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ZIPBUDS, LLC
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ZIPBUDS, LLC.

11 Plaintiff,

12 v.

13 MIZCO INTERNATIONAL, LLC; ECKO
COMPLEX, LLC d/b/a ECKO UNLIMITED;
14 and IP HOLDINGS UNLTD, LLC

15 Defendant.
16

Case No. **'12CV0768 MMA POR**

PLAINTIFF ZIPBUDS' COMPLAINT FOR
DESIGN PATENT AND TRADEMARK
INFRINGEMENT; AND UNFAIR
COMPETITION

JURY DEMANDED

17
18 Plaintiff ZIPBUDS, LLC. for its Complaint against Defendants MIZCO
19 INTERNATIONAL, LLC; ECKO COMPLEX, LLC d/b/a ECKO UNLIMITED; and IP
20 HOLDINGS UNLTD, LLC alleges and states as follows:

21 **THE PARTIES**

22 1. Plaintiff ZIPBUDS, LLC, ("Zipbuds") is a limited liability company organized and
23 existing under the laws of the State of California with its principal place of business located at 3125
24 Tiger Run Court, Suite 105, Carlsbad California.

25 2. Defendant IP HOLDINGS UNLTD, LLC ("IP Holdings") is a limited liability
26 company organized and existing, on information and belief, under the laws of the State of New
27 York, with its principal place of business at, on information and belief, 40 West 23rd Street, 6th
28 Floor, New York New York.

FACTUAL BACKGROUND

1
2 9. Through heavy investment and hard work, Zipbuds designed a unique type of
3 headphone that is both useful and highly aesthetically pleasing. The design is so aesthetically
4 pleasing and ornamental that Zipbuds pursued and obtained a design patent to protect against others
5 who may wish to sell what an ordinary observer would view as the same product. A copy of that
6 U.S. Design Patent, US D652,407 S, is attached to this Complaint as Exhibit 1 (“407 Patent”). The
7 ‘407 Patent protects design features which are in addition to the trade dress protection afforded the
8 particular trade dress Zipbuds selected and promoted to enhance its brand recognition.

9 10. In addition, Zipbuds sought to and did create distinct brand awareness by use of a
10 trademark, adopting the strong and inherently distinctive trademark “ZIPBUDS” for its highly
11 aesthetic ear phones featuring a zipper. To protect its trademark and provide notice to the public
12 that the trademark was for its exclusive use, Zipbuds sought and successfully obtained federal
13 registration of its ZIPBUDS trademark for use in connection with “audio headphones.” A copy of
14 that U.S. Trademark, Reg. No. 4,115,616, is attached to this Complaint as Exhibit 2 (“ZIPBUDS”
15 and “ZIPBUDS Trademark”).

16 11. Zipbuds has been marketing and selling its unique ZIPBUDS earphones since at least
17 as early as November 9, 2010, and has gained significant market recognition. In 2011 alone, over
18 \$1.5 million in sales of the ZIPBUDS earphones were made by Zipbuds, including through their
19 website and the far-reaching Amazon.com website. The colorful, high-quality ear buds have
20 become known for their quality and superior product design. By 2012, the ZIPBUDS earphones
21 won Travel & Leisure’s best personal gadget award. They have been featured extensively in the
22 media, including gizmag.com (<http://www.gizmag.com/zipbuds-keep-tangles-at-bay/17337/>), C-Net
23 (http://reviews.cnet.com/headphones/zipbuds-by-dga-tangle/4505-7877_7-34221397.html),
24 PRnewswire.com ([http://www.prnewswire.com/news-releases/zipbuds-introduces-2nd-generation-
25 of-tangle-resistant-earphones-featuring-higher-quality-sound-and-enhanced-functionality-
26 130763828.html](http://www.prnewswire.com/news-releases/zipbuds-introduces-2nd-generation-of-tangle-resistant-earphones-featuring-higher-quality-sound-and-enhanced-functionality-130763828.html)), among other sites. These products have been recognized for their innovation, and
27 also their successful refinement of a zipper earphone.
28

1 12. Unfortunately, in the midst of this momentous success, Zipbuds discovered that
2 Defendants started manufacturing and selling a competing earphone that infringes the trademark,
3 trade dress and design patent of Zipbuds. While Zipbuds is a focused, product-driven company for
4 its ear phones, Ecko is a mega company that was founded in (on information and belief) 1993 and
5 sells a large variety of products from clothing, to watches, to electronic accessories, to cologne, and
6 beyond. It brands itself as a “full-scale global fashion and lifestyle company” that has been “the
7 leading face of global youth culture since 1993.” They claim they are “omnipresent...from music
8 videos and television programs to catwalks, action sports, and video games” and have “expanded to
9 include t-shirts, denim jeans, hoodies, footwear, watches, hats, bags, and more.” See
10 <http://www.shopecto.com/corp/index.jsp?clickid=about>.

