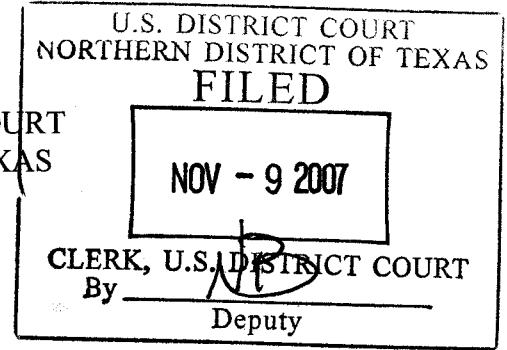


ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS



UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 GRACE N. MACHOKO, individually and)
 doing business as FAST INCOME TAX)
 SERVICES,)
)
 Defendant.)

Case Number:

3-07CV1874-N

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America alleges against defendant Grace N. Machoko, individually and doing business as Fast Income Tax Services, as follows:

1. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of Internal Revenue Code (IRC) (26 U.S.C.) §§ 7402, 7407, and 7408.

Jurisdiction and Venue

2. Jurisdiction is conferred on this Court by Sections 1340 and 1345 of Title 28, United States Code, and IRC §§ 7402(a), 7407, and 7408.

3. This is a civil action brought by the United States under IRC §§ 7402(a), 7407, and 7408 to enjoin Machoko and anyone in active concert or participation with her from:

- A. acting as a federal income tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than themselves, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;

- B. preparing or filing (or helping to prepare or file) federal income tax returns, amended returns, or other related documents and forms for others;
- C. organizing or selling tax shelters, plans, or arrangements that advise or assist taxpayers to attempt to understate their federal tax liabilities or evade the assessment or collection of their correct federal tax;
- D. understating customers' liabilities as subject to penalty under IRC § 6694;
- E. engaging in any other activity subject to penalty under IRC §§ 6694, 6700, 6701, or any other penalty provision of the IRC; and
- F. engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because Machoko resides in Dallas, Texas, within this judicial district and a substantial part of the actions giving rise to this suit took place in this district.

Defendant and Basic Facts

5. Grace N. Machoko is a paid federal tax preparer operating in Dallas, Texas.
6. Machoko is engaged in the unlawful promotion of a tax scheme in which she gives customers false and fraudulent tax advice regarding the fuel tax credit and prepares fraudulent tax returns for customers to implement the scheme.
7. Machoko prepares customers' federal income tax returns consistent with her scheme by improperly claiming fraudulent IRC§ 6421 fuel tax credits.
8. The IRS has identified at least 45 federal tax returns prepared by Machoko for customers in 2006.
9. The IRS has identified more than \$200,000 in fraudulent fuel tax credits claimed on returns Machoko prepared.
10. The IRS sent Machoko a letter on October 5, 2007, requiring, under the authority of IRC § 6107(b), that she provide copies of all of the federal income tax returns that she has

prepared on or after December 31, 2005. Machoko has failed to respond to the IRC § 6107(b) letter. Her failure to respond is conduct subject to penalty under IRC § 6695(d) and therefore subject to injunction under IRC § 7407.

Fuel Tax Credit Fraud

11. Machoko has prepared blatantly fraudulent tax returns for customers using IRS Form 4136, "Credit for Federal Tax Paid on Fuels." In using and preparing these forms Machoko misapplied IRC § 6421(a). The fuel tax credit is available only to taxpayers who operate farm equipment or other off-highway business vehicles, or burn kerosene in their homes. Moreover, the equipment or vehicles using the fuel must not be registered for highway uses.

Overview of IRC § 6421(a): Credit for Federal Tax Paid on Fuels

12. Fraudulently claiming entitlement to the fuel tax credit is a widespread tax scam, presenting a serious enforcement problem for the IRS. As part of this scheme, Machoko improperly claims the fuel tax credit for her customers for purported personal or business motor fuel purchases.

13. IRC § 6421(a) provides a credit for fuel used in an off-highway business use. Off-highway business use is any off-highway use of fuel in a trade or business or in an income-producing activity where the equipment or vehicle is not registered and not required to be registered for use on public highways. IRS Publication 225 provides the following examples of off-highway business fuel use: (1) in stationary machines such as generators, compressors, power saws, and similar equipment; (2) for cleaning purposes; and (3) in forklift trucks, bulldozers, and earthmovers. *See* IRS Publication 225 (2006), Farmer's Tax Guide, Chapter 14 (2006) (available online at: <http://www.irs.gov/publications/p225/ch14.html#d0e19048>).

14. IRS Publication 510 defines a highway vehicle as any “self-propelled vehicle designed to carry a load over public highways, whether or not it is also designed to perform other functions.” A public highway includes any road in the United States that is not a private roadway. This includes federal, state, county, and city roads and streets. These highway vehicles are not eligible for the Fuel tax credit. IRS Publication 510 provides the following as examples of highway vehicles, which are not eligible for the Fuel tax credit: passenger automobiles, motorcycles, buses, and highway-type trucks and truck tractors. *See* IRS Publication 510 (2006), Excise Taxes for 2006, Chapter 2 (2006) (available online at: <http://www.irs.gov/publications/p510/ch02.html#d0e3533>)

15. IRS Publication 510 provides the following example of an appropriate application of the Fuel tax credit:

Caroline owns a landscaping business. She uses power lawn mowers and chain saws in her business. The gasoline used in the power lawn mowers and chain saws qualifies as fuel used in an off-highway business use. The gasoline used in her personal lawn mower at home does not qualify.

16. In short, the Fuel tax credit does not apply to passenger cars or other vehicles that are registered or required to be registered to drive on public highways.

Machoko’s Fraudulent Claims of the Fuel Tax Credit

17. Machoko prepares federal income tax returns for individuals who are part or full-time wage earners, and reduces her customers’ reported tax liabilities by claiming a bogus fuel tax credit under IRC § 6421. The IRS has determined that at least 45 federal tax returns that Machoko prepared for customers in 2006 claimed false fuel tax credits.

18. Machoko prepares Forms 4136 for her customers falsely stating that the customer has used gasoline for off-highway business purposes. Machoko claims the credit for city residents in purported occupations such as nurse aids, cashiers, cooks, teachers, and hairdressers.

19. Machoko claims absurdly large credits by falsely reporting purchases of huge quantities of gasoline.

20. For example, Machoko fraudulently prepared a return claiming a fuel tax credit for a customer claiming to be a cook. Machoko claimed on the return that in 2005 the customer purchased 53,000 gallons of gasoline for off-highway business use. This customer, whose total reported income for the year was \$1,571, would have had to spend approximately \$116,000 (assuming \$2.20 per gallon) to purchase that volume of gasoline—nearly 75 times her reported total income for the year. Moreover, to use that volume of gasoline, assuming mileage of 20 miles per gallon, this Machoko customer would have had to drive 1,060,000 business miles during the year - which comes to 2,904 miles each day of the year, seven days a week. This example shows the blatantly fraudulent nature of Machoko's use of the fuel tax credit.

21. Of the 45 Machoko-prepared 2006 returns on which a false fuel tax credit is claimed, only ten claim an income higher than the amount required to purchase the claimed amount of gas, and only five showed enough income to suggest that the customers were spending less than two-thirds of their total annual income on exempt fuel.

22. The following chart shows seven more examples of Machoko's fraudulent preparation of federal income tax returns for the 2005 year using the Fuel tax credit:

Occupation, Location	Amount of off-highway business use of gasoline claimed on Form 4136	Cost of claimed business use of gasoline*	Estimated yearly/daily mileage**	Total Income	Amount of gasoline credit	Refund Requested
Customer Service, King of Prussia, PA	65,000 gallons	\$143,000	1,300,000 per yr/ 3,561 per day	\$27,702	\$11,960	\$10,607
Cook, Queen City, TX	53,000 gallons	\$116,600	1,060,000 per yr/ 2,904 per day	\$1,571	\$9,752	\$9,999
Mechanic, Dallas, TX	50,000 gallons	\$110,000	1,000,000 per yr/ 2,739 per day	\$40,161	\$9,200	\$9,711
Cashier, Dallas, TX	10,800 gallons	\$23,760	216,000 per yr/ 591 per day	\$2,588	\$1,987	\$2,987
Builder, Dallas, TX	13,000 gallons	\$28,600	260,000 per yr/ 712 per day	\$32,504	\$2,392	\$3,502
Bartender, Hollywood, FL	29,500 gallons	\$64,900	590,000 per yr/ 1,616 per day	\$21,617	\$5,428	\$6,038
Nurse Aid, Dallas, TX	51,000 gallons	\$112,200	102,000 per yr/ 2784 per day	\$524	\$9,384	\$9,962

* Estimated total cost based on \$2.20 per gallon.

** Estimated milage based on 20 miles per gallon.

Harm to the public

23. Machoko's preparation of false and fraudulent tax returns, to the extent that the Internal Revenue Service has not detected them, has resulted in customers receiving substantial federal income tax refunds to which they are not entitled and in not reporting and paying taxes

that they owe. Machoko has filed returns for customers seeking more than \$200,000 in refunds based on fraudulent fuel tax credits.

24. Machoko's conduct harms the United States because her customers are receiving refunds to which they are not entitled and failing to pay taxes that they owe.

25. In addition to the direct harm caused by preparing tax returns that understate her customers' tax liabilities, Machoko's activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

26. Machoko further harms the United States because the Internal Revenue Service must devote its limited resources to identifying Machoko's customers, ascertaining their correct tax liability, recovering any refunds erroneously issued, and collecting any additional taxes and penalties. The IRS estimates that its administrative costs associated with this scheme thus far total nearly \$10,000.

Count I
Injunction under IRC § 7407

27. The United States incorporates by reference the allegations in paragraphs 1 through 26.

28. IRC § 7407 authorizes a district court to enjoin an income tax preparer from:

- A. engaging in conduct subject to penalty under IRC § 6694;
- B. engaging in conduct subject to penalty under IRC § 6695;
- C. failing to comply with an IRS request under IRC § 6107(b);
- D. misrepresenting her experience or education as a tax return preparer; or
- E. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws

If the court finds that the preparer has engaged in such conduct and that injunctive relief is appropriate to prevent the recurrence of the conduct. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from further acting as a federal income tax return preparer.

29. Machoko has continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 by preparing federal income tax returns that understate her customers' liabilities based on unrealistic, frivolous, and reckless positions.

30. Machoko's repeated violations of IRC § 6694 fall within IRC § 7407(b)(1)(A) and (D), and thus are subject to an injunction under IRC § 7407.

31. In addition, Machoko has failed to comply with an IRS request under IRC § 6107(b), which failure is subject to penalty under IRC § 6695 and thus subject to injunction under IRC § 7407.

32. If she is not enjoined, Machoko is likely to continue to file false and fraudulent tax returns and to fail to turn over customer information as required by IRC § 6107(b).

33. Machoko's continual and repeated conduct subject to an injunction under IRC § 7407 including her failure to respond to an IRS request under IRC § 6107(b) and flagrant misuse of the fuel tax credit demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent Machoko's interference with the proper administration

of the internal revenue laws. Thus, she should be permanently barred from acting as a return preparer.

Count II
Injunction under IRC § 7408

34. The United States incorporates by reference the allegations in paragraphs 1 through 33.

35. IRC § 7408(a)-(c) authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either IRC §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

36. IRC § 6701(a) penalizes any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having a reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it will result in an understatement of another person's tax liability.

37. Machoko prepares federal tax returns for customers that she knows will understate their correct tax liabilities. Machoko's conduct is thus subject to a penalty under IRC § 6701.

