

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

ESTATE OF ELEUSIPA VAN EMBURGH,)	
BY AND THROUGH ITS EXECUTOR)	
IMELDA CROVETTO; AND IMELDA)	
CROVETTO, JAMES MICHAEL VAN,)	
EMBURGH, JAMES ALAN VAN EMBURGH,)	
AMY RIVERA, ALEXIS NAVARRO, AND)	
RAFAEL NAVARRO, INDIVIDUALLY)	
)	
<i>Plaintiffs,</i>)	Civil Action No:
v.)	
)	
THE UNITED STATES OF AMERICA)	
)	
<i>Defendant.</i>)	

COMPLAINT

COME NOW the Plaintiffs, the Estate of Eleusipa Van Emburgh, by and through its Personal Representative Imelda Crovetto; and Imelda Crovetto, James Michael Van Emburgh, James Alan Van Emburgh, Amy Rivera, Alexis Navarro, and Rafael Navarro, individually (hereinafter “Plaintiffs”), by and through their attorneys, and for their Complaint against the United States of America (hereinafter “Defendant”), state as follows:

INTRODUCTION

1. This lawsuit concerns the substandard medical care provided by agents, servants, and employees of the United States Government at Naval Medical Center Portsmouth (hereinafter “Portsmouth”) to the decedent, Eleusipa Van Emburgh (“Mrs. Van Emburgh”), between on or about October 2, 2019 to on or about November 9, 2019 when Mrs. Van Emburgh underwent a laparoscopic hiatal hernia repair (aka: “re-do”) operation at Naval Medical Center Portsmouth, conducted by General Surgeon, Dr. Kevan Mann and Dr. Jenny Held. The

medical personnel at Naval Medical Center Portsmouth, after inflicting an intraoperative perforation, failed to perform the appropriate and medically necessary procedures in a timely manner to identify the operative error, resulting in massive trauma to her person, and ultimately, her death five weeks later at 58-years-old. The treatment of Mrs. Van Emburgh failed to meet the standard of care appropriate for such surgical procedures and its related post-surgical care.

JURISDICTION AND VENUE

2. Plaintiffs bring this lawsuit pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346(b), 2671 et seq. (“FTCA”) based on the negligent acts and omissions of Defendant's employees or agents, as set forth in this Complaint.
3. Pursuant to the provisions of the FTCA, Plaintiffs filed administrative claims for personal injury, wrongful death, and loss of consortium against the Defendant within the statutory period as required by law for each individual Plaintiff, to include Mrs. Van Emburgh’s estate. These claims were denied by the Department of the Navy on March 11, 2021 asserting that the Naval providers had met the applicable standards of care, and therefore the Government was not liable for Mrs. Van Emburgh’s injuries or death. Plaintiffs' lawsuit following the statutory period for agency review is timely. This Court has jurisdiction over Plaintiff’s lawsuit pursuant to 28 U.S.C. § 1331, as this action raises federal questions under 28 U.S.C. § 1346.

VENUE

4. Venue is proper in the United States District Court for the Eastern District of Virginia, Norfolk Division, pursuant to 28 U.S.C. § 1391(b) because Defendant’s primary office is located in and the events giving rise to the claims herein occurred in Portsmouth, Virginia, which is

within the Norfolk Division for the United States District Court for the Eastern District of Virginia.

5. Injuries suffered by Plaintiffs occurred in the City of Portsmouth, Virginia. Decedent Mrs. Van Emburgh died in the Commonwealth of Virginia due to the negligence of Defendant's employees, agents and/or representatives as set forth in this lawsuit.

PARTIES

6. At all times relevant herein, Mrs. Van Emburgh resided in the City of Newport News, State of Virginia, when the events giving rise to this lawsuit occurred.
7. Mrs. Van Emburgh was treated at Naval Medical Center Portsmouth and passed away on November 9, 2019.
8. Plaintiff James Michael Van Emburgh, SFC (Ret), is the widower of Mrs. Van Emburgh. Plaintiff Imelda Crovetto is the biological daughter of Mrs. Van Emburgh. Plaintiff Amy Rivera is the biological daughter of Mrs. Van Emburgh. Plaintiff Alexis Navarro is the biological son of Mrs. Van Emburgh. Plaintiff Rafael Navarro is the biological son of Mrs. Van Emburgh. James Alan Van Emburgh is the biological son of Mrs. Van Emburgh. Imelda Crovetto is the personal representative of the Estate of Eleusipa Van Emburgh. They are, collectively, the Plaintiffs to this action.
9. At all times relevant herein, Defendant United States of America operated the healthcare facility Naval Medical Center Portsmouth, previously known as Naval Hospital Portsmouth, located in Portsmouth, Virginia, and provided healthcare services including but not limited to medical, surgical, and hospital care and treatment.
10. At all times relevant herein, Defendant United States of America represented itself to Plaintiffs as medical facilities and medical providers that had and possessed the requisite skill,

competence, facilities, and personnel to properly care for and treat Decedent Mrs. Van Emburgh, while she was alive, upon which representation she and her heirs relied.

11. At all times relevant herein, the Defendant provided personnel, including doctors and others for the care and treatment of patients, including Decedent Mrs. Van Emburgh.

12. At all times relevant herein, Defendant's employees, agents, and representatives, including but not limited to physicians, including Dr. Kevan Mann and Dr. Jenny Held, who injured the Plaintiffs through their negligent acts and omissions were employed by Defendant and were acting in the course and scope of their employment throughout the period of their treatment of Decedent Mrs. Van Emburgh.

FACTUAL ALLEGATIONS

13. Mrs. Van Emburgh was the 58-year-old wife of Retired Army Sergeant First Class James Michael Van Emburgh and mother of five children. On October 2, 2019, Mrs. Van Emburgh underwent a laparoscopic hiatal hernia redo surgery at Naval Medical Center Portsmouth, conducted by General Surgeon, Dr. Kevan Mann and Dr. Jenny Held.

14. During the surgery at Portsmouth, Mrs. Van Emburgh suffered unnecessary surgical complications when the Defendant's surgeons concluded the surgery without attending to, identifying, or treating a surgical perforation that occurred during their treatment of her.

15. Between October 2, 2019 and October 16, 2019, Defendant did not conduct sufficient post-operative investigations of complications from the surgery, nor did they refer Mrs. Van Emburgh to outside specialists at a time in which life-saving intervention would have been successful.

16. By October 16, 2019, Defendant identified that it lacked the appropriate resources to render appropriate medical care to Mrs. Van Emburgh and referred Mrs. Van Emburgh to an unaffiliated non-Department of Defense medical facility.
17. On October 16, 2019, due to Mrs. Van Emburgh's unresolved condition, Mrs. Van Emburgh was transferred from Portsmouth to Sentara Leigh Hospital in Norfolk, Virginia for the purpose of repairing the injuries suffered by Mrs. Van Emburgh at Defendant's facility.
18. On November 6, 2019, Mrs. Van Emburgh returned home after being discharged from Sentara Leigh Hospital.
19. On November 9, 2019, while at her home in Newport News Virginia, Mrs. Van Emburgh began to suddenly vomit up bright red blood. An ambulance was dispatched to her residence where her husband, Mr. James Michael Van Emburgh, her daughter, Mrs. Imelda Crovetto, her son in law, SSgt Luis Crovetto, USMC, and her three minor grandsons were all surrounding her as her health crisis escalated, witnessing her violent vomiting of blood before their very eyes. She continued to vomit bright red blood as the EMTs transferred her to the ambulance. She passed away soon after arrival at Bon Secours Mary Immaculate Hospital in Newport News, Virginia.
20. Mrs. Van Emburgh's causes of death were determined by autopsy to be: massive gastrointestinal hemorrhage and sepsis of the lungs and around the heart following hiatal hernia repair.
21. Between the October 6, 2019 hiatal hernia repair surgery and the time of her death, Mrs. Van Emburgh unnecessarily suffered physical injury, pain, discomfort, and ultimately death, as a result of the medical care provided by Defendant.

COUNT I – NEGLIGENCE

22. Plaintiffs incorporate paragraph 1 through 20 as if fully set forth herein.

23. At all relevant times, Defendant promoted its employees and/or agents, including Dr. Mann and Dr. Held, as sufficiently skilled physicians, surgeons, hospitals, nurses, surgical technicians, attendants, medical clinics, physical therapists, and the like, to capably and competently examine, diagnose, and treat Melody according to the standards of care widely held within the Commonwealth of Virginia in this medical field.

24. Defendant, through its employees and agents, had a duty during the medical care of Mrs. Van Emburgh to use such skill, prudence, and diligence as other members of the medical community commonly possess and exercise.

25. Defendant, through its employees and agents had a duty to appropriately examine, diagnose, counsel, care for, and treat Mrs. Van Emburgh.

26. Defendants owed a duty to ensure the treatment and services provided to Mrs. Van Emburgh were adequate and appropriate in the circumstances.

27. That in the aforesaid procedures, examinations, diagnoses, prescription of medications and drugs, and handling, and controlling of the care and treatment of Decedent Mrs. Van Emburgh, Defendant and its agents, servants, employees, and component governmental departments, negligently failed to possess and to exercise that degree of knowledge and skill ordinarily possessed and exercised by other physicians, surgeons, hospitals, nurses, attendants, and the like, in the same or similar locality under similar circumstances as the said medical providers.

28. That with respect to the duties, responsibilities, and liabilities of the Defendant, United States of America, the Defendant negligently, or in some other actionable manner referred to

hereinabove, failed to comply with the applicable legal standard of diagnosis, care, and treatment of Decedent Mrs. Van Emburgh.

29. That in the aforesaid handling and control of the care and treatment of Decedent Mrs. Van Emburgh, Defendant, and each of them, negligently and tortiously failed to possess or exercise that degree of knowledge or skill that would ordinarily be possessed and exercised by physicians, surgeons, hospitals, nurses, surgical technicians, attendants, medical clinics, physical therapists, and the like, engaged in said professions in the same locality as Defendant, and each of them, is that said Defendant negligently and unlawfully failed to properly and correctly diagnose, render care and treatment, to perform surgery on, prescribe and administer medicine and drugs for the condition of Decedent Mrs. Van Emburgh, including but not limited to the following:

- a. The failure to adequately diagnose and treat an intraoperative perforation;
- b. The failure to follow up by conducting appropriate post-operative testing under the medically observable circumstances;
- c. The failure to timely identify and investigate as well as effectively treat Mrs. Van Emburgh's post-operative condition;
- d. The failure to timely refer Mrs. Van Emburgh to alternative providers with the requisite knowledge and experience to effectively treat Mrs. Van Emburgh.

30. Defendant is vicariously liable for the negligence of its agents and/or employees who were in the course and scope of their duties under the doctrine of *respondeat superior*.

31. As a result of the negligence of the Defendant, the United States of America, Mrs. Van Emburgh sustained pain and suffering, mental anguish, disfigurement, loss of enjoyment of life, loss of future earning, loss of earning capacity, and loss of life. As a result of the

negligence of the Defendant, the United States of America, the Estate of Mrs. Van Emburgh
sues the Defendant to recover for pre-death pain and suffering, mental anguish, and
disfigurement, loss of enjoyment of life, loss of future earning, loss of earning capacity, and
expenses of the deceased's last illness and burial, and any and all other available estate claims
and expenses, resulting from the death of Mrs. Van Emburgh.

32. As a result of the medical negligence of Defendant's personnel and/or employees, Plaintiff
James Michael Van Emburgh suffered amongst other injuries, sorrow, mental anguish and the
loss of society, companionship, comfort, consortium, or protection and loss of filial care or
attention, and the wrongful death of his wife.

33. As a result of the medical negligence of Defendant's personnel and/or employees, Plaintiff
Imelda Crovetto suffered amongst other injuries, sorrow, mental anguish, and the loss of
society, companionship, comfort, motherly affection or protection and loss of filial care or
attention, due to the wrongful death of her mother.

34. As a result of the medical negligence of Defendant's personnel and/or employees, Plaintiff
Alexis Navarro suffered amongst other injuries, sorrow, mental anguish, and the loss of
society, companionship, comfort, motherly affection, or protection and loss of filial care or
attention, due to the wrongful death of his mother.

35. As a result of the medical negligence of Defendant's personnel and/or employees, Plaintiff
Amy Rivera suffered amongst other injuries, sorrow, mental anguish, and the loss of society,
companionship, comfort, motherly affection, or protection and loss of filial care or attention,
due to the wrongful death of her mother.

36. As a result of the medical negligence of Defendant's personnel and/or employees, Plaintiff
Rafael Navarro suffered amongst other injuries, sorrow, mental anguish, and the loss of

society, companionship, comfort, motherly affection, or protection and loss of filial care or attention, due to the wrongful death of his mother.

37. As a result of the medical negligence of Defendant's personnel and/or employees, Plaintiff James Alan Van Emburgh suffered amongst other injuries sorrow, mental anguish, and the loss of society, companionship, comfort, motherly affection, or protection and loss of filial care or attention, due to the wrongful death of his mother.

38. As a direct and proximate result of the Defendant's negligence, Decedent Mrs. Van Emburgh suffered injuries and damages, including but not limited to wrongful death, conscious pain and suffering, mental anguish, disfigurement, loss of enjoyment of life, loss of future earning, loss of earning capacity, and expenses prior to her death, and other special and general damages to be proven at trial.

COUNT II – WRONGFUL DEATH

39. Plaintiffs incorporate paragraph 1 through 39 as if fully set forth herein.

40. Defendant, through the negligent acts heretofore alleged, is liable for the wrongful death of Mrs. Van Emburgh, and the Plaintiffs are entitled to recovery for sorrow, mental anguish, and solace, including society, companionship, comfort, guidance, kindly offices and advice.

41. At all times relevant herein, Plaintiff James Michael Van Emburgh suffered severe and devastating sorrow and mental anguish by witnessing the deterioration of his wife, the effects of the severe illness during and after the time period in which Mrs. Van Emburgh was not properly diagnosed, or treated, and ultimately her death.

42. Plaintiff James Michael Van Emburgh is entitled to compensation for the wrongful death of Mrs. Van Emburgh.

43. At all times relevant herein, Plaintiffs Imelda Crovetto, Alexis Navarro, Rafael Navarro, Amy Rivera, and James Alan Van Emburgh suffered severe and devastating sorrow and mental anguish by witnessing the deterioration of their mother, the effects of the severe illness during the time period in which Mrs. Van Emburgh was not properly diagnosed, or treated, and ultimately her death.

44. Plaintiffs Imelda Crovetto, Alexis Navarro, Rafael Navarro, Amy Rivera, and James Alan Van Emburgh are entitled to compensation for the wrongful death of Mrs. Van Emburgh.

COUNT III - SURVIVAL ACTION

45. Plaintiffs incorporate herein all preceding paragraphs.

46. That Imelda Crovetto as the Personal Representative of Mrs. Van Emburgh's estate brings this claim for the conscious pain and suffering of the final days of her life needlessly caused by the negligence of Naval Medical Center Portsmouth and its staff, physical injuries, medical expenses, and other damages that the late Mrs. Van Emburgh experienced from October 2, 2019 until the time of her death on November 9, 2019, as a direct and proximate result of the negligence and breaches of the applicable standard of medical care by Defendants, by and through its doctors, nurses, and medical staff.

REQUEST FOR ADVISORY JURY

Pursuant to Rule 39(c) of the Federal Rules of Civil Procedure, "[i]n all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury." Fed. R. Civ. P. 39(c)." Plaintiffs hereby respectfully request an advisory jury.

REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully demand judgment in their favor on all Counts, and to:

- A. Award Plaintiffs compensatory, consequential and incidental damages in an amount to be proven at trial, but not less than \$25,000,000.00;
- B. Award Plaintiffs all damages to which they are entitled under VA code § 8.01-581.15;
- C. Award Plaintiffs their costs and reasonable attorney fees pursuant to 42 U.S.C. § 1988;
- D. Award pre- and post-judgment interest on any award as permitted by law;
- E. Award other costs and expenses as permitted by law; and
- F. Award such other relief that this Court deems just and proper.

DATED: June 28, 2021.

Respectfully Submitted,

By: /s/ Benjamin Beliles

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Pro Hac Vice Pending

Attorney for Plaintiffs

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

Estate of Eleusipa Van Emburgh, by and through its
Executor, Imleda Crovetto, and Imelda Crovetto, James

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

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

Benjamin A. Beliles, Esq. (VSB# 72723)
Beliles & Associates, PLLC

DEFENDANTS

County of Residence of First Listed Defendant United States
(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 checked="" 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 LABOR <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 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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <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 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				

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):
Federal Tort Claims Act, 28 U.S.C. §1346(b), 2671 et seq. ("FTCA")

Brief description of cause:
medical malpractice

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

DATE

SIGNATURE OF ATTORNEY OF RECORD

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.