

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRAD CUMMINGS, as Personal Representative
of the ESTATE OF JIMMY CHRIS CUMMINGS, Deceased,
BRAD CUMMINGS, as Personal Representative
of the ESTATE OF LINDA JANE CUMMINGS, Deceased,
and GREGORY GREENHAW, as Personal Representative
of the ESTATE OF BETTY LOU GREENHAW, Deceased,

Plaintiffs,

Case No.: 1:23-cv-00893

v.

THE UNITED STATES OF AMERICA,

Defendant.

_____ /

COMPLAINT

Plaintiffs, BRAD CUMMINGS, as Personal Representative of the ESTATE OF JIMMY CHRIS CUMMINGS, Deceased, BRAD CUMMINGS, as Personal Representative of the ESTATE OF LINDA JANE CUMMINGS, Deceased, and GREGORY GREENHAW, as Personal Representative of the ESTATE OF BETTY LOU GREENHAW, Deceased, (collectively referred to as “Plaintiffs”) by and through the undersigned attorneys, Law Offices of David M. Houliston (David M. Houliston) and Clark, Fountain, La Vista, Littky-Rubin & Whitman (Mark W. Clark and Daniel D. Walker), hereby sue Defendant, THE UNITED STATES OF AMERICA (“Defendant”), and allege:

PARTIES JURISDICTION AND VENUE

1. This wrongful death action arises under the Federal Tort Claims Act, 28 U.S.C. Sections 2671 through 2680 as the underlying fire and flood were caused by the negligent acts and omissions of the U.S. Forest Service, a federal agency within the U.S. Department of Agriculture

and was caused by the negligent acts and omissions of U.S. Forest Service employees while acting within the scope of their employment or office. As such, this Court is vested with exclusive jurisdiction under 28 U.S.C. Section 1346(b).

2. This is a wrongful death action against Defendant, THE UNITED STATES OF AMERICA, for money damages for injury, loss of property, personal injury and wrongful death caused by the negligent or wrongful acts or omissions of government employees of the U.S. Forest Service while acting within the scope of their office or employment, under circumstances where the Defendant, if a private person, would be liable to Plaintiffs in accordance with the law of the State of New Mexico, the place where the act or omission occurred.

3. Plaintiffs exhausted their administrative remedies, per 28 U.S.C. § 2675(a), as Plaintiffs timely submitted their claims to the relevant federal agency and the agency failed to act on Plaintiffs' administrative claims within six months of presentment. Plaintiffs' claims are therefore ripe and justiciable.

4. The discretionary function exception to the Federal Tort Claims Act does not apply because the conduct at issue violated federal statute, regulation, or policy and the U.S. Forest Service had no rightful option but to adhere to the directives.

5. In addition, to the extent the U.S. Forest Service retained any discretion in its decision making in this case, that discretion was not made under or subject to policy analysis. Because it does not include policy analysis, the failure to warn in this instance, is not subject to the discretionary function exception to the Federal Tort Claims Act.

6. Plaintiff, BRAD CUMMINGS, is the duly appointed Personal Representative under the Wrongful Death Act, NMSA § 41-2-1, *et. seq.*, in the proceeding on behalf of the

ESTATE OF JIMMY CHRIS CUMMINGS, Deceased. BRAD CUMMINGS is a resident of Lubbock, Texas.

7. Plaintiff, BRAD CUMMINGS, is the duly appointed Personal Representative under the Wrongful Death Act, NMSA § 41-2-1, *et. seq.*, in the proceeding on behalf of the ESTATE OF LINDA JANE CUMMINGS, Deceased. BRAD CUMMINGS is a resident of Lubbock, Texas.

8. Plaintiff, GREGORY GREENHAW, is the duly appointed Personal Representative under the Wrongful Death Act, NMSA § 41-2-1, *et. seq.*, in the proceeding on behalf of the ESATE OF BETTY LOU GREENHAW, Deceased. GREGORY GREENHAW is a resident of Lubbock, Texas.

9. Plaintiffs seek all damages recoverable under federal law, the Federal Tort Claims Act, 28 U.S.C. Sections 2671 through 2680 and the New Mexico Wrongful Death Act, NMSA § 41-2-1, *et seq.*

10. The events which gave rise to these causes of action occurred in New Mexico. Venue, therefore, is proper in the United States District Court for the District of New Mexico.

