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U.S. DISTRICT COURT  
DISTRICT OF NEVADA  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

17 FEDERAL TRADE COMMISSION, )  
18 Plaintiff, )  
19 v. )  
20 IVY CAPITAL, INC., a Nevada Corporation; )  
21 FORTUNE LEARNING SYSTEM, LLC, a )  
22 Nevada Limited Liability Corporation; )  
23 FORTUNE LEARNING, LLC, a Utah Limited )  
24 Liability Corporation; )  
25 VIANET, INC., a Nevada Corporation; )  
ENRICH WEALTH GROUP, LLC, a California )  
Limited Liability Corporation; )

**2:11-cv-00283-JCM -GWF**

**[FILED UNDER SEAL]**

- 1 BUSINESS DEVELOPMENT DIVISION, LLC, a )  
Nevada Limited Liability Corporation; )
- 2 NEVADA CORPORATE DIVISION, INC., a )  
Nevada Corporation; )
- 3 )
- 4 CORPORATE CREDIT DIVISION, LLC, a )  
Nevada Limited Liability Corporation; )
- 5 CREDIT REPAIR DIVISION, LLC, a Nevada )  
Limited Liability Corporation; )
- 6 )
- 7 TAX PLANNING DIVISION, LLC, a Nevada )  
Limited Liability Corporation; )
- 8 )
- 9 ZYZAC COMMERCE SOLUTIONS, INC., a )  
Nevada Corporation; )
- 10 THE SHIPPER, LLC, a Utah Limited Liability )  
Corporation, also d/b/a )  
11 WHOLESALEMATCH.COM; )
- 12 3 DAY MBA, LLC, a Nevada Limited Liability )  
Corporation; )
- 13 GLOBAL FINANCE GROUP, LLC, a Nevada )  
Limited Liability Corporation; )
- 14 )
- 15 VIRTUAL PROFIT, LLC, a Nevada Limited )  
Liability Corporation; )
- 16 DREAM FINANCIAL, a Nevada Corporation; )
- 17 ICI DEVELOPMENT, INC., a Nevada )  
Corporation; )
- 18 )
- 19 IVY CAPITAL, LLC, a Nevada Limited Liability )  
Corporation; )
- 20 LOGIC SOLUTIONS, LLC, a Nevada Limited )  
Liability Corporation; )
- 21 )
- 22 OXFORD DEBT HOLDINGS, LLC, a Nevada )  
Limited Liability Corporation; )
- 23 REVSYNERGY, LLC, a Nevada Limited Liability )  
Corporation; )
- 24 )
- 25 SELL IT VIZIONS, LLC, a Nevada Limited )  
Liability Corporation; )

1 KYLE G. KIRSCHBAUM, individually and as an )  
officer of Defendants Ivy Capital, Inc.; Vianet, )  
Inc.; ICI Development, Inc.; Oxford Debt )  
2 Holdings, LLC; and Sell It Vizions, LLC; )

3 JOHN H. HARRISON, individually and as an )  
officer of Defendants Ivy Capital, Inc.; Fortune )  
4 Learning System, LLC; Vianet, Inc.; Business )  
Development Division, LLC; Corporate Credit )  
5 Division, LLC; Credit Repair Division, LLC; Tax )  
Planning Division, LLC; 3 Day MBA, LLC; ICI )  
6 Development, Inc.; Logic Solutions, LLC; Oxford )  
Debt Holdings, LLC; Revsynergy, LLC; and Sell )  
7 It Vizions, LLC; )

8 STEVEN E. LYMAN, individually and as an )  
officer of Defendants Ivy Capital, Inc.; Vianet, )  
9 Inc.; ICI Development, Inc.; Logic Solutions, )  
LLC; Oxford Debt Holdings, LLC; Sell It Vizions, )  
10 LLC; and Virtual Profit, LLC; )

11 BENJAMIN E. HOSKINS, individually and as an )  
officer of Defendants Dream Financial; Logic )  
12 Solutions, LLC; Oxford Debt Holdings, LLC; Sell )  
It Vizions, LLC; and Global Finance Group, LLC; )  
13

14 CHRISTOPHER M. ZELIG, individually and as )  
an officer of Defendant Zyzac Commerce )  
Solutions, Inc.; )  
15

16 STEVEN J. SONNENBERG, individually and as a )  
manager of Defendants Fortune Learning, LLC )  
and The Shipper, LLC, also d/b/a )  
17 Wholesalematch.com; )

18 JAMES G. HANCHETT, individually and as a )  
manager of Defendant Fortune Learning, LLC; and )  
19

20 JOSHUA F. WICKMAN, individually and as an )  
owner of Defendant Enrich Wealth Group, LLC; )

21 Defendants, and )

22 CHERRYTREE HOLDINGS, LLC, a Nevada )  
Limited Liability Corporation; )  
23

24 OXFORD FINANCIAL, LLC, a Nevada Limited )  
Liability Corporation; )

25 S&T TIME, LLC, a Nevada Limited Liability )  
Corporation; )

1 VIRTUCON, LLC, a Nevada Limited Liability Corporation;

2 CURVA, LLC, a Nevada Limited Liability Corporation;

3 MOWAB, INC., a Utah Limited Liability Corporation;

4 KIERSTON KIRSCHBAUM;

5 MELYNA HARRISON;

6 TRACY LYMAN; and

7 LEANNE HOSKINS,

8 Relief Defendants.  
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**COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

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4 1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade  
5 Commission Act (“FTC Act”), 15 U.S.C. § 53(b) and 57b, and the Telemarketing and Consumer  
6 Fraud Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101 – 6108, to obtain  
7 temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts,  
8 restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable  
9 relief for Defendants’ acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C.  
10 § 45(a), and the FTC’s Trade Regulation Rule entitled Telemarketing Sales Rule (“TSR” or  
11 “Rule”), 16 C.F.R. Part 310.

**JURISDICTION AND VENUE**

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14  
15 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),  
16 and 1345, 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b).

17 3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C.  
18 § 53(b).

**PLAINTIFF**

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20  
21 4. The FTC is an independent agency of the United States Government created by  
22 statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),  
23 which prohibits unfair and deceptive acts or practices in or affecting commerce. The FTC is also  
24 charged with enforcement of the Telemarketing Act. Pursuant to the Telemarketing Act, the  
25 FTC promulgated and enforces the TSR, 16 C.F.R. Part 310, which prohibits deceptive and

1 abusive telemarketing acts or practices.

2 5. The FTC is authorized to initiate federal district court proceedings, by its own  
3 attorneys, to enjoin violations of the FTC Act, and to secure such other equitable relief as may be  
4 appropriate in each case, including rescission or reformation of contracts, restitution, the refund  
5 of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A) –  
6 (B) and 57b.

7  
8 **DEFENDANTS**

9 **Primary and Upsell Defendants**

10 6. Defendant Ivy Capital, Inc. (“Ivy Capital”) is a Nevada corporation with its  
11 principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas, Nevada. Ivy Capital  
12 transacts or has transacted business in this District and throughout the United States.

13 7. Defendant Fortune Learning System, LLC (“FLS”) is a former Nevada limited  
14 liability corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las  
15 Vegas, Nevada. FLS was a registered Nevada corporation until it dissolved on August 31, 2010.  
16 However, since that time, FLS has continued to operate as a *de facto* corporation by selling its  
17 services to consumers. FLS transacts or has transacted business in this District and throughout  
18 the United States.

19 8. Defendant Fortune Learning, LLC (“Fortune Learning”) is a Utah limited liability  
20 corporation with its principal place of business at 251 River Park Drive, Suite 325, Provo, Utah,  
21 and a secondary address at 826 East State Road, Suite 210 in American Fork, Utah. Fortune  
22 Learning transacts or has transacted business in this District and throughout the United States.

23 9. Defendant Vianet, Inc. (“Vianet”) is a former Nevada corporation with its  
24 principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas, Nevada. Vianet was  
25

1 a registered Nevada corporation until it dissolved on September 1, 2010. Vianet transacts or has  
2 transacted business in this District and throughout the United States.

3 10. Defendant Enrich Wealth Group, LLC (“EWG”) is a California limited liability  
4 corporation with its principal place of business at 3130 South Harbor Boulevard, Santa Ana,  
5 California. EWG transacts or has transacted business in this District and throughout the United  
6 States.

7 11. Defendant Business Development Division, LLC (“BDD”) is a Nevada limited  
8 liability corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las  
9 Vegas, Nevada. BDD transacts or has transacted business in this District and throughout the  
10 United States.

11 12. Defendant Nevada Corporate Division, Inc. (“NCD”) is a Nevada corporation  
12 with its principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas, Nevada.  
13 NCD transacts or has transacted business in this District and throughout the United States.

14 13. Defendant Corporate Credit Division, LLC (“CCD”) is a Nevada limited liability  
15 corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas,  
16 Nevada. CCD transacts or has transacted business in this District and throughout the United  
17 States.

18 14. Defendant Credit Repair Division, LLC (“CRD”) is a former Nevada limited  
19 liability corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las  
20 Vegas, Nevada. CRD was dissolved on October 13, 2010. CRD transacts or has transacted  
21 business in this District and throughout the United States.

22 15. Defendant Tax Planning Division, LLC (“TPD”) is a Nevada limited liability  
23 corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas,  
24 Nevada. TPD transacts or has transacted business in this District and throughout the United  
25 States.

1 16. Defendant Zyzac Commerce Solutions, Inc. ("Zyzac") is a Nevada corporation  
2 with its principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas, Nevada.  
3 Zyzac transacts or has transacted business in this District and throughout the United States.

4 17. Defendant The Shipper, LLC also d/b/a Wholesalematch.com ("WSM") is a Utah  
5 limited liability corporation with its principal place of business at 1875 South State Street, Suite  
6 T300, Orem, Utah. WSM transacts or has transacted business in this District and throughout the  
7 United States.

8 18. Defendant 3 Day MBA, LLC ("3 Day MBA") is a Nevada limited liability  
9 corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas,  
10 Nevada. 3 Day MBA transacts or has transacted business in this District and throughout the  
11 United States.

#### 12 Lead Generating Corporate Defendants

13 19. Defendant Global Finance Group, LLC ("GFG") is a Nevada limited liability  
14 corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas,  
15 Nevada. GFG transacts or has transacted business in this District and throughout the United  
16 States.

17 20. Defendant Virtual Profit, LLC ("Virtual Profit") is a Nevada limited liability  
18 corporation with its principal place of business at 2510 East Sunset Road, Suite 5, Las Vegas,  
19 Nevada. Virtual Profit transacts or has transacted business in this District and throughout the  
20 United States.

#### 21 Shell Corporate Defendants

22 21. Defendant Dream Financial is a Nevada corporation with its principal place of  
23 business at 2200 East Patrick Lane, Suite 25, Las Vegas, Nevada. Dream Financial transacts or  
24 has transacted business in this District and throughout the United States.

25 22. Defendant ICI Development, Inc. ("ICI Development") is a Nevada corporation



1 with its principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas, Nevada. ICI  
2 Development transacts or has transacted business in this District and throughout the United  
3 States.

4 23. Defendant Ivy Capital, LLC is a Nevada limited liability corporation. Its  
5 registered agent, NCD, is located at 3027 East Sunset Road, Suite 201, Las Vegas, Nevada. Ivy  
6 Capital, LLC transacts or has transacted business in this District and throughout the United  
7 States.

8 24. Defendant Logic Solutions, LLC (“Logic Solutions”) is a Nevada limited liability  
9 corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas,  
10 Nevada. Logic Solutions transacts or has transacted business in this District and throughout the  
11 United States.

12 25. Defendant Oxford Debt Holdings, LLC (“Oxford Debt”) is a Nevada limited  
13 liability corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las  
14 Vegas, Nevada. Oxford Debt transacts or has transacted business in this District and throughout  
15 the United States.

16 26. Defendant Revsynergy, LLC (“Revsynergy”) is a Nevada limited liability  
17 corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas,  
18 Nevada. Revsynergy transacts or has transacted business in this District and throughout the  
19 United States.

20 27. Defendant Sell It Visions, LLC (“Sell It”) is a Nevada limited liability  
21 corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas,  
22 Nevada. Sell It transacts or has transacted business in this District and throughout the United  
23 States.

**Individual Defendants**

1  
2           28.     Defendant Kyle G. Kirschbaum (“Kirschbaum”) is the President of Ivy Capital,  
3 and was the Director and President of Vianet. He is also an officer of ICI Development, Oxford  
4 Debt, and Sell It. At times material to this Complaint, acting alone or in concert with others, he  
5 has formulated, directed, controlled, had the authority to control, or participated in the acts set  
6 forth in this Complaint. Kirschbaum resides in this District and in connection with the matters  
7 alleged herein, transacts or has transacted business in this District.

8           29.     Defendant John H. Harrison (“Harrison”) is the Treasurer and Director of Ivy  
9 Capital and was the Secretary of Vianet. He is also an officer, agent or member of FLS, BDD,  
10 CCD, CRD, TPD, 3 Day MBA, ICI Development, Logic Solutions, Oxford Debt, Revsynergy,  
11 and Sell It. At times material to this Complaint, acting alone or in concert with others, he has  
12 formulated, directed, controlled, had the authority to control, or participated in the acts and  
13 practices set forth in this Complaint. Harrison resides in this District and in connection with the  
14 matters alleged herein, transacts or has transacted business in this District.

15           30.     Defendant Steven E. Lyman (“Lyman”) is the Secretary of Ivy Capital and was  
16 the Treasurer of Vianet. He is also an officer of ICI Development, Logic Solutions, Oxford  
17 Debt, Sell It, and Virtual Profit. At times material to this Complaint, acting alone or in concert  
18 with others, he has formulated, directed, controlled, had the authority to control, or participated  
19 in the acts and practices set forth in this Complaint. Lyman resides in this District and in  
20 connection with the matters alleged herein, transacts or has transacted business in this District.

21           31.     Defendant Benjamin E. Hoskins (“Hoskins”) is an owner of Ivy Capital. He is  
22 also an officer, agent or member of Dream Financial, Logic Solutions, Oxford Debt, Sell It, and  
23 GFG. At times material to this Complaint, acting alone or in concert with others, he has  
24 formulated, directed, controlled, had the authority to control, or participated in the acts and  
25 practices set forth in this Complaint. Hoskins resides in this District and in connection with the

1 matters alleged herein, transacts or has transacted business in this District.

2 32. Defendant Christopher M. Zelig (“Zelig”) is the President, Director, Treasurer,  
3 and Secretary of Zyzac. At times material to this Complaint, acting alone or in concert with  
4 others, he has formulated, directed, controlled, had the authority to control, or participated in the  
5 acts and practices set forth in the Complaint. In connection with the matters alleged herein, Zelig  
6 transacts or has transacted business in this District.

7 33. Defendant Steven J. Sonnenberg (“Sonnenberg”) is a manager of Fortune  
8 Learning, and the manager and registered agent for WSM. At times material to this Complaint,  
9 acting alone or in concert with others, he has formulated, directed, controlled, had the authority  
10 to control, or participated in the acts and practices set forth in this Complaint. In connection with  
11 the matters alleged herein, Sonnenberg transacts or has transacted business in this District.

12 34. Defendant James G. Hanchett (“Hanchett”) is the registered agent and a manager  
13 of Fortune Learning. At times material to this Complaint, acting alone or in concert with others,  
14 he has formulated, directed, controlled, had the authority to control, or participated in the acts  
15 and practices set forth in this Complaint. In connection with the matters alleged herein, Hanchett  
16 transacts or has transacted business in this District.

17 35. Defendant Joshua F. Wickman (“Wickman”) is the owner and registered agent of  
18 EWG. At times material to this Complaint, acting alone or in concert with others, he has  
19 formulated, directed, controlled, had the authority to control, or participated in the acts and  
20 practices set forth in this Complaint. In connection with the matters alleged herein, Wickman  
21 transacts or has transacted business in this District.

22 **Relief Defendants**

23 36. Relief Defendant Cherrytree Holdings, LLC (“Cherrytree”) is a Nevada limited  
24 liability corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las  
25 Vegas, Nevada. Defendant Kirschbaum and his wife Relief Defendant Kierston Kirschbaum are

1 the only officers of Cherrytree. Cherrytree is an officer of Ivy Capital, LLC and has received  
2 funds that can be traced directly to Defendants' unlawful acts or practices alleged below.  
3 Cherrytree does not have a legitimate claim to those funds.

4 37. Relief Defendant Oxford Financial, LLC ("Oxford Financial") is a Nevada  
5 limited liability corporation with its principal place of business at 3027 East Sunset Road, Suite  
6 201, Las Vegas, Nevada. Defendant Hoskins and his wife Relief Defendant Leanne Hoskins are  
7 the only officers of Oxford Financial. Oxford Financial is an officer of Ivy Capital, LLC and has  
8 received funds that can be traced directly to Defendants' unlawful acts or practices alleged  
9 below. Oxford Financial does not have a legitimate claim to those funds.

10 38. Relief Defendant S&T Time, LLC ("S&T Time") is a Nevada limited liability  
11 corporation with its principal place of business at 3027 East Sunset Road, Suite 201, Las Vegas,  
12 Nevada. Defendant Lyman and his wife Relief Defendant Tracy Lyman are the only officers of  
13 S&T Time. S&T Time is an officer of Ivy Capital, LLC and has received funds that can be  
14 traced directly to Defendants' unlawful acts or practices alleged below. S&T Time does not  
15 have a legitimate claim to those funds.

16 39. Relief Defendant Virtucon, LLC ("Virtucon") is a Nevada limited liability. Its  
17 registered agent, NCD, is located at 3027 East Sunset Road, Suite 201, Las Vegas, Nevada.  
18 Defendant Harrison and his wife Relief Defendant Melyna Harrison are the only officers of  
19 Virtucon. Virtucon is an officer of Ivy Capital, LLC and has received funds that can be traced  
20 directly to Defendants' unlawful acts or practices alleged below. Virtucon does not have a  
21 legitimate claim to those funds.

22 40. Relief Defendant Curva, LLC ("Curva") is a Nevada limited liability corporation  
23 with its principal place of business at 3027 East Sunset Road, Las Vegas, Nevada. Defendant  
24 Zelig is the sole officer of Curva. Curva has received funds that can be traced directly to  
25 Defendants' unlawful acts or practices alleged below. Curva does not have a legitimate claim to

1 those funds.

2 41. Relief Defendant Mowab, Inc. (“Mowab”) is a Utah corporation with its principal  
3 place of business at 11559 South Thornberry Lane, Draper, Utah. Relief Defendant Leanne  
4 Hoskins is an officer and the registered agent for Mowab. Mowab has received funds that can be  
5 traced directly to Defendants’ unlawful acts or practices alleged below. Mowab does not have a  
6 legitimate claim to those funds.

7 42. Relief Defendant Kierston Kirschbaum is the spouse of Defendant Kirschbaum.  
8 She resides in this District. She is an officer of Cherrytree and has received funds that can be  
9 traced directly to Defendants’ unlawful acts or practices alleged below. She does not have a  
10 legitimate claim to those funds.

11 43. Relief Defendant Melyna Harrison is the spouse of Defendant Harrison. She  
12 resides in this District. She is an officer of Virtucon and has received funds that can be traced  
13 directly to Defendants’ unlawful acts or practices alleged below. She does not have a legitimate  
14 claim to those funds.

15 44. Relief Defendant Tracy Lyman is the spouse of Defendant Lyman. She resides in  
16 this District. She is a managing member of S&T Time and has received funds that can be traced  
17 directly to Defendants’ unlawful acts or practices alleged below. She does not have a legitimate  
18 claim to those funds.

19 45. Relief Defendant Leanne Hoskins is the spouse of Defendant Hoskins. She  
20 resides in this District. She is an officer of Oxford Financial and Mowab and the registered agent  
21 for Mowab and has received funds that can be traced directly to Defendants’ unlawful acts or  
22 practices alleged below. She does not have a legitimate claim to those funds.

23  
24 **COMMON ENTERPRISE**

25 46. Defendants Ivy Capital, FLS, Fortune Learning, Vianet, and EWG (the “Primary

1 Defendants”); BDD, NCD, CCD, CRD, TPD, Zyzac, WSM, and 3 Day MBA (the “Upsell  
2 Defendants”); GFG and Virtual Profit (the “Lead Generating Defendants”); and Dream  
3 Financial, ICI Development, Ivy Capital, LLC, Logic Solutions, Oxford Debt, Revsynergy, and  
4 Sell It (the “Shell Defendants”) (collectively, the “Corporate Defendants”) have operated as a  
5 common enterprise while engaging in the deceptive acts and practices and other violations of law  
6 alleged in this Complaint. Defendants have conducted the business practices described below  
7 through interrelated companies that have common ownership, officers, directors, members,  
8 managers, office locations, and mailing addresses, and that commingled funds. Because these  
9 Corporate Defendants have operated as a common enterprise, each of them is jointly and  
10 severally liable for the acts and practices alleged below. Further, Shell Defendants are fronts for  
11 the other Corporate Defendants, and they operate primarily for the purpose of furthering the  
12 common enterprise. Defendants Harrison, Kirschbaum, Lyman, Zelig, Hoskins, Sonnenberg,  
13 Hanchett, and Wickman (the “Individual Defendants”) have formulated, directed, controlled, had  
14 the authority to control, or participated in the acts and practices of the Corporate Defendants that  
15 constitute the common enterprise.

## 16 17 **COMMERCE**

18 47. At all times relevant to this Complaint, Defendants have maintained a substantial  
19 course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act,  
20 15 U.S.C. § 44.

## 21 22 **DEFENDANTS’ BUSINESS PRACTICES**

### 23 **The Business Coaching Program**

24 48. Since at least 2007, and continuing thereafter, the Defendants have engaged in, or  
25 caused others to engage in, telemarketing through a plan, program or campaign to sell a

1 purported business coaching program and related services, by use of one or more telephones and  
2 involving more than one interstate call. The Defendants use or have used a variety of deceptive  
3 tactics to induce consumers to purchase their coaching program and related services.

4 49. Individual Defendants Kirschbaum, Harrison, Lyman and Hoskins founded Ivy  
5 Capital in 2003. As of 2010, each of these individuals had a 25% ownership stake in Ivy Capital.  
6 All of the other Primary Defendants were established after Ivy Capital to further the common  
7 enterprise.

8 50. Since at least 2007, Primary Defendants have marketed a program that will  
9 purportedly help consumers create, develop, market and run their own successful Internet  
10 business from home. Upsell Defendants market additional products and services with  
11 representations that such products and services are essential to any successful business. Even  
12 after purchasing additional products and services, however, consumers rarely, if ever, make any  
13 money as a result of the program or end up with a viable business of any kind.

14 51. Primary Defendants sell their program by calling consumers who have provided  
15 their telephone number in response to an unrelated e-mail or advertisement about work-at-home  
16 or Internet business opportunities. These e-mails and advertisements come from companies such  
17 as Shawn Casey's Mining Gold Corporation, Jennifer Johnson's Home Job Placement Program,  
18 and Brent Austin's Automated Wealth System. Some of these advertisements also originate  
19 from Lead Generating Defendants, which Primary Defendants have specifically created to  
20 generate leads for themselves.

21 52. During the sales calls, which can last for more than an hour, Primary Defendants'  
22 representatives make a variety of representations, often using high pressure sales tactics, to sell  
23 their business coaching program. In numerous instances, sales representatives: (a) tell  
24 consumers they have to act quickly because there are hundreds of people waiting to purchase the  
25 program and a limited number of resources; (b) describe individuals who purportedly made

1 millions of dollars through the program; (c) say that the purpose of the call is to identify  
2 “qualified” applicants and choose participants for a highly-selective “team;” and (d) ask  
3 consumers to describe what they will do with the promised proceeds from their Internet business.

4 53. Primary Defendants’ sales representatives typically do not mention Ivy Capital in  
5 the initial sales calls, but instead tell consumers they are calling on behalf of “The Success  
6 Team” or the “Internet Success Team.” In numerous instances, Primary Defendants also use  
7 these names in initial e-mail correspondence and written materials they send to consumers, so  
8 many consumers do not learn for many weeks that Ivy Capital is the seller of these products and  
9 services. Ivy Capital’s tactic of using fictional names often makes it difficult for consumers to  
10 research the company before they purchase the business coaching program.

11 54. Primary Defendants’ sales representatives make oral representations about the  
12 earnings potential of the program, either by assuring prospective purchasers that they will be able  
13 to recover their initial investment in a short period of time (typically one to three months) or by  
14 stating that purchasers typically earn from \$3,000 to \$10,000 per month.

15 55. In numerous instances, sales representatives assure consumers that if they are  
16 willing to spend five to ten hours per week and if they are committed to following the program,  
17 they will be successful. Sales representatives make these representations without telling  
18 consumers what type of Internet business they will be starting and what they will be expected to  
19 do in connection with that business.

20 56. Primary Defendants’ success and earnings claims are false because the vast  
21 majority of purchasers of Primary Defendants’ program are unsuccessful in establishing Internet  
22 businesses, and thus are unable to earn any money.

23 57. Primary Defendants represent that they will provide all the services necessary for  
24 consumers to establish successful Internet businesses, including individual coaching sessions,  
25 online resources, and website design and development. Moreover, Primary Defendants promise



1 both orally and in writing that they will continue to provide all necessary services for six months  
2 or until purchasers recoup their initial investment.

3 58. Nearly all sales of Primary Defendants' programs are credit card sales. During  
4 sales calls, consumers are asked to disclose personal financial information, including their debts  
5 and the limit on their credit cards. Sales representatives then encourage consumers to purchase  
6 the program by promising that they will soon be able to use the proceeds of their Internet  
7 business to pay back the amount charged to their credit cards.

8 59. Sales representatives typically offer the programs at three price levels:  
9 "conservative," "moderate," and "aggressive," and they encourage consumers to select a level  
10 that reflects the consumers' eagerness to make money and commitment to the program.  
11 Regardless of which level consumers select, the program purportedly includes: a personal  
12 business coach; coaching sessions; unlimited e-mail support; access to webinars and articles on  
13 Primary Defendants' websites; and/or technical and web design assistance for the consumer's  
14 business website.

15 60. Primary Defendants generally charge from \$2,000 to more than \$20,000 for their  
16 business coaching program. The exact price of the program typically depends on the amount of  
17 credit consumers have available on their credit cards.

18 61. In numerous instances, after consumers authorize Primary Defendants to charge  
19 their credit cards, sales representatives send consumers an e-mail containing a link to an  
20 electronic contract. In some of those instances, sales representatives pressure consumers into  
21 signing the electronic contract during the sales call, often without giving consumers time to read  
22 the entire contract.

23 62. Within days, weeks or months of purchasing the program, consumers discover  
24 that it is nearly impossible to establish a profitable Internet business, even if they work  
25 substantially more than five to ten hours a week and follow all the steps of the program. The

1 coaches provided by Primary Defendants give little or no substantive guidance. Many of the  
2 videos included in the program package contain merely commonsense advice or inspirational  
3 stories. Furthermore, consumers are not provided with assistance when they encounter technical  
4 or other difficulties. While some consumers are able to start a business or establish a website  
5 despite all these issues, even these consumers have not earned any money.

6 **The Related Upsells**

7 63. Shortly after consumers purchase the program, Upsell Defendants begin calling to  
8 offer purchasers additional services allegedly designed to enhance or improve their Internet  
9 business, even though at this early stage most purchasers have not completed Primary  
10 Defendants' program and do not have an operational business in place.

11 64. In numerous instances, Upsell Defendants' sales representatives call purchasers to  
12 tell them that in order for their business to succeed they should organize it as a limited liability  
13 corporation. Sales representatives then offer consumers assistance establishing limited liability  
14 corporations.

15 65. Upsell Defendants also offer packages of goods or services, including those  
16 purportedly designed to help: (a) guarantee access to corporate lines of credit; (b) provide tax-  
17 related advice and services; and (c) provide drop-shipping services. Each of these additional  
18 packages or programs must be purchased, and the costs are substantial, ranging from \$399 (for  
19 drop-shipping) to over \$12,000 (for access to corporate credit).

20 66. In numerous instances, to induce consumers to purchase upsell products and  
21 services, Upsell Defendants' sales representatives inform consumers that: (a) the consumer will  
22 be able to access substantial amounts of corporate credit in short periods of time; (b) they have  
23 Certified Public Accountants, lawyers and ex-IRS agents on staff to provide expert tax advice  
24 and assistance; and (c) drop-shipping services are a necessity for any Internet business.

25 67. In numerous instances, Upsell Defendants fail to provide these promised goods

1 and services. For example, Upsell Defendants fail to file appropriate paperwork establishing an  
2 LLC, review tax returns, or even respond to phone calls from consumers seeking assistance that  
3 should have been part of their package of services.

4 **Practices Related to Refunds**

5 68. Defendants have a strict three-day refund policy for their programs, products and  
6 services. In numerous instances, however, sales representatives fail to disclose this policy to  
7 consumers prior to purchase. Defendants also have a policy that requires consumers to sign a  
8 “non-disparagement” agreement in order to receive a refund. The “non-disparagement”  
9 agreement states that the consumer will “not provide information, make any statement orally or  
10 in writing, or take any action, directly or indirectly, that would cause [Defendants]  
11 embarrassment or humiliation or that could reasonably be interpreted to be disparaging of  
12 [Defendants].” Defendants also fail to disclose this requirement to consumers prior to purchase.

13 69. In numerous instances, consumers who seek refunds after the three-day period are  
14 told that they are not eligible for a refund of any kind, even if they were not informed about the  
15 policy prior to purchase. Consumers who continue to make refund requests are often berated and  
16 insulted by Defendants’ representatives. Yet because Defendants rarely provide any products or  
17 services in the first three days, many consumers have no way of evaluating the utility of their  
18 purchase until it is too late for a refund.

19 70. Even when consumers attempt to request a refund within three days, they  
20 typically face a series of obstacles. In some instances, consumers are unable to reach a  
21 representative to make their request within the allotted time, despite leaving multiple voicemail  
22 messages or sending e-mail messages. In other instances, consumers who do manage to connect  
23 with Defendants are given conflicting information as to how the refund request has to be made or  
24 they are transferred to very aggressive sales representatives who try to talk them out of  
25 cancelling. In any event, Defendants routinely refuse to provide refunds to consumers, even

1 those who attempt to cancel within the three-day refund period.

2 71. Some consumers who file repeated complaints with State and Federal agencies  
3 eventually are offered partial or even full refunds, but such consumers typically have to sign the  
4 “non-disparagement” agreement promising that the consumer will not take any action or make  
5 any statement that humiliates, embarrasses or disparages Defendants.

6 **Calling Telephone Numbers on the Do Not Call Registry**

7 72. To induce consumers to purchase their services, Defendants have initiated  
8 telephone calls to telephone numbers on the National Do Not Call Registry. Defendants have  
9 engaged in this behavior even after consumers have asked them to stop calling.

10 73. Defendants have called telephone numbers in various area codes without first  
11 paying the annual fee for access to the telephone numbers within such area codes that are  
12 included in the National Do Not Call Registry.

13  
14 **VIOLATIONS OF THE FTC ACT**

15 74. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts  
16 or practices in or affecting commerce.”

17 75. Misrepresentations or deceptive omissions of material fact constitute deceptive  
18 acts or practices prohibited by Section 5(a) of the FTC Act.

19  
20 **COUNT I – Misrepresentations Regarding Income**

21 76. In numerous instances, in connection with the telemarketing and sale of their  
22 business coaching program, Primary Defendants represent, directly or indirectly, expressly or by  
23 implication, one of both of the following:

- 24 A. consumers who purchase and use Primary Defendants’ business coaching  
25 program are likely to earn thousands of dollars per month from their Internet

1 business endeavors; and

2 B. within six months a purchaser's Internet business will generate income equal  
3 to or greater than the amount they paid to purchase the program.

4 77. In truth and in fact, in numerous instances in which Primary Defendants make the  
5 representations set forth in Paragraph 76 of this Complaint, consumers who purchase and use  
6 Primary Defendants' business coaching program do not earn thousands of dollars per month  
7 from their Internet business endeavors, and purchasers do not recoup within six months the  
8 amount they paid to purchase the program.

9 78. Therefore, Primary Defendants' representations as set forth in Paragraph 76 of  
10 this Complaint are false and misleading and constitute a deceptive act or practice in violation of  
11 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

12  
13 **COUNT II – Misrepresentations Regarding Goods and Services Provided**

14 79. In numerous instances in connection with the telemarketing and sale of their  
15 business coaching program and related upsell products and services, Defendants represent,  
16 directly or indirectly, expressly or by implication, one or both of the following:

17 A. Defendants will provide the services necessary for consumers to establish  
18 successful Internet businesses, including individual coaching sessions, online  
19 resources, and website design and development, for six months or until  
20 purchasers recoup their initial investment; and

21 B. Defendants will provide numerous other related products and services,  
22 including access to corporate credit and tax advice and assistance.

23 80. In truth and in fact, in numerous instances in which Defendants make the  
24 representations set forth in Paragraph 79 of the Complaint, Defendants fail to provide all the  
25

1 services necessary for consumers to establish successful Internet businesses for the promised  
2 length of time and Defendants fail to provide the promised related products and services.

3 81. Therefore, Defendants' representations as set forth in Paragraph 79 of this  
4 Complaint are false and misleading and constitute a deceptive act or practice in violation of  
5 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

6  
7 **COUNT III – Failure to Disclose Material Aspects of the Refund Policy**

8 82. In numerous instances in connection with the telemarketing and sale of their  
9 business coaching program and related upsell products and services, Defendants represent,  
10 directly or indirectly, expressly or by implication, that they will provide refunds to dissatisfied  
11 consumers.

12 83. In numerous instances in which Defendants have made the representations set  
13 forth in Paragraph 82, Defendants fail to disclose, or to disclose adequately, to consumers  
14 material aspects of Defendants' refund policy, including one or both of the following:

- 15 A. consumers must request a refund within three days of purchase; and  
16 B. consumers must sign a "non-disparagement" agreement in order to receive a  
17 refund.

18 84. In light of the representations set forth in Paragraph 82 above, Defendants' failure  
19 to disclose or to disclose adequately the material information set forth in Paragraph 83 of this  
20 Complaint constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15  
21 U.S.C. § 45(a).

22  
23 **COUNT IV – Misrepresentations Regarding Refund Policy**

24 85. In numerous instances in connection with the telemarketing and sale of their  
25 business coaching program and related upsell products and services, Defendants have

1 represented, directly or indirectly, expressly or by implication, that consumers would receive a  
2 full refund if they requested a refund within three days of their purchase.

3 86. In truth and in fact, in numerous instances in which Defendants made the  
4 representation set forth in Paragraph 85, Defendants have failed to provide refunds to consumers  
5 who requested a refund within three days.

6 87. Therefore, Defendants' representation set forth in Paragraph 85 of this Complaint  
7 is false and misleading, and constitutes a deceptive act or practice in violation of Section 5(a) of  
8 the FTC Act, 15 U.S.C. § 45(a).

9  
10 **VIOLATIONS OF THE TELEMARKETING SALES RULE**

11 88. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive  
12 telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101 – 6108,  
13 which resulted in the adoption of the Telemarketing Sales Rule, 16 C.F.R. part 310.

14 89. Defendants are “seller[s]” and “telemarketer[s]” engaged in “telemarketing,” as  
15 defined by the TSR, 16 C.F.R. §§ 310.2(aa), (cc), and (dd).

16 90. The TSR prohibits sellers and telemarketers from failing to disclose, in a clear and  
17 conspicuous manner, if the seller has a policy of not making refunds, a statement informing the  
18 customer that this is the seller's policy; or if the seller makes a representation about a refund, a  
19 statement of all material terms and conditions of such policy. 16 C.F.R. § 310.3(a)(1)(iii).

20 91. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by  
21 implication, any material aspect of the performance, efficacy, nature, or central characteristics of  
22 goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

23 92. The TSR prohibits sellers and telemarketers from misrepresenting, directly or by  
24 implication, any material aspect of the nature or terms of the seller's refund, cancellation,  
25 exchange, or repurchase policies. 16 C.F.R. § 310.3(a)(2)(iv).

1           93.     The TSR prohibits telemarketers from initiating any outbound calls to a person  
2 when that person's telephone number is on the Do Not Call Registry. 16 C.F.R. §  
3 310.4(b)(1)(iii)(B).

4           94.     The TSR also prohibits sellers and telemarketers from initiating outbound  
5 telephone calls to any person whose telephone number is within a given area code unless the  
6 seller or telemarketer, either directly or through another person, first has paid the annual fee for  
7 access to the telephone numbers within that area code. 16 C.F.R. § 310.8.

8           95.     Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and  
9 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an  
10 unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the  
11 FTC Act, 15 U.S.C. § 45(a).

12  
13                   **COUNT V – Misrepresentations Regarding the Performance, Efficacy, Nature or**  
14                   **Essential Characteristics of Goods and Services**

15           96.     In numerous instances, in connection with telemarketing offers to sell their  
16 business coaching program and related upsell products and services, Defendants have, directly or  
17 by implication, made misrepresentations regarding the performance, efficacy, nature or essential  
18 characteristics of their products and services, such as:

- 19           A.     consumers who purchase and use Defendants' products and services are likely  
20                   to earn thousands of dollars per month from their Internet business endeavors;
- 21           B.     within six months a purchaser's Internet business will generate income equal  
22                   to or greater than the amount they paid to purchase the program;
- 23           C.     Defendants will provide all the services necessary for consumers to establish  
24                   successful Internet businesses, including individual coaching sessions, online  
25                   resources, and website design and development, for six months or until



1 purchasers recoup their initial investment; and

2 D. Defendants will provide numerous other related products and services,  
3 including access to corporate credit and tax advice and assistance.

4 97. In truth and in fact:

5 A. consumers who purchase and use Defendants' products and services do not  
6 earn thousands of dollars per month from their Internet business endeavors;

7 B. within six months purchasers of Defendants' products and services do not  
8 generate income equal to or greater than the amount they paid to purchase the  
9 program;

10 C. Defendants fail to provide all the services necessary for consumers to  
11 establish successful Internet businesses for the promised length of time; and

12 D. Defendants fail to provide the promised related products and services.

13 98. The Defendants' practices as alleged in Paragraph 96 thereby constitute deceptive  
14 telemarketing acts or practices that violate Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. §  
15 310.3(a)(2)(iii).

16  
17 **COUNT VI – Failure to Disclose Material Aspects of the Refund Policy**

18 99. In numerous instances in connection with the telemarketing and sale of their  
19 business coaching program and related upsell products and services, Defendants represent,  
20 directly or by implication, that Defendants will provide refunds to dissatisfied consumers.

21 100. In numerous instances in which Defendants have made the representation set forth  
22 in Paragraph 99, Defendants fail to disclose, or to disclose adequately, in a clear and conspicuous  
23 manner, all material terms and conditions of Defendants' refund policy, including one or both of  
24 the following:

25 A. consumers must request a refund within three days of purchase; and

1 B. consumers must sign a “non-disparagement” agreement in order to receive a  
2 refund.

3 101. In light of the representation set forth in Paragraph 99 above, Defendants’ failure  
4 to disclose or to disclose adequately the material information set forth in Paragraph 100 is a  
5 deceptive telemarketing practice that violates Section 310.3(a)(1)(iii) of the TSR, 16 C.F.R. §  
6 310.3(a)(1)(iii).

7 **COUNT VII – Misrepresentations Regarding Material Aspects of the Refund Policy**

8 102. In numerous instances, Defendants have misrepresented, directly or by  
9 implication, in the sale of their business coaching program and related upsell products and  
10 services, material aspects of the nature and terms of Defendants policy by assuring consumers  
11 that they would be able to receive a full refund if they requested a refund within three days of  
12 their purchase.

13 103. In truth and in fact, in numerous instances in which Defendants have made the  
14 representations set forth in Paragraph 102, Defendants have failed to provide refunds to  
15 consumers who requested a refund within three days.

16 104. The Defendants’ practice as alleged in Paragraph 102 is a deceptive telemarketing  
17 practice that violates Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. § 310.3(a)(2)(iv).

18  
19 **COUNT VIII – Calling Telephone Numbers on the National Do Not Call Registry**

20 105. In numerous instances, in connection with telemarketing offers to sell their  
21 business coaching program, Defendants initiated, or caused others to initiate, an outbound  
22 telephone call to a person’s telephone number on the National Do Not Call Registry in violation  
23 of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B). Defendants have engaged in this behavior even after  
24 consumers have asked them to stop calling.

25 106. Defendants’ practice as alleged in Paragraph 105 is an abusive telemarketing

1 practice that violates Section 310.4(b)(1)(iii)(B) of the TSR, 16 CFR § 310.4(b)(1)(iii)(B).  
2

3 **COUNT IX – Failing to Pay the Fee for Access to the National Do Not Call Registry**

4 107. In numerous instances, in connection with telemarketing offers to sell their  
5 business coaching program, Defendants have initiated outbound telephone calls to telephone  
6 numbers on the Do Not Call Registry without paying the annual fee for access to telephone  
7 numbers that are included in the National Do Not Call Registry.

8 108. Defendants' practice as alleged in Paragraph 107 is an abusive telemarketing  
9 practice that violates Section 310.8 of the TSR, 16 CFR § 310.8.  
10

11 **Count X – Relief Defendants**

12 109. Relief Defendants Cherrytree, Oxford Financial, S&T Time, Virtucon, Curva,  
13 Mowab, Kierston Kirschbaum, Melyna Harrison, Tracy Lyman, and Leanne Hoskins have  
14 received, directly or indirectly, funds, other assets, or both, from Defendants that are traceable to  
15 funds obtained from Defendants' customers through the unlawful acts or practices described  
16 herein.

17 110. Relief Defendants are not bona fide purchasers with legal and equitable title to  
18 Defendants' customers' funds, other assets, or both, and Relief Defendants will be unjustly  
19 enriched if they are not required to disgorge the funds or the value of the benefit they received as  
20 a result of Defendants' unlawful acts or practices.

21 111. By reason of the foregoing, Relief Defendants hold funds and assets in  
22 constructive trust for the benefit of Defendants' customers.  
23

24 **CONSUMER INJURY**

25 112. Consumers have suffered and will continue to suffer substantial injury as a result

1 of Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a) and the TSR, as set  
2 forth above. In addition, Defendants have been unjustly enriched as a result of their unlawful  
3 acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to  
4 injure consumers, reap unjust enrichment, and harm the public interest.

5  
6 **THIS COURT'S POWER TO GRANT RELIEF**

7 113. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant  
8 injunctive and such other relief as the Court may deem appropriate to halt and redress violations  
9 of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award ancillary  
10 relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and  
11 the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of  
12 law enforced by the FTC.

13 114. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the  
14 Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court  
15 finds necessary to redress injury to consumers resulting from Defendants' violations of the TSR,  
16 including recession and reformation of contracts, and the refund of money.

17  
18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19  
20 of the FTC Act, 15 U.S.C. § 53(b) and 57b, and Section 6(d) of the Telemarketing Act, 15  
21 U.S.C. § 6105(b), and the Court's own equitable powers, requests that the Court:

22 1. Award Plaintiff such preliminary injunctive and ancillary relief as may be  
23 necessary to avert the likelihood of consumer injury during the pendency of this action and to  
24 preserve the possibility of effective final relief, including, but not limited to, a temporary  
25

1 restraining order, a preliminary injunction, an order freezing assets, immediate access to the  
2 Defendants' business premises, and appointment of a receiver;

3 2. Enter a permanent injunction to prevent future violations by Defendants of the  
4 FTC Act, the Telemarketing Act, and the TSR;

5 3. Award such relief as the Court finds necessary to redress injury to consumers  
6 resulting from the Defendants' violations of the FTC Act, the Telemarketing Act and the TSR,  
7 including, but not limited to, rescission or reformation of contracts, restitution, the refund of  
8 monies paid, and the disgorgement of ill-gotten monies;


9 4. Enter an order requiring Relief Defendants to disgorge all funds and assets, or the  
10 value of the benefit they have received from the funds and assets, which are traceable to  
11 Defendants' unlawful acts or practices; and

12 5. Award Plaintiff the costs of bringing this action, as well as such other and  
13 additional relief that the Court may determine to be just and proper.

14  
15  
16 Dated: February 22, 2011

Respectfully submitted,

17  
18 WILLARD K. TOM  
General Counsel

19  
20   
\_\_\_\_\_  
EMILY COPE BURTON  
SHAMEKA L. GAINEY

21  
22 Attorneys for Plaintiff  
23 Federal Trade Commission  
24  
25



**SEALED**



**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.