11 13. Defendants have begun sales of their product under the Ecko Unltd. brand produced
12 by Mizco International, Inc. as (on information and belief) a licensee of IP Holdings, and included
13 Ecko’s Ecko Unltd. branding on the packaging and product. They placed their product on their
14 official store website, shopecto.com, a website registered to Defendant IP Holdings.

15 14. Not only is Defendants’ product a copy of Zipbuds’ valuable patented design, it is
16 also marketed on the shopecto.com website (on information and belief, Ecko’s official website) as
17 “ZIP EAR BUDS,” including under the product code EKU-ZIP-GLD and barcode 58302 64207
18 (collectively, “Accused Product” or “Accused Products”), which was then listed on Amazon.com
19 for sale under the trademark “ZIP EARBUD.” The use of this mark by Defendants is likely to
20 cause confusion as it is used on the same earphone products as Zipbuds uses its ZIPBUDS
21 trademark, and is identical to Zipbuds’ trademark except for the insertion of the very descriptive
22 word “ear” in the middle.

23 15. The Accused Product also infringes the design of the ’407 Patent and the trade dress
24 of the ZIPBUDS earphones that utilize that valuable design. The ’407 Patent was issued after
25 review of relevant prior art, and found to be a novel design for earphones. As with the ’407 Patent,
26 the Accused Product does not begin its zipper feature immediately, but only does so partially up the
27 chord from the ear phone plug. Additionally, the base from which the zipper extends is shaped with
28 a flattened conical shape, as is present in the ’407 Patent and ZIPBUDS. The Accused Products are

1 sold in zipper tooth color options including black, white, teal blue and pink/red, virtually the same
2 colors as the ZIPBUDS. The Accused Products all use the same black chord material that teaches
3 an advantage over prior designs, the same shape of the chord, the same thin and skinny rectangular
4 glossy zipper handle, the building of the zipper teeth directly over the cord, the zipper-tooth shape,
5 the spacing between the zipper teeth, similarities with the '407 Patent and/or ZIPBUDS trade dress.
6 These similarities to an ordinary observer would lead one to conclude the design in the '407 Patent
7 and the Accused Product are substantially the same such that he or she would be deceived into
8 purchasing one believing it to be the other. These same similarities in trade dress are also likely to
9 confuse the average consumer into believing there is an association, relationship, sponsorship or
10 other affiliation between the Accused Product and Plaintiff, a confusion which is compounded by
11 the use of a confusingly similar ZIP EARBUD or ZIP EARBURDS mark used by Defendants.

12 16. When Zipbuds learned of this infringement, it promptly contacted Defendants and
13 demanded that they cease sales on September 16, 2011. The cease and desist letter identified the
14 exact product, stated the bases by which it was violating Zipbuds' rights, and demanded that the
15 sales of the Accused Product immediately cease.

16 17. Defendants did not stop sales, but instead responded on October 18, 2011, stating to
17 the effect that they were comfortable with their sales and did not intend to stop. On November 21,
18 2011, Zipbuds responded with a letter further detailing the many ways that Defendants had engaged
19 in infringement of Zipbuds' various intellectual property rights, explained the design and trade dress
20 bases with specificity, and dispelled the many excuses given for why it was acceptable for
21 Defendants to continue their sales. This removed any lingering excuse Defendants had for still
22 believing they could somehow legitimately continue sales without willfully violating Zipbuds'
23 intellectual property.

24 18. Over the next several months, counsel for Zipbuds and Defendants remained in
25 contact but Defendants never stopped selling the Accused Products. Zipbuds requested information
26 on sales data, but Defendants ignored the request. Sales of the Accused Products also continued
27 after Defendants were provided notice of the issuance of the '407 Patent.

28

1 19. Zipbuds discovered on further inquiry that, not only had Defendants refused to stop
2 sales, but their sales in fact include many other channels of trade that Zipbuds was not previously
3 aware. This includes Wal-Mart, Sears, and Best Buy (at least, via their online store sites). This
4 flooding of the market through major retailers has created, on information and belief, reverse
5 confusion in addition to the forward confusion that has resulted to those already familiar with
6 ZIPBUDS products.

7 **FIRST CLAIM FOR RELIEF**

8 **INFRINGEMENT OF U.S. PATENT NO. D652,407 S**

9 20. Zipbuds realleges all allegations in this Complaint as if stated herein.

10 21. On January 17, 2012, United States Patent Number D652,407 S ('407 Patent)
11 entitled "Zippered Earphones," was duly and legally issued to Zipbuds, who has the right to enforce
12 this patent. A true and correct copy of this Patent is attached hereto as Exhibit 1 and incorporated
13 herein by reference.