RELEVANT FACTS

11. On April 6, 2022, the U.S. Forest Service started a prescribed burn in the Santa Fe National Forest Pecos-Las Vegas Ranger District in New Mexico.

12. The U.S. Forest Service was operating without adequate data and information regarding wind conditions, drought conditions, and fuel conditions and ignored the data that was available to them.

13. Within hours, the U.S. Forest Service burn boss declared the prescribed burn a wildfire as they had lost control of the prescribed burn.

14. The fire has since become known as the Hermit's Peak/Calf Canyon Wildfire (the "Fire") and is the largest wildfire in New Mexico history.

15. The Fire caused by the negligence of the U.S. Forest Service has destroyed land, personal property and was the direct and proximate cause of the loss of life which gave rise to this case.

16. The Fire caused by the U.S. Forest Service created a "burn scar" in the affected areas which resulted in the loss of vegetative cover and loss of soil integrity which caused life-threatening flash floods.

17. On July 21, 2022, a flash flood resulting from the Hermit's Peak/Calf Canyon Fire "burn scar," destroyed a cabin that was occupied by Betty Lou Greenhaw, Linda Jane Cummings, and Jimmy Chris Cummings ("Decedents").

18. All three individuals were killed as a result of the flood ("Incident").

19. On March 7, 2023, the U.S. Department of Agriculture, which administers claims against the U.S. Forest Service, confirmed receipt of Plaintiffs' signed SF-95 forms which placed them on notice of the claims for property damage and wrongful death which gave rise to this lawsuit.

20. To date, neither the U.S. Department of Agriculture nor the Office of General Counsel have provided either a denial or settlement offer to Plaintiffs' claims.

21. The agency's failure to provide a settlement offer or denial after six months of submission of the claims may be treated as a denial for the purposes of filing a lawsuit under the Federal Tort Claims Act, 28 U.S.C. § 2675(a).

22. Defendant is liable in tort for injuries, including death, pursuant to 28 U.S.C. Sections 1346(b) and 2671 through 2680.

23. Defendant is liable for the negligent acts and omissions of its agents and employees, including the U.S. Forest Service, a division of the U.S. Department of Agriculture.

24. Defendant admitted fault and liability for the Hermit's Peak/Calf Canyon Fire and the injuries which occurred as a result.¹ See below excerpts² from the Hermit's Peak/Calf Canyon Fire Assistance Act:

(8) the U.S. Forest Service has assumed responsibility for the Hermit's Peak/Calf Canyon Fire;

(10) the United States should compensate the victims of the Hermit's Peak/Calf Canyon Fire.

(b) PURPOSES.—The purposes of this Act are—

(1) to compensate victims of the Hermit's Peak/Calf Canyon Fire, for injuries resulting from the fire; and

25. The Hermit's Peak/Calf Canyon Fire Assistance Act also explicitly allows for recovery against the United States for damages caused as a result of the Hermit's Peak/Calf Canyon Fire by filing a claim and bringing an action under the Federal Tort Claims Act. See below excerpt³:

¹ See Pub. L. No. 117-180, 136 Stat. 2168, Hermit's Peak/Calf Canyon Fire Assistance Act.

² *Id.* at Sec. 102 (a)(8), (a)(10), and (b)(1).

³ *Id.* at Sec. 102 (d)(h)(1)(A)-(C).

(1) IN GENERAL.—An injured person may elect to seek compensation from the United States for 1 or more injuries resulting from the Hermit’s Peak/Calf Canyon Fire by—
(A) submitting a claim under this Act;
(B) filing a claim or bringing a civil action under chapter 171 of title 28, United States Code (commonly known as the “Federal Tort Claims Act”); or
(C) bringing an authorized civil action under any other provision of law.

**COUNT I – BRAD CUMMINGS’ CLAIM FOR RELIEF FOR
NEGLIGENCE/WRONGFUL DEATH PURSUANT TO
THE FEDERAL TORT CLAIMS ACT, 28 U.S.C. SECTIONS 1346(b), 2671-2680
AGAINST THE UNITED STATES OF AMERICA**

26. Paragraphs one (1) through twenty-five (25) are realleged and incorporated as if fully restated herein.

27. Defendant, through the U.S. Forest Service owed a duty to the public, including Plaintiffs, to use reasonable care and to follow mandated directives in the planning, monitoring and control of prescribed burns, and to use reasonable care in the response to prescribed burns which become wildfires, including those which were caused as result of Defendant’s negligence.

28. Defendant owed a duty to the public following the Hermit’s Peak/Calf Canyon Fire, and to provide adequate warnings of the dangers of life-threatening flash flooding as a result of the burn scar of the Fire.

29. The deaths of Jimmy Chris Cummings occurred as a direct and proximate result of the Hermit’s Peak/Calf Canyon Fire which caused a burn scar and deadly flash floods.

30. Defendant, through the U.S. Forest Service and its agents and employees, was negligent in the following ways:

- a. Failing to follow mandated directives in the planning of prescribed burns.

- b. Failing to follow mandated directives in the lighting of prescribed burns.
- c. Failing to follow mandated directives in the management of prescribed burns.
- d. Negligently lighting a prescribed burn under conditions which Defendant knew or should have known would result in a wildfire.
- e. Negligently creating a wildfire by failing to follow mandated directives in the lighting of prescribed burns.
- f. Failing to follow specific standards mandated in the prescribed fire plan.
- g. Failing to conduct burn operations in accordance with the prescribed burn plan.
- h. Failing to follow mandated directives for response to prescribed burns that become wildfires.
- i. Failing to follow mandated directives in the management of prescribed burn created wildfires.
- j. Failing to follow mandated directives to put in place barriers or other protective systems following the damage to the land in the Hermit's Peak/Calf Canyon burn scar.
- k. Failing to close roads and prevent access to areas at risk of life-threatening flooding.
- l. Failing to warn Decedents regarding the dangers caused by the Hermit's Peak/Calf Canyon Fire.
- m. Failing to provide adequate warnings to Decedents regarding the dangers caused by the Hermit's Peak/Calf Canyon Fire.
- n. Failing to warn Decedents regarding the dangers of flash floods in the area where the Incident occurred.

- o. Failing to provide adequate warnings to Decedents regarding the dangers of potential flash floods in the area.
- p. Other negligence to be discovered.

31. As a direct and proximate result of the negligence of the United States of America, through the acts and omission of the U.S. Forest Service agents and employees, Jimmy Chris Cummings suffered a violent, painful and gruesome death by drowning in a flash flood caused by the Hermit's Peak/Calf Canyon Fire.

WHEREFORE, Plaintiff, BRAD CUMMINGS, as Personal Representative of the ESTATE OF JIMMY CHRIS CUMMINGS, Deceased, prays for judgement against Defendant, THE UNITED STATES OF AMERICA, as follows:

1. That judgment be entered in favor of Plaintiff and against Defendant for all damages allowable under federal or New Mexico law, including the New Mexico Wrongful Death Act, NMSA § 41-2-1, *et. seq*;
2. That judgment be entered in favor of Plaintiff and against Defendant for compensatory damages for the pain, suffering and death of Jimmy Chris Cummings that resulted from the negligence of Defendant's employees and agents;
3. That judgment be entered in favor of Plaintiff and against Defendant for compensatory damages for funeral, burial and other costs pertaining to the death of Jimmy Chris Cummings;
4. That Plaintiff be awarded his costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, or pursuant to any other applicable law/equity;
5. That such other relief be provided as this Court deems just and proper.

**COUNT II – BRAD CUMMINGS’ CLAIM FOR RELIEF FOR
NEGLIGENCE/WRONGFUL DEATH PURSUANT TO
THE FEDERAL TORT CLAIMS ACT, 28 U.S.C. SECTIONS 1346(b), 2671-2680
AGAINST THE UNITED STATES OF AMERICA**

32. Paragraphs one (1) through twenty-five (25) are realleged and incorporated as if fully restated herein.

33. Defendant, through the U.S. Forest Service, owed a duty to the public, including Plaintiffs, to use reasonable care and to follow mandated directives in the planning, monitoring, and control of prescribed burns, and to use reasonable care in the response to prescribed burns which become wildfires, including those which were caused as result of Defendant’s negligence.

34. Defendant owed a duty to the public following the Hermit’s Peak/Calf Canyon Fire, and to provide adequate warnings of the dangers of life-threatening flash flooding as a result of the burn scar of the Fire.

35. The death of Linda Jane Cummings occurred as a direct and proximate result of the Hermit’s Peak/Calf Canyon Fire which caused a burn scar and deadly flash floods.

36. Defendant, through the U.S. Forest Service and its agents and employees, was negligent in the following ways:

- a. Failing to follow mandated directives in the planning of prescribed burns.
- b. Failing to follow mandated directives in the lighting of prescribed burns.
- c. Failing to follow mandated directives in the management of prescribed burns.
- d. Negligently lighting a prescribed burn under conditions which Defendant knew or should have known would result in a wildfire.
- e. Negligently creating a wildfire by failing to follow mandated directives in the lighting of prescribed burns.

- f. Failing to follow specific standards mandated in the prescribed fire plan.
- g. Failing to conduct burn operations in accordance with the prescribed burn plan.
- h. Failing to follow mandated directives for response to prescribed burns that become wildfires.
- i. Failing to follow mandated directives in the management of prescribed burn created wildfires.
- j. Failing to follow mandated directives to put in place barriers or other protective systems following the damage to the land in the Hermit's Peak/Calf Canyon burn scar.
- k. Failing to close roads and prevent access to areas at risk of life-threatening flooding.
- l. Failing to warn Decedents regarding the dangers caused by the Hermit's Peak/Calf Canyon Fire.
- m. Failing to provide adequate warnings to Decedents regarding the dangers caused by the Hermit's Peak/Calf Canyon Fire.
- n. Failing to warn Decedents regarding the dangers of flash floods in the area where the Incident occurred.
- o. Failing to provide adequate warnings to Decedents regarding the dangers of potential flash floods in the area.
- p. Other negligence to be discovered.

37. As a direct and proximate result of the negligence of the United States of America, through the acts and omission of the U.S. Forest Service agents and employees, Linda Jane

Cummings suffered a violent, painful, and gruesome death by drowning in a flash flood caused by the Hermit's Peak/Calf Canyon Fire.

WHEREFORE, Plaintiff, BRAD CUMMINGS, as Personal Representative of the ESTATE OF LINDA JANE CUMMINGS, Deceased, prays for judgement against Defendant, THE UNITED STATES OF AMERICA as follows:

1. That judgment be entered in favor of Plaintiff and against Defendant for all damages allowable under federal or New Mexico law, including the New Mexico Wrongful Death Act, NMSA § 41-2-1, *et. seq*;
2. That judgment be entered in favor of Plaintiff and against Defendant for compensatory damages for the pain, suffering and death of Linda Jane Cummings which resulted from the negligence of Defendant's employees and agents;
3. That judgement be entered in favor of Plaintiff and against Defendant for compensatory damages for funeral, burial and other costs pertaining to the death of Linda Jane Cummings;
4. That Plaintiff be awarded his costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, or pursuant to any other applicable law/equity;
5. That such other relief be provided as this Court deems just and proper.

**COUNT III – GREGORY GREENHAW'S CLAIM FOR RELIEF FOR
NEGLIGENCE/WRONGFUL DEATH PURSUANT TO
THE FEDERAL TORT CLAIMS ACT, 28 U.S.C. SECTIONS 1346(b), 2671-2680
AGAINST THE UNITED STATES OF AMERICA**

38. Paragraphs one (1) through twenty-five (25) are realleged and incorporated as if fully restated herein.

39. Defendant, through the U.S. Forest Service, owed a duty to the public, including Plaintiffs, to use reasonable care and to follow mandated directives in the planning, monitoring and control of prescribed burns, and to use reasonable care in the response to prescribed burns which become wildfires, including those which were caused as result of Defendant's negligence.

40. Defendant owed a duty to the public following the Hermit's Peak/Calf Canyon Fire, and to provide adequate warnings of the dangers of life-threatening flash flooding as a result of the burn scar of the Fire.

41. The death of Betty Lou Greenhaw occurred as a direct and proximate result of the Hermit's Peak/Calf Canyon Fire burn scar and deadly flash floods.

42. The U.S. Forest Service, through its agents and employees, was negligent in the following ways:

- a. Failing to follow mandated directives in the planning of prescribed burns.
- b. Failing to follow mandated directives in the lighting of prescribed burns.
- c. Failing to follow mandated directives in the management of prescribed burns.
- d. Negligently lighting a prescribed burn under conditions which Defendant knew or should have known would result in a wildfire.
- e. Negligently creating a wildfire by failing to follow mandated directives in the lighting of prescribed burns.
- f. Failing to follow specific standards mandated in the prescribed fire plan.
- g. Failing to conduct burn operations in accordance with the prescribed burn plan.
- h. Failing to follow mandated directives for response to prescribed burns that become wildfires.

- i. Failing to follow mandated directives in the management of prescribed burn created wildfires.
- j. Failing to follow mandated directives to put in place barriers or other protective systems following the damage to the land in the Hermit's Peak/Calf Canyon burn scar.
- k. Failing to close roads and prevent access to areas at risk of life-threatening flooding.
- l. Failing to warn Decedents regarding the dangers caused by the Hermit's Peak/Calf Canyon Fire.
- m. Failing to provide adequate warnings to Decedents regarding the dangers caused by the Hermit's Peak/Calf Canyon Fire.
- n. Failing to warn Decedents regarding the dangers of flash floods in the area where the Incident occurred.
- o. Failing to provide adequate warnings to Decedents regarding the dangers of potential flash floods in the area.
- p. Other negligence to be discovered.

43. As a direct and proximate result of the negligence of the United States of America, through the acts and omission of the U.S. Forest Service employees, Betty Lou Greenhaw, suffered a violent, painful and gruesome death by drowning in a flash flood caused by the Hermit's Peak/Calf Canyon Fire.

WHEREFORE, Plaintiff, GREGORY GREENHAW, as Personal Representative of the ESTATE OF BETTY LOU GREENHAW, Deceased, prays for judgement against Defendant, THE UNITED STATES OF AMERICA as follows:

1. That judgment be entered in favor of Plaintiff and against Defendant for all damages allowable under federal or New Mexico law, including the New Mexico Wrongful Death Act, NMSA § 41-2-1, *et. seq.*;
2. That judgment be entered in favor of Plaintiff and against Defendant for compensatory damages for the pain, suffering and death of Betty Lou Greenhaw that resulted from the negligence of Defendant's employees and agents;
3. That judgement be entered in favor of Plaintiff and against Defendant for compensatory damages for funeral, burial, and other costs pertaining to the death of Betty Lou Greenhaw;
4. That Plaintiff be awarded his costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, or pursuant to any other applicable law/equity;
5. That such other relief be provided as this Court deems just and proper.

**COUNT IV – GREGORY GREENHAW'S CLAIM FOR RELIEF FOR
PROPERTY DAMAGE PURSUANT TO
THE FEDERAL TORT CLAIMS ACT, 28 U.S.C. SECTIONS 1346(b), 2671-2680
AGAINST THE UNITED STATES OF AMERICA**

44. Paragraphs one (1) through twenty-five (25) are realleged and incorporated as if fully restated herein.

45. Defendant, through the U.S. Forest Service, owed a duty to the public, including Plaintiffs, to use reasonable care and to follow mandated directives in the planning, monitoring and control of prescribed burns, and to use reasonable care in the response to prescribed burns which become wildfires, including those which were caused as result of Defendant's negligence.

46. Defendant owed a duty to the public following the Hermit's Peak/Calf Canyon Fire, and to provide adequate warnings of the dangers of life-threatening flash flooding as a result of the burn scar of the Fire.

47. Betty Lou Greenhaw, deceased, was the owner of the cabin which was destroyed as a direct and proximate result of the Hermit's Peak/Calf Canyon Fire which caused a burn scar and deadly flash floods.

48. Defendant, through the U.S. Forest Service and its agents and employees, was negligent in the following ways:

- a. Failing to follow mandated directives in the planning of prescribed burns.
- b. Failing to follow mandated directives in the lighting of prescribed burns.
- c. Failing to follow mandated directives in the management of prescribed burns.
- d. Negligently lighting a prescribed burn under conditions which Defendant knew or should have known would result in a wildfire.
- e. Negligently creating a wildfire by failing to follow mandated directives in the lighting of prescribed burns.
- f. Failing to follow specific standards mandated in the prescribed fire plan.
- g. Failing to conduct burn operations in accordance with the prescribed burn plan.
- h. Failing to follow mandated directives for response to prescribed burns that become wildfires.
- i. Failing to follow mandated directives in the management of prescribed burn created wildfires.

- j. Failing to follow mandated directives to put in place barriers or other protective systems following the damage to the land in the Hermit's Peak/Calf Canyon burn scar.
- k. Failing to warn Decedents regarding the dangers caused by the Hermit's Peak/Calf Canyon Fire.
- l. Failing to provide adequate warnings to Decedents regarding the dangers caused by the Hermit's Peak/Calf Canyon Fire
- m. Failing to warn Decedents regarding the dangers of flash floods in the area where the Incident occurred.
- n. Failing to provide adequate warnings to Decedents regarding the dangers of potential flash floods in the area.
- o. Other negligence to be discovered.

49. As a direct and proximate result of the negligence of the United States of America, through the acts and omission of the U.S. Forest Service agents and employees, Betty Greenhaw's cabin was destroyed in a flash flood caused by the Hermit's Peak/Calf Canyon Fire.

WHEREFORE, Plaintiff, GREGORY GREENHAW, as Personal Representative of the ESTATE OF BETTY LOU GREENHAW, Deceased, prays for judgement against Defendant, THE UNITED STATES OF AMERICA as follows:

1. That judgment be entered in favor of Plaintiff and against Defendant for all damages allowable under federal or New Mexico law;
2. That judgement be entered in favor of Plaintiff and against Defendant for property damage caused by the destruction of the subject cabin;

3. That Plaintiff be awarded his costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, or pursuant to any other applicable law/equity;
4. That such other relief be provided as this Court deems just and proper.

Dated: October 11, 2023

Respectfully submitted,

LAW OFFICES OF DAVID M. HOULISTON

/s/ David M. Houliston

David M. Houliston, Esq.
4801 Lang Avenue NE, Suite 205
Albuquerque, NM 87109
Phone: (505) 247-1223
Fax: (505) 214-5204
david@houlistonlaw.com

and

/s/ Mark W. Clark

Mark W. Clark, Esq.*
Florida Bar No. 358339

/s/ Daniel D. Walker

Daniel D. Walker, Esq.*
Florida Bar No. 1018257
CLARK, FOUNTAIN, LA VISTA,
LITTKY-RUBIN & WHITMAN LLP
3601 PGA Blvd., Suite 300
Palm Beach Gardens, Florida 33410
Phone: (561) 899-2100
Fax: (561) 832-3580
Email: mclark@clarkfountain.com
dwalker@clarkfountain.com
lharp@clarkfountain.com

Attorneys for Plaintiffs

**Applications for Admission Pro Hac Vice
Pursuant to Local Rule 83.3 are being prepared.*

REQUEST FOR ADVISORY JURY

Acknowledging that they are not entitled to a jury trial under the claims alleged herein, Plaintiffs respectfully moves the Court to impanel an advisory jury in the exercise of its discretion under Rule 39(c) of the Federal Rules of Civil Procedure.

Dated: October 11, 2023

/s/ David M. Houliston

David M. Houliston, Esq.
LAW OFFICES OF DAVID M. HOULISTON
4801 Lang Avenue NE, Suite 205
Albuquerque, NM 87109
Phone: (505) 247-1223
Fax: (505) 214-5204
david@houlistonlaw.com

and

Mark W. Clark

Mark W. Clark, Esq.*
Florida Bar No. 358339

Daniel D. Walker

Daniel D. Walker, Esq.*
Florida Bar No. 1018257
CLARK, FOUNTAIN, LA VISTA,
LITTKY-RUBIN & WHITMAN LLP
3601 PGA Blvd., Suite 300
Palm Beach Gardens, Florida 33410
PH: (561) 899-2100
Fax: (561) 832-3580
Email: mclark@clarkfountain.com
dwalker@clarkfountain.com
lharper@clarkfountain.com

Attorneys for Plaintiffs

**Applications for Admission Pro Hac Vice
Pursuant to Local Rule 83.3 are being prepared.*

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, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, etc.

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