering in their phones so far. I think at least three car visits as well.” (See Figure 3.)

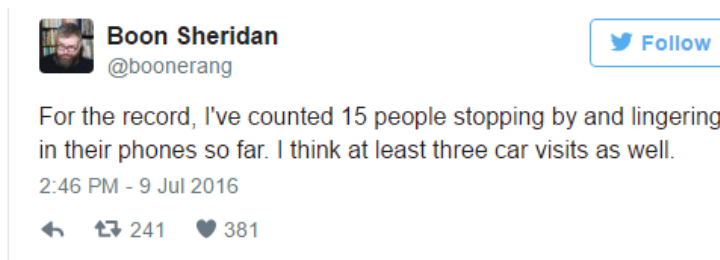


Figure 3

24. In an interview with the online publication *Buzzfeed*, Sheridan “said it is a little odd that *he has no control over his home being a significant part of the game, and never signed off on being included.*” (Emphases added.)

25. Likewise, as reported in the online videogame publication *Gamerant*, Niantic placed a Pokéstop at a private residence in Albuquerque, New Mexico, already famous as a filming location for the television show *Breaking Bad*. *Gamerant’s* article stated, in part, that the home’s “yard is being besieged by intrepid *Pokémon Go* trainers who may not be aware they’re stepping onto private property.”

26. Indeed, Defendants have shown a flagrant disregard for the foreseeable consequences of populating the real world with virtual Pokémon without seeking the permission of property owners. Niantic placed *at least three Pokéstops within the United States Holocaust Memorial Museum* in Washington, D.C. (see Figure 4), prompting the museum to state that

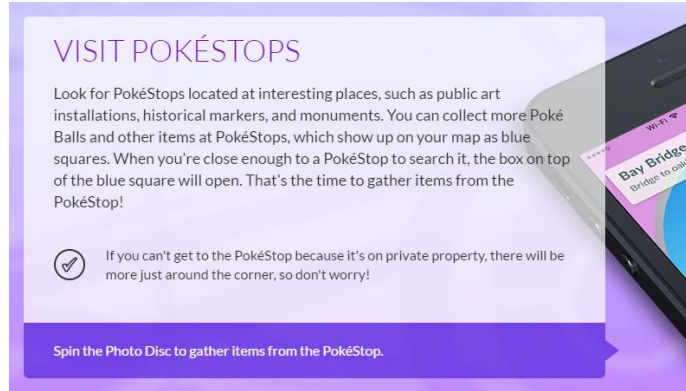
1 “Playing the game is not appropriate in the museum, which is a memorial to the victims of Nazism.  
2 We are trying to find out if we can get the museum excluded from the game.” Similarly, a  
3 representative of Mobile Memorial Gardens, a cemetery in Mobile, Alabama, has objected to the  
4 presence of *Pokémon Go* players on its property, stating “This is private. I owe it to the families  
5 we serve to provide a sense of decorum here.”  
6



15 *Figure 4*

16 27. Niantic blithely acknowledges its placement of Pokéstops on private property,  
17 advising users on the *Pokémon Go* website: “If you can’t get to the Pokéstop because it’s on private  
18 property, there will be more just around the corner, so don’t worry!”<sup>1</sup> (See Figure 5.)  
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27  
28 <sup>1</sup> <https://www.nianticlabs.com/terms/pokemongo/en>, accessed on July 22, 2016.



8 *Figure 5*

9 28. *Pokémon Go* has been immensely profitable for the Defendants, each of which  
10 receives a percentage of revenues generated by the game. The game's profitability derives from  
11 its popularity, which, in turn, derives in large part from its innovative augmented reality  
12 experience, in which playing *Pokémon Go* turns a user's surroundings into a virtual world of  
13 beacons to be activated and Pokémon to be captured.  
14

15 29. To create that immersive world, Niantic made unauthorized use of Plaintiff's and  
16 other Class members' property by placing Pokéstops and Pokémon gyms thereupon or nearby. In  
17 so doing, Niantic has encouraged *Pokémon Go*'s millions of players to make unwanted incursions  
18 onto the properties of Plaintiff and other members of the class—a clear and ongoing invasion of  
19 their use and enjoyment of their land from which Defendants have profited and continue to profit.  
20

