

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

MEGAN WINFREY,)

Plaintiff,)

v.)

KEITH PIKETT, Former Fort Bend County)

Sheriff's Deputy, LACY ROGERS, Former)

San Jacinto County Sheriff, LENARD)

JOHNSON, Former San Jacinto County)

Sheriff's Deputy Chief, SAN JACINTO)

COUNTY, and DAVID CLARK, San Jacinto)

County Sheriff, in his official capacity only,)

Defendants.)

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, MEGAN WINFREY, by and through her attorneys, Loevy & Loevy, hereby complains of Defendants KEITH PIKETT, Former Fort Bend County Sheriff's Deputy, LACY ROGERS, Former San Jacinto County Sheriff, LENARD JOHNSON, Former San Jacinto County Sheriff's Deputy Chief, SAN JACINTO COUNTY, and DAVID CLARK, San Jacinto County Sheriff, in his official capacity only, and states as follows:

Introduction

1. Plaintiff, Megan Winfrey, was wrongfully charged with and convicted of capital murder and conspiracy to commit capital murder on the basis of knowingly contrived dog scent lineups, false affidavits, and coerced false testimony.

2. The contrived dog scent lineups, which were developed by Defendant Keith Pikett, epitomized the worst of junk science. Defendant Pikett developed the

dog scent lineups without any training, without any mechanism for testing their scientific reliability or even for ensuring that the “scents” were not contaminated. In fact, the “dog scent lineups” conducted by Pikett were so preposterous that one expert who has viewed them asserted that “[i]f it was not for the fact that this is a serious matter, I could have been watching a comedy.”

3. Defendant Pikett made knowing efforts to secure a false identification of Plaintiff using his dogs, and these fabricated results from the dog scent lineups were used to obtain search and arrest warrants for Plaintiff and inculcate her in a murder that she did not commit.

4. In addition, in an attempt to ensure that Plaintiff was convicted despite her innocence, Defendants Lacy Rogers and Lenard Johnson fabricated evidence—including coerced false inculpatory testimony from a jailhouse informant—to corroborate the sham findings of the dog scent lineups.

5. Ultimately, the criminal case against Plaintiff fell apart. On February 27, 2013, the Texas Court of Criminal Appeals overturned Ms. Winfrey’s convictions and rendered acquittals for her on both charges. She was released from custody shortly thereafter, after spending approximately 6 years wrongfully incarcerated.

Jurisdiction and Venue

6. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiff’s rights as secured by the United States Constitution.

7. This court has jurisdiction of the federal claims pursuant to 28 U.S.C. § 1331 and the state law claims pursuant to 28 U.S.C. § 1367.

8. Venue is proper under 28 U.S.C. § 1391(b). All parties reside in this judicial district, and the events giving rise to the claims asserted herein occurred in this judicial district.

The Parties

9. Plaintiff Megan Winfrey is a 26 year-old resident of Texas. In 2004, at the time of the murder of which she was accused, Ms. Winfrey was a 16 year-old girl attending Coldspring High School. When she was arrested in 2007, Ms. Winfrey was 19 years old and a mother to her young daughter.

10. At all relevant times, Defendant Lenard Johnson was a law enforcement officer employed by the San Jacinto County Sheriff's Department and was acting within the scope of his employment and under color of law. Defendant Johnson is sued in his individual capacity.

11. At all relevant times, Defendant Lacy Rogers was the San Jacinto County Sheriff, was acting within the scope of his employment and under color of law, and was the final policymaking authority for the San Jacinto County Sheriff's Department. Defendant Rogers is sued in his individual capacity.

12. At all relevant times, Defendant Keith Pikett was a Deputy with the Fort Bend County Sheriff's Department and was acting within the scope of his employment and under color of law at all relevant times. Defendant Pikett is sued in his individual capacity.

13. Defendant David Clark is the Sheriff of San Jacinto County. He is sued in his official capacity only.

14. Defendant San Jacinto County is a county of the State of Texas.

The Murder

15. Murray Burr was a custodian at the high school that Megan Winfrey and her brother, Richard Winfrey, Jr., attended.

16. On or about August 7, 2004, the body of Burr was discovered inside his home. Burr had been beaten and stabbed to death.

17. At the time of Burr's murder, Plaintiff was only 16 years old and her brother was only 17 years old. Neither Plaintiff nor anyone else in her family had anything to do with this crime. She is completely innocent.

Defendants Fabricate Evidence to Inculpate Plaintiff

18. In the days following Burr's murder, Defendants Rogers and Johnson canvassed the neighborhood looking for potential witnesses. During this canvass, Defendants Rogers and Johnson learned that Plaintiff and her brother would visit Burr on occasion on their way to church on Sundays. Plaintiff and her family lived near Burr.

19. The day after Burr was found, Defendant Rogers visited Plaintiff, her brother, and their father at their home and asked them when was the last time that they were over at Burr's house. Richard Winfrey, Jr. stated that he did not remember but that he and his sister would visit Burr from time to time.

20. Upon request, Plaintiff voluntarily provided buccal swabs, a scent pad, and fingerprints to Defendants to assist them in their investigation.

21. Defendants learned no information indicating that Plaintiff, her brother, or her father had anything to do with Burr's murder, because they had nothing to do with it.

22. Instead of initiating a search for the perpetrator of this heinous crime, Defendants Rogers and Johnson simply decided that Plaintiff, her brother, and her father were the offenders. The Defendants actively ignored all evidence to the contrary, including DNA tests performed on evidence collected at the crime scene that excluded Plaintiff and her family as offenders.

23. Approximately two weeks after they approached Plaintiff, and having found no legitimate evidence that would inculpate her, the Defendants turned to Defendant Pikett and his dogs. The Defendants subjected Plaintiff to dog scent lineups on August 24, 2004.

Pikett's Fraudulent Dog Scent Lineups

24. In the early 1990s, Defendant Pikett developed a fraudulent investigative technique he coined "dog scent lineups" which supposedly connected suspects to crime scenes.

25. In this technique, a dog is introduced to a scent sample that has been collected from a crime scene or piece of evidence. After "getting" that scent, the dog is then presented with a series of paint cans containing pieces of gauze with scents on them ("scent pads"). The scent pads normally include one suspect who has been

asked to wipe his or her hands on the gauze and other, “filler” scents taken from individuals purportedly matching the gender and race of the suspect. Defendant Pikett carried around the “filler” scents in a duffel bag in his truck, but the scent pads from suspects were freshly obtained from the suspects.

26. In a dog scent lineup, Defendant Pikett would line up the paint cans containing the scent pads of the suspect and the fillers and instruct his dogs to sniff the cans to see if there was a “match” between a scent on one of the scent pads and the scent sample collected from the crime scene or piece of evidence. According to Defendant Pikett, his dogs would then communicate to him if the scent that it “got” the first time “matches” a scent in one of the containers. Pikett decided whether one of his dogs “alerted” to or “matched” a scent.

27. In reality, it is impossible to tell from videotapes of his dog scent lineups whether Defendant Pikett’s dogs alerted to any specific can or made any alert at all.

28. Without a doubt, these lineups epitomize the worst of junk science. Defendant Pikett developed the dog scent lineups without any training—he simply purchased bloodhound dogs and “trained” them to indicate when two human scents “matched.” Defendant Pikett never tested the dog scent lineups’ accuracy, nor did he establish a set of standards under which to conduct the lineups. Instead, Defendant Pikett has repeatedly lied under oath about his qualifications, his training, and the supposed infallibility of his dog identifications.

29. The fraudulent nature of Defendant Pikett's dog scent lineups was exposed well before Plaintiff was charged with and prosecuted for capital murder. Defendants Rogers and Johnson knew or should have known that Defendant Pikett was a fraud.

Defendants' Misconduct

30. To conduct the dog scent lineups in Plaintiff's case, Defendant Pikett took a "scent sample" from the victim's clothing and had his dogs compare this scent to six other scent samples in cans, including one from Plaintiff, who had readily complied with their request that she wipe her hands with a piece of gauze.

31. The dog scent lineups purportedly "confirmed" that Plaintiff's scent was on Burr's clothing. However, these results were manufactured by Defendant Pikett. For instance, Defendant Pikett used his ability to see inside the cans and identify which can contained the target suspect's scent pad rather than relying on his dogs to identify the can that contained a "matching" scent. Pikett cued his dogs by jerking on his dogs' leashes and strategically stopping as he walked his dogs by the cans in the scent lineup. Moreover, Pikett manipulated the lineups by using a fresh scent obtained from Plaintiff and older, "filler" scents that his dogs were accustomed to smelling because they were carried around in the same truck.

32. The "results" of Defendant Pikett's dog scent lineups were included in the search and arrest warrant affidavits for Megan Winfrey executed by Defendants Rogers and Johnson.

33. To provide additional “confirmation” of the dog scent lineups’ results, Defendant Pikett conducted what he described as a dog “drop trail.” That is, two dogs were allegedly provided with Plaintiff’s brother Richard’s scent outside the victim’s home. After several stops and re-starts, including portions of the “drop trail” where the two dogs were driven from one location to the next, the dogs—accompanied by Pikett—arrived at Plaintiff’s home, supposedly by having followed Richard’s scent.

34. Unfortunately for the Defendants, it was later discovered that the “drop trail” was conducted using the scent of another man named Christopher Hammond, who was not related to Plaintiff and did not live in Plaintiff’s home. There is no question that this “drop trail” was a sham on its face.

35. Once Defendant Pikett learned that the supposedly-inculpatory “drop trail” had actually been performed using another individual’s scent, he called the “drop trail” an “accident.”

36. Defendant Pikett wrote in his case report that the “drop trail” had been conducted using Christopher Hammond’s scent, not Richard Winfrey, Jr.’s scent. Approximately one day after the dog scent lineups and “drop trail” were conducted, Defendant Pikett provided a copy of his report to the Texas Ranger who was assisting Defendants Rogers and Johnson with the investigation, and the Ranger provided the report to Defendants Rogers and Johnson. The Texas Ranger also told Defendants Rogers and/or Johnson about the fact that Hammond’s scent was used in the “drop trail.”

37. Despite this knowledge, Defendant Rogers falsely wrote in his sworn affidavit for probable cause for a search warrant for Plaintiff's hair that the "drop trail" was conducted using Richard Winfrey, Jr.'s scent. Rogers executed this affidavit in January 2005, when no time exigency existed that would have explained the absence of accurate information.

38. Also despite the knowledge that it was Hammond's scent and not Richard Winfrey, Jr.'s scent used in the "drop trail," Defendant Johnson falsely wrote in his sworn affidavit for probable cause for Plaintiff's arrest that the "drop trail" was conducted using Richard Winfrey, Jr.'s scent. Johnson executed this affidavit in February 2007, when no time exigency existed that would have explained the absence of accurate information.

39. To corroborate Defendant Pikett's fabricated scent identifications of Plaintiff, Defendants Johnson and Rogers coached and manipulated a jailhouse informant, David Campbell, into falsely identifying Plaintiff, her brother, and her father as the perpetrators of Burr's murder. Defendants Johnson and Rogers never disclosed their improper coaching and manipulation of Campbell to Plaintiff or her defense counsel. Campbell has since fully admitted the truth about his prior false statements, and testified under oath that Defendants fed him a "story."

40. Moreover, Defendants Rogers and Johnson knowingly or recklessly omitted material irregularities in Campbell's story from their search and arrest warrant affidavits. For instance, according to Rogers and Johnson's contemporaneous reports, Campbell said that Plaintiff's father shot and mutilated

Burr, but this was not true. Campbell first said that one of the Winfrey children had assisted in the murder, but then averred that it was one of the father's cousins, also a major inconsistency. Also according to Campbell, Plaintiff's father allegedly murdered Burr in retribution for molesting Plaintiff or her brother, but there was never any corroboration of any such molestation. Furthermore, the guns and knife that Campbell claimed Plaintiff's father admitted stealing from Burr's house were never found, and Burr's family reported that he previously owned a small-bore shotgun, not the .3030 caliber long rifle described by Campbell.

41. Defendant Johnson's arrest warrant affidavit for Plaintiff also knowingly or recklessly omitted material information that DNA testing on forensic evidence recovered from the crime scene had excluded Plaintiff and her brother. At the same time, Defendant Johnson included questionable propensity evidence in his affidavit concerning an alleged altercation between Plaintiff and a high school teacher that occurred over a year-and-a-half before the murder.

Plaintiff's Wrongful Prosecution and Conviction

42. Despite the fact that Plaintiff had done absolutely nothing wrong, and the fact that the Defendants had absolutely no legitimate evidence against her, on or about February 8, 2007, more than two-and-a-half years after Burr's death, Plaintiff was arrested for the murder of Murray Burr.

43. For the next six years, Plaintiff was confined inside jail and prison cells and branded a murderer.

44. On October 9, 2008, Plaintiff was convicted of the murder of Murray Burr and conspiracy to commit murder.

45. Plaintiff's brother, Richard Winfrey, Jr., was acquitted after a trial in which the jury deliberated for 13 minutes. Plaintiff's father, Richard Winfrey, was convicted, but his conviction was subsequently overturned by the Texas Court of Criminal Appeals, and a judgment of acquittal was rendered for him.

Plaintiff's Exoneration

46. On February 27, 2013, the Texas Court of Criminal Appeals overturned Plaintiff's conviction and rendered a judgment of acquittal on both charges against her.

47. Although Plaintiff has regained her freedom, it has come at a tremendous cost. Megan Winfrey spent six years incarcerated for a capital crime that she did not commit. During her wrongful incarceration, Plaintiff was deprived of the various pleasures of basic human experience, which all free people enjoy as a matter of right, including the opportunity to raise her daughter, who was one year old at the time of her arrest. As a result of her wrongful incarceration, Plaintiff has suffered tremendous damage, including extreme emotional distress, physical suffering and financial loss.

Count I – 42 U.S.C. § 1983 Violation of Due Process – Keith Pikett

48. Each of the paragraphs of this Complaint is incorporated as if restated fully herein.

49. As described more fully above, Defendant Pikett, while acting under color of law and within the scope of his employment, deprived Plaintiff of her rights under the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution.

50. In the manner described more fully above, Defendant Pikett knowingly used fabricated junk science, manipulated and falsified the results of the dog scent lineups, and employed an unduly suggestive lineup procedure resulting in a faulty “identification” of Plaintiff which was used at trial and deprived Plaintiff of due process.

51. Defendant Pikett’s fabricated dog scent lineup results were also used to obtain search and arrest warrants for Plaintiff.

52. Defendant Pikett also deliberately withheld material exculpatory evidence from Plaintiff and from the prosecutors, among others. As described above, Defendant Pikett manipulated and falsified the results of his dog scent lineups, obtained Plaintiff’s conviction using that false evidence, and failed to correct evidence that he knew to be false when it was used against Plaintiff at her criminal trial. There is a reasonable probability that, had this evidence been disclosed to the Plaintiff or her counsel, the result of her criminal trial would have been different.

53. Defendant Pikett’s misconduct directly resulted in the unjust criminal prosecution and conviction of Plaintiff, thereby denying her right to a fair trial guaranteed by the U.S. Constitution. Absent this misconduct, the prosecution of Plaintiff could not and would not have been pursued.

54. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiff's constitutional rights.

55. As a result of the Defendants' unconstitutional conduct, Plaintiff suffered injuries including financial harm and emotional pain and suffering.

Count II – 42 U.S.C. § 1983
Violation of Due Process – Lenard Johnson, Lacy Rogers, San Jacinto County, and Sheriff David Clark in his Official Capacity Only

56. Each of the paragraphs of this Complaint is incorporated as if restated fully herein.

57. As described more fully above, Defendants Rogers and Johnson, while acting under color of law and within the scope of their employment, deprived Plaintiff of her rights under the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution.

58. In the manner more fully described above, Defendants Rogers and Johnson violated Plaintiff's constitutional rights when they intentionally and knowingly, or with reckless disregard for the truth, submitted affidavits containing false statements, material misrepresentations, and material omissions in order to obtain search and arrest warrants for Plaintiff. This resulted in warrants being issued without probable cause.

59. Defendants Rogers and Johnson also deliberately withheld material exculpatory evidence from Plaintiff and from the prosecutors, among others. The Defendants solicited false evidence, including testimony that they knew to be false

and perjured from David Campbell, obtained Plaintiff's conviction using that false evidence, and failed to correct evidence that they knew to be false when it was used against Plaintiff at her criminal trial. There is a reasonable probability that, had this evidence been disclosed to the Plaintiff or her counsel, the result of her criminal trial would have been different.

60. Defendants Rogers and Johnson's misconduct directly resulted in the unjust criminal prosecution and conviction of Plaintiff, thereby denying her right to a fair trial guaranteed by the U.S. Constitution. Absent this misconduct, the prosecution of Plaintiff could not and would not have been pursued.

61. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiff's constitutional rights.

62. As a result of the Defendants' unconstitutional conduct, Plaintiff suffered injuries including financial harm and emotional pain and suffering.

63. The misconduct described in this Count was undertaken pursuant to the policy and practice of San Jacinto County and the San Jacinto County Sheriff in that officers in the San Jacinto County Sheriff's Department regularly included material misstatements and omitted material facts in their affidavits for search and arrest warrants; as a matter of policy and practice, officers in the San Jacinto County Sheriff's Department did not review investigative reports and files before executing affidavits for search and arrest warrants to ensure their accuracy; also as a matter of policy and practice, officers in the San Jacinto County Sheriff's

Department failed to properly follow-up on leads and corroborate information, including from jailhouse informants; the Sheriff, who was the final policymaker for the San Jacinto County Sheriff's Department, failed to provide sufficient, or any, training to his officers in writing and executing affidavits for search and arrest warrants.

64. These widespread practices were so well-settled as to constitute *de facto* policy in the San Jacinto County Sheriff's Department, and were allowed to exist because the municipal policymakers with authority over the same actually or constructively knew of its existence and exhibited deliberate indifference to the problem, thereby effectively ratifying it.

65. The widespread practices described in the preceding paragraphs were allowed to flourish because San Jacinto County and the San Jacinto County Sheriff declined to implement sufficient training and/or any legitimate mechanism for oversight or punishment, thereby leading officers to believe that they could violate citizens' constitutional rights with impunity.

66. Furthermore, the misconduct described in this Count was undertaken pursuant to the policy and practice of San Jacinto County and the San Jacinto County Sheriff in that Defendant Rogers was the final policymaker of the San Jacinto County Sheriff's Department at all relevant times, and he took the unconstitutional actions against Plaintiff described above.

67. As a direct and proximate result of the County's policies and practices, Plaintiff's constitutional rights were violated and she suffered injuries and damages, as set forth in this Complaint.

Count III – 42 U.S.C. § 1983
Failure to Intervene – Keith Pikett, Lenard Johnson, and Lacy Rogers

68. Each of the paragraphs of this Complaint is incorporated as if restated fully herein.

69. One or more of the Defendants Pikett, Johnson, and Rogers had a reasonable opportunity, had they been so inclined, to prevent another Defendant from violating Plaintiff's rights in the manner described above, but they failed to do so.

70. The misconduct described in this Count was objectively unreasonable and was undertaken intentionally with willful indifference to Plaintiff's constitutional rights.

71. As a result of this misconduct, Plaintiff suffered injuries including financial harm and emotional pain and suffering.

Count IV – State Law Claim
Malicious Prosecution – Keith Pikett, Lenard Johnson, and Lacy Rogers

72. Each of the paragraphs of this Complaint is incorporated as if restated fully herein.

73. In the manner described above, Defendants Pikett, Johnson, and Rogers falsely accused Plaintiff of criminal activity and caused Plaintiff to be improperly subjected to judicial proceedings for which there was no probable cause.

Judicial proceedings were instituted and continued maliciously, resulting in injury, and all such proceedings were ultimately terminated in Plaintiff's favor in a manner indicative of innocence.

74. Defendants Pikett, Johnson, and Rogers accused Plaintiff of criminal activities knowing those accusations to be without genuine probable cause, and they made statements to prosecutors with the intent of exerting influence to institute and continue the judicial proceedings.

75. Statements that Defendants Pikett, Johnson, and Rogers made regarding Plaintiff's alleged culpability were made with the knowledge that said statements were false and perjured. The Defendants also fabricated evidence by coercing false inculpatory testimony from purported witnesses, and through fabricating dog scent lineup results. The Individual Defendants withheld the facts of their manipulation and the resulting fabrications from Plaintiff.

76. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of others.

77. As a result of this misconduct, Plaintiff suffered injuries including financial harm and emotional pain and suffering.

78. This Count is brought only against Defendants Pikett, Johnson, and Rogers in their individual capacities and is not brought against San Jacinto County, any municipality, or any Defendant in his official capacity.

WHEREFORE, Plaintiff, MEGAN WINFREY, respectfully requests that this Court enter judgment in her favor and against Defendants KEITH PIKETT, LACY ROGERS, LENARD JOHNSON, SAN JACINTO COUNTY, and SAN JACINTO COUNTY SHERIFF DAVID CLARK, in his official capacity only, awarding compensatory damages, costs, and attorneys' fees as well as punitive damages against Defendants PIKETT, ROGERS, and JOHNSON, and any other relief this Court deems appropriate.

JURY DEMAND

Plaintiff, MEGAN WINFREY, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

RESPECTFULLY SUBMITTED,

/s/ Gayle Horn
One of Plaintiff's Attorneys

Arthur Loevy
Jon Loevy
Gayle Horn
LOEVY & LOEVY
312 N. May St., Suite 100
Chicago, IL 60607
(312) 243-5900

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

Megan Winfrey

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

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

Loevy & Loevy
312 N. May Street, Suite 100
Chicago, IL 60607 (312) 243-5900

DEFENDANTS

Keith Pikett, Lacy Rogers, Lenard Johnson, San Jacinto County, David Clark

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

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, 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
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: Civil Rights

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: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Judge Lynn N. Hughes DOCKET NUMBER 4:10-CV-1896

DATE 02/24/2014 SIGNATURE OF ATTORNEY OF RECORD s/ Gayle Horn

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.