

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. _____

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

THOMAS B. EVANS,

Defendant.

COMPLAINT

Plaintiff United States Securities and Exchange Commission (“Commission” or “SEC”),
for its Complaint, alleges:

I. SUMMARY

1. From April 2003 through August 2005, Defendant Thomas B. Evans raised more than \$16 million from more than 100 investors through his offerings of interests issued by three Colorado limited partnerships, Garden Stone Apartments, LP (“Garden Stone”), Ventana Apartments, LP (“Ventana”), and Aspen Chase Investments, LP (“Aspen Chase”). Evans represented that he would use the funds raised by each of the limited partnerships to purchase and renovate specific low-income apartment buildings in Texas. Although Evans purchased these apartment properties with offering proceeds, he also used funds from each offering to pay for operational expenses of the other limited partnerships in direct violation of representations he made in offering materials. In quarterly statements, Evans also made numerous false statements about the status of renovations, apartment occupancy, and financial performance.

2. In approximately April 2007, investors discovered that, contrary to information they had received from Evans, some of the apartment properties owned by the limited

partnerships were heavily encumbered with debt and in significant disrepair. Investors voted to remove Evans and he subsequently relinquished control of the limited partnerships. Some of the apartment properties were foreclosed upon by commercial lenders, and a court-appointed receiver is managing others. Evans' investors have suffered significant losses through their investments in the partnerships.

II. JURISDICTION AND VENUE

3. The SEC brings this civil enforcement action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t (b)] and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u (d)].

4. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78(u)(e), and 78aa].

5. Venue lies in this Court pursuant to Section 22(a) of the Securities Act, Section 27 of the Exchange Act [15 U.S.C. §§77v(a) and 78aa], and 28 U.S.C. §1391(b)(1). Certain of the transactions, acts, practices, and courses of business constituting the violations of law alleged herein occurred within this judicial district.

6. In connection with the transactions, acts, practices, and courses of business described in this Complaint, the Defendant, directly and indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, and/or of the means and instruments of transportation or communication in interstate commerce.

III. DEFENDANT

7. Thomas B. Evans, age 45, currently resides in Austin, Texas. Evans organized Garden Stone, Ventana, and Aspen Chase while he resided in Colorado, and he exercised sole control over the respective entities that acted as their general partners.

IV. RELATED ENTITIES

8. Garden Stone Apartments, LP (“Garden Stone”) is a Colorado limited partnership with its principal place of business in Denver, Colorado. Evans formed and controlled a Colorado limited liability company, Evans Garden Stone Partners, LLC (a/k/a Phillips Garden Stone Partners, LLC), which acted as the general partner of Garden Stone.

9. Ventana Apartments, LP (“Ventana”) is a Colorado limited partnership with its principal place of business in Denver, Colorado. Evans formed and controlled a Colorado limited liability company, Ventana Apartments, GP, LLC, which acted as the general partner of Ventana until it resigned in approximately June 2007.

10. Aspen Chase Investments, LP (“Aspen Chase”) is a Colorado limited partnership with its principal place of business in Denver, Colorado. Evans formed and controlled a Colorado limited liability company, Aspen Chase Management, LLC, which acted as the general partner of Aspen Chase until it resigned in approximately June 2007.

V. FACTS

A. The Offerings

11. Between April 2003 and August 2005, Evans offered interests issued by three limited partnerships – Garden Stone, Ventana, and Aspen Chase – each of which was designed to finance the purchase, renovation and resale of specific apartment complexes.

12. For the Garden Stone, Ventana, and Aspen Chase offerings, Evans formed an entity to act as the general partner of the relevant limited partnership, and then sold limited

partnership interests, promissory notes, or interests in promissory notes to investors. Through his entities, Evans managed and controlled each of the limited partnerships.

13. In April and May 2003, Garden Stone raised approximately \$6.5 million from 53 investors through the sale of limited partnership interests and interests in promissory notes.

14. In July and August 2004, Ventana raised approximately \$8.1 million from 50 investors through the sale of limited partnership interests and promissory notes.

15. In July and August 2005, Aspen Chase sold approximately \$1.6 million of limited partnership interests to 6 investors.

16. Evans' property management company, Capitol Residential, LLC (f/k/a Vision Property Services, LLC), acted as the property manager for each of the properties owned by the limited partnerships.

17. The limited partnership interests, promissory notes, and interests in promissory notes issued by the three limited partnerships are securities in the form of investment contracts or notes.

B. Evans Commingled and Used Investor Funds for Undisclosed Purposes

18. For the Garden Stone, Ventana, and Aspen Chase offerings, investors were provided with a written "Confidential Offering Disclosure Statement" that, among other things, detailed the anticipated uses of investor proceeds. Evans, working with others, drafted these materials to describe the business he planned to conduct on behalf of the limited partnerships. Each of these disclosure statements stated that, after expenditure of the specific amounts necessary to purchase the apartment properties, most of the remaining funds raised from investors would be used to finance repairs and renovations for the partnership's properties.

19. The respective limited partnership agreements, which were provided to investors with other offering materials, further stated that investor funds would not be commingled with the funds of any other person or entity.

20. These statements in the offering materials about the anticipated uses of investor funds were false and misleading. Although Evans purchased the identified apartment complexes on behalf of the limited partnerships, he misappropriated each limited partnership's funds to pay operating expenses of the other limited partnerships. In connection with this misappropriation, Evans commingled the funds of the limited partnerships by making hundreds of transfers to and from numerous bank accounts associated with the limited partnerships, other ventures, and his personal bank accounts.

21. Each of the limited partnerships received funds from, and disbursed funds to, the other two partnerships. On a net basis, the later partnerships funded the earlier partnerships. For example, Ventana made net transfers of approximately \$619,000 to Garden Stone bank accounts. Aspen Chase made net transfers of approximately \$216,000 to Garden Stone accounts and \$104,000 to Ventana accounts.

22. Evans used investor funds for undisclosed purposes almost immediately following the Ventana and Aspen Chase offerings. For example, Evans made his first transfer from a Ventana account to a Garden Stone account within six days after the first deposit of funds into a Ventana account. Within four months, he had made net transfers of approximately \$175,000 from Ventana accounts to Garden Stone accounts. Similarly, within eight days of the Aspen Chase account receiving its first deposit, Evans had transferred \$30,000 to Garden Stone accounts and \$7,000 to Ventana accounts.

C. Evans Lulled Investors With False Status Reports and Financial Statements

23. From approximately October 2003 through April 2007, Evans distributed quarterly letters and unaudited financial statements to limited partnership investors. From at least the summer of 2005 through April 2007, Evans' letters misrepresented the progress of apartment property renovations and apartment occupancy rates. During the same time period, Evans falsified quarterly financial statements by materially overstating rental income and other income statement line items.

24. Evans' false quarterly letters and financial statements lulled investors into believing that their limited partnership investments were performing as planned and induced certain investors to invest in the last offering – Aspen Chase – that closed in August 2005.

25. Since apartment renovations were the first step in the business plans for the limited partnerships, the percentage of units that had been renovated was a key metric evaluated each quarter by investors when determining the success of each project.

26. Evans' quarterly reports to investors falsely claimed that steady progress was being made on apartment renovations, and that some properties were nearly completely renovated.

27. For example, Evans represented in numerous quarterly reports to Ventana investors that more than 95% of all unit renovations had been completed, and that the few remaining units would be completed by the end of the second quarter of 2006. These representations were false and misleading. Internal emails reflect that Evans personally inspected each of the Ventana properties and found that at least 200 units, or 25% of the total units, were in need of renovation before they could be occupied. Moreover, a management company retained after Evans' removal determined that, as of May 2007, 54% of the Ventana units required renovations before they could be occupied by tenants.

28. In his last quarterly report to Aspen Chase investors in February 2007, Evans reported that “[w]e are finishing [renovations of] our last group of 10 units and then will be done with all of the unit interiors.” However, an email received by Evans in March 2007 contains a list of more than 40 vacant units at Aspen Chase that still needed to be renovated before they could be occupied. When a new management company gained control of Aspen Chase operations in May 2007, it determined that only 40 of 144 total units, or 27%, had actually been renovated while under Evans’ control.

29. Evans also materially overstated the rental occupancy rates of the various properties in numerous quarterly reports to limited partnership investors. For example, in December 2006, Evans reported to investors that Aspen Chase was occupied at a rate of 78%, when actual occupancy was 35%.

30. In December 2006, Evans told Ventana investors that occupancy at one of that partnership’s properties was over 90%, when in fact it was only occupied in the range of 62%-67%.

31. Information regarding the lower, actual occupancies of the properties was regularly reported to Evans verbally and in written reports. Moreover, Evans knew that the occupancy rates he was reporting to investors were incorrect because he knew that large numbers of apartments had not been renovated and were uninhabitable.

32. Evans further concealed the poor performance of the limited partnerships by directing the material overstatement of rental income and other line items in quarterly financial statements distributed to limited partnership investors.

33. Evans’ misstatements of rental income made it appear as though the properties were profitable by the end of 2006, when in fact they were losing money and required significant monthly cash infusions to cover routine operating expenses.

34. Evans directed Capitol Residential's bookkeeper to make adjusting journal entries to materially inflate rental income beginning in the second or third quarter of 2005 and continuing each quarter until his entities' resignation as general partners of the relevant limited partnerships. Evans' misstatement of rental income caused the material misstatement of other key line items on the quarterly financial statements, including total operating revenue, net income before non-operating expenses, and net income.

35. Evans also manipulated the financial statements of the limited partnerships by directing Capitol Residential's bookkeeper not to record any receivables or payables on limited partnership balance sheets that would reflect Evans' cash transfers among the entities.

D. The Scheme Unravels

36. In late 2006, Evans encountered difficulty in refinancing two commercial loans secured by the Ventana properties that were scheduled to mature within months. After numerous delays, in February and March 2007, certain investors became concerned about Evans' management of the properties and sought more information about the operations of the apartment complexes. The investors subsequently learned of several million dollars of liens, additional debt, delinquencies on debt service, and other significant issues with apartment properties owned by the partnerships. None of these issues had been disclosed to investors.

37. In late April 2007, the limited partners voted to remove Evans from management of the Garden Stone, Ventana and Aspen Chase limited partnerships. Evans initially objected to the investors' efforts to remove him. However, by June 2007, Evans agreed to withdraw and consented to the appointment of a receiver over the assets of Ventana and Aspen Chase.

38. In May 2007, a new company was hired to manage the apartment properties. Immediately upon being retained, the management company performed "walk-throughs" of apartment units at the properties to confirm occupancy and the physical condition of the units.

39. The new management company discovered that apartment units had not been renovated and leased to new tenants as Evans had represented to limited partnership investors. To the contrary, portions of the apartment complexes were in significant disrepair, and each of them had occupancy rates that were far lower than what had been reported by Evans.

40. The management company took photographs demonstrating that significant numbers of the units had not been renovated but were covered in mold, had no appliances or bathroom fixtures, or had portions of walls missing, water damage, and other issues rendering them uninhabitable.

41. The following table illustrates the discrepancy between the occupancy rates reported by Evans to investors and the occupancy rates determined by the new property management company.

Apartment Complex	Last Rental Occupancy Rate Reported In Quarterly Report By Evans to Investors (January/February 2007)	Rental Occupancy Rates as Determined by the Property Management Company Hired by the Receiver (May 2007)
Garden Park (Garden Stone, LP)	90%	47%
Villas at Ventana (Ventana, LP)	91%	43%
Park at Ventana (Ventana, LP)	89%	52%
Ventana at Valwood (Ventana, LP)	91%	64%
Aspen Chase (Aspen Chase, LP)	78%	36%

42. After the receiver completed its initial evaluation of the apartment complexes owned by the respective limited partnerships, additional funds were raised from existing investors to manage and complete the renovations of two of the Ventana properties and the Aspen Chase property. Investors decided to allow a commercial lender to foreclose on Garden

Stone's remaining property and one of the Ventana properties because it was not economically feasible to invest additional capital given their condition and occupancy.

43. Investors anticipate significant losses on each of the limited partnerships.

FIRST CLAIM FOR RELIEF

**Fraud – Violations of Exchange Act Section 10(b) and Rule 10b-5
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]**

44. The SEC repeats and realleges paragraphs 1 through 43 above.

45. Defendant Evans, directly or indirectly, with scienter, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, the mails, or any facility of a national securities exchange, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person; in violation of Section 10(b) of the Exchange Act and Rule 10b-5.

46. Defendant Evans violated, and unless restrained and enjoined will in the future violate Section 10(b) of the Exchange Act and Rule 10b-5.

SECOND CLAIM FOR RELIEF

**Fraud – Violations of Securities Act Section 17(a)(1)
[15 U.S.C. § 77q(a)(1)]**

47. The SEC repeats and realleges paragraphs 1 through 43 above.

48. Defendant Evans, directly or indirectly, with scienter, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme, or artifice to defraud.

49. Defendant Evans violated, and unless restrained and enjoined will in the future violate Section 17(a)(1) of the Securities Act.

THIRD CLAIM FOR RELIEF

Fraud – Violations of Securities Act Sections 17(a)(2) and 17(a)(3)

[15 U.S.C. § 77q(a)(2) and (3)]

50. The SEC repeats and realleges paragraphs 1 through 43 above.

51. Defendant Evans, directly or indirectly, in the offer or sale of securities, by use of means or instruments of transportation or communication in interstate commerce, or by use of the mails, obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in transactions, practices, or courses of business which have been or are operating as a fraud or deceit upon the purchasers of Garden Park, Ventana and Aspen Chase securities.

52. Defendant Evans violated, and unless restrained and enjoined will in the future violate Sections 17(a)(2) and (a)(3) of the Securities Act.

PRAYER FOR RELIEF

The SEC respectfully requests that this Court:

I.

Enter an Order finding that Defendant Evans committed the violations alleged in this Complaint, and unless restrained will continue to do so.

II.

Enter an Injunction, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Evans from further violations of the law and rules alleged in this complaint.

III.

Enter an Order requiring Defendant Evans to pay a civil money penalty pursuant to Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Section 21(d) [15 U.S.C. § 78u(d)].

IV.

Order such other relief as this Court deems necessary and appropriate.

DATED: November 6, 2009.

Respectfully submitted,

s/ Julie K. Lutz _____
Julie K. Lutz
Zachary T. Carlyle
Attorneys for Plaintiff
Securities and Exchange Commission
1801 California Street, Suite 1500
Denver, CO 80202
(303) 844-1000

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.)

<p>I. (a) PLAINTIFFS SECURITIES AND EXCHANGE COMMISSION</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Julie K. Lutz, Securities and Exchange Commission, 1801 California Street, Suite 1500, Denver, CO 80202 (303) 844-1050</p>	<p>DEFENDANTS Thomas B. Evans</p> <p>County of Residence of First Listed Defendant <u>Travis County, TX</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known) John Moorhead, Esq., Baker & Hostetler LLP, 303 E. 17th Avenue, Suite 1100, Denver, CO 80203</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 10%;">PTF <input type="checkbox"/> 1</td> <td style="width: 10%;">DEF <input type="checkbox"/> 1</td> <td style="width: 33%;">Incorporated <i>or</i> Principal Place of Business In This State</td> <td style="width: 10%;">PTF <input type="checkbox"/> 4</td> <td style="width: 10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <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 (Excl. 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	<p>PERSONAL INJURY</p> <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	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <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"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p style="text-align: center;">LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p style="text-align: center;">IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 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):
15 U.S.C. § 78j(b), 77g(a)(1), 77g(a)(2), 77g(a)(3) and 17 C.F.R. § 240.10b-5

Brief description of cause:
Securities law violations

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: 11/06/2009 SIGNATURE OF ATTORNEY OF RECORD: s/ Julie K. Lutz, Esq.

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.