21 **CLASS ACTION ALLEGATIONS**

22 30. Plaintiff brings this lawsuit as a class action on behalf of himself and all other  
23 similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure  
24 23(a) and (b)(2) and/or (b)(3). This action satisfies the numerosity, commonality, typicality,  
25 adequacy, predominance, and superiority requirements of those provisions.  
26

27 31. The proposed nationwide class (the "Class") Plaintiff seeks to represent is defined  
28 as follows:

1 All persons in the United States who own property (i) the GPS coordinates of  
2 which were designated by Defendants, without authorization, as Pokéstops or  
3 Pokémon gyms in the *Pokémon Go* mobile application or (ii) abutting property  
4 the GPS coordinates of which were designated by Defendants, without  
authorization, as Pokéstops or Pokémon gyms in the *Pokémon Go* mobile  
application.

5 32. Excluded from the Class are the Defendants; any entity or division in which they  
6 have a controlling interest; their legal representatives, officers, directors, assignees, and  
7 successors; and their current or former employees. Plaintiff reserves the right to amend the Class  
8 definitions and to add additional sub-Classes as appropriate if discovery and further investigation  
9 reveal that the Class should be expanded, otherwise divided into sub-Class, or modified in any  
10 other way.  
11

### 12 **Numerosity & Ascertainability**

13 33. Although the exact number of Class members is uncertain and can only be  
14 ascertained through appropriate discovery, the number is great enough such that joinder is  
15 impracticable.  
16

17 34. The disposition of the claims of these Class members in a single action will provide  
18 substantial benefits to all parties and to the Court. Class members are readily identifiable from  
19 information and records in Defendants' possession, custody, or control.  
20

### 21 **Typicality**

22 35. Plaintiff's claims are typical of the claims of Class, as Plaintiff and the other  
23 members of the Class sustained damages arising out of the same wrongful conduct by Defendants,  
24 as alleged herein.  
25  
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27  
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1 **Adequate Representation**

2 36. Plaintiff will fairly and adequately represent and protect the interests of the Class.  
3 Plaintiff has retained counsel with substantial experience in prosecuting complex and class action  
4 litigation nationwide.  
5

6 37. Plaintiff and his counsel are committed to vigorously prosecuting this action on  
7 behalf of the Class, and have the financial resources to do so. Neither Plaintiff nor his counsel  
8 have interests adverse to those of the Class.

9 **Predominance of Common Issues**

10 38. There are numerous questions of law and fact common to Plaintiff and Class  
11 members that predominate over any question affecting only individual Class members, the answer  
12 to which will advance resolution of the litigation as to all Class members. These common legal  
13 and factual issues include, *inter alia*:  
14

- 15 a. whether Defendants designated GPS coordinates located on private property  
16 as Pokéstops or Pokémon gyms;
- 17 b. whether Defendants' conduct constituted a trespass and/or nuisance at  
18 common law and if so, what remedies are available by law;
- 19 c. whether Defendants were unjustly enriched by their actions as alleged herein;
- 20 d. whether the Court should enjoin Defendants from continuing to engage in  
21 the conduct complained of herein;
- 22 e. the appropriate measure of relief, including, but not limited to, a preliminary  
23 and/or permanent injunction; and
- 24 f. the extent of the damages caused by Defendants' acts.  
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**Superiority**

1  
2 35. Plaintiff and other Class members have all suffered and will continue to suffer harm  
3 and damages as a result of Defendants' unlawful and wrongful conduct. A class action is superior  
4 to other available methods for the fair and efficient adjudication of this controversy.  
5

6 36. Absent a class action, most Class members would likely find the cost of litigating  
7 their claims prohibitively high and would therefore have no effective remedy at law. Because of  
8 the relatively small size of the individual Class members' claims, it is likely that few if any Class  
9 members could afford to seek legal redress for Defendants' misconduct as alleged herein. Absent  
10 a class action, Class members will continue to incur damages, and Defendants' misconduct will  
11 continue without remedy.  
12

13 37. Class action treatment of common questions of law and fact would also be a  
14 superior method to multiple individual actions or piecemeal litigation in that class action treatment  
15 will conserve the resources of the courts and the litigants, and will promote consistency and  
16 efficiency of adjudication.  
17

18 **COUNT I**  
19 **(Nuisance)**

20 **(Brought on Behalf of Plaintiff and the Class**  
21 **against Niantic)**

22 38. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing  
23 allegations as though fully set forth herein.

24 39. At common law, an invasion of one's use and enjoyment of their land, if repeated  
25 or of long duration, constitutes a nuisance.  
26  
27  
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1 40. As described above, via designation of specific GPS coordinates, Niantic  
2 intentionally placed virtual Pokéstops and Pokémon gyms on or near the properties of Plaintiff and  
3 other members of the proposed Class.

4 41. Niantic undertook the foregoing conduct without authorization from Plaintiff or  
5 other members of the proposed Class.

6 42. The foregoing conduct has resulted in foreseeable incursions by *Pokémon Go*  
7 players onto the property of Plaintiff and the other members of the proposed Class, thereby  
8 invading their use and enjoyment of their properties.

9 43. The invasion described above remains ongoing, as at the time of the filing of this  
10 Complaint, Niantic continued to designate GPS coordinates on or near the properties of Plaintiff  
11 and other members of the proposed Class as Pokéstops and Pokémon gyms in *Pokémon Go*.

12 44. The foregoing conduct constitutes a nuisance.

13 45. As a direct and proximate result of Niantic's actions, Niantic is liable to Plaintiff  
14 and the other members of the proposed Class.

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16  
17  
18 **COUNT II**  
19 **(Unjust Enrichment)**

20 **(Brought on Behalf of the Plaintiff and the Class against all Defendants)**

21 46. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing  
22 allegations as though fully set forth herein.

23 47. Defendants have received and retained a benefit from Plaintiff and other members  
24 of the proposed Class, resulting in inequity.

25 48. By designating GPS coordinates on or near the properties of Plaintiff and other  
26 members of the proposed Class as Pokéstops and Pokémon gyms in the *Pokémon Go* game,  
27 Defendants created a more immersive gaming experience, thereby increasing the game's  
28

1 popularity and profitability, while encouraging millions of *Pokémon Go* players to make incursions  
2 onto the properties of Plaintiff and other members of the proposed Class.

3 49. As described *supra* at ¶¶ 12-14, each of the Defendants receives a percentage of all  
4 revenues generated by *Pokémon Go*.

5 50. As a result of the foregoing conduct, Defendants have been unjustly enriched.

6 51. The amount of Defendants' unjust enrichment should be disgorged, in an amount  
7 to be determined at trial.  
8

9 **PRAYER FOR RELIEF**

10 **WHEREFORE** Plaintiff demands judgment against Defendants as follows:

11 A. Determining that the instant action may be maintained as a class action under  
12 Federal Rule of Civil Procedure 23, and certifying Plaintiff as the Class representative;

13 B. Awarding Plaintiff and the other members of the Class damages, disgorgement or  
14 other monetary or equitable relief provided by and pursuant to the common law claims cited above  
15 or as the Court deems just proper;

16 C. Enjoining Defendants from continuing the wrongful acts and practices alleged;

17 D. Awarding Plaintiff and the other members of the Class pre-judgment and post-  
18 judgment interest;

19 E. Awarding Plaintiff and the other members of the Class reasonable attorneys' fees  
20 and costs of suit, including expert witness fees; and

21 F. Awarding such other and further relief as this Court may deem just and proper.  
22  
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**JURY DEMAND**

Plaintiff demands trial by jury.

Dated: July 29, 2016

Respectfully submitted,

**POMERANTZ LLP**

*/s/ Jennifer Pafiti*

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*Attorneys for Plaintiff*

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

JEFFREY MARDER, Individually and on Behalf of All Others Similarly Situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Pomerantz LLP 468 North Camden Drive, Beverly Hills, CA 90210 Tel: 818-532-6499

DEFENDANTS

NIANTIC, INC., THE POKÉMON COMPANY, and NINTENDO CO. LTD.,

County of Residence of First Listed Defendant San Francisco County, CA (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
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 and business location (This State, Another State, Foreign Country).

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 (specify)
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): 28 U.S.C. § 1332(d)

Brief description of cause: Plaintiff seeks to pursue remedies against Niantic, Inc. for nuisance and unjust enrichment.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/29/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Jennifer Pafiti

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

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

**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.