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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

CELLCO PARTNERSHIP and NEW YORK SMSA
LIMITED PARTNERSHIP, both D/B/A VERIZON
WIRELESS,

Plaintiffs,

vs.

THE COUNTY OF MONMOUTH, NEW JERSEY,
THE MONMOUTH COUNTY BOARD OF
COMMISSIONERS, DIRECTOR THOMAS A.
ARNONE, in his official capacity and not as an
individual, DEPUTY DIRECTOR NICK DIROCCO, in
his official capacity and not as an individual,
COMMISSIONER SUSAN M. KILEY, in her official
capacity and not as an individual, COMMISSIONER
LILLIAN G. BURRY, in her official capacity and not
as an individual, and, COMMISSIONER ROSS F.
LICITRA, in his official capacity and not as an
individual,

Defendants.

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
AND EXPEDITED REVIEW
PURSUANT TO
47 U.S.C. § 332(c)(7)(B)(v)**

**COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF
AND EXPEDITED REVIEW PURSUANT TO 47 U.S.C. § 332(c)(7)(B)(v)**

Plaintiffs, Cellco Partnership and New York SMSA Limited Partnership both d/b/a Verizon Wireless (hereafter collectively “Verizon”), by their undersigned attorneys, as and for their Complaint against the County of Monmouth, New Jersey, the Monmouth County Board of Commissioners, Director Thomas A. Arnone, in his official capacity and not as an individual, Deputy Director Nick DiRocco, in his official capacity and not as an individual, Commissioner Susan M. Kiley, in her official capacity and not as an individual, Commissioner Lillian G. Burry, in her official capacity and not as an individual, and, Commissioner Ross F. Licitra in his official capacity and not as an individual, (collectively, the “County” or “Defendants”), respectfully allege as follows and hereby petitions this Court to: conduct an expedited review of Defendants’ (a) failure to support its denial with substantial evidence, (b) material inhibition of Verizon’s provision of personal wireless service, (c) failure to act on certain necessary environmental permitting applications, (d) operation of a *de facto* moratorium, and (e) breach of contract, with respect to Verizon’s proposed deployment of telecommunications facilities in the public rights-of-way.

INTRODUCTION AND REGULATORY FRAMEWORK

1. In 1996, Congress enacted the Telecommunications Act of 1996, No. 104-104, 110 Stat. 56 (1996), which amended the Communications Act of 1934, codified in 47 U.S.C. §151 et seq. (hereinafter, the “Act” or the “TCA”) as a “pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans”¹

¹ The Act, S. Rep. 104-230, at 1 (Feb. 1, 1996) (Conf. Report).

2. Congress has declared that there is a need for wireless communication services, including “personal wireless services,”² as set forth in the Act, and the rules, regulations, and orders of the Federal Communications Commission (“FCC”) promulgated pursuant thereto. In order to foster its pro-competitive, deregulatory national policy, Congress included provisions in the Act that encourage competition by restricting the regulation of the placement of personal wireless service facilities by State and local governments and instrumentalities thereof.

3. Section 332(c)(7) of the Act imposes substantive and procedural limitations on State and local governments and instrumentalities thereof to ensure that the Act’s pro-competitive goals are not frustrated, and it expressly preempts any action or inaction by State or local governments or their agents that effectively prohibits the provision of wireless services.

4. Section 332(c)(7) of the Act strikes a balance between “preserv[ing] the traditional authority of state and local governments to regulate the location, construction, and modification of wireless communications facilities like cell phone towers”³ and “reduc[ing] . . . the impediments imposed by local governments upon the installation of facilities for wireless communications.”⁴

5. While Section 332(c)(7)(A) of the Act preserves “the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities,” that authority is subject to significant limitations – including Section 332(c)(7)(B)(ii) of the Act, which requires States and local

² Personal wireless service facilities include “Small Wireless Facilities,” as defined by the Federal Communications Commission (“FCC”) in 47 C.F.R. § 1.6002(l).

³ *T-Mobile S., LLC v. Township of Roswell*, 574 U.S. 293, 300; 135 S. Ct. 808, 814; 190 L.Ed.2d 679 (2015).

⁴ *Township of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115; 125 S. Ct. 1453, 161 L.Ed.2d 316, (2005)

governments or instrumentalities thereof to “act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with [the relevant] government or instrumentality, taking into account the nature and scope of such request.”⁵

6. The purpose of Section 332(c)(7)(B)(ii) of the Act is to counteract delays in consideration of wireless facility siting applications by State or local governments or their agents, which thwart timely deployment of wireless service.

7. Section 332(c)(7)(B)(v) of the Act provides that:

any person adversely affected by any . . . failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such . . . failure to act, commence an action in any court of competent jurisdiction.

8. As the Federal agency tasked with implementing the Act, the FCC has the authority to promulgate rules and regulations to achieve the purposes of the Act.

9. Pursuant to its statutory authority, in November 2009, the FCC adopted an initial order establishing what constitutes a “reasonable period of time” under the Act for a State or local government or instrumentality thereof to take action on an application for a wireless communications site.⁶

10. In the 2009 Shot Clock Order, the FCC recognized that “personal wireless service providers have often faced lengthy and unreasonable delays in the consideration of their facility

⁵ 47 U.S.C. § 332(c)(7)(B)(ii).

⁶ In the Matter of the Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, WT 08-165, FCC 09-99, 24 F.C.C.Rcd. 13,994, ¶ 71, Nov. 19, 2009. (the “2009 Shot Clock Order”).

siting applications, and that the persistence of such delays is impeding the deployment of advanced and emergency services.”⁷ In so holding, the FCC sought to promote the deployment of broadband and other critical wireless services.⁸

11. The FCC noted that the purpose of this “shot clock deadline” was to give State or local governments or instrumentalities thereof, “a strong incentive to resolve each application within the timeframe defined as reasonable, or they will risk issuance of an injunction granting the application. In addition, specific timeframes for State and local government deliberations will allow wireless providers to better plan and allocate resources. This is especially important as providers plan to deploy their new broadband networks.”⁹

12. On September 26, 2018, the FCC revised its Shot Clocks and policy.¹⁰

13. In its Third Report and Order the FCC “adopt[ed] two new Section 332 shot clocks for personal wireless service facilities known as Small Wireless Facilities—60 days for review of an application for collocation of Small Wireless Facilities using a preexisting structure and 90 days for review of an application for attachment of Small Wireless Facilities using a new structure.”¹¹

⁷ 2009 Shot Clock Order, p. 14,005, ¶ 32.

⁸ *Id.*

⁹ *Id.* at p. 14,000, ¶38.

¹⁰ In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WT 17-29, WC 17-84, FCC 18-133, 33 FCC Rcd. 9,088, Sept. 26, 2018. (“Third Report and Order”). The Third Report and Order became effective as of January 14, 2019. 83 Fed. Reg. 51,867 (2018). The Third Report and Order was affirmed, in part, in *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020).

¹¹ Third Report and Order at p. 9,142, ¶ 105. The “Shot Clock” timelines are codified at 47 C.F.R §1.6003.

14. The FCC also “determined that failure to meet the applicable time frame enables an applicant to pursue judicial relief within the next 30 days.”¹²

15. The Shot Clock Order further codified that:

Timely action required. A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.¹³

16. The presumptively “reasonable period of time” runs from when an application is first submitted or proffered.¹⁴

17. The FCC specifically noted the following:

if an applicant proffers an application, but a state or locality refuses to accept it until a pre-application review has been completed, the shot clock begins to run when the application is proffered. In other words, the request is “duly filed” at that time, notwithstanding the locality’s refusal to accept it.¹⁵

18. Under the FCC’s Rules and Regulations, a determination of incompleteness of a siting application tolls the shot clock only if the State or local government or instrumentality thereof provides notice to the applicant in writing within ten (10) days of the submission of the application, specifically identifying all missing information, and specifying any code provision, ordinance, application instruction, or otherwise publicly-stated procedures that require the information to be submitted.¹⁶

¹² *Id.* at p. 9,104, ¶ 19.

¹³ 47 C.F.R. § 1.6003(a).

¹⁴ 47 C.F.R. § 1.6003(e).

¹⁵ Third Report and Order at p. 9,162, ¶145 (citations omitted)

¹⁶ 47 C.F.R. § 1.6003(d)(1).

19. The expiration of the shot clock period without a determination by the State or local government or instrumentality thereof constitutes a “failure to act” under the Act and allows the applicant to seek redress in federal court pursuant to 47 U.S.C. § 332(c)(7)(B)(v).

20. Section 253 of the Act prohibits State or local authorities from erecting barriers that may prohibit or may have the effect of prohibiting the ability of any entity to provide telecommunications services, including taking action or inaction that results in an unreasonable delay in the deployment of the provider’s facilities and provision of telecommunications services.¹⁷

21. Pursuant to 47 U.S.C. § 332(c)(7)(B)(iii), “[a]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.”

22. Substantial evidence "does not mean a large or considerable amount of evidence, 'but rather such evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Cellular Telephone v. Zoning Bd. of Adjust.*, 197 F.3d 64, 71 (3d Cir. 1999).

23. Section 253(a) of the Act provides that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” Moreover, Section 253(c) limits the power of State and local government authorities to “manage the public rights-of-way” on a “competitively neutral and nondiscriminatory basis.”

¹⁷ 47 U.S.C. § 253(a).

24. In its Third Report and Order, the FCC also confirmed that the “materially inhibit” standard is the proper standard to be used to determine whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332 of the TCA.¹⁸

25. As further explained by the FCC, “a state or local government legal requirement will have the effect of prohibiting wireless telecommunications service if it materially inhibits the provision of such services. We clarify that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing a new service or otherwise improving service capabilities.”¹⁹

26. Significantly, in its Third Report and Order, the FCC also

confirm[ed] that our interpretations today extend to state and local governments’ terms for access to public ROW that they own or control, including areas on, below, or above public roadways, highways, streets, sidewalks, or similar property, as well as their terms for use of or attachment to government-owned property within such ROW, such as new, existing and replacement light poles, traffic lights, utility poles, and similar property suitable for hosting Small Wireless Facilities.²⁰

27. The FCC’s “materially inhibit” standard was recently adopted by the Third Circuit in Cellco Partnership v. White Deer Township Zoning Hearing Board.²¹

¹⁸ Third Report and Order at p. 4, ¶ 10.

¹⁹ Third Report and Order at p. 17, ¶ 37.

²⁰ Third Report and Order at p. 9.134, ¶ 92.

²¹ Docket 22-2392 (3d Circ. 2023).

28. In White Deer Township, the Court held that the “materially inhibit” standard requires the Court to “consider the totality of the circumstances” in determining whether a state or local requirement “materially inhibits” service.

