

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**WILEY REIN LLP**  
1776 K Street, NW  
Washington, DC 20006,

Plaintiff,

v.

**U.S. DEPARTMENT OF LABOR**  
200 Constitution Ave., NW  
Washington, DC 20210,

Defendant.

Civil Action No.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Wiley Rein LLP (“Wiley Rein”) alleges for its Complaint against Defendant U.S. Department of Labor (“Defendant”) as follows.

**I. INTRODUCTION**

1. This is an action brought under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), in order to compel Defendant to produce records that Defendant has already agreed to produce. On November 6, 2018, Defendant stated that it would be producing the requested records within four weeks. That was one year and four months ago, and Defendant has *still* not produced the documents. Defendant has failed to comply with its own timetable and has utterly failed to fulfill its obligation to produce the requested documents “promptly.” 5 U.S.C. § 552(a)(3)(A).

**II. PARTIES**

2. Wiley Rein is a District of Columbia law firm that filed a FOIA request with Defendant on behalf of itself and the U.S. battery manufacturing industry. Wiley Rein’s office is

located at 1776 K Street, NW, Washington, DC 20006.

3. Defendant is an agency of the United States Government within the meaning of 5 U.S.C. § 552(f)(1). Defendant has possession, custody, and control of the records requested by Wiley Rein.

### **III. JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

### **IV. BACKGROUND AND APPLICABLE LAW**

6. On August 14, 2018, Wiley Rein filed a FOIA request (dated July 13, 2018) seeking the disclosure of materials pertaining to certain investigations of battery manufacturers. As subsequently narrowed, Wiley Rein seeks merely a copy of the Compliance Action Report and narrative summary for specific investigations into certain battery manufacturers. The Case IDs for these investigations are: 1800536, 79274, 5034, 1775718, 1281865, 1297573, 1545696, 283100, 1371264, 1395820, 1515726, 1615259, 41684, 277673, 126103, 9708, 1190656, 239442, 1435656, 1456451, 1589136, 277644, 1742268, 165687, 281317, 8116, 222243, 285793, 395263, 75566, 1864158, 22539, 314631, 275269, 1793352, 275241, 92408, 10324, 92407, 1416096, 1582872, 1477776, 76653, 1270360, and 287259.

7. The Compliance Action Reports and narrative summaries for these investigations were and continue to be critical to the U.S. battery manufacturing industry. Specifically, this information would reveal, *inter alia*, Defendant's enforcement position regarding the compensability of required showering at industrial or manufacturing facilities and regarding the use of timeclocks by employers.

8. On August 22, 2018, Defendant assigned Wiley Rein's FOIA request to Defendant's Wage and Hour Division, with tracking number 865148.

9. On November 2, 2018, Leslie Jones, a Government Information Specialist with Defendant, asked Wiley Rein to narrow its request to simply a copy of the Compliance Action Report and narrative summary from the case file for each of the investigations.

10. On November 6, 2018, Wiley Rein declined, but stated that Defendant could provide a rolling production and begin by producing the Compliance Action Reports and narrative summaries first.

11. Critically, on November 6, 2018, Ms. Jones responded by stating that she would give Wiley Rein the Compliance Action Reports and narrative summaries "within the next 4 weeks."

12. The next four weeks came and went, as did the next four months. On April 5, 2019, Ms. Jones stated that she "ran into a snag because [she] was not aware of Wage Hour's processes b[ut] [is] back on track to get this done properly."

13. On June 20, 2019, ReNay Royster, another Government Information Specialist with Defendant, cited unspecified "backlog issues" and declined to provide any estimate as to when Defendant would finish processing Wiley Rein's request. Defendant appeared to have forgotten whatever work was done by Ms. Jones.

14. On July 15, 2019, Wiley Rein spoke with Ms. Royster. Ms. Royster provided Wiley Rein with the list of Case IDs for investigations of certain battery manufacturers, as reprinted in ¶ 6 of this Complaint.

15. On July 30, 2019, Wiley Rein agreed to narrow its request so that it seeks merely a copy of the Compliance Action Report and narrative summary for the investigations identified

by Ms. Royster.

16. On July 31, 2019, Ms. Royster stated that she “will be begin [*sic*] gathering the responsive documents” — documents which Wiley Rein had believed were being gathered back in November 2018 — and she provided a fee estimate.

17. On August 1, 2019, Wiley Rein agreed to pay the estimated fee.

18. On October 22, 2019, having heard nothing further, Wiley Rein inquired as to the status of its FOIA request and asked Ms. Royster to provide an estimated completion date.

19. Also on October 22, 2019, Ms. Royster stated that she “reviewed the responsive documents” and forwarded them to her superior for “final review.” She stated that the documents total more than 900 pages.

20. On November 19, 2019, having heard nothing further, Wiley Rein again inquired as to the status of its FOIA request and asked for an estimated release date.

21. On November 20, 2019, Ms. Royster stated that the “responsive documents pertaining to [Wiley Rein’s] request have been forwarded for secondary review” and that, “[o]nce they are reviewed I can release them to you.” Ms. Royster declined to provide an estimated date of completion.

22. On January 22, 2020, having heard nothing further, Wiley Rein called Defendant and demanded the release of the documents by February 21, 2020. Ms. Royster sent an email to her coworkers (Chief Genise Coleman and Manager Forrest Horak) informing them as to the urgency of the request. And we agree that this is an urgent request.

23. On February 25, 2020, having heard nothing further, Wiley Rein requested that Defendant commit to producing the documents within the next seven days.

24. On February 27, 2020, Ms. Coleman stated that Defendant’s Wage and Hour

Division was still reviewing the documents and, after the Wage and Hour Division finished with its review, Defendant would then forward the documents to the Office of the Solicitor for an additional review. Defendant refused to provide a timeline as to when Wiley Rein could expect to receive any documents.

25. It has now been more than eighteen (18) months since Wiley Rein submitted its FOIA request, and to date Defendant still has not produced the documents that it has already reviewed. Defendant has not made any attempt to address Wiley Rein's concerns regarding its undue delay, nor has it provided an estimated date when the documents will be released to Wiley Rein.

26. Wiley Rein has a statutory right to timely production of the records it seeks, and there is no legal basis for Defendant's unreasonable failure to disclose them, particularly given the specificity and limited scope of the request. Moreover, the investigations have been specifically identified by Case ID, and the Compliance Action Reports and narrative summaries do not contain U.S. government-classified information such that a FOIA exemption could possibly apply in this case.

27. Due to Defendant's complete failure to comply with its obligations under FOIA, Wiley Rein now seeks Court intervention to enforce its rights under FOIA and compel prompt production of the requested documents.

### **COUNT ONE**

28. Wiley Rein re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 27 of this Complaint.

29. As the U.S. Court of Appeals for the D.C. Circuit has previously explained, "Congress underscored the importance it attached to prompt [FOIA] responses by allowing judicial recourse, bypassing administrative exhaustion, if an agency fails to meet statutory

timetables for disclosure or to justify its delay in making nonexempt records available upon request.” *Judicial Watch, Inc. v. U.S. Dep’t of Homeland Sec.*, 895 F.3d 770, 755–76 (D.C. Cir. 2018).

30. Defendant violated FOIA by failing to “promptly” produce the documents requested in Wiley Rein’s FOIA request. 5 U.S.C. § 552(a)(3)(A).

31. Defendant has offered no reasonable justification for its failure to produce documents that it has already collected and has already reviewed.

32. Wiley Rein is being irreparably harmed by reason of Defendant’s violation of FOIA, and Wiley Rein will continue to be irreparably harmed unless Defendant is compelled to comply fully with FOIA.

#### **PRAYER FOR RELIEF**

WHEREFORE, Wiley Rein respectfully requests that the Court:

(1) declare that Defendant’s failure to produce the records requested by Wiley Rein is arbitrary and capricious and/or unlawful;

(2) order Defendant to produce, by a date certain, no later than fifteen (15) days following entry of its Order, any and all non-exempt records responsive to Wiley Rein’s request (*i.e.*, the Compliance Action Reports and narrative summaries) and a *Vaughn* index of any responsive records withheld under claim of exemption;

(3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Wiley Rein’s request;

(4) grant Wiley Rein an award of attorneys’ fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

(5) grant Wiley Rein such other relief as the Court deems just and proper.

Date: March 9, 2019

/s/ Richard W. Smith  
Richard W. Smith (D.C. Bar # 498177)  
WILEY REIN LLP  
1776 K Street, NW  
Washington, DC 20006  
Phone: (202) 719-7000  
Facsimile: (202) 719-7049  
rwsmith@wiley.law

*Counsel for Plaintiff Wiley Rein LLP*

**CIVIL COVER SHEET**

JS-44 (Rev. 6/17 DC)

<b>I. (a) PLAINTIFFS</b> WILEY REIN LLP  (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) _____  (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Richard W. Smith Wiley Rein LLP 1776 K Street, NW Washington, DC 2006	<b>DEFENDANTS</b> U.S. DEPARTMENT OF LABOR  COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>																												
<b>II. BASIS OF JURISDICTION</b> (PLACE AN X IN ONE BOX ONLY) <table style="width:100%; border: none;"> <tr> <td><input type="radio"/> 1 U.S. Government Plaintiff</td> <td><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input checked="" type="radio"/> 2 U.S. Government Defendant</td> <td><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</td> </tr> </table>	<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)	<input checked="" type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b> <table style="width:100%; border: none;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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**IV. CASE ASSIGNMENT AND NATURE OF SUIT**

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b>  <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 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> <b>C. Administrative Agency Review</b>  <input type="checkbox"/> 151 Medicare Act  <u>Social Security</u> <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))  <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*	
<input type="radio"/> <b>E. General Civil (Other)</b>		OR	<input type="radio"/> <b>F. Pro Se General Civil</b>	
<u>Real Property</u> <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  <u>Personal Property</u> <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	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement  <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609  <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <u>Other Statutes</u> <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"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <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 <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)	



<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <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"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge  
  8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 5 U.S.C. Section 552, Freedom of Information Act. Defendant is unlawfully withholding public records.

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 03/09/2020	SIGNATURE OF ATTORNEY OF RECORD:
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET 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 services 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

WILEY REIN LLP

\_\_\_\_\_  
*Plaintiff*

v.

U.S. DEPARTMENT OF LABOR

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*Defendant*

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Civil Action No. 1:20-cv-00677

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)* U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Wiley Rein LLP  
Richard W. Smith  
1776 K Street, NW  
Washington, DC 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*