14 22. Defendants have infringed and continue to infringe the '407 Patent by making, using,
15 selling, offering for sale, importing, and/or actively inducing others to use products that infringe one
16 or more of the patented design(s) in the '407 Patent, and are thus liable for patent infringement
17 pursuant to 35 U.S.C. § 271. This includes the practice by Defendants via the Accused Product,
18 sold under the name ZIP EARBUD or ZIP EARBUDS, which infringes claim 1 of the '407 Patent.

19 23. Defendants' infringement of the '407 Patent has caused and continues to cause
20 damage to Zipbuds in an amount to be determined at trial.

21 24. Defendants' infringement of the '407 Patent has caused and will continue to cause
22 immediate and irreparable harm to Zipbuds for which there is no adequate remedy at law, unless
23 this Court enjoins and restrains such activities.

24 25. Zipbuds is informed and believes and, on that bases alleges, that Defendants knew of
25 the '407 Patent and that Defendants' infringement of the '407 Patent was willful and deliberate,
26 entitling Zipbuds to enhanced damages pursuant to 35 U.S.C. § 284, and costs incurred prosecuting
27 this action.
28

SECOND CLAIM FOR RELIEF

TRADEMARK INFRINGEMENT

(15 U.S.C. § 1114 et seq.)

1
2
3
4 26. Plaintiff incorporates by reference all other paragraphs contained in this Complaint.

5 27. Plaintiff is the owner of the ZIPBUDS trademark, recorded on the United States
6 Principal Register as U.S. Trademark Reg. No. 4,115,616.

7 28. Defendants have used this mark or a substantially similar mark in connection with
8 the sale, offering for sale, distribution or advertising of goods and services, specifically the Accused
9 Product.

10 29. On information and belief, such sales knowingly and willfully infringed Zipbuds'
11 ZIPBUDS mark, constituting clear trademark infringement, both direct and vicarious.

12 30. Defendants' use of the infringing mark has caused significant confusion in the
13 marketplace, is likely to cause both confusion and mistake, and is likely to deceive, as the marks are
14 virtually identical in sound, appearance and meaning, and the goods are directly competitive.

15 31. On information and belief, such use was done willfully and with knowledge that
16 such use would or was likely to cause confusion and deceive others, such intent clearly being made
17 known as of receipt of the first cease and desist letter.

18 32. As a direct and proximate result of Defendants' trademark infringement, Zipbuds has
19 been damaged within the meaning of 15 U.S.C. § 1114 *et seq.*

20 33. Zipbuds has suffered damages in an amount to be established after proof at trial or in
21 the statutory amount.

22 34. Zipbuds is further entitled to disgorge Defendants' profits for its willful sales and
23 unjust enrichment.

24 35. This case qualifies as an "exceptional case" within the meaning of 15 U.S.C. §
25 1117(a) in that Defendants' acts were malicious, fraudulent, deliberate and willful, and taken in bad
26 faith.

1 36. Zipbuds’ remedy at law is not adequate to compensate for injuries inflicted by
2 Defendants. Accordingly, Zipbuds is entitled to temporary, preliminary and permanent injunctive
3 relief.

4 **THIRD CLAIM FOR RELIEF**
5 **TRADEMARK INFRINGEMENT; TRADE DRESS INFRINGEMENT; UNFAIR**
6 **COMPETITION**
7 **(15 U.S.C. § 1125 et seq. and Common Law)**

8 37. Plaintiff incorporates by reference all other paragraphs contained in this Complaint.

9 38. Plaintiff owns the trademark rights to ZIPBUDS by virtue of its long and continuous
10 use, and also has obtained trade dress rights in the trade dress of the ZIPBUDS.

11 39. Defendants have committed proscribed acts of unfair competition.

12 40. Defendants have sold and offered for sale counterfeit goods, as alleged above, falsely
13 designating their origin. This includes both trademark infringement and trade dress infringement of
14 the ZIPBUDS, as alleged above.

15 41. On information and belief, Defendants’ unfair competition was knowing and willful.

16 42. Defendants’ uses are likely to cause confusion and mistake with the public and
17 deceive them into believing that there is an affiliation, connection and association between
18 Defendant and Zipbuds.

19 43. Defendants’ use, on information and belief, has also resulted in a likelihood of
20 reverse confusion of those in the relevant markets previously unfamiliar with Zipbuds or who have
21 come to believe Defendants are the senior users.

22 44. As a direct and proximate result of Defendants’ wrongful acts, Zipbuds has suffered
23 and continues to suffer substantial pecuniary losses and irreparable injury to its business reputation
24 and goodwill. As such, Zipbuds’ remedy at law is not adequate to compensate for injuries inflicted
25 by Defendants. Accordingly, Zipbuds is entitled to temporary, preliminary and permanent
26 injunctive relief.

27 45. By reason of such wrongful acts, Zipbuds is and was, and will be in the future,
28 deprived of, among others, the profits and benefits of business relationships, agreements, and

1 transactions with various existing clients and/or prospective clients and customers. Defendants
2 have wrongfully obtained said profits and benefits. Zipbuds is entitled to compensatory damages
3 and disgorgement of Defendants' said profits, in an amount to be proven at trial, along with other
4 just damages.

5 **FOURTH CLAIM FOR RELIEF**

6 **UNFAIR COMPETITION**

7 **(California Common Law)**

8 46. Plaintiff incorporates by reference all other paragraphs contained in this Complaint.

9 47. Plaintiff has the exclusive right to use the trademark ZIPBUDS by virtue of its
10 extensive and continuous use, and also as evidenced by its formation of Zipbuds, LLC with the state
11 of California.

12 48. Defendants have committed unlawful acts of unfair competition, as alleged above.

13 49. As a direct and proximate result of Defendants' wrongful acts, Zipbuds has suffered
14 and continues to suffer substantial pecuniary losses and irreparable injury to its business reputation
15 and goodwill. As such, Zipbuds' remedy at law is not adequate to compensate for injuries inflicted
16 by Defendants. Accordingly, Zipbuds is entitled to temporary, preliminary and permanent
17 injunctive relief.

18 50. By reason of such wrongful acts, Zipbuds is and was, and will be in the future,
19 deprived of, among others, the profits and benefits of business relationships, agreements, and
20 transactions with various existing clients and/or prospective clients and customers. Defendants
21 have wrongfully obtained said profits and benefits. Zipbuds is entitled to compensatory damages
22 and disgorgement of Defendants' said profits, in an amount to be proven at trial, along with other
23 just damages.

24 51. Such acts, as alleged above, were done with malice, oppression and/or fraud, thus
25 entitling Zipbuds to exemplary and punitive damages.

1 **FIFTH CLAIM FOR RELIEF**

2 **STATUTORY UNFAIR COMPETITION**

3 **(Cal. Bus. & Prof. Code § 17200 *et seq.*)**

4 52. Plaintiff incorporates by reference all other paragraphs contained in this Complaint.

5 53. Defendants have committed proscribed acts of unfair competition, as alleged above.

6 54. As a direct and proximate result of Defendants' wrongful acts, Zipbuds has suffered
7 and continues to suffer substantial pecuniary losses and irreparable injury to its business reputation
8 and goodwill. As such, Zipbuds remedy at law is not adequate to compensate for injuries inflicted
9 by Defendants. Accordingly, Zipbuds is entitled to temporary, preliminary and permanent
10 injunctive relief.

11 55. By reason of such wrongful acts, Zipbuds is and was, and will be in the future,
12 deprived of, among others, the profits and benefits of business relationships, agreements, and
13 transactions with various existing clients and/or prospective clients and customers. As a result,
14 Zipbuds is entitled to restitutionary relief in an amount to be determined upon proof at the time of
15 trial.

16 **PRAYER**

17 **WHEREFORE**, Plaintiff demands the following relief:

- 18 1. A judgment in favor of Plaintiff Zipbuds and against Defendants on all counts;
- 19 2. A preliminary and permanent injunction from design patent, trademark and trade
20 dress infringement, and unfair business practices by Defendants;
- 21 3. Damages in an amount to be determined at trial, including Defendants' unjust
22 enrichment, such damages enhanced and/or trebled for willful infringement;
- 23 4. Statutory damages;
- 24 5. Exemplary and punitive damages;
- 25 5. Pre-judgment interest at the legally allowable rate on all amounts owed;
- 26 6. Costs, expenses and fees under, among others, 15 U.S.C. § 1117(a)-(b);
- 27 7. Restitution;
- 28

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ZIPBUDS, LLC

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

(c) Attorney's (Firm Name, Address, and Telephone Number)
Andrew D. Skale, Mintz Levin Cohn Ferris Glovsky & Popeo PC
3580 Camel Mountain Rd., Ste. 300, SD, CA 92130 (858) 314-1500

DEFENDANTS

MIZCO INTERNATIONAL, LLC, et al.

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

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

'12CV0768 MMAPOR

Attorneys (If Known)
John D'Ercole, Robinson Brog Leinwand Green Genovese & Gluck PC
875 Third Ave
New York, New York 10022

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)

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

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

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
~~35 U.S.C. 28 U.S.C., 15 U.S.C. 114, 15 U.S.C. 112, 26 U.S.C. 1132~~ 15 U.S.C. 1126 st

Brief description of cause:
Complaint for Design Patent & Trademark Infringement; Unfair Competition

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ **Exceeds \$75,000** CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE **03/29/2012** SIGNATURE OF ATTORNEY OF RECORD
Andrew D. Skale, Esq.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

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

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

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

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

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

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

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.