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15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 **Drew Moss, and Sahar**
18 **Maleksaeedi, Individually and on**
19 **Behalf of All Others Similarly**
20 **Situated,**

21 Plaintiffss,

22 v.

23 **Twitter, Inc.,**

24 Defendant.

25 Case No.: '11CV0906 LAB JMA

26 **CLASS ACTION**

27 **Complaint for Damages and**
28 **Injunctive Relief Pursuant To The**
Telephone Consumer Protection
Act, 47 U.S.C § 227 et seq.

Jury Trial Demanded

INTRODUCTION

1
2 1. Drew Moss and Sahar Maleksaeedi (“Plaintiffs”) bring this Class Action
3 Complaint for damages, injunctive relief, and any other available legal or
4 equitable remedies, resulting from the illegal actions of Twitter, Inc.
5 (“Defendant”), in negligently, and/or willfully contacting Plaintiffs on
6 Plaintiffs’ cellular telephones, in violation of the Telephone Consumer
7 Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading
8 Plaintiffs’ privacy. Plaintiffs allege as follows upon personal knowledge as to
9 their own acts and experiences, and, as to all other matters, upon information
10 and belief, including investigation conducted by their attorneys.

JURISDICTION AND VENUE

11
12 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiffs seek up
13 to \$1,500 in damages for each call in violation of the TCPA, which, when
14 aggregated among a proposed class number in the tens of thousands, exceeds
15 the \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiffs
16 allege a national class, which will result in at least one class member
17 belonging to a different state than that of Defendant, providing jurisdiction
18 under 28 U.S.C. Section 1332(d)(2)(A). Therefore, both elements of diversity
19 jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”) are
20 present, and this Court has jurisdiction.

21 3. Venue is proper in the United States District Court for the Southern District of
22 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because the events
23 giving rise to Plaintiffs’ causes of action against Defendant occurred within
24 the State of California and the County of San Diego, within this judicial
25 district.

PARTIES

1
2 4. Plaintiffs are, and at all times mentioned herein were, citizens and residents of
3 the State of California. Plaintiffs are, and at all times mentioned herein were,
4 “persons” as defined by 47 U.S.C. § 153 (10).

5 5. Plaintiffs are informed and believe, and thereon allege, that Defendant is, and
6 at all times mentioned herein was, a corporation whose primary corporate
7 address is in San Francisco, California. Defendant, is a citizen of this state.
8 Defendant is, and at all times mentioned herein was, a corporation and a
9 “person,” as defined by 47 U.S.C. § 153 (10). Defendant provides a social
10 networking service through the use of text messages with more than 100
11 million active users. Plaintiffs allege that at all times relevant herein
12 Defendant conducted business in the State of California and in the County of
13 San Diego, and within this judicial district.

FACTUAL ALLEGATIONS

14
15 6. At all times relevant, Plaintiffs were a citizens of the State of California.
16 Plaintiffs are, and at all times mentioned herein were, “persons” as defined by
17 47 U.S.C. § 153 (10).

18 7. Defendant is, and at all times mentioned herein was, a corporation and a
19 “person,” as defined by 47 U.S.C. § 153 (10).

20 8. At all times relevant Defendant conducted business in the State of California
21 and in the County of San Diego, within this judicial district.

22 9. Plaintiffs have been members of Twitter for a considerable period of time.

23 10. Plaintiffs activated one or more options in their Twitter accounts, online, to
24 receive notifications concerning their account via text messages on April 6,
25 2011.

26 11. Plaintiffs continued to receive text message notifications from Defendant
27 thereafter. At some point Plaintiffs decided that they no longer wanted to
28 receive text message notifications on their cellular telephone from Defendant.

1 12. Plaintiffs then responded to Defendant’s last text message notification by
2 replying “stop,” as instructed by Twitter.

3 13. At this point, Plaintiffs withdrew any express or implied consent to receive
4 text message notification to their cellular telephone that they may have
5 previous given Twitter.

6 14. In response to receiving this revocation of consent, Defendant then
7 immediately sent another, unsolicited, confirmatory text message to
8 Plaintiffs’ cellular telephones.

9 15. This unsolicited text message placed to Plaintiffs’ cellular telephone was
10 placed via an “automatic telephone dialing system,” (“ATDS”) as defined by
11 47 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

12 16. The telephone number that the defendant, or its agents, called was assigned to
13 a cellular telephone service for which Plaintiffs incurred a charge for incoming
14 calls pursuant to 47 U.S.C. § 227 (b)(1).

15 17. These telephone calls constituted calls that were not for emergency purposes
16 as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

17 18. Plaintiffs did not provide Defendant or its agents prior express consent to
18 receive unsolicited text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).

19 19. These telephone calls by Defendant or its agents violated 47 U.S.C. § 227(b)
20 (1).

21 **CLASS ACTION ALLEGATIONS**

22 20. Plaintiffs bring this action on behalf of themselves and on behalf of and all
23 others similarly situated (“the Class”).

24 21. Plaintiffs represent, and are members of the Class, consisting of all persons
25 within the United States who received any unsolicited confirmatory text
26 messages and/or any other unsolicited text messages from Defendant after
27 any class member sent a reply text message, “stop,” to Defendant in response
28 to a text message sent by Defendant, which text message was not made for

1 emergency purposes or with the recipient's prior express consent, within the
2 four years prior to the filing of this Complaint.

3 22. Defendant and its employees or agents are excluded from the Class. Plaintiffs
4 do not know the number of members in the Class, but believe the Class
5 members number in the hundreds of thousands, if not more. Thus, this matter
6 should be certified as a Class action to assist in the expeditious litigation of
7 this matter.

