

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

Civil Action No.
23-cv-4129

- v. -

(_____, J.)
(_____, M.J.)

CITY OF NEW YORK,

Defendant.
-----X

COMPLAINT

Plaintiff United States of America (“the United States”), by its attorney, Breon Peace, United States Attorney for the Eastern District of New York, Ekta R. Dharia, Assistant United States Attorney, of counsel, acting at the request of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action pursuant to Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. §§ 9606(a) and 9607(a).

2. The United States seeks an order against Defendant City of New York (the “City of New York”) directing it to (a) perform certain response activities pursuant to CERCLA Section 104(a), 42 U.S.C. § 9604(a), and (b) pay the response costs incurred and to be incurred by the United States CERCLA Section 107(a), 42 U.S.C. § 9607(a), including, but not limited to, investigative and other response costs, in connection with the release or threatened release of hazardous substances into the environment at and/or from an area known as the Wolff-Alport Site, located in Queens, New York.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1367, and 42 U.S.C. § 9613(b).

4. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 112(c), 1391(b), and 42 U.S.C. § 9613(b) because the releases or threatened releases of hazardous substances at and/or from the Wolff-Alport Site occurred in this district and because the acts or omissions giving rise to the claims occurred in this district.

PARTIES

5. Plaintiff is the United States, acting on behalf of EPA, an agency of the United States.

6. Defendant is the City of New York, a municipal corporation organized under the laws of the State of New York.

STATUTORY BACKGROUND

7. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as “response actions.” 42 U.S.C. § 9604(a); *see* 42 U.S.C. § 9601(25).

8. CERCLA Section 104(a)(1) provides in relevant part:

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may represent an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare of the environment. . . .

42 U.S.C. § 9604(a)(1).

9. CERCLA Section 104(b) provides in relevant part:

Whenever the President is authorized to act pursuant to [Section 104(a)] or whenever the President has reason to believe that a release has occurred or is about to occur, . . . he may undertake such investigations, monitoring, surveys, testing and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants, or contaminants involved, and the extent of the danger to the public health or welfare or to the environment. . . .

42 U.S.C. § 9604(b).

10. CERCLA Section 106(a), 42 U.S.C. § 9606(a), provides in relevant part:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat.... The President may also . . . take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

42 U.S.C. § 9606(a).

11. For response actions pursuant to, *inter alia*, CERCLA Sections 104(a), 104(b), and 106(a), the President's authority has been delegated to EPA.

12. CERCLA Section 107(a) provides, in relevant part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section – (1) the owner and operator of a vessel or facility, (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, (3) any person who by contract, arrangement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances, and (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, [–] shall be liable for – (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan; . . .

42 U.S.C. § 9607(a).

FACTUAL ALLEGATIONS

The Wolff-Alport Site

13. From the 1920s until 1954, the Wolff-Alport Chemical Company (the “Wolff-Alport Company”) operated a facility at 1127-1129 Irving Avenue, Queens, New York.

14. The operations of the Wolff-Alport Company included the importing and processing of monazite sand, from which rare earth elements were extracted and sold to various commercial entities.

15. The process residues from the extraction process contained radioactive materials, including thorium and uranium, along with their decay products, such as radium.

16. Such materials contain radionuclides, which are hazardous substances pursuant to CERCLA Section 101(14), 42 U.S.C. § 9601(14), 40 C.F.R. Table 302.4, and Appendix B to 40 C.F.R. Section 302.4.

17. These radioactive process wastes were disposed of in the sewer system as well as buried at the Wolff-Alport Site at or near the Wolff-Alport Chemical Company’s former facility.

18. In 2009, the New York City Department of Design and Construction conducted an investigation that revealed that the soil under the pavement/ground surface at the Wolff-Alport Site contained visible characteristics of the process waste. The investigation further revealed that the process waste was consistently present within the top four feet under the pavement/ground surface, and that in one area at the Wolff-Alport Site, the process waste was present to a depth of approximately eight to ten feet.

19. In 2013, the New York City Department of Environmental Protection conducted an investigation that revealed radiological constituents above background concentrations in the sewer

system originating from the former Wolff-Alport Company facility discharge point to at least one quarter of a mile away at the intersection of Irving Avenue and Halsey Street in Queens, New York.

The Prior Time-Critical Removal Action at the Wolff-Alport Site

20. In 2013, EPA conducted a time-critical removal action at the Wolff-Alport Site. As a part of the time-critical removal action, EPA installed a combination of lead, steel, and concrete shielding within the Wolff-Alport Company former facility building located at 1127-1129 Irving Avenue at the Wolff-Alport Site and along a portion of the Irving Avenue sidewalk adjacent to the former Wolff-Alport Company facility. During that time-critical removal action, EPA also installed a radon mitigation system in the 1129 Irving Avenue portion of the Wolff-Alport Site and covered a former rail spur at the rear of the Wolff-Alport Company former facility property with a layer of rock and clean fill to reduce exposure to waste material. The rail spur area had been used to unload monazite sand and load other product for transport.