29. In 2018, the FCC also adopted an order (the “Moratorium Order”) clarifying how local moratoria, both *de facto* and express, violate Section 253 of the TCA.²²

30. The FCC defines *de facto* moratorium as “state or local actions that are not express moratoria, but that effectively halt or suspend the acceptance, processing, approval of applications or permits for telecommunications services or facilities in a manner akin to an express moratorium.”²³

31. According to the FCC, “like express moratoria, *de facto* moratoria, prohibit or have the effect of prohibiting the provision of service and are thus prohibited by Section 253 [of the TCA].”²⁴

JURISDICTION AND VENUE

32. This Court has subject matter jurisdiction over this action pursuant to:
(a) 47 U.S.C. §§ 253 and 332(c)(7)(B) of the Act because Verizon has been adversely affected and aggrieved by Defendants’ actions in violation of those provisions of the Act; and
(b) 28 U.S.C. § 1331 because this is a civil action that presents federal questions arising under the Act.

²² In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment, WC Docket 17-84 (August 3, 2018) (“Moratorium Order”)

²³ Moratorium Order at p. 76, ¶ 149.

²⁴ Moratorium Order at p. 7, ¶ 151.

33. This Court has jurisdiction to order declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and has supplemental jurisdiction with regard to any state law claims pursuant to 28 U.S.C. § 1367.

34. This Court has personal jurisdiction over the Defendants, and venue is proper in this Court, as the Defendants conduct or have conducted continuous, systematic, and routine business within the County of Monmouth in the State of New Jersey and within the jurisdiction of this Court, pursuant to 28 U.S.C. § 110.

35. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to this action occurred in the District of New Jersey.

EXPEDITED PROCEEDING

36. Pursuant to 47 U.S.C. § 332(c)(7)(B)(v) of the Act, this Court “shall hear and decide [this] action on an expedited basis.”

THE PARTIES

37. Cellco Partnership is a general partnership formed under the law of the State of Delaware and has been authorized to do business in the State of New Jersey and maintains its principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920.

38. New York SMSA Limited Partnership is a limited partnership, with Cellco Partnership as its general partner, formed under the law of the State of New York and has been authorized to do business in the State of New Jersey and maintains its principal place of business at One Verizon Way, Basking Ridge, New Jersey 07920.

39. Verizon utilizes licenses issued by the FCC to provide personal wireless communications services.

40. Verizon uses Small Wireless Facilities (“SWFs”) to assist in providing wireless telecommunications and broadband services to its customers.

41. Defendant County of Monmouth, New Jersey (the “County”) is a municipal corporation duly organized under the laws of the State of New Jersey with a principal place of business at One East Main Street, Freehold, New Jersey 07728.

42. Upon information and belief, Defendant Monmouth County Board of Commissioners is the governing body of Defendant County of Monmouth, New Jersey with authority under federal, New Jersey and County laws to manage access to public rights of way for equipment used in the provision of telecommunications services and maintains its principal place of business at One East Main Street, Freehold, New Jersey 07728.

43. Upon information and belief, Defendant, Commissioner Director Thomas A. Arnone, in his official capacity and not as an individual, is a member of Defendant Monmouth County Board of Commissioners and is the Commissioner Director of Defendant County of Monmouth, New Jersey.

44. Upon information and belief, Commissioner Deputy Director Nick DiRocco, in his official capacity and not as an individual, is a member of Defendant Monmouth County Board of Commissioners and is the Deputy Direction of the Monmouth County Board of Commissioners.

45. Upon information and belief, Commissioner Susan M. Kiley, in her official capacity and not as an individual, is a member of Defendant Monmouth County Board of Commissioners.

46. Upon information and belief, Commissioner Lillian G. Burry, in her official capacity and not as an individual, is a member of Defendant Monmouth County Board of Commissioners.

47. Upon information and belief, Commissioner Ross F. Licitra, in his official capacity and not as an individual, is a member of Defendant County of Monmouth Board of Commissioners.

FACTS COMMON TO ALL COUNTS

48. Verizon initiated discussions with the Borough of Belmar (the “Borough”) approximately five years ago to deploy SWFs²⁵ within the public right-of-way of Ocean Avenue in the Borough, which is a municipality in the County of Monmouth (the “County”).

49. Verizon’s wireless network has exceeded its capacity to handle the demand for wireless services in Belmar and Verizon seeks to deploy the subject SWFs in order to provide additional wireless capacity in the Borough.

50. During the summer months this lack of capacity causes blocked calls on its network which means that some of the Borough’s residents and visitors are unable to make phone calls or have access to the internet via their personal devices.

51. This service blocking, which is caused by inadequate capacity, most recently occurred this past Labor Day weekend.

52. The subject portion of Ocean Avenue is a road maintained and managed by Defendants.

²⁵ Each of these proposed SWFs meets the definition of “small wireless facility” as same is set forth at 47 CFR § 1.6002(I).

53. Pursuant to N.J.S.A. 27:16-6, both the Borough's consent and the County's consent are required for the installation of SWFs in the subject right-of-way.

54. On December 12, 2016, Verizon entered into a certain *County Utility Agreement for Occupancy Within County Right-of-Way between County of Monmouth and New York SMSA Limited Partnership d/b/a Verizon Wireless* (the "ROW Agreement") with the County.

55. The ROW Agreement provides for a procedure for the County's review and approval of the installation of SWFs within the public rights-of-way under the jurisdiction of Defendants.

56. After lengthy discussion with the Borough, Verizon submitted an application to the Borough that proposed the installation of eighteen (18) SWFs within the Ocean Avenue right-of-way on January 12, 2021.

57. Because the Borough did not respond within the required "Shot Clock" as set forth at 47 C.F.R §1.6003, Verizon filed suit against the Borough.

58. That litigation, Cellco Partnership v. Borough of Belmar, Docket No. 3:21-cv-11016 (D.N.J. 2021) (the "Prior Litigation"), was settled in September 2022 and Verizon and the Borough memorialized the terms of the settlement in a written settlement agreement dated August 25, 2022 (the "Settlement Agreement").

59. The Settlement Agreement included the approval of twenty (20) SWFs to be installed within the public right-of-way of Ocean Avenue.

60. Pursuant to the ROW Agreement, and in accordance with the procedure set forth therein, on May 10, 2023, Verizon submitted an application to the County Engineer to install nine

(9) of the twenty (20) SWFs that were included in the Settlement Agreement (the “SWF Application”).

61. Section 1 of the ROW Agreement provides that the “County will allow and cooperate with Verizon Wireless with respect to the occupancy of the County right(s)-of-way by Verizon Wireless’ facilities . . . which are to be located as set forth in Exhibit A. **This Agreement will also apply to any additional installations to be approved by the County Engineer, after review of further plans, to be appended hereto as supplemental exhibits, except that fees shall be individually calculated by the County Engineer on each installation in accordance with applicable law.**” [emphasis added].

62. Significantly, the ROW Agreement applies to “any additional installations” proposed by Verizon Wireless in the County’s rights-of-way and is not limited to the seven SWFs listed in Exhibit A of the ROW Agreement.

63. The ROW Agreement does not prohibit the installation of new utility poles if same are required for the installation of SWFs, and of the seven (7) sites set forth in Exhibit A to the ROW Agreement, one of the SWFs required the installation of a new pole (i.e., the SWF located nearest to 520 Navesink River Road in Middletown New Jersey).

64. Since 2016, Verizon has submitted several applications pursuant to the ROW Agreement to the County Engineer for the installation of SWFs, at least four (4) of which required the installation of a new utility pole for the mounting of the SWF.²⁶

²⁶ Four other SWFs that required new utility poles that the County has approved include the following facilities in Eatontown, New Jersey at 172 Tinton Road (new wood pole), 38 Industrial Way (new wood pole), 130 Route 35 (new wood pole) and 33 Tinton Road (replacement wood pole).

65. In addition to approval from the Borough and the County, Verizon must also obtain approval from the New Jersey Department of Environmental Protection (“NJDEP”) under the Coast Area Facilities Review Act (“CAFRA”), N.J.S.A. 13:19-1 et seq.

66. Included with the SWF Application submitted pursuant to the ROW Agreement on May 10, 2023, Verizon submitted the necessary CAFRA application form that requires the Defendant County’s execution as the owner of the right-of-way (the “CAFRA Application”).

67. Without the County’s endorsement of the CAFRA Application, Verizon is unable to make application to the NJDEP for CAFRA approval.

68. Defendant County has adopted a set of regulations regarding the management of its rights-of-way entitled “The County of Monmouth Regulations to Protect County Roadways and Related Facilities and Excavations” (the “County Regulations”).

69. The County Regulations do not allow for the issuance of a road opening permit until all other state, local and federal permits have been obtained. The regulations pertinently provide the following:

All applications submitted shall provide the following information:
. . . a copy of all State, County and municipal permits or approvals required for the proposed work, including a copy of Monmouth County Planning Board action, as applicable, along with a sworn statement that all appropriate approvals from local, State and Federal jurisdictions have been obtained.²⁷

70. Consequently, Verizon intended to apply for the necessary road opening permit after it had obtained CAFRA approval from the NJDEP and siting approval from the County pursuant to the ROW Agreement.

²⁷ Page 3, Section 4 of the County Regulations.

71. Defendants did not notify Verizon of any missing information from either the SWF Application or the CAFRA Application within ten (10) days of filing.

72. The topic of Verizon's SWF deployment has become a contentious matter in the Borough, notwithstanding the Prior Litigation and settlement of same.²⁸

73. On May 8, 2023, a group of Belmar residents held a public meeting related to public opposition regarding Verizon's proposed installation of SWFs in the Borough.

74. Defendant County Commissioner Director Thomas Arnone attended the meeting and, upon information and belief, stated that the County would support the citizen group's opposition to Verizon's proposed installations.²⁹

75. Similarly, and as set forth in the Borough's official minutes, at the Borough's June 13, 2023, Council Meeting, a resident of the Borough asked for an update "from Monmouth County on Verizon" and Councilwoman Caitlin Donovan stated that she had attended a meeting of the County Commissioners "and they expressed support for us."

²⁸ <https://newjersey.news12.com/verizons-cell-tower-plan-could-ruin-aesthetic-beauty-of-belmar-beaches-mayor-says> (accessed August 28, 2023).

²⁹ <https://www.tapinto.net/towns/belmar-slash-lake-como/sections/community/articles/over-200-residents-protest-verizon-towers-at-taylor-pavilion> (accessed August 28, 2023). Furthermore, on July 14, 2023 the County issued a press release regarding its goal to create a "master plan" limiting the "placement of 5G monopoles" in the County, which included a statement from Commission Director Thomas A. Arnone that "this is a strong statement of support for all of our towns, especially Belmar, where residents and their borough council, have raised concerns related to health and environmental impacts of 5G monopoles. . ." In addition to demonstrating Defendants' coordination with the Borough and underlying intent to obstruct Verizon's deployment, the statement also demonstrates an unlawful intent to regulate the "placement, construction and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent such facilities comply with the [FCC's] regulations concerning such emissions" in violation of 47 U.S.C. 332(c)(7)(B)(iv).

76. Because Verizon filed the SWF Application and the CAFRA Application on May 10, 2023, under the applicable ninety (90) day “shot clock,” Defendants were required to take action on same by August 8, 2023.

77. On August 8, 2023, the County’s Counsel, Michael Fitzgerald, Esq., transmitted a letter (the “Attorney Letter”) to Verizon’s counsel which stated: 1) there “is not an agreement between Monmouth County and Verizon;” 2) the ROW Agreement did not apply to SWFs that require the installation of new poles; 3) that the correct process for Verizon to follow was to obtain a road opening permit from the County; 4) because a road opening permit had not been submitted, the applicable FCC “shot clock” had not begun to run; 5) because the SFW Application “while not complying with Monmouth County’s usual procedure is also deficient,” same was therefore denied; and 6) that the County was not bound by Verizon’s settlement with the Borough.

78. The Attorney Letter enclosed a letter from the County Engineer, Joseph M. Ettore, P.E. (the “Engineer Letter”) which, incorrectly, treated the SWF Application as an application for a road opening permit and denied same.

79. Notwithstanding the fact that Verizon did not file for a road opening permit, the Engineer Letter includes a number of arbitrary and erroneous basis for denial of the SWF Application, including: 1) “any pole mounted equipment/cabinets shall not extend into or overhang pedestrian areas” despite the fact that the plans for the SWFs show that the poles are a “stealth design” in which all equipment is located internally within the pole; and 2) “poles shall be of a breakaway design and meet [Federal Highway Administration Standards] standards” despite the fact that (a) these standards have no applicability to a county road that is not a state or interstate highway and subject to federal jurisdiction, and (b) the weight of the proposed poles is

approximately 2,000 lbs. and more than double the weight appropriate for breakaway pole designs..

80. Defendant did not, and has not, taken any action on the CAFRA Application.

81. Verizon has filed this action within 30 days of Defendants' action, and failure to act, upon Verizon's SWF Application and CAFRA Application, respectively, and therefore this action filed on this date is timely.

82. Under Sections 253(a) and 332(c)(7)(B) of the Act, Verizon is entitled to injunctive and declaratory relief permitting it access to the public rights-of-way to deploy the nine (9) SFWs included in the SWF Application.

COUNT I
(Defendants' Denial Was Not Supported by Substantial Evidence in Violation of 47 U.S.C. §332(c)(7)(B)(iii))

83. Verizon repeats and re-alleges each and every paragraph stated above and incorporates those paragraphs by reference, as though fully stated here.

84. Pursuant to 47 U.S.C. § 332(c)(7)(B)(iii), “[a]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.”

85. Here, the Engineer Letter erroneously treated the ROW Application as an application for a road opening permit. No such application was filed and as will be discussed below, no such application **could** be filed without CAFRA approval.

86. The Engineer Letter misapplies certain standards that govern the review of these types of facilities and is otherwise erroneous, conclusory and fails to adequately explain the basis for its denial.

87. For example, the Engineer Letter erroneously requires that “any pole mounted equipment/cabinets shall not extend into or overhang pedestrian areas” where the plans for the SWFs show that the poles are a “stealth design” in which all equipment is located internally within the pole.

88. Similarly, the Engineer Letter erroneously requires that “poles shall be of a breakaway design and meet [Federal Highway Administration Standards] standards” where such standards have no applicability to the subject right-of-way and the weight of the proposed poles make the use of the breakaway pole design inappropriate and dangerous to pedestrians.

89. In sum, Defendants’ denial is not supported by substantial evidence because, *inter alia*, it is erroneous, misapplies certain standards and fails to logically connect its denial to applicable standards.

90. Defendants’ actions are in violation of and preempted by § 332(c)(7)(B)(iii) of the Act and should be set aside and enjoined by the Court. Further, this Court should exercise its power to issue an order directing Defendants to approve Verizon’s SWF Application.

COUNT II
(Material Inhibition of Service in
Violation of 47 U.S.C. §§ 332(c)(7)(B) & 253(a), and the Third Report and Order)

91. Verizon repeats and re-alleges each and every paragraph stated above and incorporates those paragraphs by reference, as though fully stated here.

92. 47 U.S.C. § 253(a) provides that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”

93. Section 253 also prohibits State or local authorities from erecting barriers that may prohibit or may have the effect of prohibiting the ability of any entity to provide telecommunications services, including taking action or inaction that results in an unreasonable delay in the deployment of the provider’s facilities and provision of telecommunications services.³⁰

94. Section 253(c) of the Act limits the power of State and local government authorities to “manage the public rights-of-way” on a “competitively neutral and nondiscriminatory basis.”

95. Verizon requires that the subject SWFs be installed in order to provide much needed network capacity in the Borough.

96. In the subject case, the facts clearly demonstrate that Defendants’ have erected barriers which have the effect of prohibiting Verizon’s ability to provide telecommunications services. Specifically, Defendants’ action with respect to denying the SWF Application and its failure to act on the CAFRA Application prevent Verizon from deploying its SWFs and materially inhibit Verizon from providing wireless services.

97. As an initial matter, if the Defendants truly believed that the ROW Agreement did not apply to the nine (9) SWFs proposed by Verizon, or that Verizon should have filed a road opening permit for same, Defendants should have notified Verizon that its ROW Application was incomplete within ten (10) days of filing as required by federal law.³¹

³⁰ 47 U.S.C. § 253(a).

³¹ Third Report and Order; p. 75, ¶143; *see also* 47 CFR § 1.6003(d)(1).

98. Defendants did not so notify Verizon and, consequently, Defendants waived their ability to argue that any other application process should have applied.

99. Defendants' initial denial of the existence of the ROW Agreement and subsequent strained interpretation of the same set forth in the Attorney Letter, smacks of obstruction and ignores the fact that a new pole had been approved by the County at the time it executed the ROW Agreement, and that several additional SWFs that required the installation of new poles have been subsequently approved by the County.

100. Ultimately, Defendants grasped onto the argument that rather than file under the ROW Agreement, Verizon should have filed for a road opening permit, but under its own County Regulations, no road opening permit could be accepted as complete or issued without first obtaining the necessary CAFRA permit.

101. The County's failure to endorse the CAFRA Application prevents Verizon from applying for the road opening permit under the County Regulations.

102. Consequently, Defendants' position that Verizon was required to, at least initially, file for a road opening permit, is incorrect and pretextual.

103. Defendants' recalcitrance to act on the CAFRA Application and approve the SWF Application pursuant to the ROW Agreement, and Defendants' argument that Verizon should obtain a road opening permit (while withholding a necessary precondition to obtain same) is part of a larger effort to stop Verizon from deploying its facilities in the Borough.

104. To be clear, the Borough's consent for the subject facilities was obtained in the Settlement Agreement that resolved the Prior Litigation. Defendant County Commissioner Director Thomas Arnone's attendance at a meeting of Belmar residents at which he stated that the

County would support the residents' opposition to Verizon's proposed installation of SWFs in the Borough was inappropriate, at best. Furthermore, Councilwoman Donovan's remarks at the June 13, 2023, Borough council meeting that the County Commissioners "support us" in response to a request for an "update from Monmouth County on Verizon" further demonstrates Defendants' true purpose in obstructing Verizon.³²

105. Unfortunately, in deploying SWFs in Belmar, Verizon has not once, but now twice, been forced to file litigation in the face of local refusal to process necessary applications in the normal course.

106. Here, like the Deer Township case, the totality of factors must be considered, and in weighing these factors, it is clear that Defendants have "materially inhibited" Verizon's ability to densify its network and improve its services in the Borough because "regulatory structure [as same exists in the subject case] gives an advantage" to incumbent telecommunications and broadband facilities located in the Borough and constricts Verizon's ability to compete in a "fair and balanced" regulatory environment.

107. As such, Defendants' denial, in addition to not being supported by "substantial evidence" in violation of § 332(c)(7)(B)(iii) of the Act, are preempted by §§ 332(c)(7)(B) & 253(a) of the Act and the Third Report and Order and should be set aside and enjoined by the Court. Further, this Court should exercise its power to issue an order directing Defendants to approve Verizon's SWF Application and endorse the CAFRA Application.

³² See Footnote 32. Verizon also notes that Director Arnone's attendance at the meeting was acknowledged in the Attorney Letter.

COUNT III
**(Unreasonable Delay and Failure to Act on the Applications in
Violation of 47 U.S.C. § 332(c)(7)(B)(ii), the Shot Clock Order, the 2014 FCC Order and
the Third Report and Order)**

108. Verizon repeats and re-alleges each and every paragraph stated above and incorporates those paragraphs by reference, as though fully stated here.

109. A CAFRA permit is a critical governmental approval necessary for Verizon to construct the nine (9) subject SWFs on Ocean Avenue.³³

110. A CAFRA permit is also a necessary precondition to obtaining a road opening permit from the County pursuant to the County Regulations.

111. A CAFRA permit is also a necessary precondition to obtaining construction and electrical permits from the Borough under the Uniform Construction Code.³⁴

112. The CAFRA Application constituted a request for the placement of SWFs and, as such, Verizon is entitled to the benefits and protections of the Act, FCC Orders, and the FCC's Rules and Regulations with respect to the CAFRA Application.

113. Pursuant to 47 C.F.R §1.6003(a), "a siting authority that fails to act on a siting application on or before the shot clock date for the application . . . is presumed not to have acted within a reasonable period of time."

³³ N.J.A.C. 7:7-2.2.

³⁴ N.J.A.C. 5:23-1.4 defines "prior approvals" as "necessary certifications or approvals issued or authorized by any Federal or State agency, or any political subdivision of the State, which are not inconsistent with this chapter and which are conditions precedent to the issuance of a construction permit or a certificate of occupancy or approval, as the case may be. Prior approvals shall include . . . 5. Coastal Area Facilities Review. . ." [emphasis added].

114. Here, because Verizon was proposing to erect new structures within the right-of-way, the FCC's ninety (90) day "shot clock" applies and Defendants were required to act on the CAFRA Application by August 8, 2023.³⁵

115. The County has taken no action on the CAFRA Application.

116. Defendants' failure to meet the applicable timeframe with respect to the CAFRA Application constitutes a failure to act under Section 332(c)(7)(B)(v) and a presumptive prohibition of service, enabling Verizon to pursue judicial relief.

117. In the Third Report and Order, the FCC specifically found:

State or local inaction by the end of the Small Wireless Facility shot clock will function not only as a Section 332I(7)(B)(v) failure to act but also amount to a presumptive prohibition on the provision of personal wireless services within the meaning of Section 332(c)(7)(B)(i)(II). Accordingly, we would expect the state or local government to issue all necessary permits without further delay. In cases where such action is not taken, we assume, for the reasons discussed below, that the applicant would have a straightforward case for obtaining expedited relief in court.³⁶

118. The Defendants' unreasonable actions include, without limitation:

- a) the failure to request any purported missing information from the SWF Applications or the CAFRA Application within ten (10) days of submission of same; and
- b) the failure to take final action within the "shot clock" timeframe codified in 47 C.F.R. § 16003.

³⁵ 47 CFR § 1.6003(c)(iii).

³⁶ Third Report and Order at p. 9,148, ¶ 118.

119. As a result of Defendants' failure to act on the CAFRA Application, this Court should exercise its power to issue an order directing Defendants to endorse the CAFRA Application.

COUNT IV
(De Facto Moratorium in violation of 47 U.S.C. § 253(a) and the FCC's Moratorium Order)

120. Verizon repeats and re-alleges each and every paragraph stated above and incorporates those paragraphs by reference, as though fully stated here.

121. Pursuant to the FCC's determination in the Moratorium Oder, both *de facto* and express moratoriums violate Section 253(a) of the Act.³⁷

122. The FCC defines *de facto* moratorium as "state or local actions that are not express moratoria, but that effectively halt or suspend the acceptance, processing, approval of applications or permits for telecommunications services or facilities in a manner akin to an express moratorium."³⁸

123. Here, Defendants' actions result in a *de facto* moratorium that would effectively halt the approval of SWFs located on new poles within county roads.

124. According to the Attorney Letter, the County's approval process for SWFs located on new poles begins with an applicant filing for a road opening permit.

125. However, the County Regulations do not allow for the issuance of a road opening permit until all other state, local and federal permits have been obtained.

³⁷ In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment, WC Docket 17-84 (August 3, 2018) ("Moratorium Order")

³⁸ Moratorium Order at p. 76, ¶ 149.

126. Defendants' failure to endorse the CAFRA Application leads to the result that these necessary prior approvals cannot be obtained and, consequently, no road opening permit can likewise be received.

127. Thus, Defendants have erected a regulatory regime where, according to the terms of its own regulations, its sole approval (a road opening permit) could never actually be approved.

128. This structural inability to process and approve road opening permits is clearly a *de facto* moratorium that is prohibited by the FCC's Moratorium Order.

129. Under the circumstances, Verizon is entitled to permanent injunctive relief through an order and judgment granting the SWF Application and ordering Defendants to endorse the CAFRA Application.

COUNT V
(Breach of Contract)

130. Verizon repeats and re-alleges each and every paragraph stated above and incorporates those paragraphs by reference, as though fully stated here.

131. Defendants' refusal to approve the SWF Application and acts and omissions described above constitute a breach of the ROW Agreement.

132. Section 1 of the ROW Agreement provides that the "County will allow and cooperate with Verizon Wireless with respect to the occupancy of the County right(s)-of-way by Verizon Wireless' facilities . . . which are to be located as set forth in Exhibit A. **This Agreement will also apply to any additional installations to be approved by the County Engineer, after review of further plans, to be appended hereto as supplemental exhibits, except that fees shall be individually calculated by the County Engineer on each installation in accordance with applicable law.**" [emphasis added].

133. The ROW Agreement does not prohibit the installation of new poles and specifically applies to “any additional installations” proposed by Verizon for use of the County’s rights-of-way.

134. Every “contract in New Jersey contains an implied covenant of good faith and fair dealing.” Sons of Thunder, Inc. v. Borden, Inc., 148 N.J. 396, 420 (1997).

135. Defendants’ denial of the existence of the ROW Agreement and subsequent determination that it does not apply to SWFs that require the installation of new poles is contrary to the terms of the ROW Agreement and the course of dealing between the parties and is a violation of the implied covenant of good faith and fair dealing.

136. Indeed, of the seven (7) sites initially set forth in Exhibit A of the ROW Agreement, one site included the installation of a new pole located nearest to 520 Navesink River Road in Middletown New Jersey, and several additional SWFs that required the installation of new poles have been approve by the County.

137. On May 10, 2023, Verizon submitted the SWF Application with the expectation that same would be approved pursuant to the ROW Agreement, as similar applications have been approved previously.

138. However, the SWF Application was wrongfully denied by Defendants on August 8, 2023.

139. Defendants breached the ROW Agreement by denying the ROW Application.

140. As a result of the Defendants’ breach, Verizon will be prevented from constructing the nine (9) proposed SWFs.

141. Verizon respectfully requests that this Honorable Court enter an order of specific performance directing Defendants to approve the nine SWFs included in the SWF Application.

COUNT VI
(Defendants' Actions are Arbitrary, Capricious and Unreasonable
Under New Jersey State Law)

142. Verizon repeats and re-alleges each and every paragraph stated above and incorporates those paragraphs by reference, as though fully stated here.

143. Municipal action will “be overturned by a court if it same arbitrary, capricious or unreasonable.” Bryant v. City of Atlantic City, 309 N.J. Super. 596, 610 (App. Div. 1998).

144. Here, Defendants’ actions are clearly arbitrary, capricious or unreasonable and should be reversed.

145. The Engineer Letter fails to cite to relevant standards that should govern its review and misapplies certain standards.

146. Rather, the Engineer Letter is erroneous, conclusory and fails to adequately explain the basis for its denial.

147. For example, the Engineer Letter erroneously requires that “any pole mounted equipment/cabinets shall not extend into or overhang pedestrian areas” where the plans for the SWFs show that the poles are a “stealth design” in which all equipment is located internally within the pole.

148. Similarly, the Engineer Letter erroneously requires that “poles shall be of a breakaway design and meet [Federal Highway Administration Standards] standards” where such standards have no applicability to the subject right-of-way and the weight of the proposed poles make the use of the breakaway pole design inappropriate and dangerous to pedestrians.

149. The Attorney Letter is also arbitrary, capricious and unreasonable because it maintains that Verizon should have filed for road opening permits as an initial filing, without CAFRA approval, where the County Regulations clearly state that such an application would not be accepted as complete and could not be granted.

150. Because all of the reasons cited by Defendants for their denial of Verizon's ROW Application are erroneous, arbitrary, capricious and unreasonable, Verizon respectfully requests that this Honorable Court enter an order directing Defendants to approve the nine SWFs included in the SWF Application.

COUNT VII
(For Declaratory Relief and Permanent Injunction)

151. Verizon repeats and re-alleges each and every paragraph stated above and incorporates those paragraphs by reference, as though fully stated here.

152. A present and actual controversy has arisen and now exists between the parties regarding their respective legal rights and duties. Verizon contends that the Defendants' actions and omissions are in violation of the Act, the Shot Clock Order, the 2014 FCC Order, the Third Report and Order, the Moratorium Order and the ROW Agreement.

153. Upon information and belief, the Defendants deny such allegations.

154. Verizon and the public have been and will continue to be adversely affected by the Defendants' actions and omissions.

155. Accordingly, declaratory relief is appropriate and necessary to adjudicate the extent of Verizon rights and the Defendants' obligations and authority.

156. As a result of Defendants' actions and omissions, Verizon has been, and will continue to be, damaged and irreparably harmed absent the relief requested herein.

157. The harm caused by the Defendants' actions and omissions includes, but is not limited to, an effective prohibition on Verizon's ability to provide personal wireless services within the Borough, and unreasonable delay in taking final (and any) action on the CAFRA Application, all impairing Verizon's (a) ability to provide the public with reliable wireless telecommunications service; (b) ability to compete with other providers of telecommunications services; (c) full use of its existing FCC authorizations, and or licenses and business investments; and (d) good will and business reputation.

158. Verizon has a likelihood of success on the merits because it is entitled to access public rights-of-way under Federal law and there is no reasonable justification for Defendants' actions and omissions.

159. The harm that Verizon has suffered and continues to suffer from the Defendants' actions and omissions is not reasonably susceptible to accurate calculations and cannot be fully and adequately addressed through an award of damages.

160. Given that the matter in dispute is Defendants' denial of the SWF Application and failure to endorse the CAFRA Application, Verizon cannot be made completely whole by damages and has no other adequate remedy at law other than the Court ordering that the SWF Applications be deemed granted and that the CAFRA Application be endorsed.

161. A balancing of the equities tips in Verizon's favor in that it has proceeded throughout the application process in good faith and has submitted all requested forms and

documents, while Defendants failed to timely request any missing information from Verizon within the requisite ten (10) day period from submission.

162. Defendants have failed to act as required by federal law and have actively violate same.

163. In contrast to the immediate and irreparable injury being suffered by Verizon, its customers, and the public interest, the Defendants will suffer no significant injury if the Court issues the requested injunction.

164. As such, Verizon is entitled to a judgment and order of permanent injunction compelling Defendants to approve the SWF Application, endorse the CAFRA Application and issue any other approvals required to allow Verizon to install the nine (9) SWF proposed to be located on Ocean Avenue.

PRAYER FOR RELIEF

WHEREFORE, Verizon respectfully requests that, pursuant to 47 U.S.C. § 322(c)(7)(B)(v), the Court hear and decide this action on an expedited basis, and issue an Order and Judgment in its favor as follows:

- a) Declaring that Defendants' actions were not supported by substantial evidence in violation of § 332(c)(7)(B)(iii) of the Act;
- b) Declaring that Defendants' actions and omissions constitute a material inhibition of service in Violation of 47 U.S.C. §§ 332(c)(7)(B) & 253(a) and the Third Report and Order;
- c) Declaring that Defendants' failure to act on the CAFRA Application is an unreasonable delay and prohibition of service in violation of 47 U.S.C. §

332(c)(7)(B)(ii), the Shot Clock Order, the 2014 FCC Order and Third Report and Order;

- d) Declaring that Defendants' regulatory regime for the approval of new poles necessary for the placement of SWFs is a *de facto* moratorium in violation of 47 U.S.C. § 253(a) and the FCC's Moratorium Order;
- e) Declaring that Defendants' denial of the SWF Application was a breach of the ROW Agreement and, consequently, a breach of contract that Defendants should be directed to perform by approving the SWF Application;
- f) Granting the SWF Application and requiring the endorsement of the CAFRA Application by Defendants;
- g) Awarding Verizon's reasonable attorneys' fees, costs, disbursements, and other expenses of this action as permitted by law; and
- h) Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

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*Attorneys for Plaintiffs Cellco Partnership
and New York SMSA Limited Partnership,
both d/b/a Verizon Wireless*

September 7, 2023

L. CIV. R. 11.2 CERTIFICATION

Pursuant to Local Civil Rule 11.2, and 28 U.S.C. § 1746, the undersigned members of the bar of this Court hereby declare that the matter in controversy is not presently the subject of any other action pending in any other Court, or of any pending arbitration or administrative proceeding.

PRICE MEESE SHULMAN & D'ARMINIO, P.C

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September 7, 2023

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Cellco Partnership and New York SMSA Limited Partnership, both d/b/a Verizon Wireless

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Gregory D. Meese, Esq. Edward W. Purcell, Esq. Price, Meese, Shulman & D'Arminio, P.C. 50 Tice Blvd., Suite 380, Woodcliff Lake, NJ 07677 (201)391-3737

DEFENDANTS The County of Monmouth, New Jersey, the Monmouth County Board of Commissioners, Director Thomas A. Arnone, in his official capacity and not as an individual, Deputy Director Nick Dirocco, in his official capacity and not as an individual, Commissioner Susan M. Kiley, in her official capacity and not as an individual, and, Commissioner Ross F. Licitra, in his official capacity and not as an individual

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

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

Attorneys (If Known) Michael D. Fitzgerald, Esq. One East Main Street, Room 236 Freehold, NJ 07728

II. 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 Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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 - 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): Telecommunications Act of 1996, 47 U.S.C. Sec. 151 et seq. Brief description of cause: Violation of above cited statute, FCC orders and contract claim regarding actions and omissions by Defendant with respect to Plaintiff's small wireless facility applications.

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 Zahid N. Quraishi, U.S.D.J. DOCKET NUMBER 3:21-cv-11016-MAS-DEA

DATE September 7, 2023 SIGNATURE OF ATTORNEY OF RECORD /s/ Gregory D. Meese

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.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 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.