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14

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 M.P.B. on behalf of himself and all others
18 similarly situated,

19 Plaintiff,

20 v.

21 THERANOS, INC., and DOES 1 through 10,
22 inclusive,

23 Defendants.
24
25
26
27
28

Case No.:

CLASS ACTION COMPLAINT

1. **VIOLATION OF UNFAIR BUSINESS PRACTICES ACT [CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.]**
2. **VIOLATION OF FALSE ADVERTISING LAWS [CALIFORNIA BUSINESS & PROFESSIONS CODE § 17500, ET SEQ.]**
3. **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT [CALIFORNIA CIVIL CODE § 1750, ET SEQ.]**
4. **FRAUD**
5. **NEGLIGENT MISREPRESENTATION**
6. **DECEIT [CALIFORNIA CIVIL CODE § 1710]**
7. **VIOLATION OF ARIZONA CONSUMER FRAUD ACT [A.R.S. § 44-1521, ET SEQ.]**

DEMAND FOR JURY TRIAL

I

INTRODUCTION

1
2
3 1. This consumer fraud class action is based on Defendant Theranos’s false and misleading
4 marketing of itself as a disruptive technology in the laboratory services business. What allegedly made
5 Theranos a breakthrough was its proprietary Edison blood testing devices. In contrast to the large
6 needle and numerous tubes required in a typical venipuncture blood draw, Theranos’s Edison devices
7 were handheld machines, supposedly able to take a few drops of blood from a patient’s finger placed
8 into a nanotainer capsule, and conduct hundreds of blood tests, all outside a lab.

9 2. Theranos sold its new “tiny blood test” at Wellness Centers at Walgreens Pharmacies in
10 Arizona and California. Theranos assured its customers that these tests were highly accurate, industry
11 leading in quality, and developed and validated under, and compliant with, federal guidelines.
12 Thousands of people, including Plaintiff M.P.B., believed the Company’s representations and paid for
13 Theranos’s tests.

14 3. However, the Edison machines did not work, and Theranos’s tests were not accurate.
15 This became evident on May 19, 2016, when Theranos conceded that it had informed regulators that it
16 had voided “all” of the Company’s blood-testing results from its proprietary Edison machines, as well
17 as many tests run on traditional machines from 2014 and 2015.¹ As a result, tens of thousands of
18 patients may have been given incorrect blood-test results, been subject to unnecessary or potentially
19 harmful treatments, and/or been denied the opportunity to seek treatment for a treatable condition.

20 4. Plaintiff M.P.B., for himself, and all others similarly situated, (*i.e.*, the members of the
21 Plaintiff Class described and defined within this Complaint), brings this action for damages, including
22 reimbursement of the purchase price of the tests as well as an order enjoining Theranos from engaging
23 in further deceptive advertisements, pursuant to the Unfair Advertising, California Business and
24 Professional Code §17200, *et seq.*; False Advertising, California Business & Professional Code
25 § 17500, *et seq.*; Consumer Legal Remedies Act, California Civil Code §1750, *et seq.*; statutory deceit,
26

27
28 ¹ In the Scottsdale Facility, regulators found that the Company used misprogrammed machines to
evaluate blood coagulation tests, failed to properly gauge water purity in machines it used, and failed
to meet laboratory quality standards.

1 California Civil Code §1710; and common law fraud and negligent misrepresentation, and alleges as
2 follows:

3 **II**

4 **JURISDICTION AND VENUE**

5 5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
6 § 1332(d)(2) because Plaintiff and Defendant are citizens of different states and because, upon
7 information and belief, the aggregate amount in controversy exceeds \$5,000,000 exclusive of costs and
8 interest.

9 6. This Court has personal jurisdiction over the Defendant because Defendant has
10 conducted and continues to conduct business in the State of California, and because Defendant has
11 committed the acts and omissions complained of herein in the State of California.

12 7. Venue as to Defendant is proper in this judicial district. Defendant Theranos, Inc., is
13 headquartered in Palo Alto, California, and operates a laboratory in Newark, California, and many of
14 Defendant's acts complained of herein occurred in this district.

15 **III**

16 **PARTIES**

17 8. Plaintiff M.P.B. is a resident and citizen of Arizona. He purchased a Theranos test at a
18 Walgreen's in Tempe, Arizona, in or around December 2015. Plaintiff M.P.B. purchased the Theranos
19 test to get accurate results about his health. Plaintiff M.P.B. would not have purchased a Theranos test
20 if he had known that the Theranos Edison device did not work as described, and that the Company did
21 not conduct accurate testing.

22 9. Defendant Theranos (hereinafter the "Company") is a blood testing company based in
23 Palo Alto, California. The Company operates two laboratories, one in Newark, California, and another
24 in Scottsdale, Arizona. Through Wellness Centers located predominantly in Walgreens pharmacies in
25 Arizona and California, Theranos sells blood tests to individuals. Since it began offering testing
26 services in 2013, the company has conducted 6.1 million diagnostic tests.

27 10. The true names and capacities of Defendants sued herein as DOES 1 through 10,
28 inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by such fictitious

1 names. Each of the Defendants designated herein as a DOE is legally responsible in some manner for
2 the unlawful acts referred to herein. Plaintiff will seek leave of Court to amend this Complaint to
3 reflect the true names and capacities of the Defendants designated herein as DOES when such identities
4 become known.