21. After EPA completed its work on the removal action, on August 10, 2017, EPA entered into an administrative settlement with the City of New York, pursuant to CERCLA Section 122(h), 42 U.S.C. § 9622(h). The settlement required the City of New York to reimburse EPA \$659,037.00 for EPA's past response costs for its above-described removal activities performed on the sidewalks owned by the City of New York during the removal action.

Placement of the Wolff-Alport Site on the National Priorities List

22. EPA included the Wolff-Alport Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register, on May 12, 2014. *See* 42 U.S.C. § 9605; 63 Fed. Reg. 40, 182-01.

23. The National Priorities List is a list of sites considered by EPA to be national

priorities for long-term evaluation and response among known releases or threatened releases of hazardous substances, pollutants, or contaminants.

The Remedial Action at the Wolff-Alport Site

24. From September 2015 to March 2017, EPA conducted extensive sampling at the Wolff-Alport Site as part of a remedial investigation. EPA tested soil, sewer system sediment and materials, groundwater, air, and building materials, and collected samples to delineate the nature and extent of the radioactive waste contamination.

25. EPA completed its remedial investigation and feasibility study reports, based on its remedial investigation activities, in July 2017.

26. In July 2017, EPA released for public comment a proposed plan for cleanup of the Site. The proposed plan included a description of a number of remedial alternatives considered by EPA and EPA's specific, preferred remedial alternative and the rationale for that preference.

27. The preferred remedial alternative included the demolition of certain buildings to remove contaminated building materials and to access contaminated soils underneath them at the Wolff-Alport Site, and the proper offsite disposal of debris and the excavated soils beneath the buildings and otherwise at the Wolff-Alport Site that exceed remediation criteria. These activities necessitate the relocation of the current tenants in those buildings at the Wolff-Alport Site slated to be razed.

28. On September 26, 2017, EPA formally selected the preferred remedial alternative as the selected remedy for the Wolff-Alport Site. *See EPA, Record of Decision, Wolff-Alport Chemical Company Superfund Site, Ridgewood, Queens County, New York, available at <https://semspub.epa.gov/work/02/528285.pdf> (Sept. 2017).*

29. In December 2017, EPA sent a Special Notice letter to the City of New York. The

letter described the work that would need to be performed at the portion of the Site owned by the City of New York as part of the selected remedy, including the removal and replacement of a portion of a sewer pipe, jet washing other portions of the sewer pipe, additional excavation (if warranted) of contaminated soils, and off-site disposal of any such contaminated materials. EPA also sought reimbursement of its past costs, including cost associated with its work on the remedial investigation and feasibility study, from the City of New York.

30. The City of New York responded by letter dated February 27, 2018, stating that it was willing to cooperate with EPA to develop a scope and timeframe for the work that is needed to be performed.

FIRST CLAIM FOR RELIEF

(Injunctive Relief Under CERCLA Section 106)

31. The United States repeats and realleges each of the foregoing paragraphs of this Complaint as if set forth fully herein.

32. CERCLA Section 106(a), 42 U.S.C. § 9606(a), provides the following in relevant part:

[W]hen the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may . . . secure such relief as may be necessary to abate such danger or threat

42 U.S.C. § 9606(a).

33. The President, through his delegate, the Director of the Superfund Emergency Management Division of EPA Region 2, has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release of hazardous substances or a threatened release of hazardous substances at or from the Wolff-Alport Site.

34. CERCLA Section 106(a), 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate a danger or threat at the Wolff-Alport Site. In the Record of Decision, EPA made determinations as to the response action that is necessary to abate a danger or threat with respect to soil and sediment contamination at the Wolff-Alport Site.

35. Pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), the City of New York is liable to perform the remedial actions identified in the Record of Decision relating to property owned by the City of New York where EPA has determined action is necessary to abate a danger or threat with respect to soil and sediment contamination at the Wolff-Alport Site.

SECOND CLAIM FOR RELIEF

(Cost Recovery Under CERCLA Section 107)

36. The United States repeats and realleges each of the foregoing paragraphs of this Complaint as if set forth fully herein.

37. CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides the following in relevant part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section – (1) the owner and operator of a vessel or facility, (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for – (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan; . . .

42 U.S.C. § 9607(a).

38. The Wolff-Alport Site is a “facility” within the meaning of CERCLA Section 101(9), 42 U.S.C. § 9601(9).

39. There have been and continue to be “releases” or “threats of releases of hazardous substances” within the meaning of CERCLA Sections 101(14) and 101(22), 42 U.S.C. §§ 9601(14) and 9601(22), into the environment at the Wolff-Alport Site.

40. The releases or threats of releases of hazardous substances at the Wolff-Alport Site have caused the United States to incur response costs as the term “response” is defined in CERCLA Section 101(25), 42 U.S.C. § 9601(25), in connection with the Wolff-Alport Site, including, but not limited to, costs of investigating and engaging in response actions in connection with the Wolff-Alport Site. The United States will continue to incur response costs in connection with the response actions at the Wolff-Alport Site in the future.

41. The costs of the response actions taken and to be taken by the United States at the Wolff-Alport Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

42. The City of New York is the current owner of property at the Wolff-Alport Site, including but not limited to, roads, sidewalks, and sewers, within the meaning of 42 U.S.C. § 9607(a).

43. The City of New York is a “person” within the meaning of CERCLA Section 101(21), 42 U.S.C. § 9601(21).

44. The City of New York is a covered person pursuant to CERCLA Section 107(a)(1)-(2), 42 U.S.C. § 9607(a)(1)-(2).

45. The United States has not been reimbursed for all response costs incurred by EPA, including, but not limited to, investigation, remedy selection, and remedial action costs.

46. Pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), the City of New York is jointly and severally liable for all response costs incurred or to be incurred by the United States relating to property owned by the City of New York where EPA has determined action is

necessary, as well as other indivisible costs.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests the following of this Court:

A. On the First Claim for Relief, enter judgment pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), against the City of New York in favor of the United States to perform certain response actions selected by EPA in order to abate the conditions at the Wolff-Alport Site.

B. On the Second Claim for Relief, enter judgment pursuant to CERCLA Section 107(a), 42 U.S.C. §9607(a), against the City of New York in favor of the United States for certain response costs incurred, and to be incurred, by the United States for actions conducted at or in connection with the Wolff-Alport Site, including interest, related oversight costs, and related indirect, administrative, investigative, and enforcement costs;

C. Grant the United States such other and further relief as this Court may deem appropriate.

Dated: June 5, 2023
Brooklyn, New York

BREON PEACE
United States Attorney
Eastern District of New York
271-A Cadman Plaza East
Brooklyn, New York 11201

BY: /s/ Ekta R. Dharia
EKTA R. DHARIA
Assistant U.S. Attorney
(718) 254-7520
ekta.dharia@usdoj.gov

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

United States of America

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Ekta Dharia, Assistant U.S. Attorney, U.S. Attorney's Office, Eastern District of New York, 271-A Cadman Plaza East, Brooklyn, New York 11201, (718) 254-7520

DEFENDANTS

City of New York

County of Residence of First Listed Defendant New York

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

Christopher King, Chief, Environmental Law Division, New York City Law Department, 100 Church Street, New York, NY 10009, (212) 356-2670

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)

Does this action include a motion for temporary restraining order or order to show cause? Yes ☐ No ☐

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9607(a).
Brief description of cause:
Action brought pursuant to CERCLA directing the City of New York to perform certain response activities and to pay certain response costs

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

Block, D.J.; Bulsara, M.J.

United States of America v. Second-A-One, Inc., et al.

DOCKET NUMBER 23-cv-476

DATE

SIGNATURE OF ATTORNEY OF RECORD

June 2, 2023

EKTA DHARIA

Digitally signed by EKTA DHARIA
Date: 2023.06.05 09:42:55 -04'00'

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, Ekta Dharia, counsel for United States of America, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☐
☒
☐

monetary damages sought are in excess of \$150,000, exclusive of interest and costs,

the complaint seeks injunctive relief,

the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 1(c)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☒ No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☐ Yes ☒ No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☒ Yes ☐ No
- c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: .

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☒ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.



Yes



No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?



Yes

(If yes, please explain



No

I certify the accuracy of all information provided above.

Signature: Ekta Dharia June 2, 2023

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

UNITED STATES OF AMERICA

Plaintiff(s)

V.

CITY OF NEW YORK

Defendant(s)

Civil Action No. 23-cv-4129

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* CITY OF NEW YORK
100 CHURCH STREET
NEW YORK, NY 10009

A lawsuit has been filed against you.

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

AUSA Ekta Dharia
U.S. Attorney's Office
Eastern District of New York
271-A Cadman Plaza East
7th Floor
Brooklyn, NY 11201

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

BRENNA B. MAHONEY
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 23-cv-4129

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

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

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

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

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

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: