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NETAPP, INC.

8  
9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN JOSE DIVISION**

12 NETAPP, INC.,

13 Plaintiff,

14 v.

15 NIMBLE STORAGE, INC., MICHAEL  
16 REYNOLDS, an individual, DANIEL  
17 WEBER, an individual, SANDHYA KLUTE,  
an individual, and Does 1-50

18 Defendants.

Case No.

**COMPLAINT FOR VIOLATION OF THE  
COMPUTER FRAUD AND ABUSE ACT  
(18 U.S.C. § 1030); TRESPASS TO  
CHATEL; TRADE SECRET  
MISAPPROPRIATION; BREACH OF  
CONTRACT; INTENTIONAL  
INTERFERENCE WITH CONTRACT  
AND CONTRACTUAL RELATIONS;  
UNFAIR COMPETITION**

**DEMAND FOR JURY TRIAL**

1 Plaintiff NetApp, Inc. (“NetApp” or “Plaintiff”), by its attorneys, alleges as follows:

2 **NATURE OF THE ACTION**

3 Defendant Nimble Storage, Inc. (“Nimble”) is a company built on unlawful hiring and  
4 business practices. Throughout its existence, Nimble has targeted and encouraged NetApp  
5 employees to join the company and to take NetApp confidential information with them in violation  
6 of their contractual obligations. Some former NetApp employees did just that, and Nimble is using  
7 that illegally-acquired information to compete directly against NetApp in the marketplace.

8 NetApp attempted to resolve this dispute with Nimble before filing suit, but all attempts at  
9 resolution failed. NetApp now brings this action for injunctive relief and damages against Nimble,  
10 Michael Reynolds, Daniel Weber and Sandhya Klute for violation of the Computer Fraud and Abuse  
11 Act, 18 U.S.C. §§ 1030 *et seq.*, trespass to chattel, unfair competition, breach of contract, intentional  
12 interference with contract and contractual relations, and trade secret misappropriation.

13 **THE PARTIES**

14 1. NetApp is a Delaware corporation with its principal place of business at 495 East  
15 Java Drive, Sunnyvale, California 94089.

16 2. Nimble is a Delaware corporation with its principal place of business at 2740 Zanker  
17 Road, Suite 200, San Jose, California 95134.

18 3. Upon information and belief, Defendant Michael Reynolds (“Reynolds”) is a citizen  
19 of Australia, and resides in Melbourne, Australia. Upon further information and belief, Reynolds is  
20 a Systems Engineer with Nimble Storage Australia Pty Limited (“Nimble AUS”), the Australian  
21 proprietary company controlled by Nimble pursuant to Australia Corporations Act 2001, § 50AA.

22 4. Upon information and belief, Daniel Weber (“Weber”) resides in Lakeside Park,  
23 Kentucky. Weber, a former NetApp employee, is bound by the confidentiality provision and post-  
24 employment restrictions in his employment agreement with NetApp, which is expressly governed by  
25 California law. Upon information and belief, Weber is a Senior Account Executive at Nimble, a role  
26 with responsibilities similar to those he performed at NetApp.

27 5. Upon information and belief, Sandhya Klute (“Klute”) is a resident of Santa Clara  
28 County, California. Klute, a former NetApp employee, is bound by the confidentiality provision and

1 post-employment restrictions in her employment agreement with NetApp. Upon information and  
2 belief, Klute is a Senior Engineering Program Manager at Nimble, a role with responsibilities similar  
3 to those she performed at NetApp.

4 6. NetApp is unaware of the true names and capacities of Does 1 through 50, inclusive,  
5 whether individual, partnership, corporation, unincorporated association, or otherwise, and therefore  
6 sues these defendants under such fictitious names. NetApp will amend its Complaint to allege their  
7 true names and capacities when ascertained.

8 7. Upon information and belief, at all times herein mentioned, each Defendant acted  
9 individually and/or as the agent, co-conspirator, aider, abettor, joint venturer, alter ego, third-party  
10 beneficiary, employee, officer, director, or representative of Nimble and, in doing the things  
11 hereinafter averred, acted within the course and scope of such agency, employment or conspiracy  
12 and with the consent, permission, and authorization of Nimble. Upon information and belief, all  
13 actions of each Defendant as averred in the claims for relief stated herein were ratified and approved  
14 by Nimble, or its officers, directors, or managing agents.

15 **JURISDICTION AND VENUE**

16 8. This Court has subject matter jurisdiction over this action pursuant to the Computer  
17 Fraud and Abuse Act, 18 U.S.C. §§ 1030 *et seq.*

18 9. With respect to Weber, this Court also has jurisdiction over the subject matter of this  
19 action pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of  
20 \$75,000, exclusive of interest and costs, and is between citizens of different states.

21 10. This Court has personal jurisdiction over Nimble because it maintains its principal  
22 place of business within the Northern District of California and because it harmed NetApp in this  
23 district by seeking a competitive advantage through wrongful use of NetApp's confidential and  
24 proprietary information obtained by its employees formerly employed by NetApp, including co-  
25 defendants Reynolds, Weber and Klute, for the benefit of Nimble.

26 11. This Court has personal jurisdiction over Reynolds because he intentionally accessed,  
27 without authorization and/or exceeding authorization, NetApp's protected computer, which resides  
28 in the forum state, and which he knew would cause (and did cause) harm to NetApp, a resident of

1 the forum state. Further, on information and belief, Reynolds has attended meetings at Nimble  
2 headquarters in San Jose, California, in person, via videoconference, by telephone, or other  
3 electronic or virtual means, and communicates frequently with Nimble personnel located in San  
4 Jose, California via telephone, fax, email and mail. Finally, the End User License Agreement  
5 (“EULA”) which is one basis for NetApp’s breach of contract claim against Reynolds is deemed to  
6 have been made in and is construed pursuant to the laws of, the State of California.

7 12. This Court has personal jurisdiction over Weber because he: (a) is bound by his  
8 NetApp employment agreement, which he agreed would be governed by California law; (b)  
9 transacted business and contracted with his former employer, NetApp, in California on matters  
10 directly related to the current dispute; (c) has visited NetApp customers in California; and (d) is  
11 causing injury to NetApp in California. Upon information and belief, Weber has attended meetings  
12 at Nimble headquarters in San Jose, California, in person, via videoconference, telephone or other  
13 electronic or virtual means, and communicates frequently with Nimble personnel located in San  
14 Jose, California via telephone, fax, email and mail.

15 13. This Court has personal jurisdiction over Klute because she (a) is bound by her  
16 NetApp employment agreement, which she agreed would be governed by California law; (b) is a  
17 resident of Santa Clara County; (c) transacted business and contracted with her former employer,  
18 NetApp, in California on matters directly related to the current dispute; (d) conducts business in  
19 California on behalf of her current employer; and (e) is causing injury to NetApp in California.

20 14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because, *inter alia*, a  
21 substantial part of the events and omissions giving rise to the claims occurred here and because  
22 defendants are subject to personal jurisdiction in this district.

23 **INTRADISTRICT ASSIGNMENT**

24 15. Division assignment to the San Jose Division of the United States District Court for  
25 the Northern District of California is proper pursuant to Civil Local Rule 3-2(e) because a substantial  
26 part of the events giving rise to the claims occurred in Santa Clara County, California.

27 **FACTUAL ALLEGATIONS**

28 **A. Through Work and Investment, NetApp becomes an Innovator and Market Leader**

1           16.     Founded in 1992, NetApp is a *Fortune* 500 storage and data management solutions  
2 provider with a focus on continued innovation to meet its customers' evolving business needs. The  
3 company shares a vision of being a model company where it delivers the best possible results for the  
4 communities it serves by living a set of core values that includes winning in the marketplace with  
5 integrity and honor. NetApp believes that a great culture is the foundation for such success, and it  
6 practices what it preaches. NetApp consistently is recognized by the Great Place to Work Institute,  
7 *Fortune* magazine and other local publications as a Great Place to Work in countries and cities  
8 around the world. In 2012 NetApp ranked among the top-10 Great Places to Work in all 20 of the  
9 locations around the world where it participated in Best Workplace rankings and currently is ranked  
10 6th in the United States. In October 2013, NetApp was recognized by the Great Place to Work  
11 Institute as the #3 "World's Best Multinational Workplace."

12           17.     Over the past 21 years, there has been a massive explosion in the use and retention of  
13 electronic data as a result of many factors including the rise of the Internet, e-commerce, online  
14 banking, electronic mail, the migration from largely paper record keeping to nearly exclusive  
15 electronic record retention, enterprise-level desktop virtualization, and the cloud, to name a few.  
16 Throughout this time, NetApp has continued to enable customers to store, manage, and protect their  
17 electronic data with a wide variety of innovative products, technologies, and solutions that have  
18 helped transform the data storage industry.

19           18.     In addition to the factors noted above that contributed to the explosion in data, the  
20 increased usage of email and database systems for real-time e-commerce applications has created  
21 significant strain on organizations' ability to effectively and efficiently store and manage their  
22 electronic data. Both types of applications dramatically increased the amount of data records that  
23 organizations must retain for each employee and/or customer.

24           19.     NetApp has delivered key innovations during this period that enable organizations to  
25 more efficiently address their burgeoning storage requirements without sacrificing data integrity or  
26 security. To remain a leader in the industry it helped create, NetApp devotes tremendous resources  
27 to the development of new technologies and processes. In 2012 alone, NetApp's research and  
28 development expenditures exceeded \$900 million. NetApp also has been widely acclaimed for its

1 spirit of innovation, including recognition from *Forbes* as one of the “World’s Most Innovative  
2 Companies,” by *Intellectual Property Owners Association* as a top 300 United States patent holder,  
3 and by *IEEE Spectrum* as the best “Quality Over Quantity” patent portfolio in its industry.

4 20. NetApp’s research and development investments are of paramount importance  
5 because the markets in which it competes are subject to rapid technological change, evolving  
6 standards, changes in customer requirements, and new product introductions and enhancements. As  
7 a result, NetApp’s success depends in significant part upon its ability, on a cost-effective and timely  
8 basis, to continue to enhance its existing products, develop and introduce new products that improve  
9 performance and functionality, reduce total cost of ownership, and deliver high quality products and  
10 services.

11 21. Given the competitive world of high technology, where innovation is the bedrock of  
12 success, NetApp’s confidential and proprietary information is among its most valuable assets  
13 because it allows the company to provide sophisticated software and hardware products and services  
14 to satisfy the high standards of performance and reliability required by its customers. If NetApp’s  
15 proprietary and confidential information is misused, a competitor may gain an unfair advantage even  
16 though it did not invest the time, money and/or other resources that NetApp did to develop such  
17 products, services and technologies. To prevent against such wrongdoing, NetApp protects its  
18 proprietary and confidential information with various data-protection techniques including secure  
19 logins and passwords.

20 **B. Nimble Raids NetApp By Recruiting Its Employees and Obtaining NetApp Confidential**  
21 **Information To Compete Unfairly In the Marketplace**

22 22. NetApp and Nimble are direct competitors in the highly competitive data storage  
23 industry. Unlike other startup companies, which often launch an initial product and subsequently  
24 evolve it based on customer feedback, Nimble has achieved rapid growth and customer adoption  
25 because, in the words of its CEO Suresh Vasudevan, a former NetApp executive, Nimble “quickly  
26 established parity on a range of features that are typically only to be found in mature products that  
27 have been around for a decade or so.”

28 23. Vasudevan also has been quoted as saying that “In just two and a half years of

1 shipping product, we have an installed base of over 1,100 customers and over 2,000 deployments.”

2 24. Nimble has identified hiring and expanding its sales force as key factors in its ability  
3 to be successful. Nimble acknowledged in its recent Form S-1 filing with the United States  
4 Securities and Exchange Commission (“S-1”) that hiring in the San Francisco Bay area is  
5 competitive and that it has experienced difficulty in hiring and retaining highly skilled employees  
6 with appropriate qualifications in the past.

7 25. Nimble further states in its S-1 that a principal competitive factor in the intensely  
8 competitive data storage industry characterized by constant change and innovation is larger, more  
9 mature intellectual property portfolios.

10 26. Nimble similarly acknowledges in its S-1 that continued investment in research and  
11 development and intellectual property is critical to its business. According to Nimble, in the years  
12 ending January 31, 2011, 2012 and 2013 and the six months ending July 31, 2013, Nimble has spent  
13 \$4.4 million, \$7.9 million, \$16.1 million and \$14.4 million, respectively, on research and  
14 development.

15 27. To address these problems and gain parity with its major competitor in a highly  
16 competitive industry, Nimble has targeted NetApp talent and proprietary and confidential  
17 information to compete unfairly in the marketplace.

18 28. According to *Forbes* magazine, when Vasudevan came to Nimble in January 2011,  
19 Nimble had 40 employees. Within a year of his arrival, Nimble experienced massive growth to 230  
20 employees. Currently, approximately 15% of Nimble’s total workforce is made up of former  
21 NetApp employees, including half of its executive staff. Between July 2012 to July 2013 alone,  
22 Nimble hired approximately 55 NetApp employees, with a focus on those who had technical and  
23 sales roles at NetApp. And upon information and belief, Nimble regularly trades on NetApp’s name  
24 by telling customers and/or prospective customers that Nimble’s technology teams include former  
25 NetApp employees, many of which were employed by NetApp for a long time.

26 **C. Reynolds Accesses NetApp’s Proprietary and Confidential Information Without**  
27 **Authorization**

28 29. Upon information and belief, between October 2011 and April 2013, Reynolds was

1 employed by Thomas Duryea Consulting (“TDC”), an Australian IT infrastructure consultancy  
2 business with offices in Melbourne and Sydney, Australia.

3 30. On or about September 29, 2008, NetApp Australia Pty Limited, the Australian entity  
4 which NetApp controls, entered into a Reseller Authorization Agreement with TDC which provides,  
5 among other things, that the parties and their employees agree to hold the proprietary or confidential  
6 information of the other party in strict confidence; will not copy, reproduce, or otherwise use such  
7 information for any purpose other than the provision of services under the agreement; and will  
8 protect the other party’s protected non-public information, including any intellectual property.  
9 These restrictions and prohibitions on the use of proprietary or confidential information were in  
10 place during the entirety of Reynolds’ employment with TDC and remain in effect today.

11 31. NetApp grants or limits access to the protected systems, networks of computers and  
12 data storage devices which contain its proprietary and confidential information through the use of  
13 username and password pairs granted to NetApp employees and resellers for the purpose of selling  
14 NetApp products. Reynolds was provided access to NetApp’s protected computers as a result of his  
15 employment with TDC. Upon information and belief, Reynolds was advised by TDC and/or  
16 otherwise made aware of his obligation to hold NetApp’s proprietary and/or confidential information  
17 in strict confidence, and not to copy, reproduce, transfer or otherwise disclose such information to  
18 third parties or to use such information for any purpose whatsoever other than the provision of  
19 services for NetApp.

20 32. Following Reynolds’ departure from TDC in April 2013, Reynolds was not  
21 authorized to access, copy, or download NetApp’s computerized data.

22 **D. Reynolds and Nimble Surreptitiously Obtain NetApp’s Confidential and Proprietary**  
23 **Information**

24 33. On or about May 2013, Reynolds began employment with Nimble Storage Australia  
25 Pty Limited (“Nimble AUS”). On information and belief, Nimble AUS is an Australian small  
26 proprietary entity controlled by Nimble Storage, Inc. under the Australia Corporations Act 2001, §  
27 50AA.

28 34. After beginning his employment with Nimble AUS, Reynolds accessed NetApp’s



1 protected computers on a variety of occasions from June 3, 2013 through August 2013, including but  
2 not limited to the following:

- 3 • Accessed NetApp's Synergy database on six (6) occasions on or about June 4,  
4 2013;
- 5 • Accessed NetApp's System Performance Modeler Application database once  
6 on or about July 25, 2013 and on three (3) occasions on or about August 14,  
7 2013; and
- 8 • Accessed NetApp's Support Portal on seven (7) separate occasions between  
9 June 3, 2013 and August 14, 2013.

10 35. NetApp's Synergy database, System Performance Modeler Application database, and  
11 Support Portal all require log-in credentials because they contain confidential and proprietary  
12 information regarding NetApp's application framework that allows customers to build accurate,  
13 detailed models of NetApp products and services. Such systems – and the information contained  
14 therein – are a product of significant research and development investment on the part of NetApp  
15 and an important competitive advantage for NetApp.

16 36. Access to and/or use of information obtained from NetApp's Synergy database is  
17 governed by an End User License Agreement ("EULA"), an advisory preceding the download of the  
18 Synergy software ("Legal Notice"), and a warning that the Synergy software is to be used only by  
19 NetApp employees and registered NetApp partners and that any use by other persons or parties is  
20 prohibited ("Download Warning"). Under the terms of the EULA, users agree that they will use the  
21 software solely as embedded in, and for execution on, NetApp equipment originally purchased from  
22 NetApp or its authorized resellers, and further agree to give NetApp the right to perform an audit of  
23 their books, records, systems and usage associated with the software to verify compliance with the  
24 EULA. By installing and/or using the software, users indicate their acceptance of the EULA and all  
25 terms stated therein. Further, users are advised in the Download Warning that "USE OF THIS  
26 PRODUCT, INCLUDING THIS VERSION HISTORY, IS FOR NETAPP EMPLOYEES AND  
27 REGISTERED NETAPP PARTNERS. USAGE BY ANY OTHER PERSONS OR PARTIES IS  
28 PROHIBITED." In addition, the Synergy Legal Notice, which was acknowledged and agreed to by

1 Reynolds, reads in pertinent part that the contents of the database are proprietary and unauthorized  
2 distribution may result in civil or criminal penalties.

3 37. Upon information and belief, at the time Reynolds downloaded NetApp's Synergy  
4 Software, he was aware of the confidential and proprietary nature of the information he was  
5 accessing, and was aware of the terms of use.

6 38. As a Nimble employee, who was no longer employed by TDC, Reynolds had no  
7 reason to access NetApp's restricted databases other than to use the confidential and proprietary  
8 information he obtained against NetApp – and for the benefit of Nimble– in the marketplace.

9 39. Upon information and belief, Reynolds has used the confidential and proprietary  
10 information he wrongfully and illegally obtained from NetApp's protected databases while soliciting  
11 business on behalf of Nimble.

12 **E. Weber Violates His Employment Agreement with NetApp**

13 40. Weber worked at NetApp from approximately January 30, 2006 to February 8, 2013,  
14 as an Enterprise Account Manager. As a long time senior employee of NetApp, Weber was in a  
15 position of trust and confidence and had access to NetApp proprietary and confidential information,  
16 such as information about NetApp customers, which would be very valuable to a competitor such as  
17 Nimble.

18 41. As a NetApp employee, Weber signed a contract entitled "Proprietary Information  
19 and Inventions Agreement" (the "Agreement"), which remains in full force and effect. The  
20 Agreement defines and describes the following pertinent key terms:

- 21
- 22 • "Proprietary Information" is information that was or will be developed, created or  
23 discovered by or on behalf of [NetApp], or which became or will become known by,  
or was or is conveyed to [NetApp], which has commercial value in [NetApp]'s  
business.
  - 24 • "Proprietary Information" includes, but is not limited to information about software  
25 programs and subroutines, source and object code, algorithms, trade secrets, designs,  
26 technology, know-how, processes, data, ideas, techniques, inventions (whether  
27 patentable or not), works of authorship, formulas, business and product development  
28 plans, customer lists, terms of compensation and performance levels of Company  
employees, [NetApp] customers and other information concerning [NetApp]'s actual  
or anticipated business, research or development, or which is received in confidence  
by or for [NetApp] from any other person.

- 1 • “Company Documents and Materials” are documents or other media or tangible items  
2 that contain or embody Proprietary Information or any other information concerning  
3 the business, operations or plans of [NetApp], whether such documents, media or  
4 items have been prepared by me or by others.
- 5 • During the term of my employment and for one (1) year thereafter, I will not  
6 encourage or solicit any employee of the Company to leave the Company for any  
7 reason or to accept employment with any other company. As part of this restriction, I  
8 will not interview or provide any input to any third party regarding any such person  
9 during the period in question.

10 42. As a condition of his employment, Weber agreed to (1) keep NetApp Proprietary  
11 Information confidential; (2) leave NetApp Company Documents and Materials at the company  
12 upon his departure; and (3) not encourage any NetApp employees to leave NetApp during the term  
13 of his employment and for one year thereafter. Weber has breached the Agreement in several ways.

14 ***Weber Solicits NetApp Employees in Violation of the Agreement***

15 43. In early 2013 – while Weber was still employed by NetApp – Weber spoke to another  
16 NetApp employee, Timothy Binning (“Binning”), regarding possible employment at Nimble. In an  
17 obvious effort to avoid detection by NetApp, Weber communicated with Binning via Yahoo! Instant  
18 Message (“IM”), rather than via NetApp’s corporate e-mail system. In fact, Weber and Binning  
19 even lamented having to “mov[e] to IM for "secu[r]ity/confidential"..lol [“Laughing Out Loud”].”  
20 In one such IM chat dated January 18, 2013, Weber discussed recruiting Binning, as well as other  
21 then-current NetApp employees, to join him at Nimble. Later, on February 5, 2013, Weber told  
22 Binning, again via IM, that he had received an offer from Nimble and that Binning would be  
23 receiving one as well based in large part on Weber’s recommendation.

24 44. Upon information and belief, Weber did not accept his offer with Nimble until he had  
25 secured a position for Binning at Nimble as well. On February 7, 2013, after Weber ensured that  
26 Binning would accept a position at Nimble, both Weber and Binning resigned.

27 ***Weber Absconds with NetApp’s Confidential and Proprietary Information***

28 45. Two days before he resigned from NetApp, Weber used an external drive to  
download NetApp Company Documents and Materials. In a Yahoo! IM chat with Binning that same  
day, Weber unabashedly declared that he “went with the seagate GoFlex 1TB..very small..fits in  
laptop bag..I can drag/drop while at QBR [“Quarterly Business Review”] if needed...lol

1 [“Laughing Out Loud”)]...and later can share files between mac and pc...” Minutes later, Weber  
2 declared that he was “transferring data now.”

3 46. Similarly, in a chat dated February 5, 2013, Binning told Weber that he needed to  
4 “get a USB Drive asap [as soon as possible].” After the two discussed what information they would  
5 tell NetApp upon resigning, Binning advised that he was “hitting the car...goign [sic] to get a usb  
6 drive...so shutting down IM call me.” Approximately two hours later, Binning again chatted with  
7 Weber and advised that “all email backed up ... all files backed up ... all web bookmarks backed  
8 up ... i'm set.” In response, Weber did not discourage or stop Binning from taking NetApp  
9 Company Documents and Materials; rather, Weber revealed that he would be using a Seagate  
10 GoFlex 1TB USB to download his files.

11 47. Categories of NetApp Company Documents and Materials Weber took from NetApp  
12 include sales material; pricing models; sales strategies; and detailed customer information. The  
13 documents taken relate to, among other things, NetApp’s FAS 2200 and 3200 series storage systems,  
14 which compete directly with Nimble’s CS series product line. (The documents are referenced  
15 collective herein as the “Weber Documents”.)

16 48. Many of the documents taken by Weber constitute NetApp Company Documents and  
17 Materials, contain information that is confidential, proprietary, competitively sensitive, owned by  
18 NetApp, and expressly subject to the restrictions set forth in the Agreement. Weber promised that he  
19 would not remove any NetApp Company Documents and Materials except as required to do so in  
20 connection with performing the duties of his employment. Weber further agreed that, immediately  
21 upon termination from NetApp, he would return all Company Documents and Materials.

22 49. Information contained in the Weber Documents derives independent economic value  
23 by virtue of not being generally known, particularly to NetApp’s competitors, including Nimble,  
24 who could obtain substantial economic value from its disclosure or use, including by using the  
25 information to unfairly compete with NetApp in the marketplace.

26 50. NetApp takes, and at all relevant times has taken, reasonable steps to safeguard the  
27 secrecy of its proprietary and confidential information. Weber accessed and downloaded NetApp  
28 Company Documents and Materials a mere two days before he resigned and had no legitimate

1 business reason for accessing the particular, highly confidential NetApp Company Documents and  
2 Materials he took from NetApp.

3 **F. Klute Violates Her Contractual Obligations to NetApp**

4 51. Klute worked at NetApp from approximately February 28, 2011 to June 19, 2013, as  
5 a Senior Engineering Program Manager. As a NetApp employee, Klute, like Weber, signed a  
6 contract entitled “Proprietary Information and Inventions Agreement” (the “Agreement”), the terms  
7 of which are identical and which remain in full force and effect today.

8 52. As a condition of her employment, Klute agreed to (1) keep NetApp Proprietary  
9 Information confidential; and (2) leave NetApp Company Documents and Materials at the company  
10 upon her departure. Klute has breached the Agreement in several ways.

11 ***Klute Misappropriates NetApp’s Confidential and Proprietary Information***

12 53. Shortly before her departure from NetApp, Klute engaged in wholesale copying of  
13 data from her laptop to external hard drives.

14 54. Upon information and belief, Klute verbally accepted an offer of employment with  
15 Nimble on or about June 11, 2013, after more than a two-month recruitment process. Thereafter, on  
16 Sunday, June 16, 2013 Klute used at least one USB device to download NetApp Company  
17 Documents and Materials. Klute resigned a few days later on June 19, 2013, telling her manager  
18 only that she was going to work for a competitor.

19 55. Among the documents Klute downloaded two days before she resigned were internal  
20 proprietary and confidential NetApp documents that cover various important aspects of NetApp’s  
21 next generation AutoSupport service, an area where Nimble and NetApp compete. NetApp’s  
22 AutoSupport service is a recognized innovation in the enterprise storage field. Customers  
23 increasingly require some form of remote maintenance application, and a competitor would gain a  
24 significant advantage by possessing NetApp’s Company Documents and Materials on this and other  
25 key features.

26 56. The documents taken by Klute, which constitute NetApp Company Documents and  
27 Materials, are expressly subject to the restrictions set forth in the Agreement. Klute, like Weber,  
28 agreed that she would not remove any Company Documents and Materials from NetApp, except as

1 required to do so in connection with performing the duties of her employment. Klute further agreed  
2 that, immediately upon termination from NetApp, she would return all NetApp Company  
3 Documents and Materials.

4 57. The information contained in many of the NetApp Company Documents taken by  
5 Klute is proprietary, confidential, competitively sensitive, and owned by NetApp. It derives  
6 independent economic value by virtue of not being generally known, particularly to NetApp's  
7 competitors, including Nimble, who could obtain substantial economic value from its disclosure or  
8 use, including by using the information to get to market faster.

9 58. As explained above, NetApp takes, and at all relevant times has taken, reasonable  
10 steps to safeguard its proprietary and confidential information. Klute accessed and downloaded the  
11 NetApp Company Documents and Materials right before she was terminated and had no legitimate  
12 business reason for accessing the particular, highly confidential NetApp Company Documents and  
13 Materials she took from NetApp.

14 **FIRST CAUSE OF ACTION**

15 **Violations of Computer Fraud and Abuse Act**  
16 **18 U.S.C. §§ 1030(a)(2)(C) & (a)(4) & (a)(5)**  
**(Against Defendants Reynolds and Nimble)**

17 59. NetApp incorporates by reference each of the allegations in the preceding paragraphs  
18 of this Complaint as though fully set forth here.

19 60. Upon information and belief, Reynolds and Nimble conspired to commit acts which  
20 constitute violations of the Computer Fraud and Abuse Act so that Nimble could obtain a  
21 competitive edge in the marketplace through wrongful use of NetApp's confidential and proprietary  
22 information.

23 61. Nimble, with Reynolds acting as agent and for the benefit of his employer Nimble,  
24 violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(2)(C), by intentionally accessing a  
25 computer used for interstate and foreign commerce or communication, without authorization or by  
26 exceeding authorized access to such a computer, and by obtaining information from such a protected  
27 computer.

28 62. Reynolds and Nimble violated the Computer Fraud and Abuse Act, 18 U.S.C.

1 §1030(a)(4) by knowingly, and with intent to defraud NetApp, accessing a protected computer,  
2 without authorization or by exceeding authorized access to such a computer, and by means of such  
3 conduct furthered the intended fraud and obtained one or more things of value, including but not  
4 limited to NetApp's software and support materials.

5 63. Reynolds and Nimble violated the Computer Fraud and Abuse Act, 18 U.S.C. §  
6 1030(a)(5)(A) by knowingly causing the transmission of a program, information, code, or command  
7 and as a result intentionally causing damage without authorization to a protected computer owned by  
8 NetApp.

9 64. Reynolds and Nimble violated the Computer Fraud and Abuse Act, 18 U.S.C. §§  
10 1030(a)(5)(B) & (C) by intentionally accessing a protected computer without authorization, causing  
11 damage to NetApp, recklessly or without due regard for their actions.

12 65. Each of the computer systems or systems that Reynolds and Nimble accessed as  
13 described above constitutes a "protected computer" within the meaning of 18 U.S.C. § 1030(e)(2).

14 66. NetApp has suffered damage and loss by reason of these violations, including,  
15 without limitation, harm to NetApp's data, programs, and computer system and other losses and  
16 damage such as investigation costs including attorneys' fees and internal NetApp time, in an amount  
17 to be proved at trial, but, in any event, in an amount well over \$5,000.00, the minimum statutory  
18 amount, aggregated over a one-year period.

19 67. Reynolds' and Nimble's unlawful access to and theft from NetApp's computers also  
20 has caused NetApp irreparable injury. Unless restrained and enjoined, Defendant will continue to  
21 use the wrongfully and illegally obtained NetApp confidential and proprietary information against  
22 NetApp in the marketplace. NetApp's remedy at law is not adequate to compensate it for these  
23 inflicted and threatened injuries, entitling NetApp to remedies including injunctive relief as provided  
24 by 18 U.S.C. § 1030(g).

25 **SECOND CAUSE OF ACTION**

26 **Trespass to Chattels**  
27 **(Against Defendants Nimble and Reynolds)**

28 68. NetApp incorporates by reference each of the allegations in the preceding paragraphs

1 of this Complaint as though fully set forth here.

2 69. NetApp's password-protected computer systems are repositories of valuable  
3 proprietary information and are essential to NetApp's technical support services.

4 70. Nimble, through Reynolds' access to and downloading from NetApp's protected  
5 computer systems, as described above, intentionally and without authorization interfered with  
6 NetApp's possessory interest in NetApp's computer systems.

7 71. Reynolds and Nimble's unauthorized use proximately resulted in damage to NetApp.

8 72. The loss includes, but is not limited to, the diminution of value of these proprietary  
9 resources.

10 73. NetApp is entitled to compensatory damages, injunctive relief and such other relief as  
11 the Court may deem appropriate.

12 **THIRD CAUSE OF ACTION**

13 **Trade Secret Misappropriation**

14 **(Against Defendants Klute, Weber and Nimble)**

15 74. NetApp incorporates by reference each of the allegations in the preceding paragraphs  
16 of this Complaint as though fully set forth here.

17 75. NetApp remains a leader in the industry it helped create, in large part, because it  
18 devotes tremendous resources to the development of new technologies and processes.

19 76. NetApp has made reasonable efforts under the circumstances to preserve the  
20 confidentiality of its trade secret information taken by Weber, Klute and Nimble. Such information  
21 derives independent economic value from not being generally known to the public or to other  
22 persons who can obtain economic value from their disclosure or use. Accordingly, the above-  
23 described information constitutes "trade secrets" under California's Uniform Trade Secrets Act,  
24 California Civil Code §§ 3426 *et seq.*

25 77. NetApp's current and former employees, including Weber and Klute, have been and  
26 continue to be, under a duty to keep NetApp's proprietary and confidential information secret, and  
27 not to use or disclose such information other than for the benefit of NetApp and with NetApp's  
28 authorization. Both Klute and Weber knew, and expressly acknowledged in their respective



1 employment agreements, that by acquiring NetApp confidential and proprietary information they  
2 were under a duty to maintain its secrecy or limit its use. Nevertheless, Weber and Klute disclosed  
3 this information to Nimble and to others acting in concert with Nimble, and have used and are using  
4 that information, all without the express or implied consent of NetApp.

5 78. Nimble acquired NetApp trade secret information from Weber and Klute, persons  
6 they knew or reasonably should have known owed a duty to NetApp to maintain the information in  
7 secrecy or acquired the information through improper means. Upon information and belief, Nimble  
8 has subsequently used this information in connection with Nimble's business activities, in a manner  
9 adverse to NetApp's business interests.

10 79. Nimble, Weber, and Klute (collectively "Trade Secret Defendants") are using  
11 NetApp's trade secrets without NetApp's express or implied consent and/or used improper means to  
12 acquire knowledge of the trade secrets.

13 80. The Trade Secret Defendants obtained NetApp's trade secret, proprietary and  
14 confidential information directly or indirectly from NetApp and not from generally available  
15 information or from the Defendants' own independent research and efforts.

16 81. The actions of the Trade Secret Defendants constitute misappropriation of NetApp's  
17 trade secrets under California Civil Code §§ 3426 *et seq.*

18 82. Each of the acts of misappropriation was done willfully and maliciously by the Trade  
19 Secret Defendants, thereby entitling NetApp to exemplary damages to be proven at trial pursuant to  
20 California Civil Code § 3426.3(c).

21 83. As a direct and proximate result of the Defendants' misappropriation of NetApp's  
22 trade secrets, the Trade Secret Defendants have been unjustly enriched, and NetApp has sustained  
23 damages in an amount to be proven at trial. NetApp has suffered irreparable harm as a result of the  
24 Trade Secret Defendants' activities, and will continue to suffer irreparable injury that cannot be  
25 adequately remedied at law unless the Trade Secret Defendants, and their officers, agents and  
26 employees, and all other persons acting in concert with them, are enjoined from engaging in any  
27 further acts of misappropriation.

28

1 **FOURTH CAUSE OF ACTION**

2 **Breach of Contract**  
3 **(Against Defendant Reynolds)**

4 84. NetApp incorporates by reference each of the allegations in the preceding paragraphs  
5 of this Complaint as though fully set forth here.

6 85. Reynolds downloaded the Synergy software and, in doing so, accepted the terms of  
7 the applicable Use Restrictions.

8 86. NetApp's offer to Reynolds of a non-exclusive, limited, royalty-free license, to install  
9 and use the Synergy software subject to the Use Restrictions, and Reynolds' acceptance of these  
10 terms as evidence by his downloading of the Synergy software, constitutes a valid enforceable  
11 contract under California law.

12 87. Reynolds breached the Use Restrictions by engaging in the unauthorized reproduction  
13 and/or distribution of the Synergy software program, data, and portions thereof. Based on  
14 information and belief, Reynolds used the Synergy software and accessed NetApp's Synergy  
15 database and used the confidential and proprietary information contained therein against NetApp –  
16 and for the benefit of Nimble Storage – to compete unfairly in the marketplace.

17 88. As a direct and proximate cause of Reynolds' breach of the Use Restriction, NetApp  
18 has suffered economic injury and damages in an amount to be proven at trial.

19 89. Further, by downloading the Synergy software, Reynolds also agreed that breach of  
20 the Use Restrictions, and specifically the EULA, would "cause irreparable injury to NetApp for  
21 which monetary damages would not be an adequate remedy" and further agreed that NetApp shall be  
22 entitled to seek equitable relief in addition to any remedies it may have under the EULA or at law.  
23 *See* Exh. A, § 10. Accordingly, NetApp seeks an order requiring that Reynolds give NetApp access  
24 to his books, records and systems and usage associated with the Software to verify the extent and  
25 nature of Reynolds' non-compliance with the Use Restrictions.

26 **FIFTH CAUSE OF ACTION**

27 **Breach of Contract**  
28 **(Against Defendant Weber)**

90. NetApp incorporates by reference each of the allegations in the preceding paragraphs

1 of this Complaint as though fully set forth here.

2 91. As described above, and further set forth below, Weber breached the Agreement.

3 92. The Agreement is a valid and binding written agreement between NetApp and Weber.

4 93. The Agreement was made between Weber and NetApp for valid consideration.

5 94. NetApp performed its contractual duties under the Agreement.

6 95. The Agreement between Weber and NetApp is reasonable, consonant with public  
7 policy, and necessary to protect legitimate business interests, including NetApp's confidential and  
8 proprietary information and its goodwill in the enterprise storage market.

9 96. As a result of the conduct described above, Weber breached the Agreement by  
10 recruiting NetApp employees to join him at Nimble while still employed at NetApp and by failing to  
11 return and, on information and belief, continuing to use on behalf of Nimble, NetApp Company  
12 Documents and Materials.

13 97. As a direct and proximate cause of Weber's breach of the Agreement, NetApp has  
14 suffered, and will continue to suffer, economic injury and damages in an amount to be proven at trial.

15 **SIXTH CAUSE OF ACTION**

16 **Breach of Contract**  
17 **(Against Defendant Klute)**

18 98. NetApp incorporates by reference each of the allegations in the preceding paragraphs  
19 of this Complaint as though fully set forth here.

20 99. As described above, and further set forth below, Klute breached the Agreement.

21 100. The Agreement is a valid and binding written agreement between NetApp and Klute.

22 101. The Agreement was made between Klute and NetApp for valid consideration.

23 102. NetApp performed its contractual duties under the Agreement.

24 103. The Agreement between Klute and NetApp is reasonable, consonant with public  
25 policy, and is necessary to protect legitimate business interests, including NetApp's confidential and  
26 proprietary information and its goodwill in the enterprise storage market.

27 104. As a result of the conduct described above, Klute breached the Agreement by failing  
28 to return, and, on information and belief, continuing to use on behalf of Nimble, NetApp Company

1 Documents and Materials.

2 105. As a direct and proximate cause of Klute's breach of the Agreement, NetApp has  
3 suffered, and will continue to suffer, economic injury and damages in an amount to be proven at trial.

4 **SEVENTH CAUSE OF ACTION**

5 **Intentional Interference With Contract And Contractual Relations**  
6 **(Against Defendant Nimble and Weber)**

7 106. NetApp incorporates by reference each of the allegations in the preceding paragraphs  
8 of this Complaint as though fully set forth here.

9 107. Upon information and belief, Nimble was aware of NetApp's contracts with their  
10 former employees, including but not limited to Weber and Klute.

11 108. Nimble interfered with Weber and Klute's contracts with NetApp by inducing them  
12 to breach their obligations under their respective employment agreements by, *inter alia*, failing to  
13 return, using and disclosing NetApp's proprietary and confidential information without NetApp's  
14 permission or authorization in the development, manufacture and sale of Nimble's competing  
15 products.

16 109. Similar to Klute and Weber, Binning as a NetApp employee, signed a contract  
17 entitled "Proprietary Information and Inventions Agreement" (the "Agreement"), the terms of which  
18 are identical to Klute and Weber, and which remain in full force and effect today.

19 110. Weber intentionally interfered with Binning's contract with NetApp by encouraging  
20 him to take NetApp Company Documents and Materials before he joined Nimble.

21 111. As a proximate result of Nimble's conduct and the above described breach of contract,  
22 NetApp has suffered damages in an amount to be proven at trial.

23 112. Nimble's conduct specified above was willful, malicious, fraudulent, and in  
24 conscious disregard of NetApp's rights and interests, and, on information and belief, was undertaken  
25 with the intent to injure NetApp's property and legal rights. Accordingly, an award of punitive  
26 damages is justified.

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**EIGHTH CAUSE OF ACTION**

**Unfair Competition**

**California Business and Professions Code § 17200, *et seq.***

**(Against All Defendants)**

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3  
4 113. NetApp incorporates by reference each of the allegations in the preceding paragraphs  
5 of this Complaint as though fully set forth here.

6 114. NetApp is a “person” within the meaning of California Business & Professions Code  
7 Section 17201.

8 115. Defendants have engaged in unlawful business acts or practices by committing some  
9 or all illegal acts and practices alleged herein and above including computer fraud, trespass, breach  
10 of contract, and interference with contract, all in an effort to gain an unfair competitive advantage  
11 over NetApp.

12 116. As alleged herein, Reynolds and Nimble’s conduct is “unlawful” because, among  
13 other reasons, they violated the Computer Fraud and Abuse Act and committed trespass to chattels.

14 117. As alleged herein, Nimble’s conduct constitutes “unfair” business practices by  
15 targeting NetApp employees and inducing them to breach their employment agreements in an effort  
16 to obtain NetApp’s confidential and proprietary information without authorization.

17 118. As alleged herein, Nimble and Weber’s conduct constitutes “unfair” business  
18 practices by using NetApp’s confidential and proprietary information to compete unfairly against  
19 NetApp in the marketplace.

20 119. As alleged herein, Klute’s conduct constitutes “unfair” business practices by taking  
21 NetApp Company Documents and Materials in breach of her employment agreement and using  
22 those materials for the benefit of Nimble in the marketplace.

23 120. As alleged herein, Weber’s conduct constitutes “unfair” business praactices because  
24 Weber has taken NetApp Company Documents and Materials and solicited NetApp employees to  
25 leave the company in violation of his employment agreement with NetApp.

26 121. By reason of, and as a direct and proximate result of, Defendants’ unfair and unlawful  
27 practices and conduct as described above, NetApp has suffered and will continue to suffer, financial  
28 injury to its business and property in an amount to be determined at trial.

1 122. The entry of a permanent and mandatory injunction against Defendants, collectively  
2 and severally, is necessary to stop these ongoing unlawful and unfair business practices.

3 123. NetApp is entitled to disgorgement and/or restoration of any and all revenues,  
4 earnings, profits, compensation, and benefits Nimble obtained in violation of California Business &  
5 Professions Code § 17200 *et seq.*, including, but not limited to, returning the value of the stolen  
6 property itself and any revenue earned from it. NetApp also is entitled to injunctive relief, in that  
7 Nimble should be enjoined from further unlawful, unfair, and deceptive business practices, and  
8 Defendants should be further ordered to return all materials taken from NetApp, and all copies of  
9 such, in their possession, custody or control.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment as follows:

- 12 1. For entry of judgment against Defendants on all Claims for Relief;
- 13 2. For an injunction preliminarily and permanently prohibiting the Defendants and  
14 their officers, agents, servants, employees, and all persons acting in concert with it and/or them,  
15 from directly or indirectly:
- 16 a. Acquiring, using, possessing, disclosing, conveying, or communicating to  
17 any person any of Plaintiff's confidential or other valuable proprietary  
18 information;
- 19 b. Manufacturing, producing, offering for sale, selling, or conveying to any  
20 person any products, systems or services produced, manufactured, or  
21 marketed using Plaintiff's confidential or other valuable proprietary  
22 information;
- 23 3. For an order requiring that all individual Defendants give NetApp access to their  
24 laptops, hard drives, external storage media, and all other electronic media where NetApp Company  
25 Documents and Materials may be stored;
- 26 4. For an order requiring that Nimble give NetApp access to its computer systems and  
27 servers to verify the extent and nature of NetApp Company Documents and Materials stored therein;
- 28 5. For compensatory damages in an amount according to proof;

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- 6. For an award of punitive damages; and
- 7. For such other relief as the Court deems just and proper.

DUANE MORRIS LLP

Dated: October 29, 2013

By:           /s/ Karineh Khachatourian          

Karineh Khachatourian  
Patrick S. Salceda  
David T. Xue

Attorneys for Plaintiff  
NETAPP, INC.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), NetApp, Inc. hereby demands trial by jury as to all issues in this action triable by a jury.

DUANE MORRIS LLP

Dated: October 29, 2013

By: /s/ Karineh Khachatourian

Karineh Khachatourian  
Patrick S. Salceda  
David T. Xue

Attorneys for Plaintiff  
NETAPP, INC.

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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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
NETAPP, INC.
(b) County of Residence of First Listed Plaintiff Santa Clara
(c) Attorneys (Firm Name, Address, and Telephone Number)
Karineh Khachatourian (SBN 202634)
DUANE MORRIS LLP
490 S. California Ave, #200, Palo Alto, CA 94306
(650) 847-4150

DEFENDANTS
NIMBLE STORAGE, INC., MICHAEL REYNOLDS, DANIEL WEBER, and SANDHYA KLUTE
County of Residence of First Listed Defendant Santa Clara
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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

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

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
18 U.S.C. Section 1030 (Computer Fraud Abuse Act [CFAA])
Brief description of cause:
Violation of CFAA; Trade Secret Misappropriation and Breach of Contract

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ TBD
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE October 29, 2013 SIGNATURE OF ATTORNEY OF RECORD /s/ Karineh Khachatourian

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2) (Place an "X" in One Box Only)
( ) SAN FRANCISCO/OAKLAND (X) SAN JOSE ( ) EUREKA

## 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.Cv.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; **NOTE: 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 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.  
 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.
- 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 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 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.