5 11. Based upon information and belief, Plaintiff alleges that at all times mentioned herein,
6 each and every Defendant was acting as an agent and/or employee of each of the other Defendants, and
7 at all times mentioned was acting within the course and scope of said agency and/or employment with
8 the full knowledge, permission, and consent of each of the other Defendants. In addition, each of the
9 acts and/or omissions of each Defendant alleged herein were made known to, and ratified by, each of
10 the other Defendants.

11 IV

12 FACTUAL BACKGROUND

13 12. Theranos was founded in 2003 by Elizabeth Holmes who has maintained that she
14 developed the idea for the company as a result of her self-professed phobia of needles. According to
15 published reports, the Company initially focused on development of a hand held device that would use
16 a tiny needle to obtain a small drop of blood for analysis. By 2008, the project had grown into what is
17 now known as the Edison device.

18 13. In contrast to the large needle and numerous tubes required in a typical veinipuncture
19 blood draw, Theranos's Edison device was designed to eliminate the need for laboratories all together.
20 The concept was that a nanotainer containing a few drops of blood from a finger stick would be placed
21 into a cartridge which would, in turn, be placed into a proprietary Edison device (which Theranos
22 executives have never allowed to be photographed) where a button pushed by a staff person generates
23 results that are automatically transmitted to Theranos's databases. This concept would have enabled
24 Theranos to conduct all testing outside of the laboratory in the Wellness Centers and thus – according
25 to Theranos – revolutionize testing by significantly reducing costs.

26 14. People believed Theranos's Edison Technology was a true disruptive technology
27 breakthrough. The Company's founding CEO, Elizabeth Holmes, was hailed as the next Steve Jobs and
28

1 by 2014, Theranos was valued at \$9 billion – approximately the same as each of its two largest and
2 long established competitors in the blood testing industry.

3 15. By 2010, Theranos was in talks with Safeway and Walgreens to offer Edison testing in
4 its stores. After several years of discussions, in 2013, Theranos entered into a partnership agreement
5 with Walgreens, under which Walgreens invested \$50 million in Theranos, and Theranos agreed to
6 operate blood drawing centers, which it called “Wellness Centers” at Walgreens Pharmacies in
7 Arizona and California. The Theranos Walgreens partnership agreement launched in 2013 with a plan
8 to build Theranos Wellness Centers in more than 8,200 Walgreen stores nationwide.

9 16. Before entering the partnership with Theranos, Walgreens’ Chief Medical Officer
10 neither reviewed Theranos’s technology nor independently validated or verified the results of the
11 tests,² but the Company nevertheless said it was confident in the data before introducing the services.
12 When the Walgreens partnership was announced, the press release stated that the deal would offer
13 consumers access to “less invasive and more affordable clinician-directed lab-testing, from blood
14 samples as small as a few drops, or 1/1000 the size of a typical blood draw.”

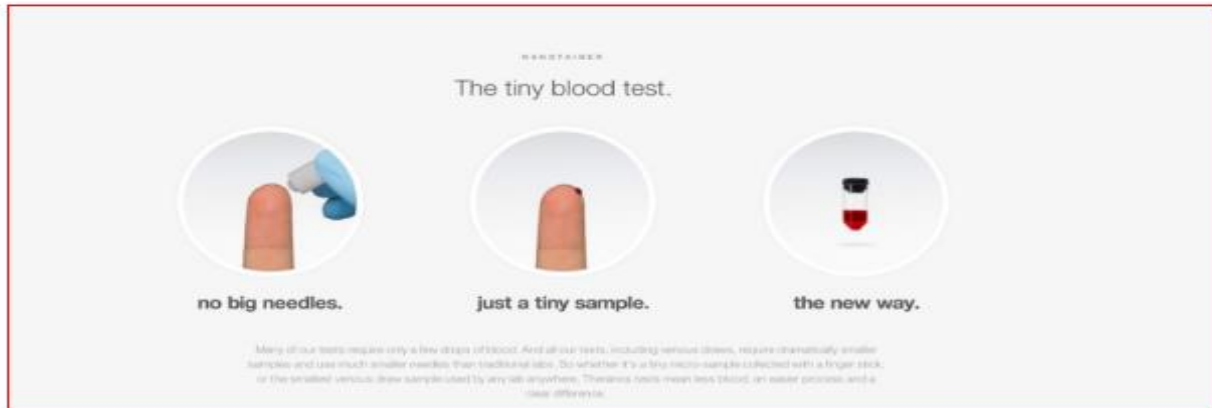
15 17. Theranos relied on the joint venture agreement with Walgreens, under which Theranos
16 has opened 40 wellness centers within Walgreen’s pharmacy stores in Arizona, and one in a pharmacy
17 in California, to sell most of its tests. In its sales materials to Walgreens customers, Theranos
18 highlighted the proprietary technology and described its offerings as a “tiny blood test,” a “new way”
19 of testing. The materials repeatedly referenced smaller sample size and depicted the nanotainer.
20 Additionally, the materials assured that Theranos was “industry leading in quality and its tests were
21 highly accurate and developed and validated under and to Federal guidelines.” Thousands of people,
22 including Plaintiff believed the Company’s representations, and paid for blood testing at Walgreen
23 Wellness Centers.

