

1 Joel E. Elkins (SBN 256020)  
 2 jelkins@weisslawllp.com  
 3 **WEISSLAW LLP**  
 4 9107 Wilshire Blvd., Suite 450  
 Beverly Hills, CA 90210  
 Telephone: 310/208-2800  
 Facsimile: 310/209-2348

5 *Attorneys for Plaintiff*

6  
 7  
 8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**

10  
 11 RAE YANG, ) Case No.  
 12 )  
 Plaintiff, )  
 13 )  
 vs. ) **COMPLAINT FOR VIOLATIONS OF**  
 ) **THE FEDERAL SECURITIES LAWS**  
 14 )  
 TELARIA, INC., PAUL CAINE, MARK ) **JURY TRIAL DEMANDED**  
 15 ZAGORSKI, DOUG KNOPPER, RACHEL )  
 LAM, WARREN LEE, JAMES ROSSMAN, )  
 16 ROBERT SCHECHTER, and KEVIN )  
 THOMPSON, )  
 17 )  
 Defendants. )  
 18 )  
 19 )

20  
 21 Plaintiff Rae Yang (“Plaintiff”), upon information and belief, including an examination and  
 22 inquiry conducted by and through her counsel, except as to those allegations pertaining to Plaintiff,  
 23 which are alleged upon personal belief, alleges the following for her Complaint:

24 **NATURE OF THE ACTION**

25 1. Plaintiff brings this action against Telaria, Inc. (“Telaria” or the “Company”) and the  
 26 members of its Board of Directors (the “Board” or the “Individual Defendants”) for their violations  
 27 of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C.  
 28

1 §§ 78n(a), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14a-9, 17 C.F.R. §  
2 240.14a-9, arising out of their attempt to sell the Company to The Rubicon Project, Inc. (“Rubicon  
3 Project”), through its wholly owned subsidiary Madison Merger Corp. (the “Proposed Transaction”).

4 2. On December 19, 2019, the Company announced it had entered into an Agreement  
5 and Plan of Merger (the “Merger Agreement”) pursuant to which, each Telaria stockholder will  
6 receive 1.082 shares of Rubicon Project common stock for each share of Telaria common stock they  
7 own.

8  
9 3. On February 4, 2020, Telaria filed a Schedule 14A Definitive Proxy Statement (the  
10 “Proxy”) with the SEC. The Proxy is materially deficient and misleading because, *inter alia*, it fails  
11 to disclose material information regarding: (i) Telaria management’s financial projections relied  
12 upon by RBC Capital Markets, LLC (“RBC”) for its financial analyses and the data and inputs  
13 underlying the valuation analyses performed by RBC; and (ii) the background of the Proposed  
14 Transaction. Accordingly, without additional information the Proxy is materially misleading in  
15 violation of federal securities laws.

16  
17 4. The stockholder vote to approve the Proposed Transaction is forthcoming. Under the  
18 Merger Agreement, following a successful stockholder vote, the Proposed Transaction will be  
19 consummated. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin defendants  
20 from conducting the stockholder vote on the Proposed Transaction unless and until the material  
21 information discussed below is disclosed to the holders of the Company common stock, or, in the  
22 event the Proposed Transaction is consummated, to recover damages resulting from the defendants’  
23 violations of the Exchange Act

24  
25 **JURISDICTION AND VENUE**

1 5. This Court has jurisdiction over the claims asserted herein for violations of Sections  
2 14(a) and 20(a) of the Exchange Act and Rule 14a-9 promulgated thereunder pursuant to Section 27  
3 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. §1331 (federal question jurisdiction).

4 6. The Court has jurisdiction over defendants because each defendant is either a  
5 corporation that conducts business in and maintains operations in this District, or is an individual who  
6 has sufficient minimum contacts with this District so as to render the exercise of jurisdiction by this  
7 Court permissible under traditional notions of fair play and substantial justice.

8 7. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. §  
9 78aa, as well as under 28 U.S.C. § 1391 because: (i) the Company maintains offices in Mountain  
10 View, California and San Francisco, California; and (ii) defendants have received substantial  
11 compensation in this District by doing business here and engaging in numerous activities that had an  
12 effect in this District.  
13

14 **THE PARTIES**

15 8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of  
16 Telaria.  
17

18 9. Defendant Telaria is a Delaware corporation with its principal executive offices  
19 located at 222 Broadway, 16th Floor, New York, New York 10038. Telaria's common stock trades  
20 on the New York Stock Exchange under the ticker symbol "TLRA."

21 10. Defendant Paul Caine ("Caine") has served as Chairman of the Board since July 2017  
22 and a director of the Company since June 2014.  
23

24 11. Defendant Mark Zagorski ("Zagorski") has served as Chief Executive Officer  
25 ("CEO") and a director of the Company since July 2017.

26 12. Defendant Doug Knopper ("Knopper") has served as a director of the Company since  
27 October 2018.  
28

1 13. Defendant Rachel Lam (“Lam”) has served as a director of the Company since May  
2 2013.

3 14. Defendant Warren Lee (“Lee”) has served as a director of the Company since  
4 September 2006.

5 15. Defendant James Rossman (“Rossman”) has served as a director of the Company since  
6 January 2011.

7 16. Defendant Robert Schechter (“Schechter”) has served as a director of the Company  
8 since June 2013.

9 17. Defendant Kevin Thompson (“Thompson”) has served as a director of the Company  
10 since January 2017.

11 18. Defendants identified in paragraphs 11-17 are referred to herein as the “Board” or the  
12 “Individual Defendants.”

13 19. Relevant non-party Rubicon Project is a Delaware corporation with its principal  
14 executive offices located at 12181 Bluff Creek Drive, 4th Floor, Los Angeles, California 90094.  
15 Rubicon Project provides a technology solution to automate the purchase and sale of digital  
16 advertising inventory for buyers and sellers. Rubicon Project’s common stock trades on the New  
17 York Stock Exchange under the ticker symbol “RUBI.”

18  
19  
20  
21 **SUBSTANTIVE ALLEGATIONS**

22 **Background of the Company and the Proposed Transaction**

23 20. Telaria provides a fully programmatic software platform for publishers to manage and  
24 monetize their video advertising. The Company’s technology enables publishers to manage and  
25 deliver their directly sold and programmatic video inventory through a single platform. Telaria’s  
26 platform is connected with leading third-party demand side platforms, through server-to-server  
27 integrations, creating a robust programmatic marketplace where publishers can seamlessly transact  
28

1 with buyers. These programmatic transactions fully automate the sales process and enable publishers  
2 to increase the value of their advertising inventory by using data to better segment and match their  
3 supply with demand. The Company provides its platform internationally in Europe, Canada, Latin  
4 America, and the Asia Pacific regions.

5 21. The Company provides a full suite of tools for publishers to control their video  
6 advertising business and protect the consumer viewing experience. These controls are particularly  
7 important for Telaria's clients in connected TV and over-the-top who need to ensure a TV-like  
8 viewing and advertising experience for consumers. Buyers on the platform include some of the  
9 largest brand advertisers in the world and the platform is integrated with the leading video volume  
10 buyers in digital advertising.

12 22. On December 19, 2019, Telaria and Rubicon Project issued a joint press release  
13 announcing the Proposed Transaction, which states, in relevant part:

14 LOS ANGELES & NEW YORK--(BUSINESS WIRE)--Rubicon Project  
15 (NYSE:RUBI), the global exchange for advertising, and Telaria (NYSE: TLRA), the  
16 complete software platform that optimizes yield for leading video publishers,  
17 announced today that they have entered into a definitive agreement to combine in a  
18 stock-for-stock merger. The transaction, which has been unanimously approved by the  
Boards of Directors of both companies, will create the world's largest independent  
sell-side advertising platform, poised to capture growth in CTV.

19 Together, Rubicon Project and Telaria will enable thousands of publishers to connect  
20 with hundreds of buyers and brands, creating a global, independent alternative to  
21 closed players in the ecosystem. In addition, the combined company will be an  
22 essential omnichannel partner for buyers across formats, screens and geographies.  
Both companies bring premium publisher partnerships and unique technical  
capabilities: Telaria as a leader in CTV, and Rubicon Project as an expert in scaled  
23 programmatic operations.

24 "The combination of Rubicon Project and Telaria will establish the world's largest,  
25 independent sell-side advertising platform with scale, capabilities and solutions  
26 unmatched by the competition," said Michael Barrett, President & CEO of Rubicon  
27 Project. "This transformative combination builds on our commitment to trust and  
28 transparency and accelerates our strategy to provide buyers and sellers with a single  
path to every format and channel including CTV. We could not be more excited about  
the future as two individually strong industry leaders with complementary assets and  
cultures come together to create a market leader that we believe will generate

1 significant opportunities for our employees, customers, partners, and stockholders  
2 worldwide.”

3 “Our businesses are highly complementary, and when combined, are a powerful,  
4 strategic alternative to the walled gardens, which have been frustrating both buyers  
5 and sellers due to their lack of transparency, innovation bottlenecks, and conflicted  
6 business models,” stated Telaria CEO, Mark Zagorski. “The two companies will  
7 provide more technology resources, a broader geographic footprint and deeper  
8 financial assets to attack the growing opportunity created by the shift from linear  
9 viewing to CTV to the benefit of our customers and in support of a thriving open  
10 internet. For our stockholders, we believe this merger allows us to accelerate our  
11 growth, while providing additional resources to increase investment and continue to  
12 scale our industry-leading CTV technology. For our employees, this is an opportunity  
13 for development and to fully realize the potential of what we have built these past few  
14 years in a scaled, omnichannel platform.”

15 \* \* \*

16 Under the terms of the merger agreement, each share of Telaria common stock issued  
17 and outstanding as of the effective time of the Merger will be converted into the right  
18 to receive 1.082 shares of Rubicon Project common stock (and, if applicable, cash in  
19 lieu of fractional shares) less any applicable withholding taxes.

20 Upon closing, Telaria stockholders are expected to own approximately 47.1% and  
21 Rubicon Project stockholders are expected to own approximately 52.9% of the fully  
22 diluted shares of the combined company.

23 Upon closing, Michael Barrett will be named Chief Executive Officer of the combined  
24 company, Mark Zagorski will be named President & Chief Operating Officer and  
25 David Day will be the Chief Financial Officer. Telaria board member Paul Caine will  
26 be Chairperson of the Board of Directors of the combined company. The full board  
27 will consist of nine members; four existing directors from each company and Michael  
28 Barrett, CEO.

**The Proxy Misleads Telaria Stockholders by Omitting Material Information**

21 23. On February 4, 2020, the Company filed the materially misleading and incomplete  
22 Proxy with the SEC. Designed to convince the Company’s stockholders to vote in favor of the  
23 Proposed Transaction, the Proxy is rendered misleading by the omission of critical information  
24 concerning: (i) Telaria management’s financial projections relied upon by RBC for its financial  
25 analyses and the data and inputs underlying the valuation analyses performed by RBC; and (ii) the  
26 background of the Proposed Transaction.  
27  
28

1 ***Material Omissions Concerning Telaria Management's Financial Projections and RBC's***  
2 ***Financial Analyses***

3 24. With respect to the Company's projections, the Proxy fails to disclose each of the line  
4 items underlying the Company's unlevered free cash flows, including: (i) stock-based compensation;  
5 (ii) capital expenditures; and (iii) working capital.

6 25. Omission of the above-referenced projections renders the financial projections  
7 included in the Proxy materially incomplete and misleading. If a proxy statement discloses financial  
8 projections and valuation information, such projections must be complete and accurate.

9 26. The Proxy describes RBC's fairness opinion and the various valuation analyses  
10 performed in support of its opinion. However, the description of RBC's fairness opinion and analyses  
11 fails to include key inputs and assumptions underlying these analyses. Without this information, as  
12 described below, Telaria's public stockholders are unable to fully understand these analyses and, thus,  
13 are unable to determine what weight, if any, to place on RBC's fairness opinion in determining  
14 whether to vote in favor of the Proposed Transaction.  
15

16 27. With respect to RBC's *Discounted Cash Flow Analyses*, the Proxy fails to disclose: (i)  
17 terminal year estimated unlevered, after-tax free cash flows for each of Telaria and Rubicon Project,  
18 and quantification thereof; (ii) quantification of the Company's and Rubicon Project's terminal value;  
19 (iii) Telaria's and Rubicon Project's net operating loss carryforwards utilized by RBC in the analyses;  
20 and (iv) quantification of the individual inputs and assumptions underlying the discount rates of  
21 10.0% to 12.5% for Telaria and 12.5% to 15.0% for Rubicon Project.  
22

23 28. The omission of this information renders certain portions of the Proxy materially  
24 misleading, including, inter alia, the following sections of the Proxy: "Certain Unaudited Prospective  
25 Financial Information Prepared by Telaria or Used at Telaria's Direction" and "Opinion of Telaria's  
26 Financial Advisor."  
27

28 ***Material Omissions Concerning the Background of the Proposed Transaction***

1 29. The Proxy also fails to disclose material information concerning the background of the  
2 Proposed Transaction.

3 30. The Proxy sets forth that Telaria entered into confidentiality agreements with potential  
4 buyers during the sale process. *Id.* at 57. Yet, the Proxy fails to disclose whether the confidentiality  
5 agreements executed by potential buyers include “don’t-ask, don’t-waive” (“DADW”) standstill  
6 provisions that are presently precluding any of these potential buyers from submitting a topping bid  
7 for the Company.  
8

9 31. The disclosure of the terms of these confidentiality agreements is crucial to Telaria  
10 stockholders being sufficiently informed of whether their fiduciaries have put in place restrictive  
11 devices to foreclose a topping bid for the Company.

12 32. The omission of this information renders certain portions of the Proxy materially  
13 misleading, including, inter alia, the following section of the Proxy: “Background of the Merger.”  
14

15 33. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the  
16 irreparable injury that Company stockholders will continue to suffer absent judicial intervention.

17 **CLAIMS FOR RELIEF**

18 **COUNT I**

19 **Claims Against All Defendants for Violations of Section 14(a) of the**  
20 **Exchange Act and Rule 14a-9 Promulgated Thereunder**

21 34. Plaintiff repeats all previous allegations as if set forth in full.

22 35. During the relevant period, defendants disseminated the false and misleading Proxy  
23 specified above, which failed to disclose material facts necessary to make the statements, in light of  
24 the circumstances under which they were made, not misleading in violation of Section 14(a) of the  
25 Exchange Act and SEC Rule 14a-9 promulgated thereunder.

26 36. By virtue of their positions within the Company, the defendants were aware of this  
27 information and of their duty to disclose this information in the Proxy. The Proxy was prepared,  
28



1 reviewed, and/or disseminated by the defendants. It misrepresented and/or omitted material facts,  
2 including material information about Telaria management's financial projections relied upon by RBC  
3 for its financial analyses, the data and inputs underlying the valuation analyses performed by RBC,  
4 and the background of the Proposed Transaction. The defendants were at least negligent in filing the  
5 Proxy with these materially false and misleading statements.

6 37. The omissions and false and misleading statements in the Proxy are material in that a  
7 reasonable stockholder would consider them important in deciding how to vote on the Proposed  
8 Transaction.  
9

10 38. By reason of the foregoing, the defendants have violated Section 14(a) of the Exchange  
11 Act and SEC Rule 14a-9(a) promulgated thereunder.

12 39. Because of the false and misleading statements in the Proxy, Plaintiff is threatened  
13 with irreparable harm, rendering money damages inadequate. Therefore, injunctive relief is  
14 appropriate to ensure defendants' misconduct is corrected.  
15

16 **COUNT II**

17 **Claims Against the Individual Defendants for**  
18 **Violations of Section 20(a) of the Exchange Act**

19 40. Plaintiff repeats all previous allegations as if set forth in full.

20 41. The Individual Defendants acted as controlling persons of Telaria within the meaning  
21 of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or  
22 directors of Telaria, and participation in and/or awareness of the Company's operations and/or  
23 intimate knowledge of the false statements contained in the Proxy filed with the SEC, they had the  
24 power to influence and control and did influence and control, directly or indirectly, the decision-  
25 making of the Company, including the content and dissemination of the various statements which  
26 Plaintiff contends are false and misleading.  
27  
28

1 42. Each of the Individual Defendants was provided with or had unlimited access to copies  
2 of the Proxy and other statements alleged by Plaintiff to be misleading prior to and/or shortly after  
3 these statements were issued and had the ability to prevent the issuance of the statements or cause the  
4 statements to be corrected.

5 43. In particular, each of the Individual Defendants had direct and supervisory  
6 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had  
7 the power to control or influence the particular transactions giving rise to the securities violations as  
8 alleged herein, and exercised the same. The Proxy at issue contains the unanimous recommendation  
9 of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly  
10 involved in the making of the Proxy.  
11

12 44. In addition, as the Proxy sets forth at length, and as described herein, the Individual  
13 Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction.  
14 The Proxy purports to describe the various issues and information that they reviewed and  
15 considered—descriptions the Company directors had input into.  
16

17 45. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of  
18 the Exchange Act.

19 46. As set forth above, the Individual Defendants had the ability to exercise control over  
20 and did control a person or persons who have each violated Section 14(a) and SEC Rule 14a-9,  
21 promulgated thereunder, by their acts and omissions as alleged herein. By virtue of their positions as  
22 controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a  
23 direct and proximate result of defendants' conduct, Telaria's stockholders will be irreparably harmed.  
24

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including  
27 injunctive relief, in her favor on behalf of Telaria, and against defendants, as follows:  
28

- 1 A. Preliminarily and permanently enjoining defendants and all persons acting in concert  
2 with them from proceeding with, consummating, or closing the Proposed Transaction;
- 3 B. In the event defendants consummate the Proposed Transaction, rescinding it and  
4 setting it aside or awarding rescissory damages to Plaintiff;
- 5 C. Directing the Individual Defendants to disseminate a Proxy that does not contain any  
6 untrue statements of material fact and that states all material facts required in it or  
7 necessary to make the statements contained therein not misleading;
- 8 D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the Exchange Act,  
9 as well as SEC Rule 14a-9 promulgated thereunder;
- 10 E. Awarding Plaintiff the costs of this action, including reasonable allowance for  
11 Plaintiff's attorneys' and experts' fees; and
- 12 F. Granting such other and further relief as this Court may deem just and proper.  
13

14 **JURY DEMAND**

15 Plaintiff demands a trial by jury on all claims and issues so triable.  
16

17 Dated: March 5, 2020

**WEISSLAW LLP**

Joel E. Elkins

By: /s/ Joel E. Elkins

18  
19  
20 **OF COUNSEL:**

**BRAGAR EAGEL & SQUIRE, P.C.**

Alexandra B. Raymond  
885 Third Avenue, Suite 3040  
New York, New York 10022  
Tel: (646) 860-9158  
Fax: (212) 214-0506  
Email: raymond@bespc.com

Joel E. Elkins

9107 Wilshire Blvd., Suite 450

Beverly Hills, CA 90210

Telephone: 310/208-2800

Facsimile: 310/209-2348

*Attorneys for Plaintiff*

21  
22  
23  
24  
25 *Attorneys for Plaintiff*

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
RAE YANG

(b) County of Residence of First Listed Plaintiff New York County, NY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Joel E. Elkins, WeissLaw LLP
9107 Wilshire Blvd., Suite 450, Beverly Hills, CA 90210
Telephone: 310/208-2800 Facsimile: 310/209-2348

DEFENDANTS

TELARIA, INC., PAUL CAINE, MARK ZAGORSKI, DOUG KNOPPER, RACHEL LAM, WARREN LEE, JAMES ROSSMAN, ROBERT SCHECHTER, and KEVIN THOMPSON

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

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

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §§ 78n(a), 78t(a)

Brief description of cause:
Violations of the Federal Securities Laws

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

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

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 03/05/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Joel E. Elkins

Print

Save As...

Reset

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 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.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 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; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 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 clerk(s) 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 six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.