

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

Civil Action No. \_\_\_\_\_

WILDEARTH GUARDIANS

Plaintiff,

v.

GINA McCARTHY, in her official capacity as Administrator of the United States  
Environmental Protection Agency,

Defendant.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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**INTRODUCTION**

1. Congress enacted section 169A of the Clean Air Act, “Visibility protection for Federal class I areas,” to protect the intrinsic beauty and historical and archeological treasures of most wilderness areas and national parks in the United States by ensuring high air quality in these pristine lands. The Clean Air Act’s visibility protection provisions require states to prepare state implementation plans (“SIPs”) designed to make reasonable progress toward restoring natural visibility conditions in these “Class 1” areas. These “regional haze SIPs” must be submitted to the Environmental Protection Agency (“EPA”), which has the authority to approve, disapprove, or require modification of the plan.

2. States were required to submit these regional haze SIPs to EPA by December 17, 2007. Continued delay by states and EPA in finalizing these plans has deprived citizens of the full enjoyment of our wilderness areas and national parks. This delay has also caused residents

and visitors to Utah to be unnecessarily exposed to harmful levels of air pollution.

3. The Clean Air Act mandates that EPA promulgate a Federal Implementation Plan (“FIP”) within two years after finding that a state has failed to make a required SIP submittal.

4. EPA disapproved Utah’s regional haze SIP in 2012. At issue was Utah’s failure to ensure that pollution from two coal-fired power plants was effectively kept in check to protect clean air and improve visibility in Class 1 areas. More than two years later, EPA has not promulgated a regional haze FIP for the State of Utah, in violation of its nondiscretionary duty.

5. Plaintiff WildEarth Guardians (“Guardians”) brings this Clean Air Act citizen suit to compel Defendant, Gina McCarthy, Administrator of the EPA, to perform her non-discretionary duty to promulgate a regional haze FIP for Utah. The timely promulgation of a FIP is necessary to ensure adequate protection of air quality and to make reasonable progress toward restoring natural visibility conditions in Class 1 areas.

#### **JURISDICTION, NOTICE AND VENUE**

6. This is an action against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under the Clean Air Act which is not discretionary with the Administrator. Thus, this Court has jurisdiction pursuant to 42 U.S.C. § 7604(a)(2) (citizen suit provision of the Clean Air Act) and 28 U.S.C. § 1331 (federal question).

7. The requested declaratory relief is authorized by 28 U.S.C. § 2201(a) and 42 U.S.C. § 7604(a). The requested injunctive relief is authorized by 28 U.S.C. § 2202 and 42 U.S.C. § 7604(a).

8. On January 21, 2015, Guardians provided EPA with written notice of the claim concerning EPA’s failure to promulgate a FIP for regional haze requirements for Utah.

Guardians provided this notice pursuant to 42 U.S.C. § 7604(b)(2). Although more than 60 days have elapsed since Guardians gave notice, EPA remains in violation of the law.

9. As EPA has failed to redress the Clean Air Act violation set forth in Guardians' notice letter, there exists now between the parties an actual, justiciable controversy within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1). EPA resides in this judicial district and maintains a major regional office responsible for the overdue FIP Rule at issue, in Denver, Colorado. Additionally, Guardians maintains a major office in Denver, Colorado.

### **PARTIES**

11. Plaintiff WILDEARTH GUARDIANS is a non-profit conservation organization. Guardians is dedicated to protecting and restoring wildlife, wild rivers, and wild places in the American West, and to safeguarding the Earth's climate and air quality. WildEarth Guardians and its members work to reduce harmful air pollution in order to safeguard public health, welfare, and the environment. WildEarth Guardians has approximately 66,500 members and activists, many of whom live, work, or recreate in Utah.

12. Guardians is a corporation. Therefore, Guardians is a "person" within the meaning of 42 U.S.C. § 7602(e). As such, Guardians may commence a civil action under 42 U.S.C. § 7604(a).