8 23. Plaintiffs and members of the Class were harmed by the acts of Defendant in
9 at least the following ways: Defendant, either directly or through its agents,
10 illegally contacted Plaintiffs and the Class members via their cellular
11 telephones by using an unsolicited and/or confirmatory text message, thereby
12 causing Plaintiffs and the Class members to incur certain cellular telephone
13 charges or reduce cellular telephone time for which Plaintiffs and the Class
14 members previously paid, and invading the privacy of said Plaintiffs and the
15 Class members. Plaintiffs and the Class members were damaged thereby.

16 24. This suit seeks only damages and injunctive relief for recovery of economic
17 injury on behalf of the Class and it expressly is not intended to request any
18 recovery for personal injury and claims related thereto. Plaintiffs reserve the
19 right to expand the Class definition to seek recovery on behalf of additional
20 persons as warranted as facts are learned in further investigation and
21 discovery.

22 25. The joinder of the Class members is impractical and the disposition of their
23 claims in the Class action will provide substantial benefits both to the parties
24 and to the court. The Class can be identified through Defendant's records or
25 Defendant's agents' records.

26 26. There is a well-defined community of interest in the questions of law and fact
27 involved affecting the parties to be represented. The questions of law and fact
28

1 to the Class predominate over questions which may affect individual Class
2 members, including the following:

- 3 a) Whether, within the four years prior to the filing of this Complaint,
4 Defendant placed any confirmatory text messages (other than a text
5 message made for emergency purposes or made with the prior express
6 consent of the called party) to a Class member using any automatic
7 telephone dialing and/or texting system to any telephone number
8 assigned to a cellular telephone service;
- 9 b) Whether Plaintiffs and the Class members were damaged thereby, and
10 the extent of damages for such violation; and
- 11 c) Whether Defendant should be enjoined from engaging in such conduct
12 in the future.

13 28. As a person that received at least one confirmatory text message without
14 Plaintiffs' prior express consent, Plaintiffs are asserting claims that are typical
15 of the Class. Plaintiffs will fairly and adequately represent and protect the
16 interests of the Class in that Plaintiffs have no interests antagonistic to any
17 member of the Class.

18 29. Plaintiffs and the members of the Class have all suffered irreparable harm as a
19 result of the Defendant's unlawful and wrongful conduct. Absent a class
20 action, the Class will continue to face the potential for irreparable harm. In
21 addition, these violations of law will be allowed to proceed without remedy
22 and Defendant will likely continue such illegal conduct. Because of the size
23 of the individual Class member's claims, few, if any, Class members could
24 afford to seek legal redress for the wrongs complained of herein.

25 30. Plaintiffs have retained counsel experienced in handling class action claims
26 and claims involving violations of the Telephone Consumer Protection Act.

27 31. A class action is a superior method for the fair and efficient adjudication of
28 this controversy. Class-wide damages are essential to induce Defendant to

1 comply with federal and California law. The interest of Class members in
2 individually controlling the prosecution of separate claims against Defendant
3 is small because the maximum statutory damages in an individual action for
4 violation of privacy are minimal. Management of these claims is likely to
5 present significantly fewer difficulties than those presented in many class
6 claims.

7 32. Defendant has acted on grounds generally applicable to the Class, thereby
8 making appropriate final injunctive relief and corresponding declaratory relief
9 with respect to the Class as a whole.

10 **FIRST CAUSE OF ACTION**

11 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

12 **47 U.S.C. § 227 ET SEQ.**

13 33. Plaintiffs incorporate by reference all of the above paragraphs of this
14 Complaint as though fully stated herein.

15 34. The foregoing acts and omissions of Defendant constitute numerous and
16 multiple negligent violations of the TCPA, including but not limited to each
17 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

18 35. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq,
19 Plaintiffs and The Class are entitled to an award of \$500.00 in statutory
20 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

21 36. Plaintiffs and the The Class are also entitled to and seek injunctive relief
22 prohibiting such conduct in the future.

23 **PRAYER FOR RELIEF**

24 **Wherefore**, Plaintiffs respectfully request the Court grant Plaintiffs and The Class
25 members the following relief against Defendant:
26
27
28

1 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
2 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

3 37. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1),
4 Plaintiffs seek for themselves and each Class member \$500.00 in statutory
5 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

6 38. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
7 conduct in the future.

8 39. Any other relief the Court may deem just and proper.

9 **TRIAL BY JURY**

10 40. Pursuant to the seventh amendment to the Constitution of the United States of
11 America, Plaintiffs are entitled to, and demand, a trial by jury.

12
13 Date: April 27, 2011

HYDE & SWIGART

14
15 By: /s Joshua B. Swigart
16 Joshua B. Swigart
17 Attorneys for Plaintiffs
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CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Drew Moss, and Sahar Maleksaeedi, Individually and on Behalf of All Others Similarly Situated

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart
411 Camino Del Rio South Suite 301, San Diego, CA 92108

DEFENDANTS

Twitter, Inc.

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

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

Attorneys (If Known) '11CV0906 LAB JMA

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 yeb
(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)

- | | | | |
|---|---|----------------------------|--|
| (For Diversity Cases Only) | | PTF DEF | PTF DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 <u>yeb</u> | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 <u>yeb</u> |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | <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 type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <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)) FEDERAL 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"/> 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 checked="" type="checkbox"/> 890 Other Statutory Acts <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
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	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	

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): 28:1331 yeb
47 U.S.C. § 227 et seq

Brief description of cause:
ICPA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
5,000,000.00 +

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 4/28/11 SIGNATURE OF ATTORNEY OF RECORD: _____

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.