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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91239962
Party	Defendant Humu, Inc.
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Date	01/18/2019
Attachments	HUMU Opposition Notification of Civil Action 91239962.pdf(7302 bytes) HUMU - 91239962 - Exhibit A - TTAB.pdf(181680 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 87/433,012; 87/433,020; and 87/433,022
Published in the *Official Gazette* on September 12, 2017 and January 23, 2018
Trademark: HUMU

Hulu, LLC, Opposers, v. Humu, Inc., Applicant.	Opposition No.: 91239962
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MOTION TO SUSPEND PROCEEDING IN VIEW OF PENDING CIVIL ACTION
PURSUANT TO TRADEMARK RULE 2.117(a)

On January 18, 2019, Applicant, Humu, Inc. (“Applicant”), filed a civil action against Hulu, Inc. (“Opposer”) in the Northern District of California. Applicant hereby attaches a true and correct copy of the Complaint in *Humu, Inc. v Hulu, LLC*, Civil Action No. 3:19-cv-00327 as Exhibit A. The civil action involves issues which are central to this proceeding.

Pursuant to 37 C.F.R. § 2.117(c) and T.M.B.P. § 510.03(a), Applicant accordingly hereby requests suspension of this proceeding pending determination of the civil action.

ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: January 18, 2019

By: /Christopher Civil/
Diana Rutowski
Christopher Civil
Attorneys for Humu, Inc.

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **MOTION TO SUSPEND PROCEEDING IN VIEW OF PENDING CIVIL ACTION** is being served upon counsel for Opposer by electronic mail on January 18, 2019 at the email address indicated below:

tmango@cantorcolburn.com
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By: /Marley Weddington/
Marley Weddington

EXHIBIT A

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12 Attorneys for Plaintiff
 13 Humu, Inc.

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA

17 Humu, Inc.,

18 Plaintiff,

19 v.

20 Hulu, LLC,

21 Defendant.

Case No. 3:19-cv-327

**COMPLAINT FOR DECLARATORY
 JUDGMENT**

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1 Plaintiff Humu, Inc. (“Humu” or “Plaintiff”) brings this action for declaratory judgment
2 against Defendant Hulu, LLC (“Hulu” or “Defendant”).

3 **NATURE OF ACTION AND RELIEF SOUGHT**

4 1. Humu is an innovative startup founded by three former Google employees. From
5 its inception, Humu has been a people sciences company that applies analytics and machine-
6 learning to support human resources activities. Humu promotes better management through its
7 Nudge EngineSM—a system that uses psychological research and algorithms to encourage
8 employees to take small personal steps to improve the workplace experience. Humu’s target
9 customers are entities who employ enough people to make the investment in the Humu systems
10 worthwhile. The decision to purchase and implement Humu’s system and services is a significant
11 one because it requires meaningful organizational commitment to implement and make use of the
12 company’s software and services.

13 2. The name HUMU was inspired by the Hawaiian name for the triggerfish. Two of
14 Humu’s founders first connected and struck up a friendship in Hawaii. Later in 2017, they
15 decided to form a new company together and looked for a name inspired in part by that
16 auspicious meeting. The triggerfish is the Hawaiian state fish and well known there by its full
17 Hawaiian name “humuhumunukunuku apua’a,” or “humuhumu” for short. Its sound and
18 appearance are evocative of “human” in connection with the company’s human resources
19 services. With these two qualities, HUMU seemed like the perfect choice. The founders of
20 Humu adopted it as their trade name, adopted the HUMU trademark and service mark for their
21 software and services, and began using it in their business to raise funds and hire employees. In
22 May 2017, they applied for trademark and service mark protection with the United States Patent
23 and Trademark Office. In mid-2017, they acquired the domain name www.humu.com from a
24 third party and began publishing a “stealth mode” website.