13. Guardians' members live, work, recreate, and conduct educational, research, advocacy, and other activities in Utah in areas where air pollution, the emission of which should be regulated under the FIP Rule at issue in this case, harms these activities. Guardians' members

also recreate in national parks and wilderness areas whose visibility continues to be impaired by air pollution that should be regulated under a regional haze FIP for Utah. This air pollution adversely impacts Guardians' and its members' interests. EPA's failure to promulgate a regional haze FIP for Utah also creates doubt for Guardians' members as to whether they are exposed to illegal levels of air pollution. Guardians' and its members' interests have been, are being, and will continue to be irreparably harmed by EPA's failure to promulgate a regional haze FIP for Utah.

14. The violations alleged in this Complaint deprive Guardians and its members of certain procedural rights associated with EPA's required action on promulgation of a FIP, including notice and opportunity to comment. The violations alleged in this Complaint also deprive Guardians and its members of certain information associated with EPA's required action on promulgation of a FIP.

15. The violations alleged in this Complaint have injured and continue to injure the interests of Guardians and its members. These injuries are traceable to Defendant's failure to act. Granting the requested relief would redress these injuries by compelling EPA action that Congress determined to be an integral part of making reasonable progress towards remedying visibility impairment in our national parks and wilderness areas.

16. Defendant GINA McCARTHY is Administrator of the United States Environmental Protection Agency. Ms. McCarthy is sued in her official capacity. The Administrator is charged with implementation and enforcement of the Clean Air Act. As described below, the Clean Air Act assigns EPA certain non-discretionary duties.

## LEGAL FRAMEWORK

17. The Clean Air Act establishes a partnership between EPA and the states for the attainment and maintenance of national air quality goals. 42 U.S.C. §§ 7401-7515. This system is intended to “speed up, expand, and intensify the war against air pollution in the United States with a view to assuring that the air we breathe throughout the Nation is wholesome once again.” H.R. Rep. No. 91-1146, at 1 (1970), *reprinted in* 1970 U.S.C.C.A.N. 5356, 5356.

18. States, or regions within a state, must adopt SIPs that contains enforceable emissions limitations necessary to attain the National Ambient Air Quality Standards (“NAAQS”) and meet all applicable requirements of the Clean Air Act. *See, e.g.*, 42 U.S.C. §§ 7410(a)(1), (a)(2)(A), 7502(c)(6). Such plans must be submitted to and approved by EPA. 42 U.S.C. § 7410(a)(1), (k).

19. Within 60 days of EPA’s receipt of a proposed SIP or SIP revision, the Clean Air Act requires EPA to determine whether the submission is sufficient to meet the minimum criteria established by EPA for such proposals. 42 U.S.C. § 7410(k)(1)(B). If EPA determines that the proposed SIP or SIP revision does not meet the minimum criteria, the State is considered not to have made the submission. 42 U.S.C. § 7410(k)(1)(C).

20. Within 12 months of finding that a proposed SIP or SIP revision is complete (or deemed complete by operation of law), EPA must act to approve, disapprove, or approve in part and disapprove in part, the submission. 42 U.S.C. § 7410(k)(2).

21. Once EPA approves a SIP or SIP revision, polluters must comply with all emission standards and limitations contained in the SIP, and all such standards and limitations become federal law and are enforceable by EPA and citizens in federal courts. 42 U.S.C. § 7413

and 42 U.S.C. § 7604(a).

22. Section 169A of the Clean Air Act regulates regional haze. In 1977, Congress declared as a national goal “the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.” 42 U.S.C. § 7491. These mandatory “Class I” Federal include 156 national parks and wilderness areas, such as Arches, Canyonlands, and Zion in Utah. *See generally* 40 C.F.R. pt. 81.

23. Congress also directed EPA to require any State in which a Class 1 Area is located to submit a SIP that contains “such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal.” 42 U.S.C. § 7491(b)(2). The Clean Air Act requires that these limits be established through a SIP approved by EPA. 42 U.S.C. § 7491(b)(2).

24. EPA’s visibility regulations, codified at 40 C.F.R. §§ 51.300-51.309, require states to develop regional haze SIPs with measures necessary to make reasonable progress towards remedying visibility impairment in Class I areas. The required SIP elements include: the setting of reasonable progress goals for each Class I area located in the state; calculations of baseline and natural visibility conditions for each Class I area within the state; a long-term strategy to address regional haze for each Class I area within the state or affected by emissions within the state, including compliance schedules, enforceable emission limitations, and other measures necessary to achieve reasonable progress goals; a strategy for measuring, characterizing, and reporting regional haze; and determinations and requirements regarding Best Available Retrofit Technology (“BART”). 40 C.F.R. § 51.308.

25. States were required to submit these regional haze SIPs to EPA by December 17, 2007. 42 U.S.C. § 7407(d)(7) and 40 C.F.R. § 51.308(b).

26. If a state fails to submit a SIP, submits an incomplete SIP, or if EPA disapproves a SIP in whole or in part because the SIP does not meet the Clean Air Act's minimum requirements, then EPA must develop its own plan, called a Federal Implementation Plan ("FIP"). 42 U.S.C. § 7410(c)(1). The Act requires EPA to Promulgate a FIP within two years of such a finding or disapproval "unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such [a FIP]." *Id.*

27. Once the "FIP clock" begins to run, EPA must promulgate that FIP unless a state submits a SIP and it is approved by EPA within the two year period. 42 U.S.C. § 7410(c).

28. If EPA fails to comply with a non-discretionary duty, such as acting on a proposed SIP revision within the Clean Air Act deadlines or promulgating a FIP within the statutorily mandated timeframe, the Clean Air Act allows any person to bring suit to compel EPA to perform its duty. 42 U.S.C. § 7604(a)(2).

### **FACTUAL ALLEGATIONS**

29. On May 26, 2011, Utah submitted a SIP revision to EPA that addressed some of the regional haze SIP requirements.

30. On October 30, 2012, EPA partially disapproved Utah's SIP revision addressing regional haze requirements under Section 169A of the Clean Air Act. 77 Fed. Reg. 74,355-74,372 (Dec. 14, 2012).

31. EPA's disapproval of Utah's regional haze plan was based on the State's failure to adopt adequate BART requirements, in compliance with 40 C.F.R. § 51.308(e), for two of the

State's largest coal-fired power plants, Hunter and Huntingdon, primarily owned and operated by PacifiCorp. Specifically, EPA disapproved the State's nitrogen oxide and particulate matter BART determinations and limits for PacifiCorp Hunter Units 1 and 2, and PacifiCorp Huntingdon Units 1 and 2. EPA also disapproved the SIP because it did not include provisions necessary to make BART limits practically enforceable as required by Section 110(a)(2) of the Clean Air Act and Appendix V to 40 C.F.R. part 51. *See* 77 Fed. Reg. 74,357.

32. As of date of filing this Complaint, EPA has not approved a regional haze SIP for Utah that meets the required elements for addressing regional haze set forth in 40 C.F.R. §§ 51.300-51.309.

33. As of the date of filing this Complaint, EPA has not promulgated a regional haze FIP for Utah.

**CLAIM FOR RELIEF**  
**Failure to Perform a Non-Discretionary Duty**  
**to Promulgate a Regional Haze FIP for Utah**

34. Plaintiff incorporates by reference all the preceding allegations in this Complaint.

35. On October 30, 2012, EPA took final action partially disapproving Utah's regional haze SIP. EPA determined that the State had not addressed some of the required regional haze SIP elements set forth at 40 C.F.R. §51.308. 77 Fed. Reg. 74,357 (December 14, 2012).

36. Therefore, EPA had, and continues to have a mandatory duty to promulgate a regional haze FIP by no later than January 14, 2015. 42 U.S.C. § 7410(c).

37. EPA has not yet promulgated a regional haze FIP for Utah, in violation of its mandatory duty in 42 U.S.C. § 7410(c).

38. This violation constitutes a “failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator,” within the meaning of the Clean Air Act’s citizen suit provision. 42 U.S.C. § 7604(a)(2). EPA’s violation is ongoing and will continue unless remedied by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff WildEarth Guardians requests that this Court enter judgment providing the following relief:

- A. A declaration that EPA has violated and continues to violate the Clean Air Act by failing to promulgate a regional haze FIP for Utah, as detailed above;
- B. An injunction compelling EPA to promulgate a FIP for Utah by a reasonable date certain;
- C. An order retaining jurisdiction over this matter until such time as EPA has complied with its non-discretionary duties under the Clean Air Act;
- D. An order awarding Guardians its costs of litigation, including reasonable attorneys’ fees; and
- E. Such other and further relief as the court deems just and proper.

Respectfully submitted on this 27th day of March, 2015,

/s/ Samantha Ruscavage-Barz  
WildEarth Guardians  
516 Alto Street  
Santa Fe, NM 87501  
(505) 401-4180  
sruscavagebarz@wildearthguardians.org

/s/ Ashley D. Wilmes  
WildEarth Guardians  
680 W. Hickory St.  
Louisville, CO 80027  
(859) 312-4162  
awilmes@wildearthguardians.org

*Attorneys for Plaintiff WildEarth Guardians*

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**  
 WildEarth Guardians

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

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
 Samantha Ruscavage-Barz, WildEarth Guardians 516 Alto Street, Santa Fe,  
 NM 87501, (505)401-4180; Ashley Wilmes, 680 W. Hickory St.  
 Louisville, CO 80027, (859)312-4162

**DEFENDANTS**  
 Gina McCarthy, Administrator, U.S. Environmental Protection Agency

County of Residence of First Listed Defendant \_\_\_\_\_  
 (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

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	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)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander		<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<b>LABOR</b>	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>TAX SUITS</b>	<input checked="" type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<b>IMMIGRATION</b>	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities Employment			
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities Other			
	<input type="checkbox"/> 448 Education			
		<b>PRISONER PETITIONS</b>		
		<b>Habeas Corpus:</b>		
		<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		
		<b>Other:</b>		
		<input type="checkbox"/> 540 Mandamus & Other		
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

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

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

**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. 7604(a)(2)

Brief description of cause:  AP Docket  
 EPA Administrator failed to perform her non-discretionary duty under Clean Air Act

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

DATE: 3/27/15

SIGNATURE OF ATTORNEY OF RECORD: /s/ Ashley Wilmes

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

AO 440 (Rev. 12/09) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**

for the

\_\_\_\_\_ District of \_\_\_\_\_

_____	)	
<i>Plaintiff</i>	)	
v.	)	Civil Action No.
	)	
_____	)	
<i>Defendant</i>	)	

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

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

*CLERK OF COURT*

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

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

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify):* \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

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

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**

for the

\_\_\_\_\_ District of \_\_\_\_\_

_____	)	
<i>Plaintiff</i>	)	
v.	)	Civil Action No.
	)	
_____	)	
<i>Defendant</i>	)	

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

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

*CLERK OF COURT*

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

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

Civil Action No. \_\_\_\_\_

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I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify):* \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

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

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

**UNITED STATES DISTRICT COURT**

for the

\_\_\_\_\_ District of \_\_\_\_\_

_____	)	
<i>Plaintiff</i>	)	
v.	)	Civil Action No.
	)	
_____	)	
<i>Defendant</i>	)	

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

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

*CLERK OF COURT*

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

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

Civil Action No. \_\_\_\_\_

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\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify):* \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

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

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: