

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF INDIANA**

MELISSA VILLEGAS, as
Administratrix of the Estate of
DELBERT JOHNSON, Deceased,

Plaintiff,

Civil Action No.: 2:24-cv-00104

vs.

HANCOCK REGIONAL HOSPITAL
AS OWNER AND OPERATOR OF
HANCOCK REGIONAL HOSPITAL
D/B/A GREAT LAKES
HEALTHCARE CENTER,

Defendant.

COMPLAINT

AND NOW, comes the Plaintiff, Melissa Villegas, as the Administratrix of the Estate of Delbert Johnson, Deceased, by and through her undersigned counsel, Dawn M. Smith, Esquire; and the law firm of Smith Clinesmith, LLP, and files this Complaint for Defendant's violation of duties imposed upon it under the Omnibus Budget Reconciliation Act of 1987 ("OBRA"); the Federal Nursing Home Reform Act ("FNHRA"); 42 U.S.C. §1396r, *et al.*; the implementing regulations found at 42 C.F.R. §483, *et al.*; and for violations of the Constitution of the United States of America under Amendment Fourteen, enforceable under 42 U.S.C. §1983, against Defendant Hancock Regional Hospital as Owner and Operator of Hancock Regional Hospital d/b/a Great Lakes Healthcare Center, a skilled nursing facility.

Nature of Action

1. This is a proceeding under 42 U.S.C. §1983 to remedy deprivations of rights under the Omnibus Budget Reconciliation Act of 1987; the Federal Nursing Home Reform Act;

the Federal Nursing Home Regulations as found at 42 C.F.R. §483, which amplify the aforementioned statutes, and the Constitution of the United States of America.

Jurisdiction and Venue

2. As the instant case presents issues of federal law, jurisdiction is proper in this forum as a federal question, pursuant to 28 U.S.C §1331.

3. Venue lies within this judicial district, since all of the actions complained of herein occurred within the Northern District of Indiana.

Parties

4. Plaintiff Melissa Villegas is an adult who resides at 2420 Venus St., Portage, IN 46368.

5. Melissa Villegas is the cousin of Plaintiff's Decedent Delbert Johnson.

6. Delbert Johnson died on October 2, 2022.

7. Melissa Villegas is in the process of being appointed as the Administratrix of the Estate of Delbert Johnson.

8. Plaintiff brings this action as the personal representative of the Estate of Delbert Johnson.

9. Defendant Hancock Regional Hospital (hereinafter "Defendant" or "Hancock") is a county hospital formed pursuant to IC 16-22 with its offices located at 2300 Great Lakes Dr., Dyer, IN 46311.

10. Defendant Hancock Regional Hospital, as a county hospital, at all times relevant hereto, was acting under the color of state law.

11. Defendant Hancock Regional Hospital owns and operates Defendant Hancock Regional Hospital d/b/a Great Lakes Healthcare Center ("Great Lakes"), which is a skilled nursing facility located at 2300 Great Lakes Dr., Dyer, IN 46311.

12. As Great Lakes is owned and operated by Defendant Hancock Regional Hospital, Defendant Hancock Regional Hospital is proper party Defendant to this matter.

13. At all times relevant hereto, Great Lakes operated as a "skilled nursing facility" as that term is defined in 42 U.S.C. §1395i-3.

14. At all times relevant hereto, Great Lakes was acting under the control of Hancock Regional Hospital, and by and through its duly authorized agents and/or employees who then and there were acting within the course and scope of their employment.

15. Defendant Hancock Regional Hospital is a county hospital organized and existing under IC 16-22. At all times relevant hereto, Defendant Hancock Regional Hospital, acting through Great Lakes, was responsible for the policies, practices, supervision, implementation, and conduct of all matters pertaining to Great Lakes and was responsible for the appointment, training, supervision, and conduct of all Great Lakes personnel. In addition, at all relevant times, Defendant Hancock Regional Hospital was responsible for enforcing the rules of Great Lakes facility and for ensuring that personnel employed in the facility obey the Constitution and laws of the United States and of the State of Indiana.

16. At no point has suit been brought by or on behalf of Delbert Johnson for his personal injuries or for his wrongful death.

Statement of Claims

17. All preceding paragraphs of this Complaint are incorporated herein, as if set more fully at length.

18. Delbert Johnson. (herein "Mr. Johnson") was 53 years old when he was admitted to Great Lakes on or about March 1, 2022 for skilled nursing services after suffering a stroke. He also had medical history significant for Type 2 Diabetes, Hypertension, Urinary Retention and Obesity.

19. Great Lakes knew that Mr. Johnson was at risk for developing pressure ulcers and skin breakdowns, and represented to his family that it was knowledgeable, skilled, staffed, and able to care for Mr. Johnson in light of his risks. As such, Great Lakes and its staff were required to implement certain pressure ulcer prevention protocols, which should have included a regular turning and repositioning schedule every two hours and as needed as well as pressure reducing/relieving devices to alleviate pressure from Mr. Johnson's person, to prevent Mr. Johnson from developing pressure ulcers. Mr. Johnson's family reasonably relied on Great Lakes's representations when selecting Great Lakes as a skilled nursing facility to care for him.

20. Great Lakes knew that Mr. Johnson was at risk for aspiration, due to history of stroke. They also knew that Mr. Johnson was at risk for aspiration pneumonia, decreased oral intake and infection. Great Lakes represented to his family that it was knowledgeable, skilled, staffed, and able to care for Mr. Johnson in light of his risks. As such, Great Lakes and its staff were required to implement certain protocols to prevent and/or minimize the risk for aspiration pneumonia, dehydration, malnutrition and monitor for infection, which should have included an ensuring that head of bed was elevated when he was eating, and for at least 45 minutes thereafter, providing him with assistance with eating, ensuring that a nutritional assessment was performed in order to assess his daily nutritional and hydration requirements and care planning in order to prevent dehydration, aspiration pneumonia and sepsis. Mr. Johnson's family reasonably relied on Great Lakes's representations when selecting Great Lakes as a skilled nursing facility to care for him.

21. Mr. Johnson's family visited him at Great Lakes on or around March 8, 2022 and discovered that he was dehydrated and not on a feeding tube despite not being able to eat due to his stroke.

22. Mr. Johnson's family also discovered a severe bed sore between his buttocks and

left thigh that was later determined to be a stage IV pressure wound.

23. As a result of the facility's failure to turn and reposition Mr. Johnson and as a result of their failure to implement proper pressure ulcer prevention protocols, Mr. Johnson had unrelieved pressure to his buttocks for an extended period of time, resulting in the formation of a severe pressure wound.

24. After Mr. Johnson developed pressure ulcers, Great Lakes nursing staff failed to provide adequate wound care resulting in his pressure wound worsening and becoming infected.

25. Upon seeing the condition that Mr. Johnson was in due to Great Lakes's failure to provide adequate care, Mr. Johnson's family removed him from Great Lakes on or about March 17, 2022.

26. Mr. Johnson was admitted to Franciscan Saint Margaret Health Dyer Hospital on March 17, 2022 where he was noted to have a stage four decubitus ulcer.

27. Mr. Johnson was also found to be severely dehydrated when he was admitted to Franciscan Saint Margaret Health Dyer Hospital. He was diagnosed with dehydration with hyponatremia as well as an acute kidney injury resulting from dehydration.

28. Mr. Johnson was found to have a urinary tract infection which was noted to be secondary to chronic foley use. Mr. Johnson was admitted to the hospital in both septic as well as hypovolemic shock and was found to have aspiration pneumonia.

29. Hospital records included a report that Mr. Johnson had not been eating and intaking fluids well and had experienced lethargy for 2 days prior to his March 17, 2022 hospitalization.

30. Mr. Johnson's stage IV pressure wound did not heal, and due to the infection he was eventually placed into hospice care.

31. During the time when Mr. Johnson was a resident of Great Lakes, the facility

was understaffed. Center for Medicare and Medicaid Services Payroll Based Journal information for the facility shows that for Quarter 1, 2022, the facility was below the national average and recommended and required certified nurse aide hours for all 90 days (including all the days of Mr. Johnson's residence) and below the number of Registered Nursing and other Nurse hours for 30 and 88 days of the quarter, respectively (including all the days of Mr. Johnson's residence at Great Lakes). Managers, owners and operators of Great Lakes knew the facility was understaffed yet made no corrections to their budgeting to allow for additional needed staff to provide care to Mr. Johnson.

32. On or about October 2, 2022, Mr. Johnson died. Mr. Johnson's causes of death listed on his Death Certificate are stroke, hypertension, and diabetes mellitus.

COUNT I

Deprivation of Civil Rights Enforceable Via 42 U.S.C. §1983

SURVIVAL

33. All of the preceding paragraphs of this Complaint are incorporated herein, as if set forth more fully at length.

34. At all times relevant to this Complaint, Great Lakes was acting under the color of state law and as an agent of the State of Indiana.

35. Defendant is bound generally by the 1987 Omnibus Budget Reconciliation Act (OBRA) and the Federal Nursing Home Reform Act (FNHRA) which was contained within the 1987 OBRA. See: 42 U.S.C. §1396r.

36. Defendant is also bound generally by the OBRA/FNHRA implementing regulations found at 42 C.F.R. §483, et seq., which served to further define and amplify specific statutory rights set forth in the above-mentioned statutes.

37. The statutes in question, as amplified and further defined by the detailed

regulatory provisions, create rights which are enforceable pursuant to 42 U.S.C. §1983, as the language of these regulations and statutory provisions clearly and unambiguously creates those rights.

38. Defendant, in derogation of the above statutes and regulations, and as a custom and policy, failed to comply with the aforementioned regulations as follows:

- a. By failing, as a custom and policy, to develop and implement written Policies and Procedures that prohibited the mistreatment, deliberate indifference and abuse of residents such as Delbert Johnson, as required by 42 C.F.R. §483.12 and 42 U.S.C. §1396r(b)(1)(A);
- b. By failing, as a custom and policy, to care for patients, including Delbert Johnson, in a manner that promoted maintenance or enhancement of his life, as required by 42 C.F.R. §483.15 and 42 U.S.C. §1396r(b)(1)(A);
- c. By failing, as a custom and policy, to promote the care of patients, including Delbert Johnson, in a manner and in an environment that maintained or enhanced his dignity as required by 42 C.F.R. §483.15 and 42 U.S.C. §1396r(b)(1)(A);
- d. By failing, as a custom and policy, to develop a comprehensive Care Plan for patients, including Delbert Johnson, as required by 42 C.F.R. §483.20 and 42 U.S.C. §1396r(b)(2)(A);
- e. By failing, as a custom and policy, to provide patients, including Delbert Johnson, the necessary care and services to allow him to attain or maintain the highest, practicable, physical, mental and psychosocial well-being, as required by 42 C.F.R. §483.25 and 42 U.S.C. §1396r(b)(3)(A);
- f. By failing, as a custom and policy, to periodically review and revise a patient's or resident's written Plan of Care by an interdisciplinary team after each of the resident's or patient's assessments as described within 42 U.S.C. §1396r(b)(3)(A) and as required by §1396r(b)(2)(C);
- g. By failing, as a custom and policy, to conduct an

assessment of a patient or resident, such as Delbert Johnson, as per 42 U.S.C. §1396r(b)(3)(A), promptly after a significant change in the resident's physical or mental condition, as required by 42 U.S.C. §1396r(b)(3)(C)(i)(ii);

- h. By failing, as a custom and policy, to use the results of the assessments required as described above in developing, reviewing and revising the resident's Plan of Care, specifically Delbert Johnson's Plan of Care, as required by 42 U.S.C. §1396r(b)(3)(D);
- i. By failing, as a custom and policy, to ensure that patients or residents, including Delbert Johnson, were provided medically related social services to attain or maintain the highest practicable physical, mental and psychosocial well-being as required by 42 C.F.R. §483.25 and 42 U.S.C. §1396r(b)(4)(ii);
- j. By failing, as a custom and policy, to ensure that an ongoing program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental and psychosocial well-being of each resident or patient, including Delbert Johnson, as required by 42 C.F.R. §483.25 and 42 U.S.C. §1396r(b)(4)(A)(v);
- k. By failing, as a custom and policy, to ensure that the personnel responsible for the care of patients were properly certified and/or re-certified as being qualified to perform necessary nursing services as required by 42 U.S.C. §1396r(b)(4)(B);
- l. By failing, as a custom and policy, to provide sufficient nursing staff to provide nursing and related services that would allow patients or residents, including Delbert Johnson, to attain or maintain the highest practicable, physical, mental and psychosocial well-being, as required by 42 C.F.R. §483.30 and 42 U.S.C. §1396r(b)(4)(C);
- m. By failing, as a custom and policy, to maintain clinical records on all residents, including Delbert Johnson, including but not limited to the Plans of Care and resident's assessment, as required by 42 U.S.C. §1396r(b)(6)(C);
- n. By failing, as a custom and policy, to ensure that the Great

Lakes facility was administrated in a manner that enabled it to use its resources effectively and efficiently to allow patients or residents, including Delbert Johnson, to maintain or attain their highest practicable level of physical, mental and psychosocial well-being as required by 42 C.F.R. §483.75, 42 U.S.C. §1396r(d)(A) and 42 U.S.C. §1396r(d)(1)(C);

- o. By failing, as a custom and policy, to ensure that the administrator of Defendant Great Lakes met the standards established under 42 U.S.C. §1396r(f)(4) as required by 42 U.S.C. §1396r(d)(1)(C);
- p. By failing, as a custom and policy, to ensure that Defendant Great Lakes was complying with federal, state, local laws, and accepted professional standards which apply to professionals providing services to residents, including Delbert Johnson, and in operating such a facility as Defendant Great Lakes, as required by 42 U.S.C. §1396(d)(4)(A); and,
- q. By failing, as a custom and policy to ensure that Defendant Great Lakes's administrator and director of nursing properly monitored and supervised subordinate staff thereby failing to ensure the health and safety of residents or patients, including Delbert Johnson, in derogation of 42 C.F.R. §483.75 and 42 U.S.C. §1396(a)(1)(A).

39. As a proximate result of Defendant's actionable derogation of its regulatory and statutory responsibilities as above-described, Plaintiff's Decedent was injured as previously referenced, and suffered pain, distress, and death as a result of Great Lakes's poor care and treatment, which allowed him to suffer harm as described herein. As such, Plaintiff has suffered, and is entitled to recover the following damages, as well as an award of reasonable counsel fees, pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1988:

- a. Pain, suffering, inconvenience, anxiety and nervousness of the Plaintiff's Decedent until the time of his death;
- b. Hospital, medical, and nursing expenses incurred on Plaintiff's Decedent's behalf;

- c. Other losses and damages permitted by law; and,
- d. Any other damages as the Court sees fit to award.

WHEREFORE, the Plaintiff, Melissa Villegas, as the Administratrix of the Estate of Delbert Johnson, Deceased, demands damages of the Defendant Hancock Regional Hospital in excess of Seventy-Five Thousand Dollars (\$75,000.00), plus interest, costs of suit and attorneys' fees.

COUNT II

Violations of the United States of America's Constitution Under Amendment Fourteen for Injury to Human Dignity Enforceable Via 42 U.S.C. §1983

SURVIVAL

40. All of the preceding paragraphs of the within Complaint are incorporated herein as if set forth more fully at length.

41. During the residency of Delbert Johnson, Defendant deliberately and/or with deliberate indifference failed to properly care for him, causing him to suffer an injury to human dignity.

42. Specifically, Defendant allowed Delbert Johnson to remain in a state that was hazardous to his health and well-being. These violations interfered with Delbert Johnson's rights under the Fourteenth Amendment to the United States of America's Constitution.

43. During its treatment of Delbert Johnson, Defendant acted pursuant to a state right or privilege, and as such was a state actor.

44. While a patient at Defendant Great Lakes, Delbert Johnson had a serious medical need, and the deliberate and deliberately indifferent acts and omissions of the staff at Defendant Great Lakes indicated deliberate indifference to Mr. Johnson's medical needs.

45. Delbert Johnson was dependent upon Defendant Great Lakes and its staff for a significant amount of his activities of daily living, nursing care, and treatment needs.

46. Defendant and its staff were deliberately indifferent to Delbert Johnson because they knew that Mr. Johnson faced a substantial risk of serious harm and they failed to take reasonable steps to avoid the harm.

47. As a proximate result of Defendant's failure to act properly as above-described, Delbert Johnson suffered an injury to human dignity as previously referenced and suffered pain, distress and death as a result of the poor care and treatment given to him, allowing him to develop the injuries and suffer death as referenced herein. As such, Plaintiff has suffered, and is entitled to recover for, the following damages:

- a. Pain, suffering, inconvenience, anxiety and nervousness of the Plaintiff's Decedent until the time of his death;
- b. Hospital, medical, surgical and nursing expenses incurred on Plaintiff's Decedent's behalf;
- c. Attorney's fees and costs;
- d. Other losses and damages permitted by law; and,
- e. Any other damages as the Court sees fit to award.

WHEREFORE, Plaintiff Melissa Villegas, as the Administratrix of the Estate of Delbert Johnson, Deceased, demands compensatory and consequential damages from Defendant Hancock Regional Hospital in excess of Seventy-Five Thousand Dollars (\$75,000.00), plus interest, costs of suit and attorneys' fees.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

/s/ Dawn M. Smith

Dawn M. Smith
SMITH CLINESMITH, LLP
325 N. St. Paul, 29th Floor
Dallas, Texas 75201
(214) 953-1900 – Telephone
(214) 953-1901 – Facsimile
dawn@fightingelderabuse.com
service@smithclinesmith.com

UNITED STATES DISTRICT COURT

for the

Northern District of Indiana

MELISSA VILLEGAS, as Administratrix of the
Estate of DELBERT JOHNSON, Deceased,

Plaintiff(s)

v.

HANCOCK REGIONAL HOSPITAL AS OWNER
AND OPERATOR OF HANCOCK REGIONAL
HOSPITAL D/B/A GREAT LAKES HEALTHCARE
CENTER

Defendant(s)

Civil Action No. 2:24-cv-00104

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Hancock Regional Hospital as Owner and Operator of Hancock Regional Hospital
d/b/a Great Lakes Healthcare Center
2300 Great Lakes Dr.
Dyer, IN 46311

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:

Dawn Smith
Smith Clinesmith, LLP
325 N. St. Paul, 29th Floor
Dallas, TX 75201

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.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 2:24-cv-00104

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:

CIVIL COVER SHEET

USDC IN/ND case 2:24-cv-00104-GSI-AZ document 1-2 filed 03/15/24 page 1 of 2

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

MELISSA VILLEGAS, as Administratrix of the
Estate of DELBERT JOHNSON, Deceased

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Dawn Smith - Smith Clinesmith, LLP
325 N. St. Paul, 29th Floor, Dallas, TX
214-953-1900

DEFENDANTS

HANCOCK REGIONAL HOSPITAL et al

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

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

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 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)

- | | 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)

Click here for: [Nature of Suit Code Descriptions.](#)

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 INTELLECTUAL 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 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 checked="" 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):
42 U.S.C. § 1983

Brief description of cause:

Deprivation of Rights under the Omnibus Reconciliation Act of 1987 and the Federal Nursing Home Reform Act

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 _____ DOCKET NUMBER 2:24-cv-00104

DATE

Mar 15, 2024

SIGNATURE OF ATTORNEY OF RECORD

s/ Dawn Smith

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- 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.
- 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.