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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DEBRA FOLI, an individual; DANNY BROWN, an individual; CAROLINE ASLANIAN, an individual; RABYN BLAKE, an individual,

Plaintiffs,

vs.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a municipal corporation; JEFFREY KIGHTLINGER, an individual,

Defendants.

Case No. **'11CV1765 JLS BLM**

COMPLAINT FOR (1) DEPRIVATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983; (2) IMPAIRMENT OF CIVIL RIGHTS UNDER 42 U.S.C. § 1981; (3) DECLARATORY RELIEF; and, (4) UNFAIR COMPETITION

Plaintiffs Debra Foli, Danny Brown, Caroline Aslanian, and Rabyn Blake, bring this action on behalf of themselves and the general public and hereby allege on information and belief as follows:

INTRODUCTION

1. This action is brought to seek redress for the unlawful and unconstitutional medication of Plaintiffs by Defendant Municipal Water District of Southern California ("MWD") using an unapproved drug. The unapproved drug being used by MWD is hydrofluosilicic acid. MWD is injecting hydrofluosilicic acid into the water supply for the purpose of treating disease and dental caries (cavities). Hydrofluosilicic acid has never been approved by the United States Food and Drug Administration for the treatment of disease or dental caries. The MWD's use of an unapproved drug by MWD to medicate Plaintiffs and other persons in order to forcibly treat disease and dental caries without their consent violates the Constitutional rights of these citizens and violates the Food and Drug Administration Act. Hydrofluosilicic acid should not be confused with different fluoride compounds that are naturally occurring, such as calcium fluoride, or that have been approved for certain specific uses, such as sodium fluoride.

PARTIES

2. Plaintiff Debra Foli brings this action on behalf of herself, and on behalf of the general public as a citizen and resident of San Diego County, California, as alleged herein. Plaintiff Foli is an individual that resides with her husband and three children on an organic avocado grove in Fallbrook, San Diego County, California. Plaintiff Foli and the rest of her

family are captive consumers of the hydrofluosilicic acid that MWD has added to her water, which is delivered to their residence by Rainbow Municipal Water District, with the expressed intent of altering their physical structure and body functions and to treat disease. The cost of the addition of this unapproved drug to the water system by MWD is passed onto Plaintiff Foli as part of the water rate she pays.

3. Plaintiff Foli is a cyclist that rides her bike for pleasure, transportation to work, physical training, health maintenance, and in organized events that sometimes equal 100 miles in distance. She estimates that she rides an average of 100 miles per week excluding organized events. During these cyclist activities she consumes approximately one gallon of water per ride, plus an additional amount to re-hydrate according to her physical exertion. Plaintiff Foli is concerned that MWD has not considered the water consumption of laborers or athletes and the increased amounts they drink in calculating the dosage of hydrofluosilicic acid Plaintiff Foli receives from MWD's intended drug administration. Plaintiff Foli through her independent review of scientific literature is informed of the newest, and reportedly only, toxicological studies on the continued use of hydrofluosilicic acid and its interactions with lead with consequences of higher concentrations of lead in blood and other body tissues. Plaintiff Foli from her independent research and formal training in nutrition is informed that considerations for the dosage of the components of a specific medication, their synergistic health effects, and contraindications with other medications, is a requirement for maintaining her health and the health of her family. Plaintiff Foli through her research for her nutritional interests and her own personal use is informed that she is susceptible to age-specific conditions prior to and during menopause that can be altered by trans-dermal use of nutrients, and that there is medical history of the use of fluoride compounds diluted in bath water to deliver medical treatment trans-

dermally to slow down the thyroid activity for patients experiencing hyperthyroid activity. Plaintiff Foli is concerned that MWD's injection of hydrofluosilicic acid into her water supply may have effect on her thyroid function, hormonal balance, bone condition, and endocrine systems which may alter her physical health and interfere with any program of health maintenance of her own choosing. Plaintiff Foli has no reasonable, economic, or physical means, of obtaining and storing an alternative source of treated water in sufficient quantity for her and her family to drink, cook with, and bathe with, in order to evade oral, systemic and dermal exposures, administration, and medication by MWD's intended hydrofluosilicic acid drug. Plaintiff Foli did not receive any advance notice of MWD's decision to begin the addition of an unapproved drug, nor did MWD take any action in advance of MWD's decision to ascertain the support, or obtain the informed consent, of consumers such as Plaintiff Foli.

4. Plaintiff Foli alleges that MWD claimed and continues to claim that their fluoridation program will safely and effectively reduce tooth decay, and now MWD delivers a drug intended to effect her bodily function to be resistant to tooth decay for which MWD with reasonable care should have known that at the time of the initiating injection into water delivered to Plaintiff Foli there was not even one toxicological study on the health and behavioral effects of continued use for any of the manner of oral, systemic, and trans-dermal drug delivery. Plaintiff Foli alleges that without the specific substance intended to treat and prevent dental disease going through the process of determining safety and effectiveness to achieve FDA approval for MWD's claims that such claims for hydrofluosilicic acid are spurious and not sustainable through scientific proof.

5. Plaintiff Danny Brown brings this action on behalf of himself, on behalf of his five-year old child, Hank Devereaux Brown, on behalf of his 8-month old child, Luke Forrester

Brown, and on behalf of the general public as a citizen and resident, as alleged herein. Plaintiff Brown is a horse farrier and resides along with his wife and two sons in Ramona, San Diego County, California. As most of Plaintiff Brown's work is performed outdoors in a hot climate, Plaintiff Brown drinks copious amounts of water, exceeding more than 2 gallons on some days. Plaintiff Brown, his five-year old son, Hank Devereaux Brown, and his 8-month old son, Luke Forrester Brown, are captive consumers of the hydrofluosilicic acid that MWD has added to the water, which is conveyed to their residence by the Ramona Water District with MWD's intention of altering their physical structure and body functions and to treat disease. The cost of the addition of this unapproved drug to the water system by MWD is passed onto Plaintiff Brown as part of the water rate he pays.

6. Plaintiff Brown is informed by his own research that exposure to the contents and contaminants in the hydrofluosilicic acid may increase total dosage for some components of the unapproved drug MWD is adding to levels that may exceed professional health recommendations for safe consumption and add risk of harm to his sons, Hank and Luke, and other children of their age. Plaintiff Brown is aware of recent epidemiological and toxicological studies that show and confirm a significant increase in lead levels in children's blood when hydrofluosilicic acid is present. Plaintiff Brown is especially concerned with the lack of consideration for health effects that may occur from the dermal administration of the unapproved drug to his sons, given their susceptibilities due to age, weight, and body surface ratio differences with adult dosages. Through his independent review of documentation concerning susceptibility of young males during their "growth spurts" around 5-10 years of age due to exposures to some fluoride compounds, Plaintiff Brown is informed that consideration for dosages of the components of a specific medication, their synergistic health effects and contraindications with

other medications, and the age-specific vulnerabilities to some medications, is a requirement for protecting his health, and the health of his children. Plaintiff Brown has no reasonable, economic, or physical means, of obtaining and storing an alternative source of treated water in sufficient quantity for he and his sons to drink, cook with, and bathe with, in order to evade oral, systemic and dermal exposures, administration, and medication by MWD's intended hydrofluosilicic acid drug. Plaintiff Brown did not receive any advance notice of MWD's then-pending decision to begin the addition of an unapproved drug, nor did MWD take any action in advance of MWD's decision to ascertain the support, or obtain the informed consent, of consumers such as Plaintiff Brown or his sons.

7. Plaintiff Brown alleges that MWD claimed and continues to claim that their fluoridation program will safely and effectively reduce tooth decay, and now MWD delivers a drug intended to effect his bodily function to be resistant to tooth decay for which MWD with reasonable care should have known that at the time of the initiating injection into water delivered to Plaintiff Brown there was not even one toxicological study on the health and behavioral effects of continued use for any of the manner of oral, systemic, and trans-dermal drug delivery. Plaintiff Brown alleges that without the specific substance intended to treat and prevent dental disease going through the process of determining safety and effectiveness to achieve FDA approval for MWD's claims that such claims for hydrofluosilicic acid are spurious and not sustainable through scientific proof

8. Plaintiff Caroline Aslanian brings this action on behalf of herself, on behalf of her eight-year old daughter Solene and her nine-year old sons Armand and Andrew, and on behalf of the general public as a citizen and resident, as alleged herein. Plaintiff Aslanian is an individual who resides in Oak Park, Ventura County, California. Plaintiff Aslanian, her two sons and

daughter, and the rest of the family are captive consumers of the hydrofluosilicic acid that MWD has added to her water, which is delivered to their residence by Triunfo Sanitation District, with the expressed intention of altering their physical structure and body functions and to treat disease. The cost of the addition of this unapproved drug to the water system by MWD is passed onto Plaintiff Aslanian as part of the water rate she pays.

9. Plaintiff Aslanian, through her independent review of documentation concerning susceptibility of young males to rare bone cancers during their "growth spurts" from approximately 5 to 10 years of age due to exposures to some fluoride compounds is informed that consideration for dosages of the components of a specific medication, their synergistic health effects and contraindications with other medications, and age-specific susceptibility to adverse effects, is a requirement for protecting her health, and the health of her children. Plaintiff Aslanian is aware that the California Carcinogen Identification Committee of the California EPA has established fluoride and its salts and perfluorooctanoic acid (PFOA) as two of their five highest priorities for determining if the existing scientific animal and human evidence of carcinogenicity rises to the level of requiring a universal California warning that the substances are cancer-causing under California Proposition 65. Plaintiff Aslanian is concerned that fluoride and its salts refers to the free-fluoride ion (anion) that MWD claims that they are intending to increase in her drinking water and the salts refers to fluoride's salt compounds, such as sodium fluoride. She is further concerned that products containing perfluorooctanoic acid have been widely touted as inert, yet PFOA products such as Scotchguard, Teflon, and food contact paper are to be removed from the market or reduced because of human exposures, which further enhances her concern that the individual drug intended by MWD to be ingested by Plaintiff Aslanian and her family is properly approved and her consent required. Plaintiff

Aslanian through her own independent research has also ascertained that FDA has approved many fluorine-based drugs for purposes other than altering the physical structure of the teeth to make them more resistant to dental caries, including drugs that are intended to effect neurological functions such as for mood and behavioral modification (i.e. Prozac and Zoloft) and anesthesia (such as Severothane). Plaintiff Aslanian is concerned about reports of studies indicating that hydrofluosilicic acid has significant effects on lead levels in children's blood, which effects are irreparable. Plaintiff Aslanian and her family have no reasonable, economic, or physical means, of obtaining and storing an alternative source of treated water in sufficient quantity to drink, cook and bathe, in order to evade oral, systemic and dermal exposures, administration, and medication by MWD's intended drug, hydrofluosilicic acid. Plaintiff Aslanian did not receive any advance notice of MWD's decision to begin the addition of an unapproved drug, nor did MWD take any action in advance of MWD's decision to ascertain the support, or obtain the informed consent, of consumers such as Caroline, Armand, Andrew, and Solene before adding unapproved hydrofluosilicic acid into their water for purposes of medication and treating disease.

