

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

BENJAMIN CARTER,
Plaintiff

v.

Case No.

JURY TRIAL DEMANDED

**MOUNTAIN VIEW FIRE
PROTECTION DISTRICT,**

and

**DAVID BEEBE, named in his
individual and official capacities;**

Defendants.

COMPLAINT

Plaintiff, Benjamin Carter, by and through his undersigned attorneys, for his Complaint against Defendants, Mountain View Fire Protection District and Fire Chief David Beebe, in both his official and personal capacities, states as follows:

INTRODUCTION, JURISDICTION AND VENUE

1. This is a civil action brought under 42 U.S.C. § 1983 for declaratory and injunctive relief, damages, and attorneys' fees and costs to redress Defendants' unlawful deprivation of Plaintiff's rights and privileges secured by the First and Fourteenth Amendments of the U.S. Constitution. This action includes supplemental state law claims for declaratory and injunctive relief, damages, and attorneys' fees and costs to redress Defendants' unlawful deprivation of Plaintiff's rights and privileges secured by the United States Constitution and Colorado statute.

2. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331; 28 U.S.C. § 1343; 28 U.S.C. § 1367; 28 U.S.C. §§ 2201-02; and 42 U.S.C. § 1983.

3. Venue is proper under 28 U.S.C. §1391 because all Defendants are located in this district and the actions and omissions complained of herein took place within this district.

4. In accordance with Colorado Revised Statute § 24-10-109, a Notice of Claim was sent via certified mail, return receipt requested to Pamela Owens, Director of Administration for the Mountain View Fire Protection District, on June 12, 2023. On August 21, 2023, a courtesy copy of the Notice of Claim was sent to Ms. Owens via email, and on August 29, 2023, a courtesy copy of the Notice of Claim was personally served on Ms. Owens by personal service at the workplace to Human Resources Director Gina Daly.

5. As of the date this Complaint was filed, Plaintiff has not received any response to the Notice of Claim.

PARTIES

6. Plaintiff Benjamin Carter is an individual who resides in Broomfield in Broomfield County, Colorado. Mr. Carter is a “citizen of the United States” within the meaning of 42 U.S.C. § 1983.

7. Defendant Mountain View Fire Protection District (“District”) is a fire protection district organized under the laws of the State of Colorado. *See* CO Rev Stat § 32-1-1002. The District provides fire and emergency medical services over a geographic area encompassing Boulder, Dacono, Erie, Mead, Niwot, Superior and unincorporated areas of Boulder and Weld counties. The District is a “person” within the meaning of 42 U.S.C. § 1983.

8. Defendant David Beebe is an individual employed as the Chief of the District. Chief Beebe is a “person” within the meaning of 42 U.S.C. § 1983.

FACTUAL ALLEGATIONS

9. Plaintiff Carter was hired by the District as a fire fighter in 2009.

10. Since approximately 2012, Plaintiff Carter has held an elected or appointed position on the executive board of the International Association of Fire Fighters, Local 3214 (“Local 3214” or “Union”), the collective bargaining representative of fire fighters employed by the District.

11. In or around October 2019, Defendant Beebe delayed Plaintiff Carter’s promotion to Lieutenant because of Carter’s having reported a violation of District policy in his capacity as a Union representative.

12. On or around February 26, 2021, Defendant Beebe and Deputy Chief Sterling Folden threatened Plaintiff Carter with discipline for speaking at a public meeting of the District Board as Treasurer of Local 3214.

13. On January 1, 2023, Plaintiff Carter was elected President of Local 3214.

14. On January 30, 2023, Plaintiff Carter went to District Fire Station No. 13 to prepare bunker gear for a group of recently hired new employees, which was part of his duties as Assistant Quartermaster. On this day, Carter was on vacation, but nevertheless reporting to work while using his vacation time in order to complete work tasks that he was unable to complete while on duty, which has been a custom and practice among fire fighters in the District.

15. While at the station, a vendor dropped off equipment for the new hires, and the vendor stated to Carter that one of the new hires requested to not have any American flags placed on their bunker gear.

16. Mr. Carter walked to Captain Shad Bennet's office to speak with him about this request, and Captain Bennet had not heard about the request. Captain Bennet used a speakerphone to call District HR Specialist Gina Daly, who stated that she was the person who submitted the request to the vendor. Plaintiff Carter asked HR Specialist Daly why someone would not want an American flag on their uniform, and Daly replied that it was a religious accommodation that had been approved by Chief Beebe and the District's legal department. Carter then stated that he was unaware of any religion that would require such an accommodation and Daly then informed Plaintiff Carter that the new hire was a Jehovah's Witness.

17. During the speakerphone conversation with Captain Bennet and HR Specialist Daly, Carter asked what other accommodations would be necessary to ensure the comfort of the new hire. Daly responded the new hire could not be assigned to raise or lower the American flag at the station. Carter replied that the Union would need to know of any other accommodations, as well as whether training could be offered to employees on religious accommodation. Daly agreed, stating that the new hire's crew would need extra training.

18. At no time during the speakerphone conversation with Captain Bennet and Plaintiff Carter did Captain Bennet or HR Specialist Daly indicate that any fact concerning the request or provision of the religious accommodation to the new hire was confidential.

19. After the speakerphone conversation with Captain Bennet and HR Specialist Daly, Plaintiff Carter left Captain Shad Bennet's office and spoke with Battalion Chief Flagg about the new employee's religious accommodation. Plaintiff Carter and Battalion Chief Flagg conducted a Google search to research how to accommodate a Jehovah's Witness.

20. In the following days, from January 31, 2023 to February 5, 2023, Plaintiff Carter had several conversations with other fire fighters on and off duty about how to best accommodate the new hire. Battalion Chief Flagg also had conversations with fire fighters about the religious accommodation.

21. In these conversations with his fellow fire fighters, Plaintiff Carter expressed his concern with the lack of information from the District about how to best accommodate the new hire. He also spoke with other fire fighters about how the department is changing, and they need to appropriately accommodate those who request accommodations.

22. On February 9, 2023, Plaintiff Carter had a meeting with Chief Beebe concerning a grievance that the Union had filed, unrelated to the new hire or religious accommodation. The meeting was contentious. No more than three hours after the contentious grievance meeting, Deputy Chief Sterling Folden informed Plaintiff Carter that, effective immediately, he was placed on administrative leave pending an investigation into allegedly discriminatory behavior.

23. On or about February 9, 2023, Plaintiff Carter contacted the District's Human Resources office to inquire about the investigation. The Human Resources office informed him that the purpose of the investigation was to investigate discrimination about a religious accommodation.

24. Deputy Chief Jeff Webb conducted numerous interviews as part of the investigation, but Plaintiff Carter was never informed of who Deputy Chief Webb interviewed and Plaintiff Carter was not himself interviewed.

25. On February 27, 2023, Deputy Chief Webb presented Plaintiff Carter with an evidence summary and stated that Plaintiff Carter could give a statement. Deputy Chief Webb did not ask Plaintiff Carter any questions during this meeting.

26. On the morning of March 21, 2023, Defendant Beebe asked Plaintiff Carter several questions related to the investigation.

27. On March 21, 2023, Plaintiff Carter received a termination letter signed by Chief Beebe. The letter stated that after an investigation, Chief Beebe had decided that Plaintiff Carter should be terminated for disseminating confidential information about a religious accommodation, insubordination, disrespectful attitudes and behaviors, and falsification of records.

28. His March 21, 2023 termination was the first discipline that Plaintiff Carter had received in his fourteen years of employment with the District.

29. Fire Chief Beebe, Deputy Chief Folden, Battalion Chief Flagg and Captain Cody Bennett all of spoke in non-confidential settings about the new hire's religious accommodation, yet did not receive any sort of discipline.

30. Plaintiff Carter's termination letter signed by Chief Beebe stated that "[T]he Fire Chief's decision is the final decision for the District for all purposes. Discipline matters are not appealable to the Board. You have the right to appeal the decision to the Fire Chief based on new or additional information."

31. On or about April 10, 2023, Plaintiff Carter, through counsel, submitted an appeal to Chief Beebe. The appeal stated, inter alia, that "[b]oth Lt. Carter and our office have repeatedly asked for full investigative materials that Chief Webb and the District gathered in the

course of its investigation, including the identities of witnesses, and recordings of the numerous witness interviews that Chief Webb conducted, as well as any other materials were examined or considered by the District. The District has refused to provide any of these materials beyond its conclusory summaries of the evidence.”

32. On or about April 12, 2023, Plaintiff Carter received a denial of his appeal, signed by Chief Beebe.

33. On or about April 27, 2023, Plaintiff Carter, through counsel, requested a hearing about his termination under the Fourteenth Amendment and through a hearing process that conforms with the requirements of *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985).

34. On May 5, 2023, the District denied Plaintiff Carter’s request for a hearing.

35. On June 22, 2023, Plaintiff Carter and the District were opposing parties at a hearing with a hearing officer to determine Plaintiff Carter’s entitlement to unemployment insurance benefits. After weighing all of the evidence asserted against Plaintiff Carter by the District and Plaintiff Carter’s credible testimony in response to the District’s arguments against him, the “hearing officer concluded the [Plaintiff] was discharged because the employer believed [Plaintiff Carter] disclosed confidential personnel information after being instructed not to do so. There was insufficient persuasive direct evidence to find the claimant acted in the manner asserted.”

36. On or about July 11, 2023, the District appealed the hearing officer’s decision. On or about August 2, 2023, the Colorado Department of Labor and Employment’s Industrial Claim Appeals Panel affirmed the June 22, 2023 hearing officer’s decision and determined that the

hearing officer accurately “found that [Plaintiff Carter] did not engage in the alleged misconduct that caused the discharge.”

37. Any grounds and reasons offered by Defendants for their adverse actions, omissions, and decisions against Plaintiff Carter are false and pretextual.

38. As a result of the Defendants’ knowing, willful, wanton, reckless, and bad faith termination of his employment and deprivation of rights, Mr. Carter has suffered lost wages and benefits, mental and emotional harm, damage to his personal and professional reputations, and other injuries.

FIRST CAUSE OF ACTION:
**42 U.S.C. § 1983 --- VIOLATION OF PLAINTIFF’S FOURTEENTH AMENDMENT
RIGHT TO PROCEDURAL DUE PROCESS**

39. Plaintiff Carter realleges and incorporates the allegations set forth in paragraphs 1 through 38.

40. The Fourteenth Amendment to the United States Constitution protects citizens from the deprivation of “life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, 1.

41. The collective bargaining agreement that governed the terms and conditions of Plaintiff Carter’s employment provides at Article XXI, Section 12, that he may only be terminated for just cause.

42. Plaintiff Carter has a property interest in his employment with the District.

43. Defendants, under color of law, intentionally deprived Plaintiff Carter of his property interest in his employment with the District without affording him due process of law.

44. Defendants did not afford Plaintiff Carter a post-termination hearing, an opportunity to be represented by counsel, an opportunity to review and counter adverse evidence,

an opportunity to confront accusers or cross examine adverse witnesses, or a neutral review of the decision to terminate his employment.

45. These actions, omissions, and decisions of the Defendants individually, separately, and/or jointly, were designed to cause, have caused, and will continue to cause Plaintiff Carter to lose wages, compensation, entitlements, and rights. In addition, these actions, omissions, and decisions of the Defendants individually, separately, and/or jointly, were designed to cause, have caused, and will continue to cause Plaintiff Carter to suffer humiliation and harm to his reputation, emotional and mental injuries, pain and suffering, financial, and other adverse consequences and irreparable harms.

46. Defendants' violation of Plaintiff Carter's right to due process was done in a knowing, willful, wanton, reckless, and bad faith manner, which violates clearly established constitutional provisions and rights which a reasonable person would have known.

47. As a direct, foreseeable, and proximate result of Defendants' unlawful conduct, Plaintiff Carter has suffered, and continues to suffer, economic injury, mental and emotional distress, humiliation, anxiety, embarrassment, and discomfort, and other injuries and irreparable harms.

48. Under 42 U.S.C. § 1983, "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Thus, Defendants are fully liable to Plaintiff for his injuries resulting from

Defendants retaliating against him and terminating his employment in violation of the Fourteenth Amendment.

49. Defendants are also liable for Plaintiff's reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b).

SECOND CAUSE OF ACTION:
**42 U.S.C § 1983 – VIOLATION OF PLAINTIFF'S FIRST AND FOURTEENTH
AMENDMENT RIGHTS TO FREE SPEECH AND ASSEMBLY**

50. Plaintiff realleges and incorporates the allegations set forth in paragraphs 1 through 49.

51. The right of Plaintiff Carter to speak freely about matters of public concern is protected by the First Amendment and Fourteenth Amendments to the United States Constitution. U.S. Const. amend. I, amend. XIV, 1. The public has a vital interest in free and open discussion on issues of public importance.

52. It is a violation of the First Amendment and Fourteenth Amendment of the United States Constitution for public employers, including the District, to discriminate against, discipline, or discharge its employees in retaliation for engaging as private citizens in speech about matters of public concern.

53. At all times material herein, Plaintiff Carter actively spoke out on matters of public concern, including, but not limited to, statements made to ensure that District policies were followed and that he and his fellow employees were able to assist with a newly hired employee's religious accommodation.

54. Upon learning that Plaintiff Carter had spoken out on such matters of public concern, Defendants, acting under color of law, individually, separately, and/or jointly, engaged in actions, omissions, and decisions aimed at denying Plaintiff Carter's employment rights and

protections granted to him under law, including, but not limited to, investigating, retaliating against and reprimanding him, and terminating his employment.

55. These actions, omissions, and decisions of the Defendants individually, separately, and/or jointly, were designed to cause, have caused, and will continue to cause Plaintiff Carter to lose wages, compensation, entitlements, and rights. In addition, these actions, omissions, and decisions of the Defendants individually, separately, and/or jointly, were designed to cause, have caused, and will continue to cause Plaintiff Carter to suffer humiliation and harm to his reputation, emotional and mental injuries, pain and suffering, financial, and other adverse consequences and irreparable harms.

56. Defendants' violations of Plaintiff Carter's rights to free speech and assembly were done in a knowing, willful, wanton, reckless, and bad faith manner, which violates clearly established constitutional provisions and rights which a reasonable person would have known.

57. Under 42 U.S.C. § 1983, "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Thus, Defendants are fully liable to Plaintiff for his injuries resulting from Defendants retaliating against and terminating him in violation of the First and Fourteenth Amendments.

58. Defendants are also liable for Plaintiff's reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b).

THIRD CAUSE OF ACTION:

42 U.S.C. § 1983 – VIOLATION OF PLAINTIFF’S FIRST AND FOURTEENTH AMENDMENT RIGHT TO FREE ASSOCIATION

59. Plaintiff realleges and incorporates the allegations set forth in paragraphs 1 through 58.

60. The right of Plaintiff Carter to freely associate with other District employees and/or a labor association of other District employees is protected by the First Amendment and Fourteenth Amendment of the U.S. Constitution. The public has a vital interest in such free association.

61. It is a violation of the First Amendment and Fourteenth Amendment of the U.S. Constitution for public employers, including the District, to discriminate against, discipline, or discharge its employees for exercising their rights to free association.

62. At all relevant times, Plaintiff Carter has held a leadership position in Local 3214 and was elected its President shortly before his termination. Plaintiff Carter has organized, led, and actively participated in the Union and its related activities involving matters of public interest and concern.

63. Because of Plaintiff Carter’s service in leadership and active participation in the affairs of the Union, including but not limited to attempts to resolve collective bargaining disputes, Defendants, acting under color of law, individually, separately, and/or jointly, engaged in actions, omissions and decisions aimed at denying the rights and protections granted under law to Plaintiff Carter, including, but not limited to, investigating, retaliating against and reprimanding him, and terminating his employment with the District.

64. These actions, omissions, and decisions of the Defendants individually, separately, and/or jointly, were designed to cause, have caused, and will continue to cause Plaintiff Carter to lose wages, compensation, entitlements, and rights. In addition, these actions, omissions, and

decisions of the Defendants individually, separately, and/or jointly, were designed to cause, have caused, and will continue to cause Plaintiff Carter to suffer humiliation and harm to his reputation, emotional and mental injuries, pain and suffering, financial, and other adverse consequences and irreparable harms.

65. Defendants' violations of Plaintiff Carter's rights to free association were done in a knowing, willful, wanton, reckless, and bad faith manner, which violates clearly established constitutional provisions and rights which a reasonable person would have known.

66. Under 42 U.S.C. § 1983, "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Thus, Defendants are fully liable to Plaintiff Carter for his injuries resulting from Defendants retaliating against and terminating him in violation of the First and Fourteenth Amendment.

67. Defendants are also liable for Plaintiff Carter's reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988(b).

FOURTH CAUSE OF ACTION:
VIOLATION OF THE COLORADO FIREFIGHTER SAFETY ACT

68. Plaintiff realleges and incorporates the allegations set forth in paragraphs 1 through 67.

69. Under the Colorado Firefighter Safety Act, firefighters have the right to engage in concerted protected activity for mutual aid and protection. The Act provides, in relevant part:

(1) Firefighters have the right to:

(a) Organize, form, join, or assist an employee organization or to refrain from doing so;

...

(c) Engage in other concerted activity for the purpose of collective bargaining or other mutual aid or protection, if and to the extent that the activity is not prohibited by this part 2 or any other law of Colorado.

CO Rev Stat § 29-5-204.

70. Plaintiff Carter engaged in significant union activities from acting as Local President, to representing the Local in contentious collective bargaining negotiations to representing members in grievance meetings. Plaintiff Carter also engaged in protected concerted activity for the mutual aid and protection of his co-workers by discussing an employee's religious accommodation with them to ensure a new employee's accommodation. President Carter's protected union activities were well known to the Defendants.

71. The Defendants have demonstrated hostility toward Plaintiff Carter because of his protected union activity on a number of occasions.

72. The Defendants' decision to terminate Plaintiff Carter's employment and deny him due process were motivated by President Carter's protected union activities.

73. The Defendants' decision to terminate Plaintiff Carter's employment serves to not only chill his protected union activity but that of other employees who were inclined to support the Union or act on their co-workers' behalf.

74. As a direct, foreseeable, and proximate result of Defendants' unlawful conduct, Plaintiff Carter has suffered, and continues to suffer, economic injury, mental and emotional distress, humiliation, anxiety, embarrassment, and discomfort, and other injuries and irreparable harm.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all issues so triable, as provided by Federal Rule of Civil Procedure 38.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests the Court:

A. Declare that Defendants unlawfully violated Plaintiff's rights and privileges secured by the First and Fourteenth Amendments of the U.S. Constitution;

B. Declare that Defendants unlawfully violated Plaintiff and his fellow union fire fighters' rights and privileges secured by the Colorado Firefighter Safety Act;

C. Enter a permanent injunction restraining and preventing Defendants from continuing to discriminate and retaliate against Plaintiff, from continuing to interfere with and infringe upon Plaintiff's rights under the First and Fourteenth Amendments of the U.S. Constitution, and from otherwise violating their obligations under the U.S. Constitution with respect to Plaintiff and all other persons similarly situated;

D. Enter a permanent injunction restraining and preventing Defendants from continuing to discriminate and retaliate against Plaintiff, from continuing to interfere with and infringe upon Plaintiff's rights under the Colorado Firefighter Safety Act, and from otherwise violating Defendants' obligations under the Colorado Firefighter Safety Act with respect to Plaintiff and all other persons similarly situated;

E. Order Defendants to rescind the retaliatory, discriminatory, and unlawful discipline issued to Plaintiff;

F. Order a complete and accurate accounting of all the compensation and relief to which Plaintiff is entitled;

G. Award Plaintiff monetary damages in the form of backpay compensation, including lost benefits that would have been paid by the District but for the unlawful termination of Plaintiff's employment, unpaid entitlements, plus prejudgment and post-judgment interest;

H. Award Plaintiff compensatory damages for the violations of Plaintiff's rights, his unlawful termination, and the harm to his reputation, humiliation, emotional and mental anguish, and for other financial and consequential harm and injuries he has suffered as a result of Defendants' violative conduct;

I. Award Plaintiff punitive damages to redress the knowing, willful, wanton, reckless, and bad faith nature of Defendants' violation of Plaintiff's Constitutional rights;

J. Award Plaintiff punitive damages to redress the knowing, willful, wanton, reckless, and bad faith nature of Defendants' violation of the Colorado Firefighter Safety Act;

K. Order Defendants to reinstate Plaintiff to his former position;

L. Order Defendants to provide notice to all employees of the District that the termination of Plaintiff's employment violated the Colorado Firefighter Safety Act and the Constitution, and that Defendants will not violate the Colorado Firefighter Safety Act.

M. Award reasonable attorneys' fees and costs to Plaintiff; and

N. Grant all other relief that the Court deems just and appropriate.

Respectfully submitted,

/s/ Naomi Y. Perera

Naomi Y. Perera
Kelman Buescher Firm
600 Grant Street, Suite 450
Denver, Colorado 80203

Counsel for the Plaintiff

Arthur Traynor
Jamie Eisner
Mooney, Green, Saindon, Murphy & Welch, P.C.
1920 L Street NW, Suite 400
Washington, DC 20036
**application for pro hac vice forthcoming*

Plaintiff's Address:

Benjamin Carter
1960 Bellaire Street
Broomfield, CO 80020

JS 44 (Rev. 04/21)

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
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
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)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

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

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

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- 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.
 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under 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.

Attachment to Civil Cover Sheet

Section I. (c)

Arthur Traynor / Jamie Eisner
Mooney, Green, Saindon, Murphy & Welch, P.C.
1920 L Street NW, Ste. 400
Washington, DC 20036

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: