

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

ROSS MOUBER, on behalf of himself and all others similarly situated,)	
)	
)	
Plaintiff,)	
)	Civil Action No. 4:21-cv-00293
v.)	
)	Removed from the Circuit Court
SAFECO INSURANCE COMPANY OF)	of Jackson County,
ILLINOIS,)	Case No. 2116-CV03922
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant SAFECO INSURANCE COMPANY OF ILLINOIS (“Safeco”) hereby gives notice of the removal of this action from the 16th Judicial Circuit Court, Jackson County, Missouri to the United States District Court for the Western District of Missouri pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453. This Notice is based upon the original jurisdiction of this Court over the parties under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d).¹ In support of this Notice of Removal, Safeco states as follows:

I. BACKGROUND

1. On February 12, 2021, Plaintiff, Ross Mober (“Plaintiff or “Mober”), filed a Complaint against Safeco in the 16th Judicial Circuit Court, Jackson County, Missouri bearing the above caption and docket number 2116-CV03922. *See* Summons and Complaint, attached hereto as Exhibit A.

2. Plaintiff served Safeco with the Complaint on March 31, 2021. *Id.*

¹ By removing this case to this Court, Safeco does not waive any defenses, objections, or motions available under state or federal law.

3. In the Complaint, Plaintiff alleges that he was covered by an insurance policy by Safeco (the “Policy”) and that he was involved in a motor vehicle accident on or about August 11, 2019. Compl. ¶¶ 10-13, 15. Plaintiff alleges that he submitted an insurance claim to Safeco, and that in resolution of the claim, Safeco failed to pay sales tax as a part of his total loss settlement. *Id.*

4. Plaintiff claims, by failing to pay sales tax, Safeco breached the Policy. *Id.* ¶¶ 30-36.

5. Plaintiff seeks multiple elements of damages, including compensatory damages for unpaid sales tax, pre-judgment interest, post-judgment interest, costs, and attorneys’ fees. *Id.* ¶ 36.

6. This Notice of Removal has been timely filed within thirty days of the date of service. 28 U.S.C. § 1446(b).

7. The 16th Judicial Circuit Court, Jackson County, Missouri is located in the United States District Court for the Western District of Missouri. 28 U.S.C. § 105. Thus, venue is proper in this Court under 28 U.S.C. § 1441(a) because the Western District of Missouri encompasses the state court in which the removed action is pending.

II. CAFA’S JURISDICTIONAL REQUIREMENTS ARE SATISFIED.

8. An action may be removed to this Court if it has original jurisdiction over the action. *See* 28 U.S.C. § 1441(a). The court's jurisdiction is measured at the time of removal. *See Grawitch v. Charter Commc'ns, Inc.*, 750 F.3d 956, 959 (8th Cir. 2014).

9. CAFA vests federal district courts with original jurisdiction over any class action that: (a) is a putative class action; (b) involves a class of at least 100 members; (c) satisfies minimal diversity requirements; and (d) presents an amount in controversy of at least five million

dollars in the aggregate, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d); *see also* *Hargis v. Access Capital Funding, LLC*, 674 F.3d 783, 788 (8th Cir. 2012).

10. CAFA reflects a “strong preference” to resolve interstate class actions in federal court. *Westerfield v. Independent Processing, LLC*, 621 F.3d 819, 822 (8th Cir. 2010). Accordingly, if there is uncertainty about whether the amount in controversy exceeds the aggregate sum of \$5,000,000, courts err in favor of exercising jurisdiction over the case. *Alexander v. Pipeline Prods., Inc.*, No. 1: 16-CV-00005-KGB, 2018 WL 3045179, at *2 (E.D. Ark. Feb. 15, 2018).

11. This lawsuit satisfies all four requirements and removal is therefore warranted.

A. This Action Is A Putative Class Action.

12. CAFA defines a “class action” as “any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by one or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B).

13. Here, this lawsuit falls squarely within CAFA’s definition of “class action” because Plaintiff has invoked Missouri’s class action statute and has styled the Complaint as a “Class-Action Petition for Damages.” Compl. ¶¶ 22-29.

B. The Putative Class Exceeds One Hundred Members.

14. Class members include “persons (named or unnamed) who fall within the definition of the *proposed* or certified class.” 28 U.S.C. § 1332(d)(1)(D) (emphasis added); *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013).

15. Plaintiff alleges that his proposed class covers “thousands of members.” Compl. ¶ 24. A review of Safeco’s records by the undersigned indicates that there are approximately

6,006 Safeco insureds who are encompassed within Plaintiff's proposed class definition. This exceeds the 100-member minimum set by CAFA. 28 U.S.C. § 1332(d)(5)(B).

C. The Minimal Diversity Requirements of CAFA Exist Here.

16. CAFA only requires “minimal diversity” (as opposed to complete diversity), meaning that only one class member and one defendant need to be citizens of different states. *See Hargis v. Access Capital Funding, LLC*, 674 F.3d 783, 788 (8th Cir. 2012); *Grawitch v. Charter Commc'ns, Inc.*, 750 F.3d 956, 959 (8th Cir. 2014).

17. Here, Plaintiff is a citizen of Missouri and is domiciled in Jackson County, Missouri. Compl. ¶ 8. Safeco is incorporated in Illinois and has a principal place of business in Boston, Massachusetts. Therefore, CAFA's minimal diversity requirement is satisfied because Plaintiff is a citizen of a different state than Safeco.

D. The Amount In Controversy Exceeds \$5,000,000 In The Aggregate.

18. CAFA applies if the amount in controversy exceeds “the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). To “determine whether the matter in controversy” exceeds that sum, “the claims of the individual class members shall be aggregated.” 28 U.S.C. § 1332(d)(6); *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013).

19. The party seeking to remove under CAFA must establish the amount in controversy by a preponderance of the evidence. *See Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 944–45 (8th Cir. 2012). “Under the preponderance standard, ‘[t]he jurisdictional fact . . . is not whether the damages *are* greater than the requisite amount, but whether a fact finder *might* legally conclude that they are’” *Id.* at 959 (quoting *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002)) (emphasis in original). The notice of removal “need include only a plausible

allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). The removing party’s “burden of describing how the controversy exceeds \$5 million constitutes a pleading requirement, not a demand for proof. Discovery and trial come later.” *Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 944–45 (8th Cir. 2012).

20. In addition to compensatory or actual damages, punitive damages, statutory penalties, and attorney’s fees may be used in determining the amount in controversy. *See Raskas*, 719 F.3d at 887; *Doss v. Am. Family Home Ins. Co.*, 47 F. Supp. 3d 836, 841 (W.D. Ark. 2014); *Basham v. Am. Nat’l County Mut. Ins. Co.*, 979 F. Supp. 2d 883, 889 (W.D. Ark. 2013).

21. “When the notice of removal plausibly alleges that the class *might* recover actual damages, punitive damages, and attorneys’ fees aggregating more than \$5 million, ‘then the case belongs in federal court unless it is *legally impossible* for the plaintiff to recover that much.’” *Pirozzi v. Massage Envy Franchising, LLC*, 938 F.3d 981, 984 (8th Cir. 2019) (emphasis in original). In *Pirozzi*, the plaintiff sought compensatory, statutory, and punitive damages as well as attorneys’ fees for unspecified amounts. *Id.* The defendant filed a notice of removal under CAFA alleging that it could potentially owe \$2.885 million in compensatory damages, \$720,000 in attorneys’ fees, and \$3.6 million in punitive fees. *Id.* The district court remanded the case to state court because the defendant offered “nothing but speculation.” *Id.* Reversing the trial court, the appellate court held that the trial court misapplied the CAFA standard, explaining “[t]his is a pleading requirement, not a demand for proof” and that “even if it is highly improbable that the Plaintiffs will recover the amounts Defendants have put into controversy, this does not meet the legally impossible standard.” *Id.*

22. Here, Plaintiff contends that the class members are entitled to damages in an unspecified amount consisting of unpaid sales tax, pre-judgment interest, post-judgment interest, costs, and attorneys' fees. Compl. ¶ 36. Plaintiff further contends that his proposed class covers "thousands of members." Compl. ¶ 24.

23. A review of Safeco's records indicate that there are approximately 6,006 Safeco insureds who are encompassed within Plaintiff's proposed class definition.

24. Missouri requires the payment of a state sales tax in the amount of 4.225% and a local sales tax ranging up to 5.765% for vehicle purchases. Applying sales tax to the value of each putative class member's insurance claim, Safeco estimates that the aggregate total of damages may exceed \$5,562,803.64.

25. In addition, Plaintiff also seeks pre-judgment interest. Missouri's pre-judgment interest rate is 9% annually. Mo. Ann. Stat. § 408.020. The total amount in controversy, factoring that aspect of Plaintiff's claimed damages as well, could be in excess of \$6,306,570.32.

26. Therefore, Plaintiff's claimed damages exceeds CAFA's \$5 million threshold.² 28 U.S.C. § 1332(d)(2).

III. CONCLUSION

27. As set forth above, this Court has original jurisdiction under CAFA.

28. A copy of this Notice of Removal is being served upon all known counsel of record as required by law, and a notice of removal is being filed with the clerk of the 16th Judicial Circuit Court, Jackson County, Missouri simultaneously with the filing in this Court.

² Safeco provides this potential damages calculation solely to evaluate the amount in controversy under CAFA. Safeco expressly denies that Plaintiff, or any other putative class member, is entitled to recover any amount, any category of damages, or that this matter is appropriate for class action treatment.

29. Pursuant to 28 U.S.C. § 1446(a), attached hereto and marked as Exhibit A is a true and correct copy of all process and pleadings which as of the date hereof have been received by Defendant Safeco in the Jackson County, Missouri action.

WHEREFORE, Safeco hereby gives notice of the removal of this action from the 16th Judicial Circuit Court, Jackson County, Missouri to the United States District Court for the Western District of Missouri.

Dated this 30th day of April, 2021.

Respectfully Submitted,

/s/ Mark B. Schaffer

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CERTIFICATE OF SERVICE

I do hereby certify that I have served a true and correct copy of the above and foregoing document on counsel of record by () electronically filing with the Clerk of Court using the CM/ECF system which sent notification of such filing, () placing the same in the United States mail, postage prepaid, () facsimile to the telephone numbers listed below, or () hand delivery, on this 30th day of April, 2021 to the following:

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Jesse B. Rochman
Craig W. Richards
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ATTORNEYS FOR PLAINTIFF

/s/ Mark B. Schaffer
Mark B. Schaffer

**NOTICE OF REMOVAL
EXHIBIT A**



IN THE 16TH JUDICIAL CIRCUIT COURT, JACKSON COUNTY, MISSOURI

Judge or Division: ADAM CAINE	Case Number: 2116-CV03922
Plaintiff/Petitioner: ROSS MOUBER	Plaintiff's/Petitioner's Attorney/Address MARTIN L DAESCH 110 E LOCKWOOD AVE SAINT LOUIS, MO 63119
Defendant/Respondent: SAFECO INSURANCE COMPANY OF ILLINOIS	Court Address: 415 E 12th KANSAS CITY, MO 64106
Nature of Suit: CC Breach of Contract	

(Date File Stamp)

Summons in Civil Case


The State of Missouri to: SAFECO INSURANCE COMPANY OF ILLINOIS
Alias:
SERVE: REGISTERED AGENT- CSC Lawyers Incorporating Service Company
221 BOLIVAR STREET
JEFFERSON CITY, MO 65101

COURT SEAL OF

JACKSON COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

11-MAR-2021
Date


Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.

(for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

other _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on _____ (date).

(Seal) My commission expires: _____ Date _____ Notary Public

Sheriff's Fees

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$ _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI,
AT KANSAS CITY

ROSS MOUBER, on behalf of himself
and all others similarly situated,

CASE NO. _____

Plaintiff,

CLASS-ACTION PETITION
FOR DAMAGES AND
DEMAND FOR JURY TRIAL

v.

SAFECO INSURANCE COMPANY OF ILLINOIS,
Serve: Registered Agent
221 Bolivar Street
Jefferson City, MO 65101

Defendant.

Plaintiff, Ross Moubert, individually and on behalf of all others similarly situated, files this Class Action Petition against Safeco Insurance Company of Illinois ("Safeco" or "Defendant") and in support states as follows:

NATURE OF THE ACTION

1. This is a class action lawsuit by Plaintiff Ross Moubert who was the named insured under a Safeco Insurance Company of Illinois automobile policy for private passenger auto physical damage, pursuant to which Defendant was required to pay the applicable sales tax for a damaged or stolen vehicle as part of a payment of loss.
2. Insureds, such as Plaintiff and the putative Class Members, pay a premium in exchange for Safeco's promises under its automobile policy.
3. Nevertheless, Safeco failed to include sales tax in making its loss payment to Class Members in breach of its clear policy promise.
4. This lawsuit is brought by Plaintiff individually and on behalf of all other similarly situated insureds who suffered damages due to Safeco's failure to pay sales tax.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to MO Rev. Stat. § 478.070.

6. This Court has personal jurisdiction over Defendant because the Defendant at all times material hereto was licensed to transact in insurance in the State of Missouri, has offices in the State of Missouri, writes millions of dollars in premiums in the State of Missouri, and engages in substantial business activities in the State of Missouri.

7. Venue is proper in this Court, pursuant to MO Rev. Stat. § 478.461, because the cause of action arose in this County, the transaction, or some part of it, occurred in this County, and Defendant is not a Missouri resident. But Defendant does conduct customary and extensive business in Jackson County and is subject to personal jurisdiction here.

THE PARTIES

8. At all times material hereto, Plaintiff Ross Mober is and was a citizen of the State of Missouri and domiciled in Jackson County.

9. At all times material hereto, Defendant is and was a corporation located in the State of Illinois and authorized to transact insurance in the State of Missouri and conducting a substantial part of its business in Jackson County. Defendant's principal place of business and headquarters are both located in the State of Illinois.

SAFECO POLICY

10. The Form Policy issued by Safeco to the Plaintiff and all putative class members are virtually identical in all material respects. Affixed hereto is the Policy Form issued to Mr. Mober (the "Policy"). The terms therein are applicable and identical to the terms applicable to Mr. Mober and all putative class members. Exh. A (Policy).

11. In its standardized Policy, Defendant promises to pay for “direct and accidental loss” to a covered auto. *Id.* at 11.

12. In the event that an insured’s covered auto sustains loss, Defendant explains, in its “Payment of Loss” section, “we may pay for loss in money or repair or replace the damaged or stolen property.” *Id.* at 15.

13. Defendant further promises “[i]f we pay for loss in money, our payment will include the applicable sales tax for the damaged or stolen property.” *Id.*

PLAINTIFF ROSS MOUBER’S ACCIDENT

14. At all times material hereto, Plaintiff insured a 2013 Kia Sportage EX AWD under the Policy issued by Safeco.

15. On or about August 11, 2019, the insured vehicle sustained loss or damage, after which Plaintiff filed a claim for property damage with Safeco.

16. Following the filing of said claim, Defendant determined that the vehicle was a total loss with a base vehicle value of \$13,319.00 and an adjusted vehicle value of \$13,265.00. Exh. B (Valuation Report).

17. Safeco calculates the base and adjusted value through a third-party vendor (“CCC”), which bases vehicle valuations on the cost to purchase similar vehicles with similar conditions and mileage. First, CCC identifies the underlying value of comparable vehicles, from which it adjusts based on any differences in mileage, trim, options, *etc.* See Exh. B.

18. CCC calculated that the sales tax on the adjusted vehicle value was \$1,140.79. *Id.* at 1.

19. However, Safeco *removed* sales tax when making payment. Instead, Safeco paid only the adjusted vehicle value of \$13,265.00 minus the deductible of \$1,000.00 for a total

payment of \$12,265.00. Exh. C (Settlement Letter). By failing to include sales tax in making payment for the loss, Safeco breached its contract with Plaintiff.

20. Nothing in the Policy unambiguously excludes sales tax or contradicts Defendant's promise to pay sales tax where it pays for the loss in money. To the extent the applicable limitation on liability is the vehicle's actual cash value, such limitation does not operate to exclude or subvert Defendant's explicit and unambiguous promise to include payment for sales tax in its loss payments.

21. Similarly, Safeco failed to pay sales tax to all members of the Class, defined below, and thus breached its contract with all such Class Members.

CLASS ALLEGATIONS

22. Plaintiff brings this action as representative of the Class defined as follows:

All Missouri insureds, under a policy issued by Safeco covering a vehicle with private-passenger auto physical damage coverage for comprehensive or collision loss, who, within the applicable statute of limitations prior to the filing of this lawsuit through the date of the certification Order, submitted a first-party property damage claim determined by Safeco to constitute a covered loss claim and where the loss claim payment did not include sales tax.

23. The Policy, including comprehensive and collision coverage and the Payment of Loss section, are materially identical as to Plaintiff and all members of the Class, and apply equally to Plaintiff and all members of the Class.

24. There are numerous parties such that it would be impracticable to bring all the parties before the court. For example, upon information and belief and based on the premiums written in this state by Safeco and Safeco's loss ratio (percentage of premiums collected paid on claims), Plaintiff estimates there are thousands of members of the Class.

25. Additionally, there exists a question of common interest as to members of the Class – namely, whether sales tax should be paid as part of a payment of loss under the Policy.

26. This case is ideally suitable for class treatment because the common question (a) is a legal question of policy interpretation resolvable as a matter of law by this Court and (b) this Court's determination will resolve virtually the entirety of each member of the Class' claims in one stroke. If this Court determines that a loss payment includes sales tax, then every member of the Class is entitled to payment of sales tax (less the amount, if any, previously paid).

27. Calculation of such damages will be a ministerial effort based on data and records in Defendant's possession and kept as a normal, business practice.

28. Moreover, it would be a significant waste of judicial and party resources to file thousands of individual lawsuits merely to resolve the exact same question of policy interpretation, and to do so would unnecessarily create the risk of inconsistent adjudications and conflict within and between the courts. It is far more efficient – and far more preferable – to resolve the centrally dispositive question of policy interpretation for thousands of Class Members in a single stroke.

29. Importantly, Plaintiff and the undersigned have no conflicts adverse to those of the Classes, and there are no other issues or facts that preclude class treatment or render it less than ideal for any reason.

COUNT I: BREACH OF CONTRACT

30. Paragraphs 1 through 29 are hereby incorporated by reference.

31. This count is brought by Plaintiff Ross Mober individually and on behalf of the Class Members.

32. Plaintiff was party to an insurance contract with Safeco as set forth herein. All Class Members were parties to an insurance contract with Safeco containing materially-identical terms. Plaintiff and members of the Class satisfied all conditions precedent.

33. Plaintiff and all Class Members made a claim determined by Safeco to be a first-party loss under the insurance policy and determined by Safeco to be a covered claim.

34. Upon the loss to the insured vehicles, Plaintiff and every Class Member were owed the sales tax as part of their loss payment. Nevertheless, Defendant failed to include sales tax in making the loss claim payments.

35. By failing to include sales tax in the loss claim payments, Defendant breached its contract with Plaintiff and with each respective Class Member.

36. As a result, Plaintiff and all A Class Members were damaged, and are entitled to damages in the amount of the Sales Tax, less any amount in sales tax already paid (if any), along with prejudgment interest, post-judgment interest, costs, and attorneys' fees allowable by law.

RELIEF REQUESTED

WHEREFORE, Plaintiff Ross Moubert, individually and on behalf of the Class Members, demand a trial by jury on all triable issues and seek relief and judgment as follows:

- For an Order certifying this action as a Class Action on behalf of the Class described above;
- For an award of compensatory damages for the Class in amounts owed under the Policies;
- For all other damages according to proof;
- For an award of attorney's fees and expenses as appropriate pursuant to applicable law;

- For costs of suit incurred herein;
- For pre and post-judgment interest on any amounts awarded; and
- For injunctive and other further forms of relief as this Court deems just and proper.

Dated: February 12, 2021

Respectfully submitted,

ONDERLAW, LLC

By /s/ Martin L. Daesch
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JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):**First Listed Plaintiff:**

Ross Mouber ;

County of Residence: Jackson County**Defendant(s):****First Listed Defendant:**

Safeco Insurance Company of Illinois ;

County of Residence: Outside This District**County Where Claim For Relief Arose:** Jackson County**Plaintiff's Attorney(s):**

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v

Chicago, Illinois 60601

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Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: N/A

Defendant: N/A

Origin: 2. Removed From State Court

State Removal County: Jackson County

State Removal Case Number: 2116-CV03922

Nature of Suit: 110 Insurance Contracts

Cause of Action: 28 U.S.C. §§ 1332, 1441, 1446 and 1453

Requested in Complaint

Class Action: Class Action under State Statute or Rule

Monetary Demand (in Thousands): 6,306

Jury Demand: Yes

Related Cases: Is NOT a refiling of a previously dismissed action

Signature: Mark B Schaffer

Date: 4/30/2021

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.