

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

CIVIL ACTION NO. _____

WENDELL TABB,

Plaintiff,

v.

BOARD OF EDUCATION OF THE
DURHAM PUBLIC SCHOOLS,

Defendant.

**COMPLAINT
(Jury Trial Demanded)**

NOW COMES Plaintiff and alleges as follows:

NATURE OF THE CASE

1. This action is brought to remedy race discrimination against the Plaintiff in violation of Title VII of the Civil Rights Act of 1964 ("Title VII") as amended by the Civil Rights Act of 1991, as now set forth in 42 U.S.C. § 2000e, *et seq.* and in violation of 42 U.S.C. § 1981 (Reconstruction Era Statutes).
2. This action is also brought to remedy discrimination and retaliation in violation of the Americans with Disabilities Act ("ADA"), as amended, 42 U.S.C. §§ 12112, 12117 and 12203.
3. Plaintiff seeks monetary relief in the form of economic damages and compensatory damages pursuant to 42 U.S.C. § 2000e(g) and 42 U.S.C. § 1981A(b).

JURISDICTION AND VENUE

4. Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity

Commission (“EEOC”), designated as EEOC Charge No. 433-2016-02146.

5. On May 11, 2017, the EEOC issued a Notice of Right to Sue to Plaintiff.
6. Plaintiff has exhausted his administrative remedies.
7. Plaintiff is a citizen and resident of Durham, North Carolina.
8. At all times relevant to this Complaint, Plaintiff worked for Defendant in Durham Public Schools. At all times relevant to this Complaint, Plaintiff worked for Defendant in Durham County, North Carolina.
9. The unlawful employment practices complained of herein occurred within Durham County, North Carolina.
10. The jurisdiction of this court is invoked pursuant to 42 U.S.C. § 2000e, 42 U.S.C. § 1981 and 42 U.S.C. § 12112 .
11. Venue is proper under 28 U.S.C. § 1391(b).

PARTIES

12. Plaintiff is an African-American male.
13. Plaintiff is the father of a disabled son who was a student in the Durham Public Schools. Plaintiff, on behalf of himself and his son, brought legal claims against Defendant when a Special Needs Therapist assaulted his son.
14. Defendant Board of Education of the Durham Public Schools (“DPS”) is a corporate entity under North Carolina law with the capacity to sue and be sued.
15. Defendant DPS employed Plaintiff at all times relevant to this Complaint.
16. Defendant is engaged in an industry affecting commerce under 42 U.S.C. § 2000e(h) and is an employer as set forth in Title VII, 42 U.S.C. § 2000e(b), and the ADA, 42 U.S.C.

§12111(7) .

17. At all times relevant to this Complaint, Defendant employed the following people, all of whom acted as agents of Defendant and within the course and scope of their employment with respect to the acts complained of in the Complaint:

- a. Members of the Defendant School Board, including, but not limited to, Heidi Carter (white), Mike Lee (black), Minnie Forte-Brown (black), Leigh Bordley (white), Matt Sears (white), Natalie Beyer (white), and Sendolo Diaminah (black)
- b. Superintendent Bert L'Homme (white)
- c. Former Superintendent Eric Becoats (black)
- d. Former Superintendent Carl Harris (black)
- e. Former Superintendent Ann Denlinger (white)
- f. Chief Financial Officer Aaron Beaulieu (white)
- g. Deputy Superintendent for Finances and Operations Hugh Osteen (white)
- h. Former Deputy Superintendent Hank Hurd (white)
- i. Deputy Superintendent for Instruction Stacy Wilson-Norman (black)
- j. Assistant Superintendent for Personnel Thomas Crabtree (white)
- k. Former Assistant Superintendent for Personnel Jacqueline Ellis
- l. Assistant Superintendent for Curriculum and Instruction Chris Bennett (white)
- m. Area Superintendent for High Schools Jim Key (white)
- n. Former Area Superintendent for High Schools Terri Mozingo (black)
- o. Former Area Superintendent for High Schools Alicia McLean (black)
- p. Director of Arts Education Mary Casey (white)

- q. Principal of Hillside High School William Logan (black)
- r. Former Principal of Hillside High School Hans Lassiter (black)
- s. Former Principal of Hillside High School Earl Pappy (black)
- t. Former Principal of Hillside High School Eunice Sanders (black)
- u. Former Principal of Hillside High School Henry Pankey (black)
- v. Former Principal of Hillside High School George Faison (black)
- w. Former Principal of Hillside High School Richard Hicks (black)

STATEMENT OF FACTS

Plaintiff's Background and Qualifications

- 18. Plaintiff is a 54-year-old African-American male.
- 19. Plaintiff is a graduate of Louisburg High School. Plaintiff received his B.A. degree in Theater Education and his M.A. degree in Educational Administration from North Carolina Central University.
- 20. Plaintiff is married to Duchess Tabb and has a son, Emmanuel.
- 21. Emmanuel has cerebral palsy and other disabilities which are a substantial limitation upon his major life activities.
- 22. Emmanuel is a person with a disability within the meaning of the ADA.
- 23. Plaintiff first began work as a drama teacher at Hillside High School in 1987 and has worked for Defendant continuously for the past thirty years.
- 24. Plaintiff's work as a teacher and Director of the Drama Department at Hillside High School has been exemplary.
- 25. Plaintiff has always received good performance evaluations from Defendant.

26. Plaintiff has built the Drama Department at Hillside High School into a program that has won international recognition.

The Hillside High School Drama Program

27. Since 1987, the Drama Department at Hillside High School has won over 100 awards, certificates and citations, including the following:
- Six Best Play awards from the North Carolina Theatre Conference
 - Numerous awards for Best Ensemble Acting, Best Music and Best Choreography from the North Carolina Theatre Conference
 - Numerous awards for Best Actors and Actresses in the state from the North Carolina Theatre Conference.
28. Under Plaintiff's guidance, the Hillside Theatre program has achieved international recognition. Plaintiff has directed Hillside students in stage productions and drama workshops in Cuba, China, Australia, Kenya, England, Japan, Peru, Brazil, Gambia, and Bermuda.
29. Plaintiff's students have gone on to perform on television shows, including "CSI-Miami," "The Young and the Restless," "Jericho," "and Tyler Perry's "If Loving You is Wrong."
30. Under Plaintiff's direction, the Hillside High School Drama Program has become one of the premier high school drama programs in the United States.

Plaintiff's Awards and Honors

31. Plaintiff has personally received the following awards and honors:
- Honorable Mention for a Tony Award
 - Tar Heel of the Week from the *Raleigh News and Observer*

- Fellowship from the National Endowment for the Arts
- Featured Guest on “The State of Things,” WUNC Public Radio
- Excellence in Directing Award from the North Carolina Regional Theatre Conference
- Citizen of the Year Award from Omega Psi Phi Fraternity, Inc.
- Teacher of the Year Award from Durham Public Schools
- Walmart Teacher of the Year
- The Sister Cities Mayors’ Award for promoting international understanding
- NAACP Freedom Fund Lifetime Achievement Award
- C.C. Lipscomb State Best Director Award
- North Carolina Central University Distinguished Alumnus Award
- Key to the City of Durham
- Certificate of Appreciation from NC Governor Beverly Perdue
- Honored Guest of Governor Roy Cooper at his State of the State Address
- Proclamation of Wendell Tabb Day by Durham County Commissioners
- Father of the Year Award from *Triangle Tribune*
- Hillside High School National Alumni Service Award
- James E. Shepard’s Sertoma Educator of the Year Award
- Spirit of Hayti Legacy Keeper Award
- Excellence in Teaching Award from the National Council of Negro Women
- Educator of the Year Award from ABC-WTVD
- Black Living Legend Educator Award from Franklin County Arts Council

Manner in Which Public School Teachers are Compensated

32. The base pay of public school teachers in North Carolina is established according to salary schedules set by the North Carolina General Assembly which take into account the teacher's years of experience, level of educational achievement, and special certifications.
33. Local school boards, like Defendant DPS, may supplement a teacher's pay based upon years of experience and advanced degrees.
34. Plaintiff's base salary and his local supplement are in keeping with other teachers who work for Defendant with the same level of experience and educational attainment.
35. Plaintiff's base pay and his local supplement are therefore not at issue in this case.

Manner in Which Defendant DPS Compensates Teachers for Extracurricular Work

36. Teachers in the Performing Arts (theatre, music, band, dance, and chorus) who engage in extracurricular activities for Defendant DPS are compensated with a "Performing Arts Supplement."
37. Currently, Defendant DPS provides four different Performing Arts Supplements for high school teachers who work after hours with students: Theatre Director Supplement, Theatre Technical Director Supplement (for lights, sound, and sets), Band Director Supplement, and Dance/Music Director Supplement.
38. Similar supplements are used to provide extra pay to teachers who work with students in athletics, e.g., football and basketball coaches receive a supplement for their work after school with sports teams.
39. Additionally, teachers (and other school workers) for Defendant DPS may receive

“Extra-Duty Pay” for work that is performed on specific projects, e.g., running the lighting or sound for a graduation ceremony.

Defendant’s Failure to Compensate Plaintiff for his Extracurricular Work

40. For the past thirty years, Plaintiff has staged three or four plays at Hillside High School each year.
41. As a result Plaintiff has continuously worked long extracurricular hours.
42. At Hillside High School, Plaintiff has not only performed the work of Theatre Director (directing students in the extracurricular theatrical productions), but has also performed the work of Theatre Technical Director (doing the lighting, sound, sets and other technical duties necessary to stage high-quality theatre productions). In other words, Plaintiff performed the extracurricular work of two teachers.
43. Although Defendant has generally paid Plaintiff a supplement as Theatre Director, it denied him payment for his work as Theatre Technical Director, despite his repeated requests to be compensated for performing these duties.
44. Over the past thirty years Plaintiff has also worked long extracurricular hours at the behest of Defendant’s administrators, keeping the Hillside High School Theatre open for events unrelated to the Hillside theatre program, e.g., musical performances involving students from other schools, graduation ceremonies, administrative meetings, convocations, etc.
45. Defendant’s administrators often schedule events at the Hillside venue, with the expectation that Plaintiff will work after hours to keep the Theatre open and functioning.
46. Normally, Defendant would provide Extra-Duty Pay to a teacher who was called upon to

perform these types of extra duties that fall outside the scope of the Performing Arts Supplement.

47. Plaintiff has sought Extra-Duty Pay for such work, including scheduling, managing and running the Hillside Theatre for non-Hillside events (which he sometimes refers to as the duties of a “Theatre Manager”), but has been denied Extra-Duty Pay or other forms of compensation for performing these duties.

The Role of Race in Defendant’s Failure to Compensate Plaintiff

48. Despite the achievements of Plaintiff and the Drama Program at Hillside High School, Plaintiff has been denied proper compensation from Defendant because of his race.
49. Prior to 1950, the public schools in the City of Durham, NC were segregated by race. Of the 22 public schools in Durham in 1950, 14 of the schools were for white students and 8 of the schools were for black students. There was no integration between the races.
50. Hillside High School is well-known in Durham as a school that has educated generations of black students.
51. In 1959, after litigation by parents, the Durham City School Board ordered the integration of the schools and two students were reassigned from the all-black Hillside High School to attend the all-white Durham High School.
52. In 1965, the Durham City School Board adopted a “freedom of choice” program to allow integration to occur voluntarily. Nevertheless, most schools remained segregated as only a small number of black students chose to attend the white high schools and no white students chose black schools. Thereafter, white flight from the Durham City Schools made the racial imbalance worse.

53. In 1992, the Durham Public Schools was formed from the merger of the Durham County Schools with the Durham City Schools. The Defendant School Board in this case governs the two former school systems.
54. The formerly all-white Durham High School has now been converted into a magnet school, for both middle and high school students. It is now called the Durham School of the Arts.
55. According to Defendant's own statistics, Hillside High School is still predominantly black. 81.6% of its students are black.
56. There are only three other high schools run by Defendants that have theatre programs comparable to the one at Hillside.
57. The other schools run by Defendant with comparable theatre programs are all predominantly white: Jordan High School (40.9% black), Durham School of the Arts (34.7% black), and Riverside High School (41.4% black).
58. According to the Defendant's own statistics, Hillside High School has a ratio of black students that is almost twice as high as the other comparable schools run by Defendant with substantial drama programs.
59. Despite the success of the Hillside High School Drama Program, Defendant has failed to provide Hillside High School with the same level of staffing for the Drama Program that it provides at comparable drama programs in its predominantly white high schools.
60. Many of the principals at Hillside High School, including Principals Hicks, Faison, Pankey, Pappy and Lassiter have advocated with Defendant's administration to provide Plaintiff with a Theatre Technical Director, but their requests were denied.

61. Despite Plaintiff making numerous requests for either assistance or extra pay, Defendant has refused to provide Plaintiff with a Theatre Technical Director or to pay him for performing those duties.
62. As a result, Plaintiff has been forced to do the work of two or three teachers in order to maintain the Hillside High School Drama Program, while the comparable predominantly white high schools have had two or more teachers assigned to do the same work.

Comparison with Riverside High School

63. As early as the 2005-2006 school year, Riverside High School had both a Theatre Director, Key Strong (white female) and a Theatre Technical Director Tech, Paul Overton (white male).
64. In 2007-2008, Riverside High School acquired a second Theatre Director to assist Key Strong, Corey Davis (white female).
65. Riverside High School therefore had two white female drama teachers (both of whom received Theatre Director supplements) and a Theatre Technical Director position, held by Paul Overton (who received both a teacher salary and a supplement as a Theatre Technical Director).
66. By 2011-2012, Corey Davis was replaced by Wes Schultz (white male) and Paul Overton was replaced by Michael Krause (white male).
67. When Wes Schultz left, Monique Taylor (African-American female) was hired to replace him.
68. At that point, Riverside High School still had two drama teachers who received the Theatre Director supplement and a Theatre Technical Director receiving a supplement for

that work.

69. During this time period, Wendell Tabb was performing all of the work done by these employees without receiving the pay for the supplemental assistance which he had requested.
70. Approximately two years ago, Key Strong quit and was not replaced. Tom Nevels (white male) was hired as a Theatre Technical Director and worked with Monique Taylor as Theatre Director.
71. During this time period, Riverside had two teachers performing the job that Plaintiff was performing all by himself.
72. When Tom Nevels left Riverside, he was replaced by Will Holly (white male).
73. Defendant then created a lower paid position for Will Holly as Theatre Tech primarily because he is not a licensed teacher.
74. Riverside High School continues to have a Theatre Director and a Theatre Tech while Plaintiff does these jobs by himself.

Comparison with Durham School of the Arts

75. Historically, Durham School of the Arts (“DSA”) has had at least two employees who work in the high school theatre program.
76. Going back to 2005-2006, Defendant employed Doug Graves (white male) as the Middle School Theatre Director, Carl Martin (white male) as the High School Theatre Director, and a Theatre Technical Director, Daniel Deter (white male), then Thomas Nevels (white male), then Kristin Winchester (white female).
77. DSA has a history of employing two teachers to perform the duties being performed by

Plaintiff at Hillside High School. These teachers are receiving separate supplements from the Durham Public Schools for their work.

78. Currently, DSA has four drama teachers, having hired Beth Wickham (white female) who also receives a supplement as a Theatre Director.
79. The disparity between DSA and Hillside High School is now even worse than it has been in the past.
80. Although DSA is part of a magnet program for arts and drama, it is supposed to receive funding and supplements in the same manner as Defendant's other schools.
81. Plaintiff's drama program at Hillside High School has produced at least as many (and in most years more) theatre productions than DSA.
82. By any standards, productions at Hillside High School under Plaintiff's direction have been equal or superior to those produced at DSA.

Comparison with Jordan High School

83. Historically, Jordan High School has had both a Theatre Director and a Theatre Tech position.
84. The current Theatre Director, Olivia Garcia Putnam (Hispanic/white female) was the Theatre Tech for at least three different Theatre Directors, including Artie Kline (white male) and two other white females.
85. Recently Jordan High School has cut back its performing arts program because one of the dance teachers had an inappropriate relationship with students.

Plaintiff's Association With and Opposition to Discrimination Against His Disabled Son

86. Plaintiff's son Emmanuel was born prematurely, has cerebral palsy, and is blind in his

right eye.

87. Emmanuel attended Durham Public Schools and Plaintiff advocated for his needs as a disabled child and opposed discrimination against him by Defendant as he was growing up.
88. In April 2005, when Emmanuel was ten years old, a Special Needs Therapist working for Defendant assaulted him by taping his mouth shut while he sat at his desk during class.
89. In May 2006, Plaintiff and his wife filed a lawsuit against Defendant on behalf of their son and themselves in the U.S. District Court for the Middle District of North Carolina, (Docket No. 06-CV-00487) to recover damages for the harm done to his disabled child.
90. Defendant's Superintendent at the time, Ann Denlinger, and the Board of Education were named as defendants in the lawsuit.
91. The lawsuit continued until 2009, when it was resolved by Defendant paying a settlement of \$75,000 for the benefit of Emmanuel and \$100 to Plaintiff and his wife.
92. Many of the Defendant's top administrators (including current Superintendent L'Homme, who was a Deputy Superintendent at the time, Deputy Superintendent for Finances and Operations Hugh Osteen, and Assistant Superintendent for Personnel Thomas Crabtree) were embarrassed by and unhappy with Plaintiff's advocacy for his disabled son and have retained a lingering resentment against Plaintiff.
93. As a result of Plaintiff's association with a person with a disability and opposition to disability discrimination he has been denied the assistance of a Theatre Technical Director or pay for performing those duties.

Uncompensated Extra Duty Work Performed by Plaintiff

94. Plaintiff has for many years performed work unrelated to his theatre program at the request of Hillside administrators and at the direction of Defendant's district administration.
95. Examples of events for which Plaintiff has provided this uncompensated work include, but are not limited to, new student orientations, open houses, senior orientations, senior pictures, class and yearbook pictures, class meetings, ring ceremonies, pageants, coronations, quiz bowls, science fairs, step shows, career and technology education events, leadership summit, awards day programs, banquets, and athletic awards ceremonies.
96. Plaintiff has frequently been called upon to provide theatre management and theatre technical work for the School Board, other schools, and other programs within the Durham Public Schools, all of whom wish to use the Theatre at Hillside High School and to have Plaintiff schedule their events and provide technical services, including lighting and sound.
97. Plaintiff has acted as Theatre Manager, scheduling events, overseeing the operation and maintenance of the light and sound systems, and opening up and running the theatre at Hillside High School at the request of Hillside administrators and district school officials for events unrelated to his work as Theatre Director. Despite repeated requests, he has not been paid for this work. Some examples of this unpaid work since May 2014 are as follows:
- August 2014, District Human Resources Event (Five Days)

- August 2014, Freshman Orientation
- August 2014, Teacher Orientation
- September 2014, Hornet Academy Class Meetings
- September 2014, Business and Finance Academy Meeting
- September 2014, Herff Jones Senior Meeting
- October 2014, Mr. and Miss Hillside Pageant
- October 2014, Character Education Assembly
- October 2014, Hornet Academy
- October 2014, Dance Company Fashion Show
- October 2014, Step Show
- November 2014, Hornet Academy
- November 2014, Dance Concert
- November 2014, Mr. and Miss Hillside Coronation
- December 2014, Band Concert
- December 2014, Fall Sports Award Ceremony
- December 2014, Prom Committee Talent Show
- January 2015, Hornet Academy
- January 2015, New Tech Coronation
- January 2015, Dance Choreography Concert
- February 2015, Hornet Academy
- February 2015, Science Fair
- February 2015, Step Show

- February 2015, Winter Sports Award Ceremony
- March 2015, Hornet Academy
- April 2015, Queen's Foundation Meeting
- April 2015, Hornet Academy
- April 2015, Step Show
- April 2015, Band Concert
- May 2015, Dance Concert
- May 2015, Chorus Concert
- May 2015, Spring Sports Ceremony
- May 2015, Gospel Chorus Concert
- June 2015, Star Program
- July 2015, Summer Bridge Parent Meeting
- July 2015, Summer School Rehearsal and Graduation Ceremony
- August 2015, Hornet Academy
- August 2015, District-Wide Back to School Kickoff Event
- September 2015, Hillside Chorus Alumni Event
- September 2015, Senior Class Meeting
- September 2015, Business and Finance Academy
- October 2015, Blue Cross/Blue Shield Event
- October 2015, Hillside Pageant
- October 2015, New Tech Pageant
- October 2015, Step Show

- October 2015, Herff Jones Event
- October 2015, Student Government Association District Event
- November 2015, Coronation of Mr. and Miss Hillside
- November 2015, Stargaze Dance Showcase
- November 2015, District-Wide Teaching and Learning Conference
- December 2015, Truancy Court Meeting
- December 2015, Accounting Quiz Bowl
- December 2015, Student Services Ignite Event
- January 2016, Student Choreography
- January 2016, Fall Sports Banquet
- February 2015, Step Show
- February 2015, Junior Class Meeting
- February 2015, CTE Meeting
- February 2016, 5th Grade Parents Expo
- February 2016, 8th Grade Parents Expo
- April 2016, DPS Job Fair
- April 2016, Chorus Concert
- April 2016, Band Concert
- April 2016, JROTC Award Ceremony
- April 2016, Financial Literacy Night
- April 2016, High School Battle of the Books
- May 2016, Dance Concert

- May 2016, Spring Sports Ceremony
- May 2016, School Awards Ceremony
- May 2016, Gospel Choir Concert
- July 2016, Hornet Academy
- August 2016, Summer School Graduation
- September 2016, Senior Class Meetings
- September 2016, Ring Ceremony
- October 2016, Hillside Pageant
- October 2016, New Tech Pageant and Coronation
- November 2016, CTE Durham Youth and Leadership Summit
- November 2016, Dance Showcase
- December 2016, State Dance Competition
- January 2017, Chorus Concert
- January 2017, Hillside High Coronation
- February 2017, Science Fair
- February 2017, Junior Class Ring Meeting
- March 2017, Student Service Meetings
- March 2017, Truancy Meeting
- April 2017, Band Concert
- April 2017, Step Show
- April 2017, Southwest Elementary Musical
- May 2017, Band Concert

- May 2017, Chorus Concert
 - May 2017, School Awards Ceremony
 - July 2017, Substitute Teacher Professional Development.
98. Upon information and belief, other drama teachers at predominantly white high schools have not been asked to do this same type and volume of unpaid work or have been paid an extra-duty payment or a contractual payment for performing this type of work.
99. Upon information and belief, other drama teachers who are not associated with a person with a disability or who have not opposed disability discrimination have been paid an extra-duty payment or a contractual payment for performing this type of work.
100. During this same time period, Plaintiff also opened and ran the Hillside Theatre for rehearsal and performances of three or four drama productions per year, including the following: "In the Heights," "A Raisin in the Sun," "Why Mosquitoes Buzz," "Perilous Time," "Dreamgirls," "The Story: African-Americans Who Have Made a Difference," "Shrek," "Bubbling Brown Sugar," "Gifted," "Fame," "The Wiz," "Madagascar," and "The Glory of the Gospel."

Plaintiff's Efforts to Seek Proper Compensation

101. As early as 1999, Plaintiff has advocated for a supplement to be paid to Performing Arts Teachers who do extracurricular work based on the amount of work they do and their years of service to the school system, the format that was used to support the extracurricular work of athletic coaches.
102. In the 2000's Defendant adopted some criteria to judge the extracurricular work of arts teachers, but did not adjust the supplements being paid.

103. Since at least 2004, Plaintiff has asked Defendant to recognize the failure to either pay him or provide assistance to him in running the theatre program at Hillside High School.
104. Over the years since 2004, Plaintiff has contacted the following school officials to seek proper pay for the extra duties that he has performed:
- a. Members of the Defendant School Board, including, but not limited to, Heidi Carter (white), Mike Lee (black), Minnie Forte-Brown (black), Leigh Bordley (white), Matt Sears (white), Natalie Beyer (white), and Sendolo Diaminah (black),
 - b. Superintendent Bert L'Homme (white)
 - c. Former Superintendent Eric Becoats (black)
 - d. Former Superintendent Carl Harris (black)
 - e. Former Superintendent Ann Denlinger (white)
 - f. Chief Financial Officer Aaron Beaulieu (white)
 - g. Deputy Superintendent for Finances and Operations Hugh Osteen (white)
 - h. Former Deputy Superintendent Hank Hurd (white)
 - i. Deputy Superintendent for Instruction Stacy Wilson-Norman (black)
 - j. Assistant Superintendent for Personnel Thomas Crabtree (white)
 - k. Former Assistant Superintendent for Personnel Jacqueline Ellis
 - l. Assistant Superintendent for Curriculum and Instruction Chris Bennett (white)
 - m. Area Superintendent for High Schools Jim Key (white)
 - n. Former Area Superintendent for High Schools Terri Mozingo (black)
 - o. Former Area Superintendent for High Schools Alicia McLean (black)

- p. Director of Arts Education Mary Casey (white)
 - q. Principal of Hillside High School William Logan (black)
 - r. Former Principal of Hillside High School Hans Lassiter (black)
 - s. Former Principal of Hillside High School Earl Pappy (black)
 - t. Former Principal of Hillside High School Eunice Sanders (black)
105. During July/August each year, the budget for the Durham Public Schools is adopted by Defendant.
106. In July 2008, in correspondence with Hillside Principal Eric Pappy and Director of Arts Education Mary Casey, and the Superintendent's Budget Advisory Committee, Plaintiff advocated for the hiring of a Technical Theatre Director and compared the program at Hillside to that of DSA, Jordan, and Riverside High Schools.
107. In July/August 2009, in correspondence with Assistant Superintendent for Personnel Jacqueline Ellis and Area Superintendent for High Schools Terry Mozingo, Plaintiff again advocated for the hiring of a Technical Theatre Director and compared the program at Hillside to that of DSA, Jordan, and Riverside.
108. In July 2010, in correspondence with Asst. Superintendent for Curriculum and Instruction Chris Bennett, Plaintiff again advocated for hiring a Technical Theatre Director.
109. In July/August 2011, in correspondence with Asst. Superintendent Jim Key, Director of Arts Education Mary Casey, Principal Hans Lassiter, and others including School Board Member Nancy Cox, Plaintiff again advocated for hiring a Technical Theatre Director and demanded to know who had the authority to allocate funds for the position and

pointed out the “Equity Issue” set forth in this Complaint by comparing Hillside to DSA, Jordan and Riverside. Plaintiff noted the “day to day technical work” is being done by him and that he is “paying the price, physically and mentally.”

110. School administrators indicated that the decision was made at by the Hillside Principal.
111. Principal Hans Lassiter responded that he had advocated for the Theatre Technical Director position with the central school administration.
112. Assistant Superintendent Key recognized that Plaintiff had raised a valid issue and responded, “I am going to try to get you some additional compensation.”
113. In June/July 2012, in correspondence with Superintendent Eric Becoats, Plaintiff again advocated for Defendant to fund a position for Technical Theatre Director
114. Superintendent Eric Becoats responded that the failure to provide the allotment for the position was the responsibility of the Hillside Principal.
115. In August 2013, in correspondence with Principal Logan and Director of Arts Education, Plaintiff again advocated for the hiring of a Technical Theatre Director.
116. Hillside Principal William Logan indicated that he had been willing to “identify an allotment and posting of a position for Technical Theater for almost a month...”
117. During 2014, Plaintiff continued to advocate for the hiring of a Technical Theatre Director or for being paid for doing the work. No change occurred.
118. On October 25, 2015, in a presentation to Superintendent Bert L’Homme,, Plaintiff submitted documents and data for the purpose of seeking pay for the extra duties that he was performing. No change occurred.
119. In February 2016, Plaintiff asked for another meeting with the Superintendent regarding

the inequity in his pay.

120. Superintendent L'Homme responded that there was no reason for another meeting because the administration was working on a proposal to evaluate the "extra duty/extra pay scale."
121. Plaintiff then copied the members of the School Board on his request (including Heidi Carter, Mike, Minnie Forte-Brown, Leigh Bordley, Matt Sears, Natalie Beyer, Sendolo Diaminah) and received a response from Natalie Beyer thanking him for his work on the issue.
122. On or about March 28, 2016, Plaintiff again made a proposal to Superintendent L'Homme seeking equitable payment for the extra duties that he was performing.
123. Superintendent L'Homme responded that he knew Plaintiff was doing the extra work, but that he would not be able to compensate Plaintiff and was instead working on a proposal for all teachers.
124. Plaintiff attempted to describe the unique situation at Hillside High School, but Superintendent L'Homme refused to change his position.
125. Over the past ten years, and as recently as last week, Plaintiff has sought repairs and improvements for the Hillside Theatre, including needed work on its lighting systems and sound systems and replacement of its curtains.
126. These repairs and improvements have been unduly and unreasonably delayed by the Defendant's administrators.
127. Plaintiff filed his Charge of Discrimination alleging race and disability discrimination and retaliation on or about May 12, 2016.

128. In June 2016, Aaron Beaulieu, Defendant's Chief Financial Officer, did a Powerpoint presentation to Defendant's Board with regard to changes in the payment of the "ExtraCurricular Supplement."
129. On or about October 19, 2016, Director of Arts Education Mary Casey announced new criteria for paying the Performing Arts Supplement that includes checklists of duties that must be performed to warrant supplemental pay as a Theatre Director.
130. This new set of criteria increased Plaintiff's pay as a Theatre Director (and benefitted all the Performing Arts Teachers), but still did not address either the historical deficits in his pay or the fact that Plaintiff has performed the jobs of a Technical Theatre Director and has run the Hillside Theatre for non-theatre events without compensation, while additional assistance and/or pay has been provided at the predominantly white schools with comparable theatre programs.
131. More than a year after Plaintiff filed his Charge of Discrimination, the Durham Public School system tendered to him an extra-duty pay form to compensate him for a non-theatre-related short-term task.
132. Plaintiff has been discriminated against on the basis of his race by being denied proper compensation by Defendant.
133. Plaintiff has been discriminated against and retaliated against because of his association with a person with a disability and his opposition to disability discrimination by being denied proper compensation.
134. As a result of Defendant's unlawful behavior, Plaintiff has lost wages and other benefits of employment in excess of \$10,000.

135. As a result of Defendant's unlawful behavior, Plaintiff has been required to work extremely long hours, has suffered inconvenience, emotional distress and loss of time with his family, such that he is entitled to compensatory damages in excess of \$10,000.

FIRST CAUSE OF ACTION:
VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

136. Plaintiff hereby incorporates by reference the above allegations in support of this claim for relief.

137. The actions of Defendant as set forth herein constitute intentional discrimination against Plaintiff on the basis of his race, in violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e, *et seq.*, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981A(a)(1).

138. As a proximate result of Defendant's conduct alleged herein, Plaintiff is entitled to all of his benefits of employment, including but not limited to back pay, front pay, additional contributions to retirement plans and other benefit plans.

139. Plaintiff has suffered emotional distress and inconvenience, including but not limited to loss of time with his family, as a result of the unlawful behavior of Defendant described herein.

140. As a proximate result of Defendant's conduct alleged herein, Plaintiff is entitled to recover compensatory damages as provided by 42 U.S.C. § 1981A in an amount exceeding \$10,000.

141. Plaintiff is further entitled to recover reasonable attorneys' fees, the costs and expenses of this action, and such interest as may be allowed by law.

SECOND CAUSE OF ACTION:
VIOLATION OF RECONSTRUCTION ERA STATUTES

142. Plaintiff hereby realleges and incorporates by reference the allegations of paragraphs 1 through 135 as though set forth fully herein.
143. The actions of Defendant as set forth herein constitute intentional discrimination on the basis of Plaintiff's race, in violation of the Reconstruction Era Statutes, 42 U.S.C. § 1981.
144. As a proximate result of Defendant's conduct alleged herein, Plaintiff is entitled to all of the lost wages and other benefits of employment including but not limited to back pay, front pay, contributions to retirement plans and other employment benefits, in an amount exceeding \$10,000.
145. Plaintiff has suffered emotional distress and inconvenience, including but not limited to loss of time with his family, as a result of the unlawful behavior of Defendant described herein.
146. As a proximate result of Defendant's conduct alleged herein, Plaintiff is entitled to compensatory damages for emotional distress and inconvenience as provided by the Reconstruction Era Statutes, 42 U.S.C. § 1981, in an amount exceeding \$10,000
147. Plaintiff is further entitled to recover reasonable attorney's fees, the costs and expenses of this action, and such interest as may be allowed by law.

THIRD CAUSE OF ACTION:
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT

148. Plaintiff hereby realleges and incorporates by reference the allegations of paragraphs 1 through 135 as though set forth fully herein.
149. Defendant unlawfully and intentionally discriminated against Plaintiff and retaliated

- against Plaintiff because of his association with a person with a disability and his opposition to discrimination against a person with a disability, his son Emmanuel Tabb.
150. Defendant's actions were in violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12112, 12117 and 12203.
151. As a proximate result of Defendant's conduct alleged herein, Plaintiff is entitled to all of his benefits of employment, including but not limited to back pay, front pay, additional contributions to retirement plans and other benefit plans.
152. Plaintiff has suffered emotional distress and inconvenience, including but not limited to loss of time with his family, as a result of the unlawful behavior of Defendant described herein.
153. As a proximate result of Defendant's conduct alleged herein, Plaintiff is entitled to recover compensatory damages as provided by 42 U.S.C. § 1981A in an amount exceeding \$10,000.
154. Plaintiff is further entitled to recover reasonable attorney's fees, the costs and expenses of this action, and such interest as may be allowed by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands a trial by jury of all issues so triable and respectfully prays for judgment against the Defendant as follows:

- (1) A declaration that the acts and practices complained of herein are in violation of Title VII of the 1964 Civil Rights Act, the Reconstruction Era Statutes, and the Americans With Disabilities Act.
- (2) An order enjoining Defendant from engaging in discrimination on the basis of

race in accordance with Title VII of the 1964 Civil Rights Act and the Reconstruction Era Statutes and discrimination on the basis of disability in accordance with the Americans With Disabilities Act.

- (3) For money judgment against Defendant for violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-5(g) representing all lost benefits of employment, including but not limited to lost wages and other benefits of employment, for an amount in excess of \$10,000, which amount shall be determined specifically at the trial of this action.
- (4) For money judgment against Defendant for violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-5(g) and 42 U.S.C. § 1981A representing emotional distress, inconvenience and other compensatory damages for an amount in excess of \$10,000, which amount shall be determined specifically at the trial of this action.
- (5) For a money judgment against Defendant for violation of the Reconstruction Era Statutes, 42 U.S.C. § 1981, representing all lost wages, other benefits of employment and compensatory damages, including but not limited to emotional distress and inconvenience damages, for an amount in excess of \$10,000, which amount shall be determined specifically at the trial of this action.
- (6) For money judgment against Defendant for violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12112, 12117 and 12203, representing all lost benefits of employment including but not limited to lost wages, for an amount in excess of \$10,000, which amount shall be determined specifically at the trial of

this action.

- (7) For money judgment against Defendant for violation of the Americans with Disabilities Act, 42 U.S.C. § 1981A representing emotional distress, inconvenience and other compensatory damages for an amount in excess of \$10,000, which amount shall be determined specifically at the trial of this action.
- (8) For a money judgment representing prejudgment interest.
- (9) For the court to retain jurisdiction of this action until Defendant has fully complied with the orders of the court and that the court require Defendant to file such reports as may be necessary to supervise such compliance.
- (10) For the costs of suit, including an award of reasonable attorneys' fees pursuant to federal law.
- (11) For such other and further relief as may be just, proper and necessary to afford complete relief to Plaintiff and to provide Plaintiff that to which he is entitled at the time this action is tried.

This the _____ day of _____, 2017

GLENN, MILLS, FISHER & MAHONEY, P.A.

/s/Stewart W. Fisher

Stewart W. Fisher (N.C. Bar No. 10327)

Daniel N. Mullins (N.C. Bar No. 48227)

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E-mail: sfisher@gmfm-law.com

dmullins@gmfm-law.com

Attorneys for Plaintiff

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.)

<p>I. (a) PLAINTIFFS <u>WENDELL TABB</u></p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) _____</p>	<p>DEFENDANTS <u>BOARD OF EDUCATION OF THE DURHAM PUBLIC SCHOOLS</u></p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width: 100%;"> <tr> <td style="width: 25%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 55%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		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
	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	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <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 <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <p style="text-align: center;">SOCIAL SECURITY</p> <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))	<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 <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
<p>REAL PROPERTY</p> <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	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" 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	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <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 <p>Others:</p> <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	<p style="text-align: center;">FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 2000e; 42 U.S.C. § 1981, 42 U.S.C. § 12117

Brief description of cause:
Race and disability discrimination

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 08/09/2017 **SIGNATURE OF ATTORNEY OF RECORD** /s/Stewart W. Fisher

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. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – 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.