

JMS

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JUN 17 2013

at 2 o'clock and 0 min M.  
SUE BEITIA, CLERK

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 ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

CV13 00301 JMS KSC

DEMOCRATIC PARTY OF HAWAII,

CIVIL NO. \_\_\_\_\_

Plaintiff,

COMPLAINT; SUMMONS

vs.

SCOTT T. NAGO, in his official  
capacity as Chief Election  
Officer of the State of Hawai'i,

Defendant.

## **COMPLAINT**

Plaintiff DEMOCRATIC PARTY OF HAWAII ("DPH"), by and through its attorneys, Gill, Zukeran & Sgan, alleges and avers as follows:

### **SUMMARY OF CASE**

1. This action is brought to vindicate Plaintiff DPH's associational freedoms guaranteed by the First Amendment to the United States Constitution. *See California Democratic Party v. Jones*, 530 U.S. 567, 120 S.Ct. 2402 (2000).

2. This action seeks declaratory and injunctive relief against enforcement of portions of the Hawai'i State Constitution and Hawai'i Revised Statutes pertinent to primary elections, to the extent that such laws unconstitutionally constrain the DPH in its nomination of candidates for public elective offices.

3. This action is brought pursuant to 42 U.S.C. § 1983, and the First and Fourteenth Amendments to the United States Constitution.

4. The method of candidate selection to which the DPH is entitled

by right under the Constitution of the United States, as set forth below, is in real and present conflict with certain provisions of the Constitution and certain statutes of the State of Hawai'i. This conflict justifies the issuance of a declaratory judgment as to DPH's rights, and an injunction that prevents further violation of such rights.

### **JURISDICTION AND VENUE**

5. The United States District Court for the District of Hawai'i has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343 (a)(3)-(4), 2201 and 2202, and 42 U.S.C. § 1983.

6. Venue is appropriate in the District of Hawai'i pursuant to 28 U.S.C. § 1391.

7. Plaintiff DPH maintains its principal place of business at its state headquarters at 404 Ward Avenue, Honolulu, Hawai'i, 96814, within the District of Hawai'i.

8. Defendant Scott T. Nago, in his capacity as Chief Election

Officer of the Hawai'i Office of Elections, discharges his responsibilities, including supervision of personnel and elections, from an office at 802 Lehua Avenue, Pearl City, Hawai'i, 96782, within the District of Hawai'i.

### **PARTIES**

#### **Plaintiff**

9. Plaintiff DPH is a political party and a nonprofit corporation in the State of Hawai'i.

10. DPH can sue, complain, and defend in its corporate name pursuant to Rule 17(b) of the Federal Rules of Civil Procedure and Hawai'i Revised Statutes ("HRS") § 414-42 (1).

11. DPH brings this action on its own behalf.

12. DPH is a political party within the meaning of HRS §§ 11-1 and 11-61, and is therefore a political party within the meaning of HRS, Title 2, Elections.

13. DPH is a political party that is qualified for "election ballot purposes" within the meaning of HRS § 11-62, and, as a result of that qualification or other law, is subject to the requirements of the various Hawai`i statutes regulating elections.

14. DPH is subject to the Hawai`i primary elections law, HRS Chapter 12.

15. The official positions and policies of the DPH are codified in the Constitution of the Democratic Party of Hawai`i and in resolutions that it enacts at its conventions from time to time.

16. The Constitution of the Democratic Party of Hawai`i, Article I, Section 1, in language adopted by the Convention of the party on May 27, 2006, states in pertinent part:

The Democratic Party of Hawai`i believes that its primary election, a state-imposed mandatory nomination procedure, ought to be open to participation of only such persons as are willing to declare their affiliation with and support for the Party, either through public registration to vote, or through maintenance of membership in the Party. The Party further

believes that the current Constitution and laws of the State of Hawai`i, by maintaining secrecy of affiliation, and by compelling the Party to admit to its nomination procedures those who may have no interest in, or actually oppose the interests, values, and platform of the Party, do violence to the Party's associational freedoms and the individual freedoms of its membership to define their own political views, guaranteed under the Constitution of the United States. The State Central Committee and Party Chairperson shall take appropriate action to correct this injustice.

17. The Constitution of the Democratic Party of Hawai`i, Article I, Section 1 also provides that the DPH is open to all persons who want to support DPH, who wish to be known as Democrats, and who live in Hawai`i.

**Defendant**

18. On information and belief, Defendant Scott T. Nago is the duly appointed Chief Election Officer of the State of Hawai`i and the administrator of the State of Hawai`i Office of Elections.

19. Defendant Nago is sued solely in his official capacity, and no

personal wrongdoing is asserted or implied in this Complaint.

20. Pursuant to HRS § 11-2, the Chief Election Officer supervises all state elections and has actual authority and control over the activities of the Hawai`i Office of Elections, established by HRS § 11-1.5, and the elections-related activities of any county personnel to whom he may have delegated elections-related responsibility.

21. The Chief Election Officer of the Hawai`i Office of Elections is the official primarily and directly responsible for interpreting and implementing Hawai`i law regarding elections. Among other powers, pursuant to HRS § 11-2 (e), the Chief Election Officer may adopt rules governing elections in accordance with HRS Chapter 91, the Hawai`i Administrative Procedure Act. The Chief Election Officer is the Hawai`i official who can most directly and efficiently effectuate any order of this Court.

**IDENTIFICATION OF AND EFFECT OF STATE LAW**

22. Hawai'i's Constitution, at Article II, Section 4, states:

The legislature shall provide for the registration of voters and for absentee voting and shall prescribe the method of voting at all elections. Secrecy of voting shall be preserved; provided that no person shall be required to declare a party preference or non-partisanship as a condition of voting in any primary or special primary election. Secrecy of voting and choice of political party affiliation or nonpartisanship shall be preserved. (Emphasis added.)

23. An effect of Article II, Section 4, of the Hawai'i Constitution is that the State of Hawai'i may neither inquire about, nor maintain any lists showing, any voter's party affiliation or preference. Therefore, Hawai'i cannot manage any state-run primary election system that would restrict participation in a party nomination process to members of a political party, or, in the alternative, to members of, plus non-member affiliates of, a party.

24. An effect of Article II, Section 4 of the Hawai'i Constitution, considered with the mandatory and exclusive nature of Hawai'i's primary election process provided by statute, is to frustrate DPH's desire to



nominate its candidates with the participation only of its members and affiliates.

25. The United States Supreme Court has recognized that "the First Amendment protects 'the freedom to join together to further common political beliefs,' . . . which 'necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only.'" California Democratic Party v. Jones, 530 U.S. 567, 574, 120 S.Ct. 2402, 2408 (2000) (internal citations omitted).

26. "In no area is the political association's right to exclude more important than in the process of selecting its nominee." California Democratic Party, *supra*, 530 U.S. at 575.

27. The selection of standard-bearer nominees for public office, to contest the general election, is the process by which political parties define their goals, objectives, and programs, and it is the key method by which they project their philosophy into the public arena. Id. at 575.

28. HRS § 12-1 provides, "All candidates for elective office, except as provided in section 14-21, shall be nominated in accordance with this chapter and not otherwise." (Emphasis added.)

29. HRS § 14-21 provides that a political party may select its presidential electors, but not candidates for any other office, by "party or group convention." DPH does not challenge HRS § 14-21 in this Complaint.

30. An effect of HRS § 12-1 is to require that DPH use only the nomination system provided in HRS chapter 12, and no other system, to nominate its candidates for all offices, except President of the United States.

31. HRS § 12-2 states: "No person shall be a candidate for any general or special general election unless the person has been nominated in the immediately preceding primary or special primary." (Emphasis added.)

32. An effect of HRS § 12-2, is to require that DPH use Hawai'i's primary election system, and no other system, to nominate its candidates

for a general election.

33. HRS § 12-31 states in pertinent part:

No person eligible to vote in any primary or special primary election shall be required to state a party preference or nonpartisanship as a condition of voting. Each voter shall be issued the primary or special primary ballot for each party and the nonpartisan primary or special primary ballot. A voter shall be entitled to vote only for candidates of one party or only for nonpartisan candidates. If the primary or special primary ballot is marked contrary to this paragraph, the ballot shall not be counted. (Emphasis added.)

34. An effect of HRS § 12-31 is to allow any and all registered voters in Hawai'i to participate in the nomination of the candidates of the DPH.

35. An effect of HRS § 12-31 is to allow registered voters with no affiliation with the DPH to participate in the nomination of the candidates of the DPH.

36. An effect of HRS § 12-31 is to prevent the DPH from knowing, before the primary election, who will participate in the nomination of its

candidates, or, after the election, learning who has in fact participated in the nomination of its candidates.

37. An effect of HRS § 12-31 is to prevent the DPH from exerting any control over who may participate in the nomination of its candidates.

38. A potential effect of HRS § 12-31 is that the active, earnest, and faithful members of the DPH may be substantially outnumbered in their own nomination process, by persons unknown to DPH.

39. HRS § 12-31 further provides that: "In any primary or special primary election in the year 1979 and thereafter, a voter shall be entitled to select and to vote the ballot of any one party or nonpartisan, regardless of which ballot the voter voted in any preceding primary or special primary election."

40. An effect of this portion of HRS § 12-31 is to permit persons with minimal or no commitment to the political goals of the DPH, who

have no interest in fulfilling the duties or obligations of membership in the DPH, who have no interest in affiliating with and deliberating with members of the DPH, who have no interest in contacting or being contacted by the DPH or its candidates, or who are not willing to be publicly identified as sharing the goals of the DPH, to participate in the DPH nomination process.

41. An effect of this portion of HRS § 12-31 is to permit persons who may have no sympathy for the political aims of the DPH, or may actively oppose it, to confound the DPH nomination process by crossing party lines to select either the weaker candidate, or the candidate who less fully exemplifies the values of the DPH, and cause that candidate to be the standard-bearer for the DPH in the general election, to the detriment of DPH; moreover, this crossover voting may occur *sua sponte* as a matter of individual voter preference, or as a *sub rosa* orchestrated campaign of interference directed by an opposing person or organization, or for that

matter, even as a publicly-orchestrated campaign of interference by a person or an organization.

42. Defendant Nago, in faithful discharge of his office, and in the absence of an injunction to the contrary, presently has no choice but to uphold, enforce, and implement the Hawai`i laws identified herein.

### **STATEMENT OF CLAIM**

43. Operating under color of Hawai`i's constitution and statutes governing primary election procedures, Defendant Nago necessarily discharges his duties and directs those under his control such that Hawai`i law infringes on DPH's First Amendment associational freedoms, as follows:

a. DPH is unconstitutionally compelled to associate with persons who influence the outcome of DPH's nominations, even though they: (1) may not be members of DPH; (2) may have no affiliation, however minute,

with the DPH; (3) may not sympathize with the political aims and goals of DPH; (4) may actually be hostile to goals and aims of DPH; and (5) cannot be known to the DPH either before or after the primary election;

b. DPH is unconstitutionally prohibited from defining the class or classes of persons eligible to participate in its nomination process;

c. DPH is unconstitutionally hindered in using its nomination process to resolve internal policy contests among DPH's members; and

d. DPH is unconstitutionally hindered in using its nomination process to select standard-bearer candidates to represent DPH in the general election.

44. The provisions of Hawai'i's constitution and statutes, discussed above, severely burden DPH's First Amendment rights under the United States Constitution.

45. No compelling state interest justifies the severe burden created

by Hawai`i's constitution and statutes.

46. Hawai`i's constitution and statutes, discussed above, are not narrowly tailored to protect any compelling state interest.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief.

1. That this Court enter declaratory judgment that Article II, Section 4 of the Hawai`i Constitution, and HRS §§ 12-1, 12-2, and 12-31, violate DPH's First Amendment rights and are unenforceable, to the extent they operate as set forth in paragraphs 43 through 46, in the Statement of Claim above; and for such other declaratory relief as may be just, proper, equitable, and appropriate in the circumstances.

2. That this Court enjoin Defendant Nago, in his capacity as Chief Election Officer of the Hawai`i Office of Elections, and that his successors in title or authority pursuant to statute, as amended, from enforcing the

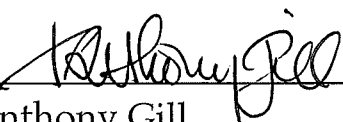


primary election laws, cited above, against DPH, in any manner violative of the rights declared in this matter, and that Plaintiff DPH be granted such other and further injunctive relief as may be just, proper, equitable, and appropriate under the facts of this case.

3. Plaintiff further prays for such other and further relief as may be just, proper, equitable, and appropriate, and for attorneys' fees and costs of suit as may be provided by law.

DATED: Honolulu, Hawai'i, June 17, 2013.

GILL, ZUKERAN & SGAN

By:   
T. Anthony Gill

Attorneys for Plaintiff  
Democratic Party of Hawai'i

HID 440 (Rev. 12/09) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

DEMOCRATIC PARTY OF HAWAII

*Plaintiff*

v.

SCOTT T. NAGO, in his official capacity as Chief  
Election Officer of the State of Hawai'i

*Defendant*

Civil Action No.

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* David M. Louie, Attorney General of the State of Hawai'i  
Department of the Attorney General  
State of Hawai'i  
425 Queen Street  
david.m.louie@hawaii.gov

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: June 17, 2013



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 \$ \_\_\_\_\_ 0 \_\_\_\_\_.

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:

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**

DEMOCRATIC PARTY OF HAWAII

ORIGINAL

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

T. ANTHONY GILL, GILL, ZUKERAN & SGAN  
707 RICHARDS STREET, SUITE 100, HONOLULU, HI 96813  
(808) 523-6777

**DEFENDANTS**

SCOTT T. NAGO, in his official capacity as Chief Election Officer of the State of Hawaii

County of Residence of First Listed Defendant **HONOLULU**  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

DEPARTMENT OF THE ATTORNEY GENERAL, STATE OF HAWAII  
425 QUEEN STREET, HONOLULU, HAWAII 96813

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

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 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                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C § 1983

Brief description of cause:

First Amendment Challenge to State of Hawaii Primary Election Laws

**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

JUNE 17, 2013

*T. Anthony Gill*

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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