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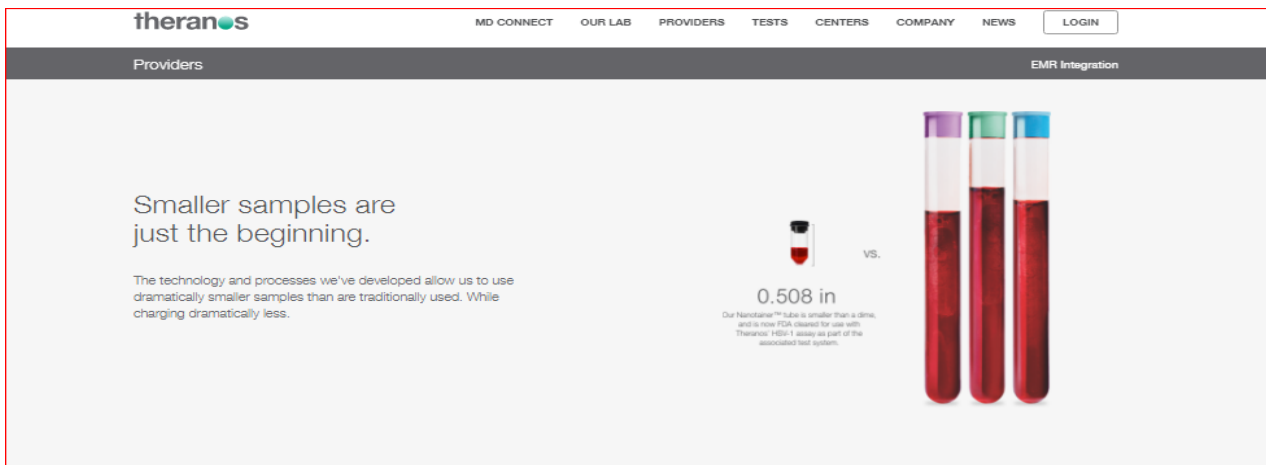
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27 ² [http://www.economist.com/news/business/21697273-pressure-mounting-startup-has-tried-shake-up-](http://www.economist.com/news/business/21697273-pressure-mounting-startup-has-tried-shake-up-lab-test-market-blood-sports)
28 [lab-test-market-blood-sports](http://www.economist.com/news/business/21697273-pressure-mounting-startup-has-tried-shake-up-lab-test-market-blood-sports) (last visited May 23, 2016).

18. Theranos described its technology as follows:



19. In its marketing to Walgreens' customers, Theranos focused its advertising message on the idea that its lab services were based on proprietary technology and a different model which required far smaller samples and far less blood than typical blood testing:



20. On another webpage advertisement to Walgreen's customers, the Company stated that smaller samples had a direct benefit on patients by dramatically reducing the time it takes to analyze samples because its technology enabled a "more timely diagnosis to support better, more informed treatment."³

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³ <http://www.walgreens.com/pharmacy/lab-testing/home.jsp> (last visited May 22, 2016).

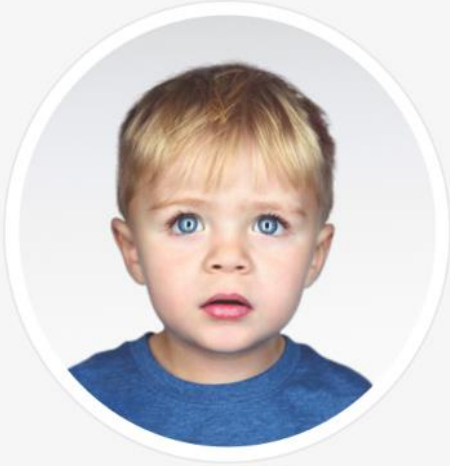
1 theranos MD CONNECT OUR LAB PROVIDERS TESTS CENTERS COMPANY NEWS LOGIN

2

3 THE DIFFERENCE

4 Smaller samples.
5 Smaller needles.
6 A better experience.

7 Our tests, including venous draws, require smaller samples than traditional
8 labs. We also use much smaller needles. Ones designed specifically for
9 collecting blood for children, taking the smallest sample possible. Theranos
10 tests mean less blood, an easier process, and a clear difference in your
11 experience.




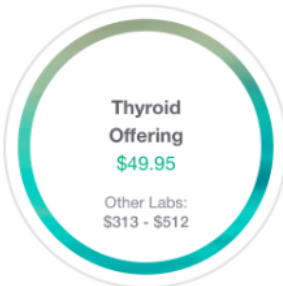


12 21. At Walgreens, Theranos offered a variety of testing directly to consumers:

13

14 The same low prices for everyone.

15 Whether you have good insurance, bad insurance or no insurance at all, at Theranos we believe you
16 should be able to afford lab testing. Which is why Theranos charges everyone the same low prices.
17 Period. Theranos prices are clear, up-front, published online, and always a fraction of other labs.
18 Meaning there are no surprises, and you know exactly what you're paying before you get tested.

19 [View test menu >](#)

 <p>Comprehensive Metabolic Panel (CMP) \$7.27 Other Labs: \$27 - \$29</p>	 <p>Thyroid Offering \$49.95 Other Labs: \$313 - \$512</p>	 <p>STI Comprehensive Offering \$59.95 Other Labs: \$924 - \$1,019</p>	 <p>Insulin \$7.86 Other Labs: \$49 - \$95</p>
<p>To evaluate organ function and check for conditions such as diabetes, liver disease, and kidney disease</p>	<p>To evaluate thyroid function</p>	<p>To screen for and diagnose sexually transmitted infections</p>	<p>To help evaluate insulin production</p>

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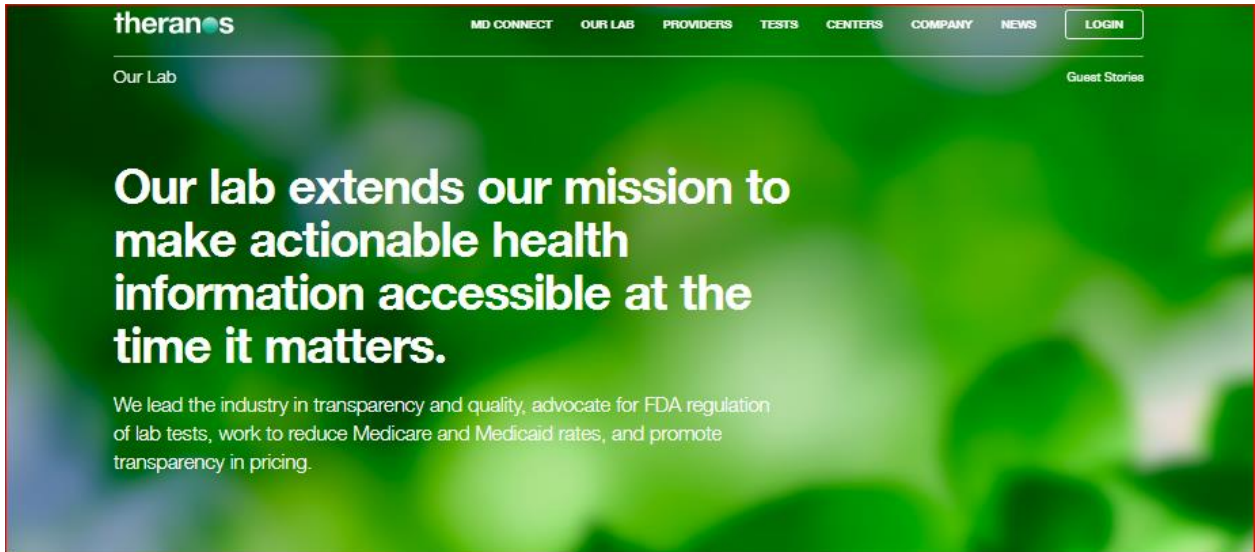
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11 **Theranos’s Statements About its Wellness Center Testing Were False**

12 22. Though Holmes had spent years working to perfect the Edison device in order to
13 achieve a lofty goal, by the time the Wellness Centers opened, the Edison machines were not yet
14 beyond the prototype stage.

15 23. Theranos did not have the necessary FDA approval, known as a CLIA waiver, to use
16 the Edison Device for conducting on-site blood testing at the Wellness Centers, with the sole
17 exception of a single test (Herpes Simplex HSV-1), for which the company obtained approval in July
18 2015.

19 24. Despite the Company’s representations to the public about the importance of the
20 nanotainer and its proprietary technology, by the end of 2014, Theranos was using its proprietary
21 Edison machines and nanotainers for only 15 out of 205 tests.

22 25. In a report detailing objectionable conditions at Theranos dated September 16, 2015,
23 the FDA informed Theranos that, among other things, the agency considered the nanotainer devices to
24 be uncleared medical devices being shipped in interstate commerce.⁴

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28 ⁴ <http://www.fda.gov/ucm/groups/fdagov-public/@fdagov-afda-orgs/documents/document/ucm469395.pdf> (last visited May 23, 2016).

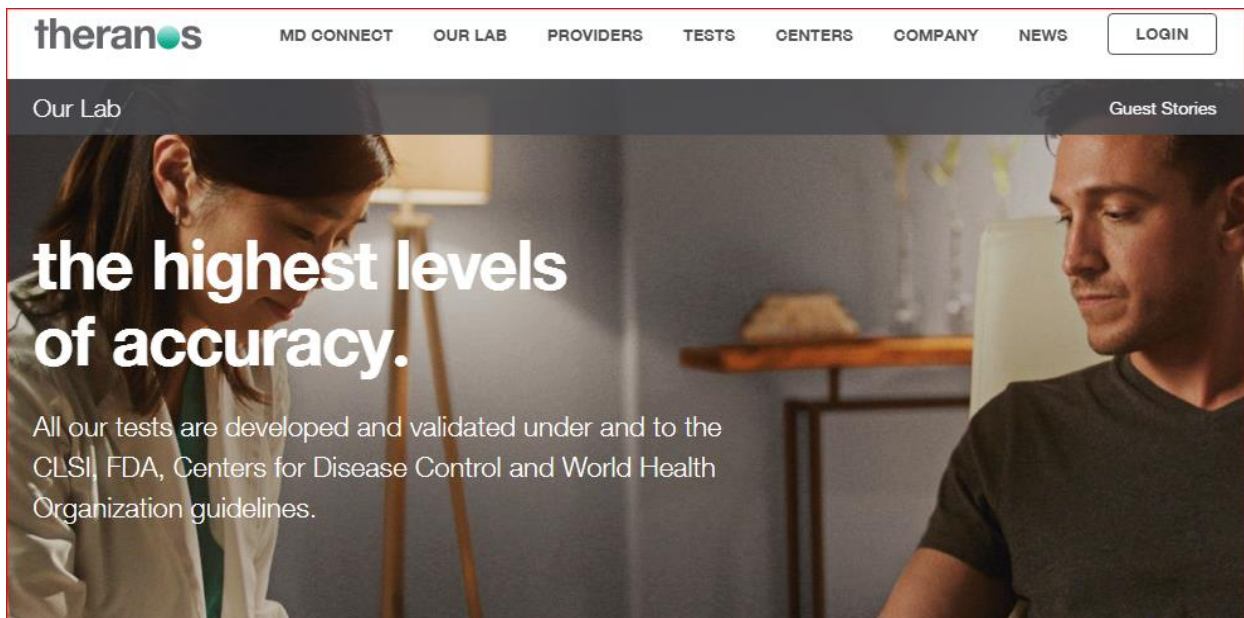
1 26. Because Theranos did not have FDA approval to conduct tests on the Edison device
2 outside of a laboratory setting (with the limited exception discussed above), when Theranos drew
3 blood at the Walgreen’s Wellness Centers, the samples obtained then had to be couriered to one of the
4 Company’s two centralized labs, either in Newark, California, or Scottsdale, Arizona. The proprietary
5 Edison devices were only located in the Newark laboratory and, accordingly, all the finger stick blood
6 samples were analyzed at that facility.

7 27. The Scottsdale Lab only performed analyses on venipuncture tests, and only analyzed
8 those samples on machines purchased from outside companies such as Siemens.

9 28. In the context of a regulated laboratory, Theranos did not need FDA approval to
10 perform testing using the Edison devices, so long as the Company complied with proficiency testing
11 and other safeguards; however, the blood labs failed to comply with such testing and guidelines
12 according to published reports.

13 **The Lab Testing at Theranos’s Offsite Labs Was Not Accurate and/or Accomplished in**
14 **Accordance With Federal Guidelines**

15 29. Theranos advertised that its labs were accurate “validated” or compliant with federal
16 regulations or law. Specifically:



1 30. However, these representations were false. In January 2016, the Centers for Medicare
2 and Medicaid Services cited the Newark lab for multiple serious deficiencies. Among other things, in
3 October 2014, 29 percent of quality control checks performed on the Company's Edison devices
4 produced results outside the acceptable range. Regardless, Theranos continued to rely on the Edison
5 devices.

6 31. In February 2015, an Edison device used for testing certain hormone levels failed 87
7 percent of quality control checks.

8 32. In addition, the FDA observed that there were no quality audits being performed at the
9 Newark lab in contravention of FDA regulations.⁵

10 33. At the very time that Theranos was advertising compliance with federal regulations, it
11 had been repeatedly sanctioned by federal authorities. For example, on March 18, 2016, the Company
12 had received a letter from the Centers for Medicare and Medicaid Services (CMS) referenced "RE:
13 PROPOSED SANCTIONS - CONDITIONS NOT MET IMMEDIATE JEOPARDY", which stated
14 that the Company was not in compliance with accepted clinical laboratory standards. That letter
15 stated, "This letter provides notice of sanctions the Centers for Medicare & Medicaid Services (CMS)
16 is proposing to impose against the laboratory's Clinical Laboratory Improvement Amendments of 1988
17 (CLIA) certificate and of the laboratory's opportunity to submit in writing any evidence or information
18 as to why the proposed sanctions should not be imposed." The letter noted that, based on a December
19 23, 2015, survey, Theranos was found to be out of compliance with five CLIA Condition-level
20 requirements and CMS determined that various CLIA Standard-level requirements were not met.⁶

21 34. Inspection reports found that Edison machines in the lab often failed to meet the
22 Company's own accuracy requirements, including a test to detect prostate cancer.

23 35. Theranos's conventional laboratory operations in both Scottsdale and Newark were
24 found to be flawed by government regulators.

25 _____
26 ⁵ <http://www.fda.gov/ucm/groups/fdagov-public/@fdagov-afda->
27 [orgs/documents/document/ucm469395.pdf](http://www.fda.gov/ucm/groups/fdagov-public/@fdagov-afda-) (last visited May 23, 2016).

28 ⁶ <http://www.wsj.com/public/resources/documents/hhslettertheranos.pdf> (last visited May 23, 2016).

1 36. According to published reports, at Theranos's Scottsdale lab, the Company performed
2 lab tests with certain Siemens lab equipment programmed to the wrong settings, and failed to
3 adequately gauge the purity of the water input into Siemens lab equipment, which could effect the
4 outcome of the results of testing run on such devices.

5 37. Finally, a peer reviewed study by researchers at the Icahn School of Medicine at Mount
6 Sinai showed that results for cholesterol tests done by Theranos differed enough from the two largest
7 laboratory companies that it could negatively impact patient care.

8 38. Accordingly, those statements to customers, asserting that testing was accomplished
9 through proprietary analysis, which was accurate and compliant with federal regulations and
10 guidelines, were false.

11 **V**

12 **CLASS ACTION ALLEGATIONS**

13 39. Plaintiff bring this action on behalf of himself and two potential classes pursuant to
14 Federal Rules of Civil Procedure, Rule 23(a), 23(b)(2), and/or 23(b)(3), defined as follows:

15 **National Class:**

16 All purchasers of Theranos lab panels and blood testing services

17 40. In the alternative, pursuant to Federal Rules of Civil Procedure, Rule 23(c)(5), Plaintiff
18 seeks to represent the following state class only in the event that the Court declines to certify the
19 Nationwide Class above. Specifically, the State Class is defined as follows:

20 **Arizona Subclass:**

21 All purchasers of Theranos lab panels and blood testing services in Arizona.

22 41. This action is brought as a class action and may properly be so maintained pursuant to
23 the provisions of Rule 23 of the Federal Rules of Civil Procedure. Plaintiff reserves the right to amend
24 or modify the Class description with greater specificity or further division into subclasses or limitation
25 to particular issues, based on the results of discovery. Excluded from the Class are Defendant, its
26 affiliates, employees, officers and directors, persons or entities, and the Judge(s) assigned to this case.
27 Plaintiff reserves the right to modify, change, or expand the Class definition.
28

1 42. **Numerosity of the Class** – The members of the Class are so numerous that their
2 individual joinder is impracticable. There were approximately 6.1 million tests performed by
3 Theranos. Plaintiff believes there are thousands of members in the class. Inasmuch as the class
4 members may be identified through business records regularly maintained by Defendant and its
5 employees and agents, and through the media, the number and identities of class members can be
6 ascertained. Members of the Class can be notified of the pending action by e-mail, mail, and
7 supplemented by published notice, if necessary.

8 43. **Existence and Predominance of Common Question of Fact and Law** – There are
9 questions of law and fact common to the Class. These questions predominate over any questions
10 affecting only individual class members. These common legal and factual issues include, but are not
11 limited to:

- 12 a. Whether the laboratory tests performed by Theranos were accurate;
- 13 b. Whether the Edison devices performed as advertised;
- 14 c. Whether Theranos’s testing delivered the highest degree of accuracy;
- 15 d. Whether Theranos’s statements about its laboratories were materially misleading;
- 16 e. Whether Theranos’s conduct violates the laws as set forth in the causes of action.

17 44. **Typicality** – The claims of the representative Plaintiff are typical of the claims of each
18 member of the Class. Plaintiff, like all other members of the Class, has sustained damages arising
19 from Defendant’s violations of the law, as alleged herein. The representative Plaintiff and the
20 members of the Class were and are similarly or identically harmed by the same unlawful, deceptive,
21 unfair, systematic, and pervasive pattern of misconduct engaged in by Defendant.

22 45. **Adequacy** – The representative Plaintiff will fairly and adequately represent and
23 protect the interests of the Class members and have retained counsel who are experienced and
24 competent trial lawyers in complex litigation and class action litigation. There are no material
25 conflicts between the claims of the representative Plaintiff and the members of the Class that would
26 make class certification inappropriate. Counsel for the Class will vigorously assert the claims of all
27 Class members.
28

1 46. **Predominance and Superiority** – This suit may be maintained as a class action under
2 Federal Rule of Civil Procedure 23(b)(3) because questions of law and fact common to the Class
3 predominate over the questions affecting only individual members of the Class and a class action is
4 superior to other available means for the fair and efficient adjudication of this dispute. The damages
5 suffered by individual class members are small compared to the burden and expense of individual
6 prosecution of the complex and extensive litigation needed to address Defendant’s conduct. Further, it
7 would be virtually impossible for the members of the Class to individually redress effectively the
8 wrongs done to them. Even if Class members themselves could afford such individual litigation, the
9 court system could not. In addition, individualized litigation increases the delay and expense to all
10 parties and to the court system resulting from complex legal and factual issues of the case.
11 Individualized litigation also presents a potential for inconsistent or contradictory judgments. By
12 contrast, the class action device presents far fewer management difficulties; allows the hearing of
13 claims which might otherwise go unaddressed because of the relative expense of bringing individual
14 lawsuits; and provides the benefits of single adjudication, economies of scale, and comprehensive
15 supervision by a single court.

16 47. The Plaintiff contemplates the eventual issuance of notice to the proposed Class
17 members setting forth the subject and nature of the instant action. Upon information and belief,
18 Defendant’s own business records and electronic media can be utilized for the contemplated notices.
19 To the extent that any further notices may be required, the Plaintiff would contemplate the use of
20 additional media and/or mailings.

21 48. This action is properly maintained as a Class Action pursuant to Rule 23(b) of the
22 Federal Rules of Civil Procedure, in that:

23 a. Without class certification and determination of declaratory, injunctive, statutory and
24 other legal questions within the class format, prosecution of separate actions by individual
25 members of the Class will create the risk of:

26 i. Inconsistent or varying adjudications with respect to individual members of the
27 Class which would establish incompatible standards of conduct for the parties
28 opposing the Class; or

1 ii. Adjudication with respect to individual members of the Class which would as a
2 practical matter be dispositive of the interests of the other members not parties to
3 the adjudication or substantially impair or impede their ability to protect their
4 interests;

5 b. The parties opposing the Class have acted or refused to act on grounds generally
6 applicable to each member of the Class, thereby making appropriate final injunctive or
7 corresponding declaratory relief with respect to the Class as a whole; or

8 c. Common questions of law and fact exist as to the members of the Class and
9 predominate over any questions affecting only individual members, and a Class Action is
10 superior to other available methods of the fair and efficient adjudication of the controversy,
11 including consideration of:

- 12 i. The interests of the members of the Class in individually controlling the
13 prosecution or defense of separate actions;
- 14 ii. The extent and nature of any litigation concerning controversy already
15 commenced by or against members of the Class;
- 16 iii. The desirability or undesirability of concentrating the litigation
17 of the claims in the particular forum;
- 18 iv. The difficulties likely to be encountered in the management of a
19 Class Action.

20 **VI**
21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **(Violation of California Business & Professions Code Sections 17200, *et seq.* –**
24 **Unfair Business Practices Act)**
25 **(On Behalf of the Nationwide Class)**

26 49. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged
27 herein.
28

1 50. Plaintiff brings this claim on behalf of himself and on behalf of the National Class
2 defined above.

3 51. The Unfair Business Practices Act defines unfair business competition to include any
4 “unfair,” “unlawful,” or “fraudulent” business act or practice. The Act also provides for injunctive
5 relief, restitution, and disgorgement of profits for violations.

6 52. Defendant’s unlawful, unfair, and fraudulent business acts and practices are described
7 throughout this Complaint and include, but are not limited to the following: 1) advertising that it will
8 provide testing using proprietary Edison devices when, in fact, Theranos did not actually use the
9 Edison devices for most laboratory testing; and 2) conducting testing that was a not carried out within
10 proper federal regulations. In addition to the above, the conduct as alleged throughout the complaint
11 constitutes a violation of False Advertising Laws, Cal. Bus. & Prof. Code § 17500, *et seq.*, the
12 Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, statutory deceit, Cal. Civ. Code
13 § 1710) and fraud and negligent misrepresentation that not only result in liability as to the individual
14 causes of action, they also provide a basis for a finding of liability under California Business and
15 Professions Code § 17200, *et seq.*

16 53. Furthermore, Defendant’s practices violate the declared legislative policies as set forth
17 by the federal government in 40 C.F.R. § 600.307(a)(ii)(A); 40 C.F.R. § 600.302-08(b)(4) and 16
18 C.F.R. § 259.2(a).

19 54. Plaintiff and the Class members have been damaged by said practices. Pursuant to
20 California Business and Professions Code §§ 17200 and 17203, Plaintiff, on behalf of himself and all
21 others similarly situated, seeks relief as prayed for below.

22 **SECOND CAUSE OF ACTION**

23 **(Violation of California Business & Professions Code Sections 17500, *et seq.* –**

24 **False Advertising Laws)**

25 **(On Behalf of the Nationwide Class)**

26 55. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged
27 herein.

28

1 56. Plaintiff brings this claim on behalf of himself and on behalf of the National Class
2 defined above.

3 57. Defendant disseminated materially misleading and deceptive information and omitted
4 material information, as discussed throughout the Complaint, for purposes of inducing customers to
5 purchase the tests, in violation of California Business and Professions Code § 17500, *et seq.*

6 58. Plaintiff and the Class, and each of them, have been damaged by said practice and seeks
7 relief as prayed below.

8 **THIRD CAUSE OF ACTION**

9 **(Violation of California Civil Code Section 1750 *et seq.* –Consumer Legal Remedies Act)**

10 **(On Behalf of the Nationwide Class)**

11 59. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged
12 herein.

13 60. Plaintiff brings this claim on behalf of himself and on behalf of the National Class
14 defined above.

15 61. The following definitions come within the meaning of the Consumer Legal Remedies
16 Act (Cal. Civ. Code § 1750, *et seq.*):

17 a. The members of the Class, all of whom purchased tests sold by Theranos are
18 “consumers,” Cal. Civ. Code § 1761(d);

19 b. Defendant Theranos is a “person,” Cal. Civ. Code § 1761(c);

20 c. Plaintiff and each and every Class members’ purchase of the subject test constitute a
21 “transaction,” Cal. Civ. Code § 1761(e); and

22 d. The subject tests are “goods,” Cal. Civ. Code § 1761 (a).

23 62. The acts and practices of Defendant as discussed throughout the Complaint, constitute
24 “unfair or deceptive acts or practices” by Defendant, that are unlawful, as enumerated in section
25 1770(a) of the California Civil Code.

26 63. Such misconduct materially affected the purchasing decisions of Plaintiff and the
27 members of the Classes.

28 64. Plaintiff seeks injunctive relief pursuant to California Civil Code § 1780.

1 65. As a result of the California Civil Code section 1770 violations described above,
2 Plaintiff and each and every member of the Class have suffered actual damages.

3 **FOURTH CAUSE OF ACTION**

4 **(Fraud)**

5 **(On Behalf of the Nationwide and Arizona Classes)**

6 66. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged
7 herein.

8 67. Plaintiff brings this claim on behalf of himself and on behalf of the National Class, or
9 the Arizona Class in the alternative, as defined above.

10 68. The misrepresentations, nondisclosure, and/or concealment of material facts made by
11 Defendant to Plaintiff and the members of the Class, as set forth above, were known, or through
12 reasonable care should have been known, by Defendant to be false and material and were intended by
13 Defendant to mislead Plaintiff and the members of the Class.

14 69. Plaintiff and the Class were actually misled and deceived and were induced by
15 Defendant to purchase the testing which they would not otherwise have purchased.

16 70. As a result of the conduct of Defendant, Plaintiff and the Class members have been
17 damaged. In addition to such damages, Plaintiff seeks punitive or exemplary damages pursuant to
18 California Civil Code § 3294 in that Defendant engaged in “an intentional misrepresentation, deceit, or
19 concealment of a material fact known to the defendant with the intention on the part of the defendant
20 of thereby depriving a person of property or legal rights or otherwise causing injury.”

21 **FIFTH CAUSE OF ACTION**

22 **(Negligent Misrepresentation)**

23 **(On Behalf of the Nationwide and Arizona Classes)**

24 71. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged
25 herein.

26 72. Plaintiff brings this claim on behalf of himself and on behalf of the National Class, or
27 the Arizona Class in the alternative, as defined above.

28

1 73. Defendant had a duty to provide honest and accurate information to its customers so
2 that customers could make informed decisions on the purchase laboratory testing.

3 74. Defendant specifically and expressly misrepresented material facts to Plaintiff and the
4 Class members, as discussed above.

5 75. Defendant knew, or in the exercise of reasonable diligence should have known, that the
6 ordinary consumer would be misled by Defendant's misleading and deceptive advertisements.

7 76. Plaintiff and the Class members justifiably relied on Defendant's misrepresentations
8 and have been damaged thereby.

9 **SIXTH CAUSE OF ACTION**
10 **(California Civil Code § 1710 - Deceit)**
11 **(On behalf of the Nationwide Class)**

12 77. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged
13 herein.

14 78. Plaintiff brings this claim on behalf of himself and on behalf of the National Class, or
15 the Arizona Class in the alternative, as defined above.

16 79. Based on Defendant's conduct as discussed above, Defendant has engaged in fraud and
17 deceit as set forth in California Civil Code § 1710. Plaintiff and the Class members have reasonably
18 relied on the material misrepresentations and omissions made by Defendant and have been damaged
19 thereby.

20 **SEVENTH CAUSE OF ACTION**
21 **(Violation of Arizona Consumer Fraud Act, A.R.S. § 44-1521, et seq.)**
22 **(On Behalf of the Arizona Class)**

23 80. Plaintiff incorporates by reference and re-alleges all paragraphs previously alleged
24 herein.

25 81. Plaintiff brings this claim on behalf of himself and on behalf of the National Class, or
26 the Arizona Class in the alternative, as defined above.

27 82. Plaintiff brings this claim on behalf of himself and on behalf of the National Class, as
28 defined above.

1 83. Defendants are “persons” within the meaning of A.R.S. § 44-1521(6).

2 84. Theranos lab panels and blood tests sold in Arizona are “merchandise” within the
3 meaning of A.R.S. § 44-1521(5).

4 85. The Arizona Consumer Fraud Act provides that “[t]he act, use or employment by any
5 person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise,
6 misrepresentation, or concealment, suppression or omission of any material fact with intent that others
7 rely upon such concealment, suppression or omission, in connection with the sale or advertisement of
8 any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is
9 declared to be an unlawful practice.” A.R.S. § 44-1522(A).

10 86. Based on Defendant’s conduct as discussed above, Defendant has engaged in fraud and
11 deceit as set forth in Arizona Arizona Consumer Fraud Act. Plaintiff and the Class members have
12 reasonably relied on the material misrepresentations and omissions made by Defendant and have been
13 damaged thereby.

14 87. Pursuant to the Arizona Consumer Fraud Act, Plaintiff seeks damages described above
15 as well as judicial orders of an equitable nature against Defendant, including, but not limited to, orders
16 declaring such practices as are complained of herein to be unlawful, unfair, fraudulent and/or
17 deceptive and enjoining them from undertaking any further unfair, unlawful, fraudulent and/or
18 deceptive acts or omissions.

19 88. 8. In addition, Plaintiff seeks disgorgement of profits and restitution plus interest
20 due thereon at the legal rate.

21 89. Plaintiff also seeks punitive damages according to proof and reasonable costs and
22 attorneys fees.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, on behalf of himself and the members of the Class, demands judgment
25 against and general and special relief from Defendant as follows:

26 1. An order certifying that the action may be maintained as a Class Action under Federal
27 Rule of Civil Procedure 23 as defined herein and appointing Plaintiff and his counsel of record to
28 represent the defined Class;

1 2. An order enjoining Defendant under California Business and Professions Code §§ 17203
2 and 17535, California Civil Code §§ 1780 and 1781, and Arizona Revised Statute § 44-1521, *et seq.*:

3 a. To reimburse Plaintiff and the Class members the purchase price for all Theranos tests
4 as restitution of all funds improperly obtained by Defendant as a result of such acts
5 and practices declared by this Court to be an unlawful, fraudulent, or an unfair
6 business act or practice, a violation of laws, statutes, or regulations, or constituting
7 unfair competition;

8 b. To disgorge all profits and compensation improperly obtained by Defendant as a
9 result of such acts and practices declared by this Court to be an unlawful, fraudulent,
10 or an unfair business act or practice, a violation of laws, statutes, or regulations, or
11 constituting unfair competition; and

12 c. To cease engaging in false advertising and to disseminate an informational campaign
13 to correct its misrepresentations and material omissions.

14 3. For damages under the causes of action for fraud, negligent misrepresentation, statutory
15 Deceit, and the Arizona Consumer Fraud Act;

16 4. For punitive damages, pursuant to California Civil Code § 3294 and the Arizona
17 Consumer Fraud Act;

18 5. For reasonable attorney's fees and costs, pursuant to California Code of Civil Procedure
19 § 1021.5, the Arizona Consumer Fraud Act, and other statutes as may be applicable;

20 6. For prejudgment interest to the extent allowed by law;

21 7. For costs of suit incurred herein;

22 8. For such other and further relief as the Court deems appropriate.

23 DATED: May 25, 2016

McCUNEWRIGHT, LLP

24 BY: /s/Richard D. McCune

25 Richard D. McCune
26 Attorney for Plaintiff
27
28

DEMAND FOR JURY TRIAL

Plaintiff, and all others similarly situated, hereby demand a trial by jury herein.

DATED: May 25, 2016

McCUNEWRIGHT, LLP

BY: /s/Richard D. McCune
Richard D. McCune
Attorney 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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

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

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

DEFENDANTS

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and sub-categories with checkboxes.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

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 SIGNATURE OF ATTORNEY OF RECORD

05/25/16

(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.