10. Plaintiff Aslanian alleges that MWD claimed and continues to claim that their fluoridation program will safely and effectively reduce tooth decay, and now MWD delivers a drug intended to effect her bodily function to be resistant to tooth decay for which MWD with reasonable care should have known that at the time of the initiating injection into water delivered to Plaintiff Aslanian there was not even one toxicological study on the health and behavioral effects of continued use for any of the manner of oral, systemic, and trans-dermal drug delivery. Plaintiff Aslanian alleges that without the specific substance intended to treat and prevent dental disease going through the process of determining safety and effectiveness to achieve FDA

approval for MWD's claims that such claims for hydrofluosilicic acid are spurious and not sustainable through scientific proof.

11. Plaintiff Rabyn Blake brings this action on behalf of herself and the general public as a citizen and resident, as alleged herein. Plaintiff Blake is an individual who resides in Topanga, County of Los Angeles, California. Plaintiff Blake is a captive consumer of the hydrofluosilicic acid that MWD has added to her delivered water that she receives through Los Angeles County Water District No. 29 with the intention of altering her physical structure and body functions and to treat disease. The cost of the addition of this unapproved drug to the water system by MWD is passed onto Plaintiff Blake as part of the water rate she pays.

12. Plaintiff Blake takes medications for her thyroid. Plaintiff Blake is familiar with research that fluoride was used trans-dermally to reduce thyroid activity, and is concerned about other endocrine health effect susceptibilities described in recent government scientific reviews with respect to the MWD use of hydrofluosilicic acid to medicate her and other consumers. Plaintiff Blake is informed that her health status and medication require that any other medications be considered for synergistic health effects and contraindications to preserve her health. Plaintiff Blake has no reasonable, economic, or physical means, of obtaining and storing an alternative source of treated water in sufficient quantity to drink, cook with, and bathe with, in order to evade oral, systemic and dermal exposures, administration, and medication by MWD's intended hydrofluosilicic acid drug. Plaintiff Blake did not receive any advance notice of MWD's decision to begin the addition of an unapproved drug, nor did MWD take any action in advance of MWD decision to ascertain the support or obtain the informed consent of consumers such as Plaintiff Blake.

13. Plaintiff Blake alleges that MWD claimed and continues to claim that their fluoridation program will safely and effectively reduce tooth decay, and now MWD delivers a drug intended to effect her bodily function to be resistant to tooth decay for which MWD with reasonable care should have known that at the time of the initiating injection into water delivered to Plaintiff Blake there was not even one toxicological study on the health and behavioral effects of continued use for any of the manner of oral, systemic, and trans-dermal drug delivery. Plaintiff Blake alleges that without the specific substance intended to treat and prevent dental disease going through the process of determining safety and effectiveness to achieve FDA approval for MWD's claims that such claims for hydrofluosilicic acid are spurious and not sustainable through scientific proof.

14. Defendant Metropolitan Water District of Southern California ("MWD") is a public municipal corporation organized and existing under the laws of the State of California. MWD is a regional water agency, which imports water from Northern California and the Colorado River into the coastal plain of Southern California. MWD is engaged in the development, storage, treatment, and delivery of water to their member public agencies for municipal and domestic use. MWD is, and at all times material herein mentioned was, a municipal corporation doing business in the State of California and within the County of San Diego. The addition of hydrofluosilicic acid to the municipal water supply by MWD was for the express purpose of administering hydrofluosilicic acid to the Plaintiffs and other members of the general public receiving their water supply from MWD with the intention of altering their physical structure and body functions and to treat disease. The addition of hydrofluosilicic acid by MWD for the express purpose of administering hydrofluosilicic acid and medicating the Plaintiffs and others was and is the execution of an express written and official policy of MWD.

The hydrofluosilicic acid being administered to the captive water consumers by MWD is an unapproved drug because hydrofluosilicic acid is being administered by MWD for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, and this use of hydrofluosilicic acid is not described in the approved labeling of the drug under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). Hydrofluosilicic acid is not being administered for potability of the water or for any other purpose other than for the diagnosis, cure, mitigation, treatment, or prevention of disease.

15. Defendant Jeffrey Kightlinger is the General Manager of MWD and is the person responsible for implementing the policies and practice of MWD which are challenged herein. Jeffrey Kightlinger personally participated in the decision to medicate consumers of the MWD municipal water with the unapproved hydrofluosilicic acid drug and he ratified and approved the MWD's medication of consumers with hydrofluosilicic acid.

16. At all times mentioned in the causes of action alleged herein, each and every defendant was an agent and/or employee of each and every other defendant. In doing the things alleged in the causes of action stated herein, each and every defendant was acting within the course and scope of this agency or employment and was acting with the consent, permission and authorization of each of the remaining defendants. All actions of each defendant as alleged in the causes of action stated herein were ratified and approved by every other defendant or their officers or managing agents.

GENERAL ALLEGATIONS

17. MWD is a water agency which imports water and supplies water with the intention of delivering water to residents in Southern California. MWD receives the water from

Northern California and the Colorado River, and then systematically adds an unapproved drug, hydrofluosilicic acid, to the water, and then causes the water to be delivered to water consumers like the Plaintiffs. The addition of hydrofluosilicic acid to the public drinking water is not done for the treatment of water, or improvement of the potability, storage or consistent delivery of water to consumers. The addition of hydrofluosilicic acid to the water supply by MWD is for the express purpose of administering hydrofluosilicic acid to the Plaintiffs and other members of the general public receiving their water supply from MWD with the intention of altering their physical structure and body functions to prevent and to treat disease. The addition of hydrofluosilicic acid by MWD for the expressed purpose of administering hydrofluosilicic acid and medicating the Plaintiffs and others with Hydrofluosilicic acid was and is the execution of an expressed written and official policy of MWD. MWD was not authorized by any Federal or State law to add an unapproved drug into the water supply. MWD was not authorized by any Federal or State law to add hydrofluosilicic acid into the water supply. MWD was not authorized by any Federal or State law to add hydrofluosilicic acid into the water supply in order to prevent and to treat disease. MWD receives additional money as a result of the sale of the water containing hydrofluosilicic acid.

18. MWD is the sole source of water to consumers water districts served by MWD, including the Plaintiffs. The Plaintiffs and such consumers have no reasonable, economic, or physical means, of obtaining and storing an alternative source of treated water in sufficient quantity to drink, cook with, and bathe with, in order to evade oral, systemic and trans-dermal exposures, administration, and medication, by MWD's intended drug, hydrofluosilicic acid, as a result of MWD's conduct. The Plaintiffs and other consumers are required to pay for the cost of the addition of the unapproved drug through the water rates charged to them.

19. Hydrofluosilicic acid is not a naturally occurring substance. MWD has chosen to medicate the Plaintiffs with an unapproved drug without their consent that is not produced with controlled manufacturing practices and consistencies in impurities, and analyses of hydrofluosilicic acid indicate contamination of the unapproved drug with dangerous impurities, including lead and arsenic, and varying amounts of cadmium, mercury, beryllium and other contaminants dependent on the specific mining location. Generalized claims of safety and effectiveness for a different, virtual or mythical substance that is not the same as the unapproved drug MWD delivers is not an acceptable substitute for the approval by the FDA.

20. Hydrofluosilicic acid is a hazardous chemical and hazardous waste, which the manufacturer cannot deposit in an ocean, lake, river, or stream, nor be buried or given away. The industrial grade hydrofluosilicic acid that the MWD has elected to use to medicate end water consumers is a byproduct of fertilizer production that is captured and then processed from the scrubber systems required by the Clean Air Act to protect against airborne toxicity, and contains lead, arsenic, and other harmful heavy metals. MWD makes no attempt to remove the harmful heavy metals from the hydrofluosilicic acid. MWD makes no attempt to use alternate sources which do not involve industrial grade hydrofluosilicic acid and which do not contain harmful heavy metals. MWD made no attempt to utilize a substance that complied with approved manufacturing practices for drugs or to seek FDA approval for use of the drug being administered for the prevention or treatment of disease.

21. MWD has elected to use the industrial grade hydrofluosilicic acid in order to save expenses and cut costs at the expense of the safety and health of the water consumers, including Plaintiffs.

22. MWD has made public declarations that their hydrofluosilicic acid drug program treats and prevents tooth decay and offers endorsements for that behavior, and has selected a drug product to inject into the water delivered to Plaintiffs and other consumers as a drug for which MWD knew, or with reasonable care should have known, there were no toxicological studies on the health and behavioral effects of continued use in each or any of the manners of oral, systemic, and trans-dermal drug delivery. MWD in their oral presentations to down-line distributors of their unapproved drug, their representations to media, and information on their web site and references to other links have deceptively omitted the unique nature of hydrofluosilicic acid and falsely referred to this unapproved drug as as fluoride.

23. MWD made public declarations that they intended to add fluoride to the water to safely and effectively treat and prevent dental disease and then in a classic bait-and-switch selected and initiated use of an unapproved drug to fulfill that intention for which there are no toxicological studies on the health and behavioral effects of continued use to support such a claim for any of the known exposures and manners of drug delivery.

24. MWD portrays their addition of "fluoride" to merely adjust concentration of the free-fluoride ion that can be measured in the source water without accurately describing that they are not merely adding the free-fluoride ion, and that they did not choose to use the salt form of compound containing the fluoride anion.[1] The free fluoride ion, as fluorine, represents only approximately 17-18% of the drug MWD administers. MWD's deceptive characterizations of the hydrofluosilicic acid drug they administer by calling it fluoride is just as misleading as if they omitted the unique nature of other fluoride compounds that the public is exposed to in drug form,

[1] In technical terms, the term "fluoride" represents the free-fluoride ion (anion), and in some contexts is referenced as "*as fluorine"*, to accentuate that it is not a compound. Fluoride can also correctly refer to the salt form of fluoride compounds, such as sodium fluoride.

household products, and pesticides, such as Prozac, Zoloft and other psychotropic drugs; Sevorothane, Fluorothane, Halothane, and other anesthesia; Cryolite (sodium aluminum fluoride), sulfuryl fluoride, and other pesticides; Scotchguard, Teflon, and GoreTex where the fluoride compound creates tighter molecular bonds to prevent sticking; and other surfactants (PFOA and PFOS) that are used on food contact paper for most fast foods, and cartons and bottles to prevent product penetration or leakage and increase shelf life; drugs that have once obtained FDA approval but then had FDA order their removal from the market, such as Fen Phen, the diet drug, and fluoroquinolones used on fowl that eventually showed migration to human consumers that eat the meat and impaired effectiveness of antibiotics. To introduce any of these fluoride compounds into water intended to treat humans for tooth decay and not properly represent the specific drug's unique nature in the classifications of fluorides would be deceptive, as is MWD's omission of the true nature of hydrofluosilicic acid and its interactions with other agents in the water and the contents and impurities in the specific formulation. Hydrofluosilicic acid is known to be used to extract lead from brass, an action for which the fluoride salts are not recognized. Chemically, hydrofluosilicic acid also is rated more toxic than other fluoride compounds

25. FDA has asserted with their response pertaining to fluoride in water and supplements to the House Committee on Science investigation on fluoride, that when a fluoride compound is administered to humans and intended to treat humans, the substances are subject to FDA regulation. In a response to Congressional investigation on fluoride with a letter on behalf of Dr. Jane E. Henney, Commissioner of Food and Drugs directed to The Honorable Ken Calvert, Chairman, Subcommittee on Energy and Environment, Committee on Science, U.S. House of Representatives, Washington, DC:

> Dear Mr. Chairman:
>
> Thank you for the letter of May 8, 2000, to Dr. Jane E. Henney, Commissioner of Food and Drugs, regarding the use of fluoride in drinking water and drug products. We apologize for the delay in responding to you. We have restated each of your questions, followed by our response.
>
> **1. If health claims are made for fluoride-containing products (e.g. that they reduce dental caries incidence or reduce pathology from osteoporosis), do such claims mandate that the fluoride-containing product be considered a drug, and thus subject the product to applicable regulatory controls?**
>
> Fluoride, when used in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animal, is a drug that is subject to Food and Drug Administration (FDA)regulation.

26. Hydrofluosilicic acid has never been approved by the FDA for the treatment of any disease, including dental caries. The following is a true and correct copy of an official communication by the FDA confirming that hydrofluosilicic acid has not been approved for ingestion for the purpose of preventing or mitigating dental decay:

> Dear Dr. Osmunson:
>
> Thank you for writing the Division of Drug Information, in the FDA's Center for Drug Evaluation and Research.
>
> A search of the Drugs@FDA database (http://www.accessdata.fda.gov/scripts/cder/drugsatfda/index.cfm) of approved drug products and the Electronic Orange Book (http://www.accessdata.fda.gov/scripts/cder/ob/default.cfm) does not indicate that sodium fluoride, silicofluoride, or hydrofluorosilicic acid has been approved under a New Drug Application (NDA) or Abbreviated New Drug Application (ANDA) for ingestion for the prevention or mitigation of dental decay.
>
> The FDA is aware of sodium fluoride-containing products in various dosage forms that are currently marketed. At the present time, the FDA is deferring any regulatory action on sodium fluoride products that were marketed prior to 1962 as long as the currently marketed product is identical to the pre-1962 product. Any prescription sodium fluoride-containing product coming into the marketplace after

> 1962 that is not identical to the pre-1962 labeling and that has drug claims, is subject to the FDA drug review process prior to marketing.
>
> Best regards,
> Drug Information SH
> Division of Drug Information
> Center for Drug Evaluation and Research
> Food and Drug Administration

27. Scientific literature provides evidence of health risks from exposure to the free-fluoride ion, which thus merit a full FDA review of the safety and effectiveness claims for the specific unapproved hydrofluosilicic acid drug used by MWD for each manner or mechanism of delivery of the drug, as well as a review of dosage for the drug. The scientific literature identifies such health risks for the free-fluoride ion as including interference with endocrine function, such as melatonin production, seratonin production, thyroxin production, insulin production, and calcium metabolism. These are all necessary for the regulation of body function. There is also evidence in scientific literature of risks for cancer, genetic damage, intolerant reactions, chronic toxicity, bone pathology and neurological injury in humans, as well as aggravation of malnutrition, iodine deficiencies, and other existing illnesses. Adverse bone pathologies and permanent damage to the teeth are specifically named, skeletal fluorosis and dental fluorosis, respectively, for the causative agent. A determination of the health risks the plaintiffs and other so situated may suffer from exposure to MWD's injection of this specific unapproved hydrofluosilicic acid drug in the water must be evaluated, and the claims of safety and effectiveness must be scientifically confirmed and approved, by the FDA, before the Plaintiffs can reasonably give their consent to such medication.

28. MWD knew, or with reasonable care should have known, that at the time of their decision to use hydrofluosilicic acid to treat Plaintiffs, and subsequently when they began to inject the chemical into the public drinking water for delivery to Plaintiffs and others so situated,

U.S. EPA has stated that they were not able to identify any toxicological studies on the health and behavioral effects of continued use of hydrofluosilicic acid. In a letter by Fox J C, Asst. Admin., U.S. EPA. to Ken Calvert, Chairman, Subcommittee on Energy and The Environment, Committee on Science. U.S. House of Representatives, Washington, DC. June 23, 1999, during their Congressional investigation on fluoride, the EPA wrote "In collecting data for a fact sheet, EPA was not able to identify chronic studies for these [fluoridation] chemicals."

29. Hydrofluosilicic acid is a unique and different class of fluorine-containing product than calcium fluoride, which is considered the primary source of the free-fluoride ion found naturally, and sodium fluoride, which is an alternative fluoridating agent. Hydrofluosilicic acid is known to interact differently with other agents, such as chloramine, which is used in some water treatment systems, and lead, than the alternative fluoridating agents. MWD knew, or with reasonable care should have known, that the first toxicological study on the health or behavioral effects of the continued use of hydrofluosilicic acid was published in 2010. MWD continues to deliver the unapproved drug hydrofluosilicic acid to the Plaintiffs, despite the 2010 toxicological study's confirmation of epidemiological studies of more than 400,000 children showing significant increases of lead in their blood when hydrofluosilicic acid is present, compared to even sodium fluoride's presence. In 2011 the second toxicological study on the health effects of continued use of hydrofluosilicic acid was published showing a dramatic increase in the incidence and severity of dental fluorosis (the permanent scarring, discoloration and disfigurement of the enamel of teeth) when hydrofluosilicic acid is present with lead, such as found in exposures to lower-income housing, compared to the same exposures to lead alone. An FDA review of the claims of safety and the available scientific literature is necessary to determine the extent that Plaintiffs' children are at risk to the specific unapproved

hydrofluosilicic acid drug that MWD intentionally injects into their water, as well as the contraindications possible.

30. MWD's injection of an unapproved drug into the water supply intended for delivery to Plaintiffs is intended by MWD solely to alter the physical structure and body function of the consumers' teeth by making the teeth more resistant to acid dissolution, the demineralization process recognized as caries or decay.

31. While the public discussion of the intentional addition of the hydrofluosilicic acid is often focused on the values of systemic exposures from ingestion, the mechanism of exposure and introduction into the plaintiffs' body as caused by MWD's conduct is three-fold: oral, systemic, and trans-dermal.

32. Recent medical and scientific evidence now reveals that the use of hydrofluosilicic acid in the public water as implemented by MWD and intended for ingestion does not effectively prevent tooth decay, and therefore does not serve any legitimate purpose.

33. Although FDA has never approved the use of hydrofluosilicic acid for oral treatment or prevention of caries, FDA does approve the use of other fluorides for topical application to the surface of the teeth such as in the use of toothpaste, or mouth rinses. However, FDA requires that all such topical fluoride applications bear a poison control warning on the packaging to keep out of reach of children under 6 years of age, and to not swallow. FDA has never approved as effective any fluoride topical application even as low as 500 ppm much less the 0.8 ppm concentration that MWD intends for Plaintiffs. Hydrofluosilicic acid is neither approved for effectiveness for MWD's manner of oral and topical delivery, nor at the oral dosages that Plaintiffs are exposed to.

34. MWD's third mechanism of effecting Plaintiffs with their unapproved drug is through trans-dermal delivery, with the same absorption through skin to effect the body systemically as intended by seasickness and nicotine patches. This creates great concern for Plaintiffs as there is no reasonable, economic, and non-commercial means to eliminate the hydrofluosilicic acid drug from the water delivered by MWD in quantities sufficient for real time bathing and showering. Some Plaintiffs and others so situated are aware that scientific literature reveals that medical treatment for reducing thyroid activity consisted of soaking for 20 minutes in a bath with added fluoride. Plaintiffs are concerned that the unapproved drug will have contraindications for their health condition or other medications, and are concerned that this unapproved drug may interfere even with their normal thyroid activity, or effect the health of children disproportionately because of age-related skin surface to weight ratios, different susceptibilities because of gender, vulnerabilities during certain growth stages, living environment conditions, race, and deficiencies in diet.

35. MWD purposely engaged in deceptive practices intended to reduce the sophistication of the end consumers regarding the quality, content, contamination, and lack of approval of the specific hydrofluosilicic acid added to their drinking water. MWD has acted in concert with other down-line water suppliers of their hydrofluosilicic acid drug, and requested that the down-line water suppliers act in concert with MWD, in restricting the information that the local retailer of MWD's water containing their chosen hydrofluosilicic acid reveals to their consumers, blatantly stating in their power point presentations directed to city councils and water boards to, "…make our message consistent with all service areas, so all of our customers are hearing the same thing." MWD advised their down-line recipient suppliers of water intended to medicate the end-user that the retail water suppliers incorporate links to the MWD web site in

order to answer consumer questions in the manner orchestrated by MWD. MWD purposely avoided revealing that the hydrofluosilicic acid MWD chose to use in medicating the end-consumer is not and was not ever approved for any of the claims of safety and effectiveness that MWD or their down-line water supplier retailers made, nor that at the time of MWD's decision to use the specific hydrofluosilicic acid classification of chemical that there were no toxicological studies on the health effects of its continued use. MWD's concerted actions to deceive the public and restrict information concerning the substance MWD has chosen to use to medicate the end-user has acted to deter consumers from any reasonable motivation to perform their own due diligence to determine whether they should make any attempt to limit exposure, thus rendering the consumers captive by intent and public persuasion.

36. The FDA is the appropriate and only authority that is authorized to determine the safety and effectiveness of this hydrofluosilicic acid drug with which MWD intends to treat and prevent disease in consumers. The United States EPA is not authorized by Congress to regulate claims of safety and effectiveness of substances intended to treat or prevent disease in humans, nor any claims of effectiveness of direct water additives. By notice in the Federal Register in 1988, EPA announced that as of April 7, 1990 they were no longer to be active in their previous advisory oversight of safety of direct water additives, and their previous lists of acceptable water additives and any product advisories that were used as recommendations were to be invalidated.

37. Although the EPA does establish a Maximum Contaminant Level (MCL) for the free-fluoride ion (anion) as a measurable contaminant in source water, establishing the MCL is a process of negotiation considering the costs of testing and removal of a contaminant from source water and was never intended to permit companies to voluntarily add more toxic chemicals or to treat disease. The National Research Council Review of Fluoride ordered by the EPA and

published in December 2006 unanimously determined that the current scientific point of safety for lifetime ingestion of the free-fluoride ion without adverse health effects (MCLG) established by the EPA, and the point at which water operators must remediate for contamination with the free-fluoride ion (MCL), are not protective of human health.

38. The EPA has not performed any risk assessments, or established any scientific point of safety for lifetime ingestion or point of enforced remediation, for silicofluorides, of which hydrofluosilicic acid is one, as they are not present in drinking water without artificial addition. In 2001 The National Risk Management Research Laboratory, Office of Research, of the U.S. EPA responded to a request for empirical scientific data on the health and behavioral effects of fluosilicic acid or sodium silicofluoride and manganese neurotoxicity, stating:

> To answer your first question on whether we have in our possession empirical scientific data on the effects of fluosilicic acid or sodium silicofluoride on health and behavior, our answer is no. Health effects research is primarily conducted by our National Health and Environmental Effects Research Laboratory (NHEERL). We have contacted our colleagues at NHEERL and they report that with the exception of some acute toxicity data, they were unable to find any information on the effects of silicofluorides on health and behavior.

39. In addition, EPA does not require as part of its MCL enforcement, and MWD does not perform, measurements for the concentration of hydrofluosilicic acid or its compounded contaminants, such as aluminum fluoride, beryllium fluoride, or any other compounds containing expected contaminants of hydrofluosilicic acid, such as arsenic, lead, cadmium, mercury, etc… As a result, the MWD has no scientific basis or empirical evidence to determine the specific drug's exact contribution and subsequent contraindications without the hydrofluosilicic acid drug, as it is constituted before injection into the Plaintiffs' drinking water, going through the appropriate testing, review, public comment, and approval or rejection process of a New Drug Application by the FDA.

40. This action seeks relief for violations of the United States Constitution and Federal law, including, inter alia; declaratory and injunctive relief, as appropriate, on behalf of individuals who have been and currently are victimized by the medication of Plaintiffs and the general public by MWD using an unapproved drug, hydrofluosilicic acid, to treat disease and dental caries.

41. The Plaintiffs each receive treated water from MWD, and do not have an alternate source, to which water MWD has unlawfully and unconstitutionally added an unapproved drug, hydrofluosilicic acid, for the express purpose of treating disease and dental caries in the water consumers, including the Plaintiffs. This conduct by MWD is continuous and ongoing. MWD uniformly failed to obtain the approval of the FDA for the particular drug being used to medicate the Plaintiffs and MWD uniformly failed to obtain the informed consent of the water consumers including the Plaintiffs.

42. The questions of law and fact for which Plaintiffs seek resolution for purposes of declaratory and injunctive relief, include, but are not limited to the following:

(a) Whether MWD has added and continues to add hydrofluosilicic acid to the water supplied to the Plaintiffs;

(b) Whether the hydrofluosilicic acid used by MWD has been approved by the FDA for the purpose of treating disease and dental caries in humans;

(c) Whether MWD has added an unapproved drug, hydrofluosilicic acid, to the water supplied to the Plaintiffs for the express purpose of treating or preventing disease and dental caries;

(d) Whether MWD's treatment of the Plaintiffs with an unapproved drug violates the constitutional rights of the Plaintiffs under the United States Constitution;

(e) Whether MWD's treatment of the Plaintiffs with an unapproved drug deprives the Plaintiffs of their civil rights guaranteed by the United States Constitution;

(f) Whether MWD's treatment of the Plaintiffs with an unapproved drug impairs the civil rights of the Plaintiffs guaranteed by the United States Constitution;

(g) Whether MWD's treatment of the Plaintiffs with an unapproved drug, hydrofluosilicic acid, is a deceptive, unfair and/or unlawful business practice; and,

(h) Whether MWD should be enjoined from adding hydrofluosilicic acid to the water supplied to the Plaintiffs;

43. Because Plaintiffs receive their water from MWD, which water has been uniformly tainted with an unapproved drug, hydrofluosilicic acid, by MWD, and Plaintiffs now seek to prevent and enjoin the use of an unapproved drug.

44. Plaintiffs have all similarly suffered irreparable harm and injuries to their rights as a result of MWD's conduct. Absent this action, MWD's unlawful conduct will continue unremedied and uncorrected.

FIRST CAUSE OF ACTION
DEPRIVATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983

45. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 44 of this Complaint.

46. Federal law, 42 U.S.C. § 1983, provides in relevant part as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,

> shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…

47. Plaintiffs are citizens of the United States who are being continuously subjected to the conduct of the Defendants alleged herein which deprives these individuals of the rights, privileges and immunities secured by the United States Constitution and Federal laws. The United States Constitution and Federal law secures the right, privilege and/or immunity to be free of medication using an unapproved drug and the right, privilege and/or immunity to only be medicated with an approved drug and only after informed consent has been provided. The conduct of the Defendants alleged herein, whereby MWD medicates Plaintiffs and other water consumers with an unapproved drug violates these rights, privileges and immunities.

SECOND CAUSE OF ACTION
IMPAIRMENT OF CIVIL RIGHTS UNDER 42 U.S.C. § 1981

48. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 47 of this Complaint.

49. Federal law, 42 U.S.C. § 1981, provides in relevant part as follows:

> (a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property…
>
> (c) Protection against impairment. The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

50. The rights of the Plaintiffs to be free from forced medication, to be free from medication by unapproved drugs, and to be only subject to medication by FDA approved drugs, as secured by the United States Constitution and Federal law, have been impaired by the conduct

of MWD and Jeffrey Kightlinger as alleged herein. The Defendants' conduct was performed in whole or in part under color of law.

THIRD CAUSE OF ACTION
DECLARATORY RELIEF

51. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 50 of this Complaint.

52. Plaintiffs seek a declaration of their rights, privileges and immunities as secured by the United States Constitution and Federal law with respect to the Defendant's conduct and policy of medicating consumers with an unapproved drug, hydrofluosilicic acid, through MWD's addition of this hazardous and contaminated chemical into the water supply, and whether such conduct was arbitrary, illegal and/or unconstitutional as applied to the rights, privileges and immunities of Plaintiffs and the general public.

FOURTH CAUSE OF ACTION
UNLAWFUL, UNFAIR AND DECEPTIVE BUSINESS PRACTICES

53. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 52 of this Complaint.

54. California Business & Professions Code § 17200 et seq. (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

> Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any

money or property, real or personal, which may have been acquired by means of such unfair competition.

California Business & Professions Code § 17203.

55. Business & Professions Code section 17200, et seq. prohibits acts of unfair competition, which shall mean and include any "unlawful business act or practice."

56. The policies, acts and practices heretofore described were and are an unlawful business act or practice because MWD's conduct in treating individuals, without their informed consent, with an unapproved drug through the sale of water violates the constitutional rights of the Plaintiffs and also violates the Food and Drug Act, 21 U.S.C. § 301, et seq. and other federal laws. Plaintiffs reserve the right to allege additional statutory and common law violations by MWD. Such unlawful conduct is ongoing to this date.

57. Business & Professions Code §17200, et seq. also prohibits acts of unfair competition, which shall mean and include any "unfair business act or practice."

58. The policies, acts or practices described herein were and are an unfair business act or practice because any justifications for MWD's illegal and wrongful conduct were and are vastly outweighed by the harm such conduct caused Plaintiffs and the members of the general public. There are FDA approved methods to treat dental caries and disease, and therefore, there can be no justification for MWD's use of an unapproved drug to medicate water consumers through the water supply. Such conduct is ongoing to this date.

59. Business & Professions Code §17200, et seq. also prohibits acts of unfair competition, which shall mean and include any "deceptive business act or practice."

60. The policies, acts or practices described herein were and are a deceptive business act or practice because MWD fails to inform consumers that they are being medicated with hydrofluosilicic acid, that hydrofluosilicic acid is an unapproved drug, and that hydrofluosilicic

acid presents a risk of serious and irreparable harm to consumers. As a result of this conduct, consumers of MWD are likely to be deceived about their water and the MWD's conduct towards them.

61. Plaintiffs have suffered injury and harm as a result of MWD's conduct and have lost money or property as a result of MWD's sale of water tainted with an unapproved drug. Plaintiffs are therefore entitled to the relief requested below.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs pray for judgment and relief as follows:

1. A judicial declaration that the use of an unapproved drug, hydrofluosilicic acid, by MWD violates the United States Constitution and the civil rights of the Plaintiffs and other recipients of the water so medicated by MWD;

3. An order enjoining MWD from pursuing the policies, acts, and practices complained of herein;

4. Costs of this suit;

5. Such other and further relief as the Court deems just and proper.

Date: August 8, 2011

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: */s/ Norman B. Blumenthal*
Norman B. Blumenthal, Esq.
Kyle R. Nordrehaug, Esq.

Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand a trial by jury on all issues so triable.

Date: August 8, 2011

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: */s/ Norman B. Blumenthal*
Norman B. Blumenthal, Esq.
Kyle R. Nordrehaug, Esq.
Attorneys for Plaintiffs

JS 44 (Rev. 12/07)

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DEBRA FOLI; DANNY BROWN; CAROLINE ASLANIAN; RABYN BLAKE

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Norman B. Blumenthal, Blumenthal, Nordrehaug & Bhowmik, 2255 Calle Clara, La Jolla, CA, (858) 511-1223

DEFENDANTS

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA; JEFFREY KIGHTLINGER

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

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

Attorneys (If Known)

'11CV1765 JLS BLM

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)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

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

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury

PERSONAL INJURY
- ❒ 362 Personal Injury - Med. Malpractice
- ❒ 365 Personal Injury - Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 444 Welfare
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ☒ 440 Other Civil Rights

PRISONER PETITIONS
- ❒ 510 Motions to Vacate Sentence

Habeas Corpus:
- ❒ 530 General
- ❒ 535 Death Penalty
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition

FORFEITURE/PENALTY
- ❒ 610 Agriculture
- ❒ 620 Other Food & Drug
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 630 Liquor Laws
- ❒ 640 R.R. & Truck
- ❒ 650 Airline Regs.
- ❒ 660 Occupational Safety/Health
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Mgmt. Relations
- ❒ 730 Labor/Mgmt.Reporting & Disclosure Act
- ❒ 740 Railway Labor Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 463 Habeas Corpus - Alien Detainee
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 810 Selective Service
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 875 Customer Challenge 12 USC 3410
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 892 Economic Stabilization Act
- ❒ 893 Environmental Matters
- ❒ 894 Energy Allocation Act
- ❒ 895 Freedom of Information Act
- ❒ 900Appeal of Fee Determination Under Equal Access to Justice
- ❒ 950 Constitutionality of State Statutes

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

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from another district (specify) ❒ 6 Multidistrict Litigation ❒ 7 Appeal to District Judge from Magistrate Judgment

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. § 1981; 42 U.S.C. § 1983

Brief description of cause:
IMPAIRMENT AND DEPRIVATION OF CIVIL RIGHTS

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 08/08/2011

SIGNATURE OF ATTORNEY OF RECORD /s/ Norman B. Blumenthal

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.C.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; 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 clerks 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 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. 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.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

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 dollar amount (in thousands of dollars) 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.