

USDC SCAN INDEX SHEET



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3:98-CV-01265 SEC V. GILLETTE

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CMP.

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *A. Sch* DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 SECURITIES AND EXCHANGE COMMISSION

Case No.

12 Plaintiff,

'98 CV 1265S CGA

13 v.

COMPLAINT

14 JOHN W. GILLETTE, JR.,

15 Defendant.
16
17

18 Plaintiff Securities and Exchange Commission
19 ("Commission"), for its complaint, upon information and belief,
20 alleges as follows:

21 1. Defendant John W. Gillette, Jr. ("Gillette"),
22 directly or indirectly, has engaged, and unless restrained and
23 enjoined will continue to engage, directly or indirectly, in
24 transactions, acts, practices and courses of business that
25 constitute violations of Section 17(a) of the Securities Act of
26 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the
27 Securities Exchange Act of 1934, as amended ("Exchange Act") [15
28 U.S.C. § 78j(b)], Rule 10b-5 promulgated thereunder [17 C.F.R.

1 § 240.10b-5] and Sections 203(a), 206(1) and 206(2) of the
2 Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§
3 80b-3(a), 80b-6(1), and 80b-6(2)].

4 JURISDICTION

5 2. This Court has jurisdiction over this action pursuant
6 to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)],
7 Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) &
8 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].
9 Gillette, directly or indirectly, has made use of the means or
10 instrumentalities of interstate commerce, and/or the mails in
11 connection with the securities transactions described in this
12 Complaint.

13 3. Certain of the transactions, acts, practices and
14 courses of business constituting the violations of law alleged
15 herein occurred within the Southern District of California, and
16 the Defendant may be found in, inhabits, or transacts business in
17 the Southern District of California.

18 THE DEFENDANT

19 4. John W. Gillette, Jr. ("Gillette") age 42, resides in
20 San Diego, California. Gillette was formerly a registered
21 representative who held several National Association of
22 Securities Dealers ("NASD") licenses. He worked as a registered
23 representative for various broker-dealers until 1996.

24 RELATED ENTITIES

25 5. Gillette & Co., dba Pro Sports Management International
26 ("Pro Sports"), is a California corporation incorporated in 1994.
27 Gillette owns Pro Sports and controlled its day-to-day
28 operations.

1 6. Impact Investments, Inc. ("Impact") a California
2 corporation, incorporated in 1994, is wholly owned by Pro Sports.
3 Gillette controlled Impact's day-to-day operations. Impact acted
4 as the sole limited partner in the various real estate limited
5 partnerships through which Gillette directed, or purported to
6 direct, investor funds.

7 GILLETTE ACTED AS AN UNREGISTERED INVESTMENT ADVISER

8 7. From about September 1994 through June 1997, Defendant
9 Gillette, either individually or through Pro Sports, solicited a
10 number of his former brokerage firm clients and others to hire
11 Pro Sports to manage their money. The majority of individuals
12 whom Gillette solicited were professional athletes. Gillette
13 told these individuals that he was in charge of Pro Sports and
14 that Pro Sports would provide investment advice and bill paying
15 services in exchange for a small fee.

16 8. Between 1995 and 1997, all Pro Sports clients signed
17 contracts agreeing to pay Pro Sports a fee of 1% to 2% of their
18 money under management. Gillette obtained power of attorney over
19 most of Pro Sports' clients' personal bank and brokerage
20 accounts.

21 9. By mid-1997, Pro Sports and Gillette managed
22 approximately \$28 million of assets that belonged to at least 80
23 clients, many of whom live in states other than California.
24 Neither Gillette nor Pro Sports, however, was registered with the
25 Commission as an investment adviser.

26 THE FRAUDULENT SCHEME

27 10. Gillette made material misrepresentations to clients
28 and potential clients. From about 1993 through July 1997,

1 Defendant Gillette, through the use of the mail or telephone
2 communications, engaged in a fraudulent scheme involving, among
3 other things, the misappropriation of client funds and
4 securities, and the fraudulent offer and sale of municipal bonds
5 and real estate limited partnership securities. At least \$5
6 million to \$11 million of the funds entrusted with Gillette and
7 Pro Sports has been lost due to Gillette's violations described
8 herein.

9 11. When soliciting investments, Gillette told clients and
10 potential clients that he would invest their funds in low risk
11 investments, such as real estate limited partnerships and
12 municipal bonds, that would pay returns of up to 50% annually.
13 Contrary to his representations to his clients, Gillette
14 frequently failed to effect such transactions. Instead, Gillette
15 commingled the clients' money and misappropriated portions of it
16 for his personal benefit, including to pay for his family's
17 expenses, to pay Pro Sports' operating expenses, and to purchase
18 undisclosed interests in various business ventures.

19 12. Gillette also omitted to disclose material facts to his
20 clients. Gillette omitted to state that the money raised from
21 clients was not used in the manner represented, i.e. to purchase
22 certain municipal bonds or to fund certain real estate limited
23 partnership projects. Gillette further omitted to state that
24 portions of the money he raised were used for his personal
25 benefit.

26 13. To mask the fraudulent scheme, to increase Pro Sports
27 clients' confidence, and to lull those clients into believing
28 that they were receiving the promised returns, each quarter

1 Gillette instructed Pro Sports's staff to create and send
2 falsified income statements and balance sheets to the clients.
3 These falsified financial statements misrepresented the clients'
4 amount of money under management and their return on investments.
5 Based on Gillette's apparent success in investing their funds as
6 reflected in these statements, clients continued to invest
7 additional money with Pro Sports.

8 14. To further increase client confidence, Gillette made
9 various payments of principal and interest to investors. In some
10 cases, in order to make these payments, Gillette misappropriated
11 money from other Pro Sports clients.

12 15. The misrepresentations described in ¶¶ 10 through 14
13 were material as his clients would no doubt consider important
14 the fact that, among other things, the promised securities were
15 never purchased, that the money paid for the securities was
16 misappropriated, and that returns on investment consisted of
17 other investor funds.

18 **MISAPPROPRIATION OF CLIENTS' SECURITIES**

19 16. Between 1993 and 1994, while acting as a registered
20 representative, Gillette misappropriated at least \$400,000 of
21 securities belonging to one of his clients. Without the client's
22 knowledge or consent, Gillette used the power of attorney she
23 gave him in order to misappropriate her securities. Gillette
24 then liquidated the securities and used the proceeds for his
25 personal benefit.

26 17. In 1994, the niece of the client referred to in ¶ 16
27 inherited the client's securities. Gillette falsely represented
28 to the niece that he had used the proceeds of those securities to

1 purchase municipal bonds. Contrary to his representations to the
2 niece, Gillette had misappropriated the securities for his
3 personal benefit prior to her inheritance.

4 18. In 1994, Gillette sent the niece two checks purporting
5 to represent interest payments from the bonds. Gillette
6 misappropriated the funds used to pay the niece from the accounts
7 of other Pro Sports clients.

8 **MISUSE AND MISAPPROPRIATION OF CLIENTS' FUNDS**

9 19. Between September 1, 1994 and June 13, 1997, Gillette
10 misused and misappropriated clients' funds for his personal
11 benefit in the following manner:

12 **A. FBI Project**

13 20. Between September 1994 and early 1995, Gillette raised
14 funds from Pro Sports' clients to invest in a real estate limited
15 partnership that would construct a building to be occupied by the
16 Federal Bureau of Investigation ("FBI Project"). Gillette
17 distributed offering documents and represented to investors that
18 they would receive a return of principal plus a 50% profit.
19 Gillette raised at least \$823,000 from five investors to fund
20 construction of the FBI Project.

21 21. Contrary to his representations to the investors
22 referred to in Paragraph 20, when the FBI Project was completed,
23 Gillette misappropriated the proceeds for his personal use.

24 **B. DEA Project**

25 22. Starting in late 1995, Gillette raised funds from Pro
26 Sports clients, in person or over the telephone, to invest in a
27 real estate limited partnership. This real estate limited
28 partnership, identical in structure to the FBI project, purported

1 to construct a building to be occupied by the Drug Enforcement
2 Administration ("DEA Project"). Gillette raised \$1.5 million
3 from two clients to fund construction of the DEA Project.

4 23. Contrary to his representations to the clients referred
5 to in Paragraph 22, Gillette failed to invest any of these funds
6 in the DEA Project and instead misappropriated all of the funds
7 for his personal benefit.

8 C. Wateridge Project

9 24. From 1995 through at least March 1997, Gillette raised
10 funds from Pro Sports clients in order to purchase a building and
11 pavilion owned by the Resolution Trust Corporation ("RTC")
12 ("Wateridge Project").

13 25. Gillette and Pro Sports personnel solicited investments
14 for the Wateridge project over the telephone and in person.
15 Gillette and Pro Sports personnel represented that the building
16 would be leased to various tenants and that the building would be
17 operating at a substantial profit within a period of 12-15
18 months.

19 26. Gillette raised approximately \$1,020,000 from four
20 clients to fund the purchase of the Wateridge project. Gillette
21 also transferred at least \$500,000 that belonged to one or more
22 Pro Sports client, without their knowledge or consent, to help
23 finance the purchase of the Wateridge Project.

24 27. When the Wateridge Project was eventually sold in 1997,
25 Gillette misappropriated for his own use the proceeds properly
26 belonging to those investors referred to in Paragraph 26.

27 *

28 *

CITY OF SAN DIEGO BONDS

28. In 1995, Gillette began soliciting Pro Sports clients, over the telephone and in person, to invest in City of San Diego municipal bonds. Gillette misrepresented that the funds investors gave him would be used to purchase these bonds.

29. Gillette raised \$1,750,000 from five clients.

30. Gillette omitted to state that investors' money was never used to purchase the bonds.

31. In March or April 1996, one of Gillette's clients sought from Gillette additional verification of his purchase of municipal bonds. In response, Gillette caused to be prepared a letter from the City of San Diego Finance Director. In order to create this letter, Gillette obtained letterhead from the City of San Diego Finance Director's office by deceit, and forged the Finance Director's seal and handwriting. This letter falsely acknowledged that the client owned \$500,000 worth of City of San Diego bonds. Gillette then sent the letter to the client.

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FIRST CAUSE OF ACTION

ACTING AS AN UNREGISTERED INVESTMENT ADVISER

**Violations of Section 203(a) of the
Investment Advisers Act of 1940**

[15 U.S.C. § 80b-3(a)]

32. Paragraphs 1-31 are realleged and incorporated herein by reference.

33. Defendant Gillette, by engaging in the conduct described in ¶¶ 1-31 above, by the use of means or instruments of transportation or communication in interstate commerce or of the mails in connection with his business as an investment adviser, while not registered as an investment adviser:

a. for compensation, engaged in the business of advising others regarding the value of securities or the advisability of investing in, purchasing, or selling securities, or

b. for compensation, and as part of a regular business issued analyses or reports concerning securities.

34. By reason of the foregoing, Gillette violated, and unless restrained and enjoined will continue to violate, Section 203(a) of the Advisers Act [15 U.S.C. § 80b-3(a)].

SECOND CAUSE OF ACTION

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Section 17(a) of the Securities Act

[15 U.S.C. § 77q(a)]

35. Paragraphs 1-31 are realleged and incorporated herein by reference.

*

1 36. Defendant Gillette, by engaging in the conduct
2 described in ¶¶ 1-31 above, directly or indirectly, in the offer
3 or sale of securities, by the use of means or instruments of
4 transportation or communication in interstate commerce or by the
5 use of the mails:

6 a. with scienter, employed a device, scheme or
7 artifice to defraud; or

8 b. obtained money or property by means of untrue
9 statements of material fact or by omitting to state material
10 facts necessary in order to make the statements made, in the
11 light of the circumstances under which they were made, not
12 misleading; or

13 c. engaged in transactions, practices or courses of
14 business which operated or would operate as a fraud or deceit
15 upon the purchasers of such securities.

16 37. By reason of the foregoing, Defendant Gillette
17 violated, and unless restrained and enjoined will continue to
18 violate, Section 17(a) of the Securities Act [15 U.S.C. §
19 77q(a)].

20 THIRD CAUSE OF ACTION

21 FRAUD IN CONNECTION WITH THE

22 PURCHASE OR SALE OF SECURITIES

23 Violations of Section 10(b) of the Exchange

24 Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated

25 thereunder [17 C.F.R. § 240.10b-5]

26 38. Paragraphs 1-31 are realleged and incorporated herein
27 by reference.

28 *

1 39. Defendant Gillette, by engaging in the conduct
2 described in ¶¶ 1-31 above, directly or indirectly, in connection
3 with the purchase or sale of securities, by use of means or
4 instrumentalities of interstate commerce, or of the mails, with
5 scienter:

6 a. employed devices, schemes or artifices to defraud;

7 b. made untrue statements of material fact or omitted
8 to state material facts necessary in order to make the statements
9 made, in the light of the circumstances under which they were
10 made, not misleading; or

11 c. engaged in acts, practices or courses of business which
12 operated or would operate as a fraud or deceit upon other
13 persons.

14 40. By reason of the foregoing, Defendant Gillette
15 violated, and unless restrained and enjoined will continue to
16 violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]
17 and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

18 FOURTH CAUSE OF ACTION

19 FRAUD IN CONNECTION WITH CONDUCT

20 AS AN INVESTMENT ADVISER

21 Violations of Sections 206(1) and 206(2) of the
22 Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]

23 41. Paragraphs 1-31 are realleged and incorporated herein
24 by reference.

25 42. Gillette, by engaging in the conduct described in ¶¶ 1-
26 31 above, by use of the mails or means or instrumentalities of
27 interstate commerce, directly or indirectly, while acting as an
28 investment adviser:

1 a. with scienter, employed devices, schemes or
2 artifices to defraud advisory clients or prospective advisory
3 clients; and

4 43. b. engaged in transactions, practices or course
5 of business which operated as a fraud or deceit upon advisory
6 clients or prospective advisory clients.

7 44. By reason of the foregoing, Gillette violated Sections
8 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and
9 80b-6(2)].

10 PRAYER FOR RELIEF

11 WHEREFORE, the Commission respectfully requests that this
12 Court:

13 I.

14 Issue findings of fact and conclusions of law that the
15 Defendant committed the violations charged and alleged herein.

16 II.

17 Enter a Final Judgment permanently enjoining Gillette from
18 engaging in the transactions, acts, practices, and courses of
19 business described herein, and from engaging in conduct of
20 similar purport and object, in violation of Section 17(a) of the
21 Securities Act, Section 10(b) of the Exchange Act, Rule 10b-5
22 thereunder, and Sections 203(a), 206(1) and 206(2) of the
23 Advisers Act.

24 III.

25 Grant such other and further relief as this court may
26 determine to be just, equitable and necessary.

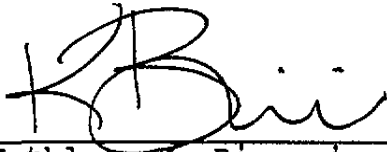
27 *

28 *

IV.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

DATED: June 30, 1998


Kathleen K. Bisaccia
Attorney for Plaintiff
Securities and Exchange Commission

(a) PLAINTIFFS

U.S. SECURITIES AND EXCHANGE COMMISSION

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
EXCEPT IN U.S. PLAINTIFF CASES**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**

WILLIAM E. WHITE
SECURITIES AND EXCHANGE COMMISSION
5670 WILSHIRE BLVD., SUITE 1100
LOS ANGELES, CA 90036
(213) 965-3869

DEFENDANTS

JOHN W. GILLETTE, JR.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

ATTORNEYS (IF KNOWN)

R.J. COUGHLIN, U.S. DISTRICT COURT CLERK
COUGHLIN, SEMMER & LIPMAN
501 W. BROADWAY, SUITE 400
SAN DIEGO, CA 92101
(619) 232-0800
DEPUTY

I. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE FOR DEFENDANT)
(For Diversity Cases Only)

- | | 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 |

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. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$
UNDER F.R.C.P. 23

Check YES only if demanded in complaint: **JURY DEMAND:** ☐ YES ☒ NO

VII. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) Violations of antifraud provisions of the federal securities laws 15 U.S.C. Sections 77q(a), 78j(b), 80b-3(a), 80b-6(1), 80b-6(2) and 17 C.F.R. Section 240.10b-5.

VII. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

OTHER STATUTES	CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY
400 State Reapportionment	<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal
410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 620 Other Food & Drug	28 USC 158
430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 423 Withdrawal
450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	28 USC 157
460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<u>PROPERTY RIGHTS</u>
470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 820 Copyrights
810 Selective Service	<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 830 Patent
850 Securities/Commodities/Exchange	<input type="checkbox"/> 153 Recovery of Overpayment Of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 840 Trademark
875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<u>LABOR</u>	<u>SOCIAL SECURITY</u>
891 Agricultural Act	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)
892 Economic Stabilization Act	<input type="checkbox"/> 195 Contract Product Liability	<u>CIVIL RIGHTS</u>	<u>PRISONER PETITIONS</u>	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)
893 Environmental Matters	<u>REAL PROPERTY</u>	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
894 Energy Allocation Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI
895 Freedom of Information Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))
900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<u>FEDERAL TAX SUITS</u>
950 Constitutionality of State Statutes	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
890 Other Statutory Actions	<input type="checkbox"/> 245 Tort Product Liability		<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
	<input type="checkbox"/> 290 All Other Real Property				

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):