38. If the Court does not enjoin Machoko, she is likely to continue to engage in conduct subject to penalty under IRC § 6701. Injunctive relief is therefore appropriate under IRC § 7408.

Count III
Injunction under IRC § 7402(a)
Necessary to Enforce the Internal Revenue Laws

39. The United States incorporates by reference the allegations of paragraphs 1 through 38.

40. IRC § 7402 authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

41. Machoko, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

42. Unless enjoined, Machoko is likely to continue to engage in such improper conduct. If Machoko is not enjoined from engaging in fraudulent and deceptive conduct the United States will suffer irreparable injury by wrongfully providing federal income tax refunds to individuals not entitled to receive them.

43. Enjoining Machoko is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop her illegal conduct and the harm it causes the United States.

44. The Court should impose injunctive relief under 26 U.S.C. § 7402(a).

WHEREFORE, the United States prays for the following:

A. That the Court find that Grace N. Machoko has continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 and has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;

B. That the Court find that Grace N. Machoko has engaged in conduct subject to a penalty under IRC § 6701, and that injunctive relief under IRC § 7408 is appropriate to prevent a recurrence of that conduct;

C. That the Court find that Grace N. Machoko has engaged in conduct subject to penalty under IRC § 6695(d);

D. That the Court find that Grace N. Machoko has engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and IRC § 7402(a);

E. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Grace N. Machoko, and all those in active concert or participation with her from:

- A. acting as a federal income tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than herself, or appearing as representatives on behalf of any person or organization whose tax liabilities are under examination by the Internal Revenue Service;
- B. preparing or filing (or helping to prepare or file) federal income tax returns, amended returns, or other related documents and forms for others;
- C. organizing or selling tax shelters, plans, or arrangements that advise or assist taxpayers to attempt to understate their federal tax liabilities or evade the assessment or collection of their correct federal tax;
- D. understating customers' liabilities as subject to penalty under IRC § 6694;
- E. engaging in any other activity subject to penalty under IRC §§ 6694, 6700, 6701, or any other penalty provision of the IRC; and
- F. engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

F. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Grace N. Machoko within fifteen days to contact by United States mail and, if an e-mail address is known, by e-mail, all persons for whom she prepared a federal tax return to inform them of the Court's findings concerning the falsity of Machoko's prior representations and enclose a copy of the permanent injunction against her;

G. That the Court, pursuant to IRC §§ 7402(a), 7407, and 7408, enter an injunction requiring Grace N. Machoko to produce to counsel for the United States within fifteen days a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom she prepared federal tax returns or claims for a refund since January 1, 2005;

H. That the Court retain jurisdiction over Grace N. Machoko and over this action to enforce any permanent injunction entered against Machoko;

I. That the United States be entitled to conduct discovery to monitor Machoko's compliance with the terms of any permanent injunction entered against her; and

J. That this Court grant the United States such other and further relief, including costs, as is just and equitable.

DATED: November 7, 2007

Respectfully submitted,

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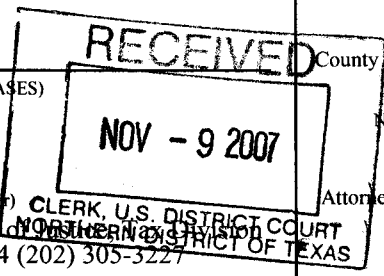
Attorneys for Plaintiff United States of America

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.)

(a) PLAINTIFFS
United States of America
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
Michael J. Roessner, U. S. Department of Justice, P.O. Box 7238, Washington, DC 20044 (202) 305-3227

DEFENDANTS
Grace N. Machoko
County of Residence of First Listed Defendant Dallas County (IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
3-07CV1874-N



I. 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)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
DEF PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Contains various legal categories and 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 (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):
26 U.S.C. §§ 7402(a), 7407, and 7408
Brief description of cause:
Complaint seeking to enjoin defendant from performing tax preparation services.

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

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

DATE November 7, 2007
SIGNATURE OF ATTORNEY OF RECORD [Signature]

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.