

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

CALVIN BROWN;
JESUS GARCIA,

Plaintiffs,

v.

CITY OF AURORA,

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiffs Calvin Brown and Jesus Garcia, by and through their counsel, David A. Lane and Danielle C. Jefferis of KILLMER, LANE & NEWMAN, LLP, respectfully allege for their Complaint and Jury Demand as follows:

I. INTRODUCTION

1. Plaintiffs Calvin Brown and Jesus Garcia are tenured, experienced firefighters. They boast long, successful careers with departments across the country. When they received offers to work for the Aurora Fire Department (“AFD”), they relocated to Colorado and looked forward to the chance to demonstrate their skills and success with a new department.

2. Their chances to do so were cut short, however, when AFD discriminated against them on account of their race and retaliated against them for their participation in an internal investigation involving one of Mr. Brown’s and Mr. Garcia’s fellow lateral recruits and a superior officer.

3. This is an action against AFD for discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964. Defendant's illegal conduct has caused Mr. Brown and Mr. Garcia to suffer significant damages and losses.

II. JURISDICTION AND VENUE

4. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. This action is authorized and instituted pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), as amended, 42 U.S.C. § 2000e, *et seq.* Jurisdiction supporting Plaintiff's claims for attorney's fees and costs is conferred by 42 U.S.C. § 2000e-5(k).

5. Venue is proper pursuant to 28 U.S.C. § 1391 because Defendant is subject to personal jurisdiction in the District of Colorado and the employment practices alleged herein to be unlawful were committed in the District of Colorado.

III. ADMINISTRATIVE PREREQUISITES

6. Plaintiffs timely filed Charges of Discrimination with the Equal Employment Opportunity Commission and have received their Notices of Right to Sue. Thus, all administrative prerequisites have been met.

IV. PARTIES

7. Plaintiff Calvin Brown is a resident of, and domiciled in, the State of Colorado. At all times relevant to this Complaint he was employed by Defendant.

8. Plaintiff Jesus Garcia is a resident of, and domiciled in, the State of Colorado. At all times relevant to this Complaint he was employed by Defendant.

9. Defendant City of Aurora ("Aurora") is a political subdivision of the State of Colorado and is responsible for the supervision, training, official policies, customs, and actual

practices of its agents, the Aurora Fire Department and its firefighters. Aurora has continuously been an “employer” within the meaning of Title VII at all times relevant to this Complaint.

V. FACTUAL ALLEGATIONS

10. Calvin Brown (African American) and Jesus Garcia (Hispanic) were hired by AFD and entered the Rocky Mountain Fire Academy in January 2012. They were experienced lateral hires. Mr. Brown spent several years as a firefighter in Garden City, Kansas. Mr. Garcia came to AFD with six years’ firefighting and emergency medical services experience from Hialeah, Florida.

11. Both men were highly successful in their previous positions. Mr. Brown, for example, was 2007’s Firefighter of the Year for Lafayette Fire and Rescue and Firefighter of the Month in 2010 in Garden City. They were thrilled with the opportunity to work for AFD.

12. Predictably, based on their track records and experience, Mr. Brown and Mr. Garcia excelled in the Academy.

13. AFD’s one-year probationary program requires new hires to pass practical skills tests at their three-, six-, nine-, and twelve-month anniversaries. Both men received excellent reviews, and neither failed an exam or skills test, on their three-month anniversary.

14. Mr. Brown and Mr. Garcia graduated from the Academy in April 2012 and were then placed in specific fire stations with AFD.

15. They performed well in their respective stations and received no disciplinary actions or negative reviews.

16. Their success was halted, however, beginning in June 2012, by the discriminatory and retaliatory conduct of their team of AFD instructors – superiors separate and apart from Mr. Brown’s and Mr. Garcia’s superiors at their respective stations.

17. For each of their periodic test sessions, Mr. Brown and Mr. Garcia were evaluated, at least in part, by the same core team of instructors: Captain James Moon, Chief Kris Anderson, Lieutenant James Eitel, and Lieutenant Mitchell Harr (replaced by Lieutenant Kenneth Kahler).

18. During their six-month anniversary testing, Mr. Brown and Mr. Garcia, and one of their fellow recruits Ryan Goosley (Caucasian), witnessed one of their instructors, Lieutenant Harr, target and berate another recruit, Nathaniel Lewis (African American), for failing his practical skills test.

19. Mr. Lewis initiated a complaint of race discrimination against Lieutenant Harr with his superior that day. AFD launched an internal investigation of the incident.

20. As part of the investigation, AFD required Mr. Brown and Mr. Garcia to submit to an interview and to provide a statement to the investigator.

21. Neither man was comfortable doing so; in fact, Mr. Garcia told the investigator that he did not want to participate because of the hostility that he and his fellow lateral, racial minority recruits had already sensed and experienced by their team of instructors, including Lieutenant Harr. Mr. Garcia feared that hostility would only increase in retaliation for his cooperation in the investigation of Lieutenant Harr.

22. Seemingly to alleviate his concerns, however, and to elicit his participation, the investigative team assured Mr. Garcia that if he faced any sort of retaliation for his participation in the investigation, they would address it.

23. On that reassurance, both Mr. Brown and Mr. Garcia submitted to interviews and provided their statements.

24. The investigation concluded that Lieutenant Harr had violated several internal policies, but did not find that he discriminated against Mr. Lewis. AFD suspended Lieutenant Harr for a short period of time.

25. Thereafter, Mr. Brown and Mr. Garcia went back to working their shifts at their assigned stations, where they resumed their previous success and encountered no performance or disciplinary issues with their superiors.

26. But when it came time for their nine-month periodic test session, when they faced their team of instructors again for the first time since the investigation – the same instructors who had worked closely with Lieutenant Harr and were acutely aware of the investigation into his allegedly discriminatory conduct and Mr. Brown’s and Mr. Garcia’s participation in that investigation – Mr. Brown’s and Mr. Garcia’s performance was suddenly and inexplicably deficient.

27. Specifically, it was deficient on the practical skills portion of the testing, which is dependent largely on the instructor’s subjective evaluation of the subject’s performance.

28. Now at the whim of the subjective evaluation of that same core of AFD instructors, just weeks after their participation in the investigation and upon their first encounter

with those instructors following the investigation, Mr. Garcia and Mr. Brown failed their nine-month practical tests.

29. Based upon their experience and the nuances of the particular practical skills on which they were tested, their failures were unjustified.

30. AFD gave Mr. Brown and Mr. Garcia an opportunity to retest, but their retest was again administered in part by Lieutenant Kahler. Lieutenant Kahler and the instructor team failed Mr. Brown and Mr. Garcia on their retests, after providing them with the wrong tools to complete the test and/or then citing only minor mistakes as the bases for the fails.

31. Just days after their second retest, AFD abruptly terminated Mr. Brown.

32. When Mr. Garcia voiced concerns (again) that the AFD instructors were discriminating and retaliating against Mr. Brown and him, AFD allowed Mr. Garcia to retest a second time.

33. AFD fired Mr. Garcia nearly immediately after the second retest.

34. Of the four individuals who witnessed the incident involving Lieutenant Harr and participated in the investigation into his conduct, only one remained employed with AFD – Ryan Goosley – the only white individual involved in the investigation.

35. AFD fired the other three firefighters – Mr. Brown, Mr. Garcia, and Mr. Lewis – just weeks after their participation in the investigation of discrimination and harassment. All three are members of protected classes.

36. AFD's conduct has caused Mr. Brown and Mr. Garcia significant injuries, damages, and losses.

VI. STATEMENT OF CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*
Discrimination**

37. Plaintiffs hereby incorporate all paragraphs of this Complaint as though fully set forth herein.

38. As an African American man, Mr. Brown is a member of a protected class under Title VII. As a Hispanic man, Mr. Garcia is a member of a protected class under Title VII.

39. Defendant treated Mr. Brown and Mr. Garcia less favorably than their similarly situated white counterpart by failing them on their practical skills exams and firing them in retaliation for their participation in the investigation of Lieutenant Harr's conduct.

40. Mr. Brown and Mr. Garcia were subjected to adverse treatment in the terms and conditions of their employment because of their race, including but not limited to, Defendant's terminations of their employment.

41. At all pertinent times, Mr. Brown and Mr. Garcia performed the functions of their job competently and were qualified for their positions.

42. Despite their qualifications, Defendant fired Mr. Brown and Mr. Garcia, in whole or in part, because of their race.

43. Defendant's asserted reasons for firing Mr. Brown and Mr. Garcia were mere pretext for illegal discrimination.

44. Defendant is liable for the acts and/or omissions of its agents and employees. Defendant, either directly or by and through its agents, discriminated against Mr. Brown and Mr.

Garcia on the basis of their race, and directly and proximately caused them injuries, damages, and losses.

45. Defendant's acts and conduct were committed with malice or with reckless indifference to Mr. Brown's and Mr. Garcia's federally protected rights within the meaning of Title VII.

SECOND CLAIM FOR RELIEF
Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.
Retaliation

46. Plaintiffs hereby incorporate all of the paragraphs of this Complaint as though fully set forth herein.

47. Mr. Brown and Mr. Garcia opposed activities prohibited by Title VII by participating in the investigation of Lieutenant Harr's allegedly discriminatory conduct toward Mr. Lewis.

48. As a direct result of Mr. Brown's and Mr. Garcia's opposition to activities prohibited by Title VII, Defendant subjected Mr. Brown and Mr. Garcia to adverse treatment, including but not limited to, firing them.

49. Defendant is liable for the acts and omissions of its agents and employees. Defendant, either directly or by and through its agents, retaliated against Mr. Brown and Mr. Garcia and directly and proximately caused them severe injuries, damages, and losses.

50. Defendant's acts and conduct were committed with malice or with reckless indifference to the federally protected rights of Mr. Brown and Mr. Garcia within the meaning of Title VII.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendant, and award them all relief as allowed by law, including, but not limited to the following:

- a. Declaratory relief and injunctive relief, as appropriate;
- b. Actual economic damages as established at trial;
- c. Compensatory damages, including, but not limited to those for future pecuniary and non-pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses;
- d. Pre-judgment and post-judgment interest at the highest lawful rate;
- e. Attorney's fees and costs; and
- f. Such further relief as justice requires.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Dated this 13th day of April, 2015.

KILLMER, LANE & NEWMAN, LLP

s/ David Lane

David Lane
Danielle C. Jefferis
1543 Champa Street, Suite 400
Denver, Colorado 80202
(303) 571-1000

Attorneys for Plaintiff

CIVIL COVER SHEET

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

<p>I. (a) PLAINTIFFS Calvin Brown, et. al</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> David Lane, Killmer, Lane & Newman 1543 Champa Street, Suite 400, Denver, CO 303-571-1000</p>	<p>DEFENDANTS City of Aurora</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <p><i>(For Diversity Cases Only)</i></p> <table style="width:100%;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<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
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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 Tort Contract Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <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 <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			PROPERTY RIGHTS	
			<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <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
			LABOR	
			<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<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"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
			SOCIAL SECURITY	
			<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
			TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
			PRISONER PETITIONS	
			<p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
			<p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision

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

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
 42 USC 2000

VI. CAUSE OF ACTION

Brief description of cause: AP Docket

Violations of Title VII of the Civil Rights Act of 1964, Discrimination and Retaliation

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

DATE: April 13, 2015 SIGNATURE OF ATTORNEY OF RECORD: s/ David Lane

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, 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

Or:

"AP Docket"

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.

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