25 3. Approximately six months later, the subscription-based consumer entertainment
26 company Hulu sent a cease-and-desist letter demanding that Plaintiff cease all use of the mark
27 HUMU. Defendant alleged likelihood of confusion and dilution between the HULU and HUMU
28 trademarks as used respectively by Plaintiff and Defendant. Even as the nature of Plaintiff’s

1 business became more and more apparent and the reason for any concern evaporated, Defendant
2 continued to contest Plaintiff's right to use its HUMU mark, threatened litigation, and even
3 challenged its HUMU trademark and service mark applications. All subsequent efforts at
4 resolution have failed. Accordingly, there is presently an actual controversy between the parties
5 as to whether the HUMU mark as used by Plaintiff is confusingly similar to the HULU mark as
6 used by Defendant, and whether Plaintiff's mark causes dilution. Plaintiff apprehends that it will
7 be sued, and is not required to sit by and wait for Defendant to decide when it will bring
8 litigation.

9 4. Accordingly, this is a civil action for declaratory relief to vindicate the rights of
10 Plaintiff to continue use of its trade name, trademark and service mark HUMU. Plaintiff seeks
11 through this lawsuit declarations that its use of the HUMU mark does not create a likelihood of
12 confusion, cause dilution, or otherwise unlawfully violate Defendant's rights under the Lanham
13 Act or state law.

14 **THE PARTIES**

15 5. Plaintiff Humu, Inc. is a Delaware corporation with its headquarters and principal
16 place of business in Mountain View, California.

17 6. Defendant Hulu LLC is a Delaware Limited Liability Company with its principal
18 place of business in California, including offices in San Francisco and Santa Monica.

19 **JURISDICTION AND VENUE**

20 7. This is an action for declaratory relief arising under the Lanham Act, codified at
21 U.S.C. § 1051 et seq. and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This
22 Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

23 8. This Court has personal jurisdiction over Defendant because it maintains its
24 principal place of business in California, conducts business in this district under the HULU
25 trademark, maintains offices in this District, employs individuals in this District, and claims that
26 the HULU mark is famous, diluted and infringed in this District. Defendant's assertion that its
27 mark is famous in this District for purposes of trademark law, whether correct or not, necessarily
28 means that Defendant has conducted widespread and systematic business activities in this

1 District. Furthermore, Defendant intentionally sent a cease-and-desist letter to Plaintiff in this
2 District, threatening litigation and demanding that Plaintiff cease using its trade name and the
3 HUMU mark, knowing that the effects of that demand would be felt in this District.

4 9. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §
5 1391(b)(2) because a substantial portion of the events giving rise to Plaintiff’s claims occurred in
6 this district, and pursuant to 28 U.S.C. § 1391(b)(1) and 1391(d) because Defendant resides in
7 this district.

8 **FACTUAL ALLEGATIONS**

9 **A. Humu’s Business and Brand.**

10 10. Plaintiff Humu was founded in 2017 by former Google employees Wayne Crosby,
11 Laszlo Bock, and Jessie Wisdom to apply machine learning in the context of human talent
12 development. Humu is a people sciences company providing support for organizations’ human
13 resources departments through its innovative and unique Nudge Engine. The Nudge Engine
14 begins with an organizational diagnostic that combines scientifically-validated and actionable
15 questions with cutting-edge, comprehensive demographic analytics to develop a thorough
16 understanding of every team within a company or organization. Through this diagnostic, Humu
17 identifies the top drivers of happiness, productivity, and retention for every team. Then, with
18 “nudges” generated by the Nudge Engine—nudges are short messages conveying individualized
19 advice or suggestions—the company can take the right actions at the right time. Humu’s nudges
20 activate every person in a team in a way that is customized, contextualized, and complementary.
21 Humu’s technology results in measurable improvements in outcomes that matter—retention,
22 innovation, inclusion, productivity, and (most importantly) happiness.

23 11. Two of Humu’s founders, Wayne and Laszlo, first had a meaningful interaction
24 when Wayne won an award for his work at Google and Laszlo presented the award at a 2012
25 event in Hawaii. Their meeting in Hawaii began a friendship, and in 2017 Wayne and Laszlo,
26 together with their third co-founder Jessie Wisdom, started a company together based on people
27 analytics and happiness. The name “Humu” was inspired by their connection in Hawaii with
28 reference to the Hawaiian triggerfish, which is the state fish of Hawaii and commonly known by

1 its Hawaiian name “humuhumunukunukuāpua‘a” or just “humuhumu” for short. The inspiration
2 of the humuhumu fish is also reflected in Humu’s branding, which is aquatic-themed and includes
3 stylized fish, aquatic plants, and seascapes. The aquatic theme extends across Humu’s branding,
4 including aquatic-themed conference room names at Humu’s headquarters.

5 12. The name “Humu” also lends itself well to a people sciences company because
6 “Humu” is evocative of concepts related to “humans,” such as human happiness, human
7 psychology, and, in the business world, human resources.

8 13. Humu’s target customers are large business enterprises and organizations
9 interested in implementing researched-based tools to motivate employees across the organization
10 to take small steps to improve employee happiness, which in turn drives high morale and
11 employee retention. Humu markets its services directly to business executives. Humu and its
12 desire to bring data-driven analytics to companies has been profiled favorably in business
13 publications such as Forbes and in the technology section of the New York Times.

14 14. Humu’s product is provided through an ongoing services contract that is generally
15 managed by business executives or human resource managers. Once a company purchases
16 Humu’s product, Humu works with the company’s business executives to develop a sophisticated
17 profile of an organization in order to identify the organization’s unique attributes and goals, and
18 custom-tailors its Nudge Engine to assist in bolstering those goals. Humu’s services are not off-
19 the-shelf. Due to the large amount of information collected by Humu to support the Nudge
20 Engine and associated cost, Humu’s clients engage in careful consideration before using Humu’s
21 services and software. Often, the decision to implement Humu’s Nudge Engine is made at the
22 highest executive levels of Humu’s clients.

23 15. In short, Humu’s prospective clients are not confused in any respect about whether
24 they are dealing with a consumer entertainment company when encountering the mark HUMU on
25 Plaintiff’s software and services and evaluating a purchase decision.

26 **B. Hulu’s Business.**

27 16. Defendant Hulu is a subscription-based streaming video services provider. Hulu
28 streams television shows and movies over the internet to individual and family subscribers.

1 Hulu's content catalog includes original content as well as content licensed from other producers.
2 Hulu competes for the consumer entertainment dollar with over-the-air broadcasters, with internet
3 and cable-based video-on-demand services, and other large streaming entities like Amazon.com
4 and Netflix. Hulu does not offer services related to human resources or employee happiness and
5 retention. Hulu's services are offered at a retail-consumer level to individuals and families that
6 subscribe to a monthly subscription service.

7 17. The word "hulu" actually means a type of video service in the Mandarin language.
8 According to Hulu's company blog:

9 In Mandarin, Hulu has two interesting meanings, each highly
10 relevant to our mission. The primary meaning interested us because
11 it is used in an ancient Chinese proverb that describes the Hulu as the
12 holder of precious things. It literally translates to "gourd," and in
13 ancient times, the Hulu was hollowed out and used to hold precious
14 things. The secondary meaning is "interactive recording". We saw
15 both definitions as appropriate bookends and highly relevant to the
16 mission of Hulu.

14 **C. The Parties' Dispute.**

15 **1. Hulu's Cease-and-Desist Letter.**

16 18. On December 20, 2017, Defendant sent Plaintiff's counsel a cease-and-desist
17 letter. In the letter, Defendant asserted trademark rights, including U.S. Trademark Registration
18 Nos. 3,878,144, 4,129,912, 4,317,326, 4,614,054, and 4,649,516 (the "HULU Marks"), and
19 alleged that the HUMU mark "is confusingly similar to the HULU Marks" and that Plaintiff's
20 "registration and/or use of the HUMU Marks is likely to confuse, deceive, and/or mislead
21 consumers into believing that [Humu's] good and services come from Hulu or that Hulu has
22 licensed, endorsed, sponsored, or otherwise authorized or approved [Humu's] goods and
23 services."

24 19. Defendant's cease and desist letter also asserted that the "HUMU Marks are likely
25 to cause dilution of the distinctiveness of the famous HULU Marks through blurring and/or
26 tarnishment" and that "registration of the HUMU Marks would infringe and dilute Hulu's
27 valuable trademark rights and constitute unfair competition under Section 43(a) of the Lanham
28 Act."

1 preceding paragraphs.

2 27. Defendant claims that Plaintiff's use of the HUMU mark as alleged herein is likely
3 to dilute through blurring or tarnishment the HULU trademark.

4 28. Plaintiff denies that its use of the HUMU mark is likely to dilute through blurring
5 or tarnishment Defendant's trademarks. Plaintiff's use of the HUMU mark is not in violation of
6 any rights Defendant may have in the HULU mark under the Lanham Act or California law.

7 29. It is Defendant's burden to establish that the HULU mark is famous under 15
8 U.S.C. § 1125(c) and Cal. Bus. and Prof. Code § 14330, and to establish dilution under those
9 statutes. Defendant cannot meet these burdens.

10 30. Defendant's use of the HULU mark is relevant to only a portion of the consuming
11 public. Even if it has achieved notoriety among certain broadband internet users willing to
12 consider the use of third-party video streaming services, this kind of niche fame is not the type of
13 secondary meaning that qualifies as fame for purposes of dilution.

14 31. Nor will Plaintiff's use of the HUMU mark dilute by blurring Defendant's HULU
15 mark. The HUMU and HULU marks create significantly different commercial impressions. In
16 addition, HUMU has no intention to create an association with the HULU mark. There is no
17 actual association between the HUMU and HULU marks.

18 32. Nor is there any about Plaintiff's use of HUMU that will tarnish or otherwise harm
19 the reputation of the Defendant's HULU mark.

20 33. An actual controversy exists between the parties, and Plaintiff has a reasonable
21 apprehension of being sued by Defendant. Defendant's cease-and-desist states that "costly
22 litigation" can be avoided only if Plaintiff abandons its HUMU marks and name. Defendant's
23 letter claims that the HULU mark is famous and asserts that Plaintiff will dilute that mark.

24 34. In addition to its letter, Defendant has made similar claims to the TTAB in
25 opposing Plaintiff's attempt to obtain trademark and service mark registrations.

26 35. Consequently, there is an actual and substantial controversy between Plaintiff and
27 Defendant regarding Plaintiff's rights to use and seek registration of the HUMU mark. In order to
28 resolve the issues raised by Defendant and to dispel the controversy and cloud which Defendant's

1 assertions have created for Plaintiff, Plaintiff is entitled to a declaratory judgment confirming its
2 rights pursuant to 28 U.S.C. § 2201.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff Humu, Inc. respectfully requests that the Court grant the
5 following relief:

- 6 A. Judgment in Plaintiff’s favor on each count;
- 7 B. A declaration from the Court that Plaintiff’s use and registration of the HUMU
8 mark is not likely to cause confusion as to Defendant’s use and registration of the
9 HULU marks.
- 10 C. A declaration from the Court that Defendant’s HULU mark is not famous for
11 purposes of the dilution statutes.
- 12 D. A declaration from the Court that Plaintiff’s use and registration of the HUMU
13 mark does not dilute through blurring and/or tarnishment the HULU mark.
- 14 E. Reasonable attorneys’ fees and the costs of suit.
- 15 F. Such other relief as the Court deems just and proper.

16
17
18 Dated: January 18, 2019

ANNETTE L. HURST
DIANA M. RUTOWSKI
NATHAN SHAFFER
ANDREW J. KIM
Orrick, Herrington & Sutcliffe LLP

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22 By: /s/ Annette L. Hurst
ANNETTE L. HURST
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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

Humu, Inc.

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Annette Hurst, Diana Rutowski, Nathan Shaffer, and Andrew Kim ORRICK, HERRINGTON & SUTCLIFFE LLP 405 Howard Street, San Francisco, CA 94105

DEFENDANTS

Hulu, LLC

County of Residence of First Listed Defendant San Francisco (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): 28 U.S.C. § 2201(a); 15 U.S.C. §§ 1114(1), 1125(a), 1125(c)

Brief description of cause:

Declaratory judgment of no likelihood of confusion, trademark infringement, unfair competition, or dilution

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 0.00

CHECK YES only if demanded in complaint: JURY DEMAND: 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) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 01/18/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Annette L. Hurst

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.