

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

_____)	
UNITED STATES OF AMERICA,)	
)	
)	Civil Action No.
Plaintiff,)	
v.)	
)	
SAVOIA, INC.,)	
BMX IMPORTS, L.P.,)	
BMX TRADING, L.L.C.,)	
and TERRY ZIMMER,)	
)	
Defendants.)	
_____)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”) files this complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Sections 204, 205, and 213 of the Clean Air Act (“CAA” or “the Act”) (42 U.S.C. §§ 7523, 7524, and 7547) for injunctive relief and the assessment of civil penalties for violations of the Act and regulations promulgated thereunder at 40 C.F.R. §§ 86 (“Control of Emissions from New and In-Use Highway Vehicles and Engines”); 1051 (“Control of Emissions from Recreational Engines and Vehicles”); and 1068 (“General Compliance Provisions for Engine Programs”).
2. The violations cited herein arise from Defendants’ importation and introduction of approximately 24,167 recreational vehicles and highway motorcycles (“Subject Vehicles”)

from model years 2006–2010 into United States’ commerce in violation of the certification, emission warranty and emission control information labeling requirements of the Act.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of and the parties to this action pursuant to Sections 204, 205, and 213 of the Act, 42 U.S.C. §§ 7523, 7524 and 7547, and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in this jurisdiction pursuant to Sections 204 and 205 of the Act (42 U.S.C. §§ 7523 & 7524) because the Defendants have their principal place of business in Dallas, Texas.

DEFENDANTS

5. Savoia, Inc. (“Savoia”) is incorporated under the laws of the State of Texas.

6. Savoia has been in a state of ‘forfeited existence’ since approximately February 18, 1998 for failing to pay franchise taxes.

7. Savoia is a ‘person’ within the meaning of Section 302(e) of the Act. 42 U.S.C. § 7602(e).

8. Savoia is a ‘manufacturer’ within the meaning of Section 216(1) of the Act. 42 U.S.C. § 7550(1); 40 C.F.R. § 1051.801.

9. At all times relevant to this action, Terry Zimmer was Savoia’s president and director.

10. Zimmer is a ‘person’ within the meaning of Section 302(e) of the Act. 42 U.S.C. § 7602(e).

11. Zimmer is a ‘manufacturer’ within the meaning of Section 216(1) of the Act. 42 U.S.C. § 7550(1); 40 C.F.R. § 1051.801.

12. BMX Imports, L.P. ("BMX Imports") is a limited partnership created pursuant to the laws of Texas.

13. BMX Imports is a 'person' within the meaning of Section 302(e) of the Act. 42 U.S.C. § 7602(e).

14. BMX Imports is a 'manufacturer' within the meaning of Section 216(1) of the Act. 42 U.S.C. § 7550(1); 40 C.F.R. § 1051.801.

15. Subject to a reasonable opportunity for further investigation or discovery, at all times relevant to this action, Zimmer was BMX Imports' president.

16. Subject to a reasonable opportunity for further investigation or discovery, at all times relevant to this action, BMX Imports had no limited partners.

17. Under Texas law, a limited partnership is a partnership that is governed as a limited partnership under Title 4 and that has one or more general partners and one or more limited partners. Tex. Bus. Org. § 1.002(50).

18. Under Texas law, general partners are liable for the debts of a limited partnership. Tex. Bus. Org. § 153.152(a)(2).

19. BMX Imports has only one general partner, BMX Trading, L.L.C. ("BMX Trading").

20. BMX Trading is liable for the debts of BMX Imports.

21. BMX Trading is a limited liability company created in December, 2004 pursuant to the laws of Texas.

22. BMX Trading has been in a state of 'forfeited existence' since November 10, 2006. Tex. Tax Code Ann. § 171.309 (Vernon 2008).

23. BMX Trading is a 'person' within the meaning of Section 302(e) of the Act. 42 U.S.C. § 7602(e).

24. BMX Trading is a 'manufacturer' within the meaning of Section 216(1) of the Act. 42 U.S.C. § 7550(1); 40 C.F.R. § 1051.801.

25. Subject to a reasonable opportunity for further investigation or discovery, at all times relevant to this action, Zimmer was BMX Trading's president.

26. Under Texas law, the failure to pay franchise taxes subjects a corporation's and limited liability company's directors and officers to individual liability for subsequent debts incurred in the corporation's name. Tex. Tax Code Ann. § 171.255 (Vernon 2008).

27. Texas Tax Code § 171.255 also removes a forfeited taxable entities' "privileges," including the right to conduct business in the state of Texas. Tex. Tax Code Ann. § 171.2515(b).

28. Texas Tax Code § 171.255 applies to all taxable entities through Texas Tax Code § 171.2515(a).

29. Texas Tax Code § 171.0002 defines a taxable entity as "a partnership, limited liability partnership, corporation, banking corporation, savings and loan association, *limited* liability company, business trust, professional association, business association, joint venture, joint stock company, holding company, or other legal entity."

30. Zimmer is therefore liable for the acts and omissions by Savoia alleged herein.

31. Zimmer is therefore liable for the debts incurred in the name of Savoia at all times relevant to this action.

32. Zimmer is therefore liable for the debts incurred in the name of BMX Trading at all times relevant to this action that the company was in forfeited existence.

33. Savoia, BMX Imports, and BMX Tradings' (collectively "Companies") principal place of business is located at 13401 Denton Drive, Dallas, Texas 75234.

34. The Companies have used www.bestpriceatvs.com to market and sell recreational vehicles and highway motorcycles.

35. At all times relevant to this action, Defendants were engaged in the business of importing, selling, or otherwise introducing into commerce nonroad recreational vehicles and highway motorcycles.

STATUTORY AND REGULATORY BACKGROUND

36. This action arises under Part A of Title II of the Act (42 U.S.C. §§ 7521–7554) and the regulations promulgated thereunder that are aimed at reducing emissions from mobile sources of air pollution. The allegations in this complaint regard two types of vehicles: 1) highway motorcycles, for which 40 C.F.R. § 86 sets emission standards and 42 U.S.C. § 7522 sets compliance provisions; and 2) recreational vehicles (e.g., all-terrain vehicles ("ATVs") and off-road utility vehicles ("ORUVs"), and off highway motorcycles for which 40 C.F.R. § 1051 sets emission standards and 40 C.F.R. § 1068 sets compliance provisions.

37. The certification, warranty, and labeling requirements under the CAA and its regulations became applicable to highway motorcycles beginning with the 1978 model year. 40 C.F.R. § 86.401-97.

38. The certification, warranty, and labeling requirements under the CAA and its regulations became applicable to recreational vehicles beginning with the 2006 model year. 40 C.F.R. § 1051.1.

A. General Definitions

39. 'Manufacturer' means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce. 42 U.S.C. § 7550(1); *see also* 40 C.F.R. §§ 1051.801, 1068.30 (incorporating the definition of manufacturer from § 7550(1)).

40. 42 U.S.C. § 7602(e) defines 'person' to include an individual, corporation, partnership, association, state, municipality, political subdivision of a state, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

41. 'Importer' means the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. An importer may be the consignee or the importer of record. 19 C.F.R. § 101.1.

42. An 'engine family' is a group of engines expected to have similar emission characteristics throughout their useful life. 40 C.F.R. §§ 86.420-78; 1051.230.

43. Pursuant to 40 C.F.R. § 1051.801, 'model year' is, among other things: the (i) Calendar year; or the (ii) Annual new model production period. If it is different than the calendar year, a model year must include January 1 of the calendar year for which the model year is named, may not begin before January 2 of the previous calendar year, and must end by December 31 of the named calendar year. *Id.*

44. Under the Act, vehicles are considered 'new' at the time of import. 40 C.F.R. § 1051.801.

45. 'Ultimate purchaser' means, with respect to any new nonroad equipment or new nonroad engine, the first person who in good faith purchases such new nonroad equipment or new nonroad engine for purposes other than resale. 40 C.F.R. § 1051.801.

46. Section 216(4) of the Act defines 'ultimate purchaser' to mean, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale. 42 U.S.C. § 7550(5).

47. 'Useful life' means the period during which a vehicle is required to comply with all applicable emission standards, specified as a given number of calendar years and kilometers (whichever comes first). In some cases, useful life is also limited by a given number of hours of engine operation. 40 C.F.R. § 1051.801.

48. According to 40 C.F.R. §§ 86.402-98, 86.419-2006(b), the useful life of a highway motorcycle, depending on its engine size, is:

<u>Engine Size</u>	<u>Useful Life</u>
Less than 50 cc	Lesser of 6,000 km or 5 years
50 cc or more	Lesser of 12,000 km or 5 years

49. According to 40 C.F.R. § 1051.105(c), the useful life of an off highway motorcycle, depending on its engine size, is:

<u>Engine Size</u>	<u>Useful Life</u>
Less than 70 cc	Lesser of 5,000 km or 5 years
70 cc or more	Lesser of 10,000 km or 5 years

50. According to 40 C.F.R. § 1051.107(c), the useful life of an ORUV or ATV, depending on its engine size, is:

<u>Engine Size</u>	<u>Useful Life</u>
Less than 100 cc	Lesser of 5,000 km, 500 hours, or 5 years
100 cc or more	Lesser of 10,000 km, 1,000 hours, or 5 years

51. An 'adjustable parameter' is any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation.

40 C.F.R. § 1051.801.

52. 'Other adjustments' is defined to include changes to a vehicle's or engine's air-fuel ratio that can be made by an experienced mechanic in less than one hour and with a few parts whose total cost is under \$50 (in 2001 dollars). 40 C.F.R. § 1051.115(d).

B. The Types of Vehicles at Issue and Other Relevant Definitions

53. The term 'motor vehicle' means any self-propelled vehicle designed for transporting persons or property on a street or highway. 42 U.S.C. § 7550(2).

54. The term 'motorcycle,' as defined at 40 C.F.R. § 86.402-98, refers to on-highway motorcycles and means a motor vehicle with a headlight, tail-light, stop-light, two or three wheels that weighs less than or equal to 793 kg (1749 pounds).

55. The vehicles identified herein as a highway motorcycle meet this definition of motorcycle and are subject to the emission standards and other requirements under 40 C.F.R. § 86.

56. The term 'recreational' vehicle is defined at 40 C.F.R. § 1051.801 to include ATVs, ORUVs, and off-highway motorcycles.

57. 40 C.F.R. § 1051.801 defines the term 'all-terrain vehicle' as a nonroad vehicle that is either: (a) designed to travel on four low-pressure tires, has a seat designed to be straddled by the operator and handlebars for steering control, and is intended for use by a

single operator and no other passengers; or (b) has three or more wheels and one or more seats, is designed for operation over rough terrain, is intended primarily for transportation, and has a maximum vehicle speed of 25 miles per hour or higher.

58. 40 C.F.R. § 1051.801 defines the term 'offroad utility vehicle' as a nonroad vehicle that a) has more than four wheels; b) seating for two or more persons; c) is designed for operation over rough terrain; and 4) has either a rear payload capacity of 350 pounds or more or seating for six or more passengers.

59. 40 C.F.R. § 1051.801 defines the term 'off-highway motorcycle' as a two-wheeled vehicle with a nonroad engine and a seat.

60. Each vehicle identified herein as a recreational vehicle is subject to the emission standards and other requirements under 40 C.F.R. §§ 1051 and 1068.

C. Certification Requirements

61. Section 203(a)(1) of the Act (42 U.S.C. § 7522(a)(1)) prohibits manufacturers of new motor vehicles from selling, offering for sale, or introducing or delivering for introduction into commerce—or causing any of the foregoing—any new motor vehicle or new motor vehicle engine unless the vehicle or engine is covered by a certificate of conformity ("COC") issued by EPA under regulations prescribed by the Act. 40 C.F.R. § 86.407-78; 40 C.F.R. § 86.402-98 (defining highway motorcycles as a subset of motor vehicles).

62. Section 203(a)(1) of the Act (42 U.S.C. § 7522(a)(1)) prohibits any person from importing or causing another to import a new motor vehicle or new motor vehicle engine into the United States unless that new motor vehicle or new motor vehicle engine is covered by an EPA-issued COC. 42 U.S.C. § 7522(a).

63. A manufacturer is also prohibited from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing a recreational vehicle—or causing any of the foregoing—unless such recreational vehicles are covered by an EPA-issued COC. 40 C.F.R. § 1068.101(a)(1); 42 U.S.C. § 7547.

64. The requirement that vehicles be certified under a COC applies to new highway motorcycles regardless of engine size if its model year is 2006 or later (40 C.F.R. § 86.401-2006); and new recreational vehicles with model years 2006 or later (40 C.F.R. §§ 1051.105 & 1051.107).

65. To obtain a COC, a manufacturer must submit an application to EPA for each engine family and each model year that it intends to manufacture and sell in the United States. 40 C.F.R. §§ 86.416-80 (highway motorcycles); 1051.201 (recreational vehicles).

66. The application must include, among other things, identification of the covered engine family, a description of the vehicles and their emission control system, test results from a prototype emissions data vehicle (EDV), and descriptions of all adjustable parameters and other adjustments. 40 C.F.R. §§ 86.420-78; 86.416-80 (highway motorcycles); 86.416-80(a)(2)(ii) & 1051.205(q) (adjustable parameters and other adjustments); 1051.205 (recreational vehicles).

67. Where a recreational vehicle has adjustable parameters or other adjustments, the applicant must demonstrate that the vehicle meets emission standards throughout the physically adjustable range. 40 C.F.R. §§ 1051.115(c) & (d).

68. 40 C.F.R. § 1051.205(a) also requires that COC applications for recreational vehicles list the model names included in the engine family.

69. 40 C.F.R. § 86-416-80(a)(2) requires that COC applications for highway motorcycles include “[i]dentification and description of the vehicles covered by the application”

70. Once issued, a COC covers only those vehicles that: are within the engine family specified in the application; are marketed with a model name specified in the application; were produced during the model year; were imported subsequent to the effective date of the COC; and conform in all material respects to the specifications in the COC application. 40 C.F.R. §§ 86.437-78(b)(3)–(4), 1051.205, 1068.101(a)(1)(i), 1068.103(a), (c)(2), 86.407-78(a), 86.437-78(a)(2)(ii) and (iii) (highway motorcycles), 1051.201(a) and 1068.101(b)(5) (recreational vehicles).

D. Warranty Requirements

71. Section 207(a) of the Act (42 U.S.C. § 7541(a)) requires manufacturers of new motor vehicles to warrant to the ultimate purchaser and each subsequent purchaser that: 1) the vehicle or engine is designed, built, and equipped to conform with applicable emission regulations at the time of sale; and 2) is free from defects in materials and workmanship that could cause the vehicle to fail to conform with applicable regulations for its useful life.

72. Section 203(a)(4) of the Act (42 U.S.C. § 7522(a)(4)) prohibits manufacturers of new motor vehicles or engines subject to emission standards under the Act from selling any such vehicle or engine unless the manufacturer has complied with the requirements of Section 207(a) of the Act. 42 U.S.C. § 7541(a).

73. Under Sections 203(a)(4) and 213(d) of the Act (42 U.S.C. §§ 7522(a) & 7547(d)), the prohibitions under Section 203(a) of the Act and the warranty requirements under

Section 207(a) of the Act (42 U.S.C. § 7541(a)) also apply to manufacturers of recreational vehicles. 40 C.F.R. § 1051.120(a).

74. Section 213(a)(3) of the Act (42 U.S.C. § 7547(a)(3)) provides that the useful life of recreational vehicles shall be determined by EPA.

75. The definitions of useful life for the vehicles relevant to this action are found in paragraphs 48–50, *supra*.

76. The warranty statement for recreational vehicles must be included in the vehicle's owner's manual. 40 C.F.R. § 1051.120(e).

77. Section 202(d)(3) of the Act (42 U.S.C. § 7521(d)(3)) provides that the useful life of highway motorcycles shall be determined by EPA.

E. Label Requirements

78. Under Section 203(a)(4)(A) of the Act (42 U.S.C. § 7522(a)(4)(A)) and 40 C.F.R. § 1068.101, a manufacturer is prohibited from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, a new motor vehicle or new motor vehicle engine unless that vehicle is permanently affixed with a compliant emission control information ("ECI") label. 40 C.F.R. §§ 1068.101(a).

79. Under Section 207(c)(3)(C) of the Act (42 U.S.C. § 7541(c)(3)(C)), an ECI label is compliant only if it states that it is covered by a COC, includes specific emission-related information, identifies the emission control system, and is attached so that it is not removable without being destroyed or defaced. 40 C.F.R. § 1051.135.

80. Under Section 213(d) of the Act (42 U.S.C. § 7547(d)) the emissions labeling requirements of Section 207 of the Act also apply to nonroad engines and vehicles. 40 C.F.R. § 90.1003(a)(4)(ii).

81. The label requirement requires manufacturers to include the following information in all recreational vehicle labels: the heading “Emission Control Information;” the full corporate name and trademark of the manufacturer; EPA’s standard designation for engine families; the engine’s displacement; the statement: “THIS VEHICLE IS CERTIFIED TO OPERATE ON [fuel type];” the month and year the engine was manufactured; the applicable exhaust emission standards; an identification of the emission control system; specifications and adjustments for engine tune ups; the fuel type and any requirements for fuel and lubricants; a statement regarding the engine’s useful life; and the statement that “THIS VEHICLE MEETS U.S. EPA REGULATIONS FOR [model year] ATVs.” 40 C.F.R. § 1051.135.

F. Enforcement

82. Sections 205(a)–(b) and 213(d) of the Act (42 U.S.C. §§ 7524(a)–(b), 7547(d); and 40 C.F.R. § 1068.125) authorize EPA to commence a civil action to assess and recover civil penalties and seek injunctive relief against any person that violates Section 203(a) of the Act, 42 U.S.C. § 7522(a), and 40 C.F.R. § 1068.101.

83. Under Section 205(a) of the Act (42 U.S.C. § 7524(a)) each vehicle or engine imported, offered for sale, distributed in commerce, or sold in violation of Section 203(a) of the Act (42 U.S.C. § 7522(a)) constitutes a separate violation of the Act and shall be subject to a civil penalty not to exceed \$25,000 per violation. See also 40 C.F.R. § 1068.101(a)(1) (prohibited acts and penalties as to recreational vehicles).

84. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701), and EPA’s latest Civil Monetary Penalty Inflation Adjustment Rule (finalized on January 7, 2009), the maximum civil penalty for violations of Section 203(a) of the Act

occurring between March 16, 2004 and January 12, 2009 is \$32,500 per day, per violation. For violations occurring on or after January 13, 2009, the maximum civil penalty is \$37,500 per day, per violation. *See* 74 Fed. Reg. 626 (Jan. 7, 2009); 40 C.F.R. § 19.4. All violations alleged in this Complaint occurred on or after May 2, 2006.

GENERAL ALLEGATIONS

85. From May 2006 through approximately November 2010, one or more of the Defendants imported and sold approximately 24,167 recreational vehicles and highway motorcycles (“Subject Vehicles”) in violation of the Act and its regulations. (Subject Vehicles are described in Exhibit 1 to this Complaint.)

86. Approximately 11,389 of the Subject Vehicles were not covered by an EPA-issued COC.

87. Approximately 23,456 of the Subject Vehicles were not covered by a warranty in compliance with the requirements of the Act and the regulations.

88. Approximately 505 of the Subject Vehicles had noncompliant emission control information labels.

89. Subject to a reasonable opportunity for further investigation or discovery, the Subject Vehicles were manufactured overseas.

90. The Subject Vehicles were manufactured after the date that the relevant emissions standards promulgated by EPA became applicable. Thus, each of the Subject Vehicles is subject to Part A of Title II of the Act, as amended, 42 U.S.C. § 7521 *et seq.*, and the implementing regulations in 40 C.F.R. Parts 86, 1051, and 1068.

91. One or more of the Defendants initiated purchase orders for the Subject Vehicles to be imported from overseas manufacturers into the United States, which, at times, may have occurred through an intermediary entity or individual.

92. Terry Zimmer, Savoia or BMX Imports is the entity identified as importers of record on the commercial invoices or bills of lading for the Subject Vehicles.

93. Savoia was identified as the importer of record for all but approximately 18 Subject Vehicles. As to all or many of the Subject Vehicles, this identification was made on the EPA Declaration Form entitled, "Importation of Engines, Vehicles, and Equipment Subject to Federal Air Pollution Regulations" (EPA Form 3520-21) or on the U.S. Customs Service Form 3461 or Form 7501.

94. BMX Imports was identified as the importer of record for the remaining Subject Vehicles. As to all or many of the Subject Vehicles, this identification was made on the EPA Declaration Form entitled, "Importation of Engines, Vehicles, and Equipment Subject to Federal Air Pollution Regulations" (EPA Form 3520-21) or on the U.S. Customs Service Form 3461 or Form 7501.

95. Zimmer is occasionally listed on importation documents other than the EPA Declaration Form without Savoia or BMX Imports listed as the importer. Therefore, Zimmer, along with Savoia or BMX Imports, is the importer of record for those Subject Vehicles where he is identified as such.

96. In addition, Zimmer is the importer of record with respect to the importations by Savoia alleged in this Complaint based on the following: (i) As the director of Savoia, a forfeited corporation, Zimmer is the responsible for the corporation's "debts", including its obligations to comply with the Act; and

97. (ii) As a forfeited corporation, Savoia cannot do business in the State of Texas and thus Zimmer was conducting Savoia's business as an unincorporated person.

98. As importers of Subject Vehicles, Defendants "engaged in importing such vehicles or engines for resale" and therefore, pursuant to Section 216(1) of the Act, 42 U.S.C. § 7550(1), each is a 'person' and 'manufacturer' subject to the prohibitions set forth in Section 203 of the Act (42 U.S.C. § 7522) and the requirements imposed on manufacturers as set forth in the Act and its implementing regulations.

99. Subject to a reasonable opportunity for further investigation and discovery, one or more of the Defendants sold, offered for sale, introduced, or delivered for introduction into commerce, Subject Vehicles from their common location at 13401 Denton Drive, Dallas (or Farmers Branch), Texas 75234 or online.

100. In response to a Section 208 Request for Information ("§ 208 Request") (42 U.S.C. § 7542) issued by EPA, Defendant Zimmer and/or his employees, colleagues, agents, or affiliates compiled Defendants' responses into a single certified response, which he submitted to the EPA.

A. Certification Violations

101. In total, one or more of the Defendants imported approximately 11,389 vehicles that were not covered by a COC. Each vehicle was uncertified for one or more of six reasons set forth below.

1. Non-Conforming Catalyst

102. In total, Defendants imported approximately 103 recreational vehicles with catalysts that were of different dimensions or had less substrate material and cell density than specified in the applications for the COCs that purportedly covered them.

103. EPA determined that a sample catalyst purportedly from engine family 8XYXX.300UAL did not conform to its applicable COC. Because this was a representative sample, EPA determined that all of the approximately 18 vehicles in this engine family that the Defendants imported under entry # 34909019545 had non-conforming catalysts.

104. EPA determined that a sample catalyst purportedly from engine family 8JPSX0.28A1B did not conform to its applicable COC. Because this was a representative sample, EPA determined that all of the approximately 78 vehicles in this engine family that the Defendants imported had non-conforming catalysts.

105. EPA determined that a sample catalyst purportedly from engine family AXYXX.300UAL did not conform to its applicable COC. Because this was a representative sample, EPA determined that all of the approximately seven vehicles in this engine family that the Defendants imported had non-conforming catalysts.

106. Because the approximately 103 vehicles described in paragraphs 103–105 do not conform in all material respects to their applicable COCs, they are uncertified were imported in violation of 40 C.F.R. § 1068.101 (a)(1).

2. Model Name Not Listed on COC

107. In total, Defendants imported approximately 1,536 recreational vehicles and approximately 90 highway motorcycles with model names that were not identified on the applications for the COCs that purportedly covered them.

108. In response to the § 208 Request, the Defendants disclosed and documented that, in total, they imported approximately 136 model FA-A70 vehicles, 574 model FA-B70 vehicles, and 826 model FA-C70 vehicles purportedly covered by the COC for engine family 6CBGXO.11JNK.

109. In response to EPA's § 208 Request, the Defendants disclosed and documented that, in total, they imported approximately 42 model LF250 highway motorcycles purportedly covered by the COC for engine family 6LFNC0.20NFG.

110. On or about August 21, 2008 (Entry # 34909029406) authorized federal representatives inspected approximately 16 model TPGS-804 and approximately 32 model TPGS-808 motorcycles that were imported by the Defendants.

111. Defendants have claimed the vehicles referenced in the preceding paragraph were covered by the COC for engine family 8PCGC.150SA1.

112. None of the models described in paragraphs 108–111 were listed on the proffered COCs or any other relevant COC or COC application.

113. A vehicle model that is not listed on a COC application is not covered by that COC, therefore the vehicles described in paragraphs 108–111 are uncertified imported in violation of 40 C.F.R. § 1068.101(a)(1).

3. Imported Before Effective Date of COC

114. In total, Defendants imported approximately 974 recreational vehicles that were imported prior to the effective date of the COC that purportedly covered them.

115. In response to EPA's § 208 Request, Defendants disclosed and documented that they imported approximately 54 vehicles under the COC for engine family 8XYXX.300UAL before May 13, 2008 (the effective date for that COC).

116. In response to EPA's § 208 Request, Defendants disclosed and documented that they imported approximately 18 vehicles under the COC for engine family 8XYXX.500UAW before May 22, 2008 (the effective date for that COC).

117. In response to EPA's § 208 Request, Defendants disclosed and documented that one or more of them imported approximately 902 vehicles under the COC for engine family 8JPSX0.11A3B before May 19, 2008 (the effective date for that COC).

118. None of the vehicle models from those referenced in the preceding paragraph were listed on the COC for 8JPSX0.11A3B.

119. None of the vehicles referenced in paragraphs 115–118 were covered by any other applicable COC.

120. A COC only covers vehicles that are imported subsequent to the effective date of the COC (40 C.F.R. § 1068.103(c)(2)), therefore the vehicles described in paragraphs 115–118 were imported in violation of 40 C.F.R. § 1068.101(a)(1).

4. Built Outside Model Year Covered by Applicable COC

121. In total, Defendants imported approximately 63 recreational vehicles that were built outside the model year specified by the COC that purportedly covered them.

122. On or about August 6, 2008 (Entry # 34909026964) authorized federal representatives conducted an inspection of a sample recreational vehicle purportedly produced in 2008 that had been imported by the Defendants. Because there is no 2008 COC covering the recreational vehicles in question, the approximately 63 recreational vehicles imported with the representative sample were uncertified.

123. A COC certifies only those vehicles produced during the calendar year for the model year it covers, therefore the vehicles described in paragraph 122 were imported in violation of 40 C.F.R. § 1068.103(a).

5. Undeclared Adjustable Parameters or Other Adjustments

124. In total, Defendants imported approximately 11 recreational vehicles with undeclared adjustable parameters and other adjustments.

125. In February 2011, authorized federal representatives inspected a vehicle from engine family AXYXX.500UAW and found an adjustable air-fuel mixture screw (an 'adjustable parameter') that was not described in the application for the COC for engine family AXYXX.500UAW. 40 C.F.R. § 1051.115(c)-(d).

126. In February 2011, authorized federal representatives inspected a vehicle from engine family AXYXX.500UAL and found an adjustable air-fuel mixture screw (an 'adjustable parameter') that was not described in the application for the COC for engine family AXYXX.500UAL. 40 C.F.R. § 1051.115(c)-(d).

127. In February 2011, authorized federal representatives inspected a vehicle from engine family AXYXX.300UAL and found a carburetor jet needle with a multiple position clip (an 'adjustable parameter') that was not described in the application for the COC for engine family AXYXX.300UAL. 40 C.F.R. § 1051.115(c)-(d).

128. In February 2011, authorized federal representatives inspected a vehicle from engine family AXYXX.500UAW and found easily replaceable carburetor jets (an 'other adjustment') that were not described in the application for the COC for engine family AXYXX.500UAW. 40 C.F.R. § 1051.115(c)-(d).

129. In February 2011, authorized federal representatives inspected a vehicle from engine family AXYXX.500UAL and found easily replaceable carburetor jets (an 'other adjustment') that were not described in the application for the COC for engine family AXYXX.500UAL. 40 C.F.R. § 1051.115(c)-(d).

130. Because the vehicles described in paragraphs 125–129 do not conform in all material respects to their COC and its application, they are uncertified, and therefore were imported in violation of 40 C.F.R. § 1068.101(a)(1).

6. No Such COC Exists

131. In total, Defendants imported approximately 8,612 recreational vehicles for which no applicable COC exists.

132. In the response to EPA's § 208 Request, Defendants stated that they imported vehicles covered by the COC for engine family 6CQHX.196WAM.

133. EPA has never issued a COC for any engine family named 6CQHX.196WAM.

134. In the response to EPA's § 208 Request, Defendants stated that they imported vehicles covered by the COC for engine family 6GDJX.150AA1.

135. EPA has never issued a COC for any engine family named 6GDJX.150AA1.

136. In the response to EPA's § 208 Request, Defendants stated that they imported vehicles covered by the COC for engine family 6DGJX.070AA3.

137. EPA has never issued a COC for any engine family named 6DGJX.070AA3.

138. In the response to EPA's § 208 Request, Defendants stated that they imported vehicles covered by the COC for engine family 6DGJX.200AM2.

139. EPA has never issued a COC for any engine family named 6DGJX.200AM2.

140. In the response to EPA's § 208 Request, Defendants stated that they imported vehicles covered by the COC for engine family 7CBGX0.07NFG.

141. EPA has never issued a COC for any engine family named 7CBGX0.07NFG.

142. In the response to EPA's § 208 Request, Defendants stated that they imported vehicles covered by the COC for engine family 7CBGX0.11JNK.

143. EPA has never issued a COC for any engine family named 7CBGX0.11JNK.

144. In the response to EPA's § 208 Request, Defendants stated that they imported approximately 182 vehicles without identifying a COC that covered them.

145. Because no COCs exist covering the vehicles described in paragraphs 132–144 above, they are uncertified, and therefore were imported in violation of 40 C.F.R.

§ 1068.101(a)(1).

B. Warranty Violations

146. In total, Defendants introduced approximately 23,276 recreational vehicles and approximately 180 highway motorcycles into commerce with no emission warranties.

147. Defendants have stated that none of these recreational vehicles were exported from the United States.

148. Subject to further investigation and discovery, one or more of the Defendants sold, caused others to sell, or otherwise introduced into commerce approximately 23,276 recreational vehicles and approximately 180 highway motorcycles with no emission warranties.

149. By selling these vehicles without a compliant emission warranty, one or more of the Defendants violated 42 U.S.C. § 7522(a)(4)(A) and 40 C.F.R. § 1068.101(b)(6).

C. Label Violations

150. In total, Defendants introduced approximately 505 recreational vehicles from engine family 8XYXX.500UAW into commerce with non-compliant ECI labels.

151. Based on an inspection of a representative sample of these vehicles performed by authorized federal representatives, these ECI labels did not contain all of the information

required under 40 C.F.R. § 1051.135, including an accurate list of the emission controls on the vehicle.

152. By introducing the vehicles described in paragraphs 150–151 into commerce, one or more of the Defendants violated 40 C.F.R. § 1068.101(a)(1).

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Importing Recreational Vehicles and Highway Motorcycles Not Covered by COCs)

153. The United States realleges paragraphs 1 through 152 above, as if fully set forth herein.

154. Some or all of the Subject Vehicles identified in paragraphs 102–146 and Exhibit I to this Complaint were not covered by a COC at the time they were imported by one or more of the Defendants.

155. Each Subject Vehicle the Defendants imported—or caused to be imported—that was not covered by a valid COC is a separate violation of Section 203(a)(1) of the Act, 42 U.S.C. §§ 7522(a)(1), 7547(d), and/or 40 C.F.R. § 1068.101.

156. Additional violations of the type alleged herein are or may be occurring, continuing, and recurring in the future.

157. Pursuant to Sections 204(a) and 205(a) of the Act (42 U.S.C. §§ 7523(a) & 7524(a)) each Defendant is liable for injunctive relief and civil penalties of up to \$32,500 for each vehicle that such Defendant imported or caused to be imported that was not covered by a COC between March 16, 2004 and January 12, 2009, and for civil penalties of up to \$37,500 per vehicle on or after January 13, 2009.

SECOND CLAIM FOR RELIEF

**(Selling or Offering for Sale Recreational Vehicles and Highway Motorcycles
in Violation of the Emissions Warranty Requirements)**

158. The United States realleges Paragraphs 1 through 152 above as if fully set forth herein.

159. One or more of the Defendants sold or offered to sell, introduced into commerce, or delivered for introduction into commerce, some or all of the Subject Vehicles identified in paragraphs 147–150 in violation of the emission-related warranty requirements at 42 U.S.C. § 7541 and 40 C.F.R. § 1051.120.

160. Each Subject Vehicle sold or offered to sell, introduced into commerce, or delivered for introduction into commerce, that was not covered by valid emission-related warranty is a separate violation of 42 U.S.C. § 7522 and 40 C.F.R. § 1068.101.

161. Additional violations of the type alleged herein are or may be occurring, continuing, and recurring in the future.

162. Pursuant to Sections 204(a) and 205(a) of the Act, 42 U.S.C. §§ 7523(a) & 7524(a), and 40 C.F.R. §§ 19.4 and 1068.101 each Defendant is liable for injunctive relief and civil penalties of up to \$32,500 per Subject Vehicle not covered by a valid emission-related warranty that such Defendant sold or offered for sale between March 16, 2004 and January 12, 2009, and for civil penalties of up to \$37,500 per vehicle sold or offered for sale on or after January 13, 2009.

THIRD CLAIM FOR RELIEF

**(Importing and Selling or Otherwise Introducing into Commerce Recreational Vehicles for
which the Emission Control Label Requirements are Not Met)**

163. The United States realleges Paragraphs 1 through 152 above as if fully set forth herein.

164. One or more of the Defendants sold, offered for sale, or introduced the Subject Vehicles identified in paragraphs 151–153 into commerce in violation of the label requirements at Sections 207(c)(3)(C) and 213(d) of the Act, 42 U.S.C. §§ 7541(c)(3)(C) and 7547(d), and 40 C.F.R. §§ 1051.135(b)(1) and 1068.101(a)(1).

165. Each recreational vehicle sold, offered for sale, introduced into commerce on which a valid emissions label was not affixed as required by Section 207(c)(3)(C) of the Act, 42 U.S.C. § 7541(c)(3)(C), and 40 C.F.R. § 1051.135 is a separate violation of Sections 203(a)(4)(A) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(4)(A) and 7547(d), and 40 C.F.R. § 1068.101.

166. Additional violations of the type alleged herein are or may be occurring, continuing, and recurring in the future.

167. Pursuant to Sections 204(a) and 205(a) of the Act, 42 U.S.C. §§ 7523(a) & 7524(a), and 40 C.F.R. §§ 19.4 and 1068.101, each Defendant is liable for injunctive relief and civil penalties of up to \$32,500 for vehicles such Defendant imported and sold or offered for sale in violation of the labeling requirements set forth in Section 207(c)(3)(C) of the Act (42 U.S.C. § 7541(c)(3)(C)) between March 16, 2004 and January 12, 2009, and for civil penalties of up to \$37,500 per vehicle on or after January 13, 2009.

PRAYER FOR RELIEF

WHEREFORE Plaintiff, the United States, respectfully prays that this Court provide the following relief:

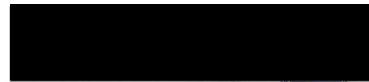
1. A permanent injunction restraining any further violations and directing Defendants to take steps necessary to come into permanent and consistent compliance with applicable regulations.

2. A judgment assessing civil penalties against Defendants and in favor of the United States, not to exceed: (1) \$32,500 for each violation per engine or per day of violation, as applicable, after March 15, 2004 through January 12, 2009; or (2) \$37,500 for each violation per engine or per day of violation, as applicable, after January 12, 2009.
3. The award of the United States' costs and disbursements in this action; and
4. The granting of such other relief as this Court deems appropriate.

Respectfully submitted,

For the United States of America

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice



Patrick B. Bryan
Trial Attorney
(Virginia Bar No. 48138)
(District of Columbia Bar No. 481991)
Abigail E. André
Trial Attorney
(Ohio Bar No. 0086926)
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 616-8299/ (202) 305-2775
Facsimile: (202) 616-2427/ (202) 514-8395
Email: Patrick.Bryan@usdoj.gov
Abigail.Andre@usdoj.gov

SARAH R. SALDAÑA
United States Attorney
Northern District of Texas

Lynette S. Wilson
Assistant United States Attorney
U.S. Attorney's Office
Northern District of Texas, Dallas Division
1100 Commerce Street, Suite 300
Dallas, TX 75242-1699
Telephone: (214) 659-8600
Facsimile: (214) 659-8807
Email: Lynette.Wilson@usdoj.gov

Of Counsel:

Evan M. Belser
Air Enforcement Division
Office of Civil Enforcement
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
ARS: Room 1111A, Mailcode 2242A
Washington, D.C. 20460 (mail) 20004 (courier)
Telephone: (202) 564-6850
Facsimile: (202) 564-0069
Belser.Evan@epamail.epa.gov

EXHIBIT 1 TO COMPLAINT: LIST OF SUBJECT VEHICLES

Purported Engine Family	Importer of Record	Certification Violations		Warranty Violations Quantity	Label Violations Quantity
		Quantity	Reason		
6CBGX0.11JNK	Savoia, Inc.	1,536	model name not on COC	7,353	
6CBGX0.28NFG	Savoia, Inc.			130	
6CSMX0.20ATV	Savoia, Inc.			198	
6CQAX0.11NFG	Savoia, Inc.			352	
6CQHX.196WAM, 6GDJX.150AA1, 6DGJX.070AA3, 6DGJX.200AM2	Savoia, Inc.	400	no such COC exists		
6LFNC0.05NFG	Savoia, Inc.			32	
6LFNC0.12NFG	Savoia, Inc.			24	
6LFNC0.20NFG	Savoia, Inc.	42	COC does not cover 250cc vehicles	124	
7CBGX0.07NFG	Savoia, Inc.	205	no such COC exists	205	
7CBGX0.11JNK	Savoia, Inc.	7,825	no such COC exists	7,825	
7CBGX0.28NFG	Savoia, Inc.			553	
7PCGX.110AM3	Savoia, Inc.	63	built after close of model year, and there's no model year 2008 COC for 110cc vehicles		
7WNGX.110AA1	Savoia, Inc.			4,685	
7WNGX.150AA1	Savoia, Inc.			62	
7XYXX.300UAL*	Savoia, Inc.			90	
7XYXX.500UAW	Savoia, Inc.			108	
8JPSX0.11A3B	Savoia, Inc.	902	built before model year, and there's no model year 2007 COC	902	
8JPSX0.28A1B	Savoia, Inc.	78	nonconforming catalyst	78	
8PCGC.150SA1	Savoia, Inc.	48	model name not on COC		
8XYXX.300UAL	Savoia, Inc.	72	nonconforming catalyst; imported prior to COC effective date	230	
8XYXX.500UAW	Savoia, Inc.	18	imported prior to COC effective date	505	505
AXYXX.300UAL	BMX Imports, L.P.	7	nonconforming catalyst; adjustable parameters, and other adjustments		
AXYXX.500UAW	BMX Imports, L.P.	11	adjustable parameters and other adjustments		
Unknown		182	no such COC exists		
Totals:			11,389	23,456	505

* EPA determined that the engine family reported by Defendants as 7XYXX.300UAL should have been reported as 7XYXX.300UAW. Ninety warranty violations exist for this engine family regardless of whether EPA was correct in their identification of this error.

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet 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
United States of America

DEFENDANTS
Savoia, Inc., BMX Imports, L.P., BMX Trading, L.L.C., Terry Zimmer

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

County of Residence of First Listed Defendant Dallas
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Patrick B. Bryan, U.S. Department of Justice, Environment and Natural Resources Division, Ben Franklin Station, P.O. Box 7611, Washington, D.C. 20044-7611, Telephone: 202-616-8299

Attorneys (If Known)
Tony Mallers

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

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

- 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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

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):
42 U.S.C. Sections 7523, 7524, 7547

Brief description of cause:
Violations of Sections 203, 205 and 213 of Clean Air Act (42 U.S.C. Sections 7523, 7524, and 7547)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMANDS Injunctive Relief and Penalties CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) PENDING OR CLOSED: (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

07/13/2012

SIGNATURE OF ATTORNEY OF RECORD

Patrick B. Bryan

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44 Reverse (Rev. 09/11)

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 government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box I or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference cases that are related to this filing, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is "related" to this filing if the case: (1) involves some or all of the same parties and is based on the same or similar claim; (2) involves the same property, transaction, or event; (3) involves substantially similar issues of law and fact; and/or (4) involves the same estate in a bankruptcy appeal.

Date and Attorney Signature. Date and sign the civil cover sheet.