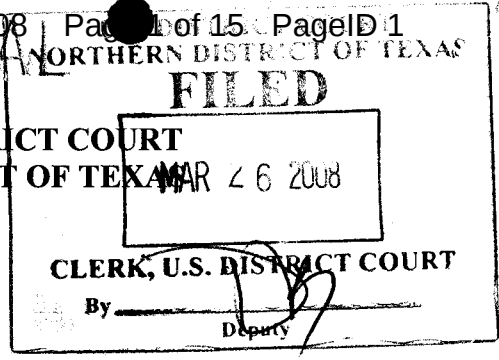


ORIGINAL



IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

TNA Entertainment, LLC

Plaintiff,

v.

Charles "Carlos" Ashenoff, pka "Konnan"

Defendant

§ § § § § § § § § § §

Civil Action No. 308 CV - 522-10

20459

PLAINTIFF'S ORIGINAL COMPLAINT AND REQUEST FOR DECLARATORY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff TNA Entertainment, LLC ("TNA" or "Plaintiff") hereby files this ORIGINAL COMPLAINT AND REQUEST FOR DECLARATORY JUDGMENT against Charles "Carlos" Ashenoff, pka "Konnan" ("Ashenoff," "Konnan" or "Defendant") and in support thereof respectfully shows the Court as follows:

PARTIES

1. Plaintiff TNA Entertainment, LLC is a Delaware limited liability company, with its principal place of business in Nashville, Tennessee. TNA is subject to the jurisdiction of this Court.

2. Defendant Charles Ashenoff is an individual resident of the State of California and may be served with process at his residence at 1894 Cabernet Drive, Chula Vista, California; telephone: 619-841-6676. Plaintiff requests that, alternatively, Defendant's attorney, Cary Ichter, accept service on his behalf. Mr. Ichter's address is as follows: Cary Ichter, Adorno &

Yoss, LLP, 1201 West Peachtree Street, Suite 2200, Atlanta, Georgia 30309; telephone: 404/541-2956.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action, and venue is proper in this Court, pursuant to the jurisdiction and venue provisions contained in the agreements dated January 24, 2004, and August 5, 2005, as well as the Addendums to these agreements (the “*Independent Contractor Agreements*”).

4. The Court also has jurisdiction over this action because the case and controversy at issue arises, at least in part, under federal law. Specifically Defendant has alleged that TNA has violated 42 U.S.C. § 1981. Thus, this Court has jurisdiction over an action arising under the laws of the United States pursuant to the United States Constitution art. 3, § 2 and 28 U.S.C. §1331.

5. This Court has supplemental jurisdiction over Plaintiffs’ state law claims under 28 U.S.C. § 1367, because they are so related to Plaintiffs’ federal claims in this action that they form part of the same case or controversy under Article II of the United States Constitution.

### **INTRODUCTION AND BACKGROUND FACTS**

6. Plaintiff TNA is engaged in the business of producing, arranging, staging, conducting and promoting professional wrestling events and programs throughout the world. In conducting wrestling events, TNA contracts with wrestlers, writers, bookers and administrative personnel.

7. Defendant Ashenoff has been a professional wrestler for over two decades. He has wrestled for multiple wrestling organizations, including the World Wrestling Federation, World Championship Wrestling, Extreme Championship Wrestling, CMLL, AAA, Promo

Azteca and TNA. These professional wrestling organizations, like TNA, are engaged in the creation, management and direction of performance art for entertainment purposes, which largely rely on staged combat and wrestling scenes, along with creative and dramatic story lines.

8. As with other wrestling organizations, while he was a wrestler with TNA, Ashenoff, believed to be a Cuban-American, wrestled under the stage or "ring name" of "Konnan," and portrayed the role of an Hispanic wrestler. Despite assertions to the contrary (which are described more fully below), this was not a character which TNA created; rather, the "Konnan" character was a mix of several different wrestling characters developed by Ashenoff and others in over twenty years in the business. When Ashenoff first began providing services to TNA, TNA incorporated Ashenoff's existing character role into its dramatic story lines and scenes for its purposes of providing creative entertainment to its audience.

#### **THE PARTIES' INDEPENDENT CONTRACTOR AGREEMENTS**

9. On or about January 2004, Defendant entered into one of the Independent Contractor Agreements at issue with TNA under which Konnan was retained to "render ... wrestling and performing services in connection with, the rehearsal, performance and broadcast of 26 or more Programs ("*Performance*") designated to you by TNA...." These services were to rendered subject to TNA's direction.

10. In August 2005, TNA and Konnan entered into another Independent Contractor Agreement, which contains many of the same provisions as the 2004 agreement, including the provisions referenced herein.

11. Defendant voluntarily entered into the Independent Contractor Agreements knowing that the contracts required him to portray characters of Hispanic origin, including the Konnan character.

12. These Independent Contractor Agreements were very specific regarding which State's laws would apply to this relationship. Indeed, both expressly state as follows:

10. **...THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF TEXAS, AND ITS VALIDITY, CONSTRUCTION, AND EFFECT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS APPLICABLE TO AGREEMENTS EXECUTED AND TO BE PERFORMED WHOLLY THEREIN, AND WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF. YOU AND TNA IRREVOCABLY SUBMIT TO THE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT SITUATED IN DALLAS COUNTY, TEXAS FOR THE RESOLUTION OF ANY DISPUTE HEREUNDER OR THE COMMENCEMENT OF ANY ACTION IN CONNECTION HEREWITH. YOU AND TNA SPECIFICALLY AND IRREVOCABLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION ARISING HEREUNDER.**

13. In light of the nature of and risk associated with professional wrestling, both of the Independent Contractor Agreements attach Addendums with the following Waiver and Release of liability, Assumption of Risk and Indemnity Agreement:

By signing the Agreement and this Addendum with TNA, which provides me with consideration that includes the opportunity to engage in the activity of professional wrestling, I hereby acknowledge and reflect my understanding that professional wrestling is an activity that is inherently dangerous and which involves a high degree of risk of serious bodily injury and/or death, as well as property damage.

By signing this Addendum, **I HEREBY WAIVE, DISCHARGE AND RELEASE ANY AND ALL CLAIMS I HAVE, MAY HAVE, OR THAT I MAY EVER HAVE IN THE FUTURE, AGAINST TNA, ITS PARENT AND AFFILIATES AND ALL OF THEIR RESPECTIVE AGENTS, OFFICERS, EMPLOYEES AND DIRECTORS ... (THE "TNA" PARTIES") THAT ARISE FROM OR RELATE IN ANY WAY TO MY PARTICIPATION IN THE ACTIVITY OF PROFESSIONAL WRESTLING OR IN ANY RELATED ACTIVITIES, WHETHER CAUSED BY THE NEGLIGENCE OF THE TNA PARTIES OR OTHERWISE.**

**IN THAT REGARD, I ALSO AGREE ON MY OWN BEHALF, AS WELL AS ON BEHALF OF MY PERSONAL REPRESENTATIVES, MY ASSIGNS, MY HEIRS, AND MY NEXT OF KIN THAT I WILL NOT FILE SUIT OR ASSERT ANY DEMANDS OR CLAIMS FOR LIABILITY OR DAMAGES FOR ANY AND ALL LOSSES, INJURIES OR DAMAGES OF ANY KIND ARISING OUT OF MY PARTICIPATION IN THE ACTIVITY OF PROFESSIONAL WRESTLING OR RELATED ACTIVITIES, WHETHER CAUSED BY THE NEGLIGENCE OF THE TNA PARTIES OR OTHERWISE.**

**I HEREBY ASSUME FULL RESPONSIBILITY FOR ANY AND ALL RISK OF PERSONAL OR BODILY INJURY, DEATH, OR PROPERTY DAMAGE, now and forever, arising out of or related to participation in the activity of professional wrestling, whether foreseen or unforeseen and whether caused by the negligence of the TNA Parties or otherwise. I HEREBY SEPARATELY AGREE TO DEFEND, INDEMNIFY and SAVE and HOLD HARMLESS the TNA Parties from any all loss, liability, damage, fees, expenses or costs that they may incur, now and forever, in connection any personal or bodily injury to me, my death, or damage to my property that arises out of or may be attributable to my participation in the activity of professional wrestling, whether caused by the negligence of the TNA Parties or otherwise.**

**I HEREBY acknowledge that INJURIES RECEIVED MAY BE COMPOUNDED OR INCREASED BY NEGLIGENT ASSISTANCE OR PROCEDURES OF THE TNA PARTIES and I further agree that this Waiver and Release of Liability, Assumption of Risk and Indemnity Agreement extends to all acts of negligence by the TNA Parties, INCLUDING NEGLIGENCE IN PROVIDING ASSISTANCE and is intended to be as broad and inclusive as permitted by law....**

**I have read this Waiver and Release..., fully understand that I have given up substantial rights by signing it. I am aware of its legal effect and consequences, and I have signed it freely and voluntarily without any inducement, assurance, or guarantee made to me, and I intend my signature to be my complete unconditional release of all liability to the greatest extent that is allowed by law....**

14. The Independent Contractor Agreements further provide guidance with respect to trademark and other intellectual property issues. Specifically, the 2005 agreement allows TNA to use both "Original Intellectual Property," including any trademarks Defendant owned prior to the agreement, and any "New Intellectual Property," including trademarks created after the 2005 agreement was signed, both during after the term of the agreement.

#### **DEFENDANT'S CLAIMS AND THREATENED SUIT**

15. With that backdrop, in March of this year TNA received a demand letter and a draft lawsuit complaint that, despite the above provisions, threatened suit in some other jurisdiction (as opposed to Texas) in connection with what Defendant describes as "bodily injury claims," "racial discrimination claims," and trademark claims.

16. Specifically, the Defendant has alleged among other things that i) as a result of his professional wrestling career at TNA his pre-existing hip injury became a chronic problem and eventually dislocated, ii) TNA negligently hired, trained and supervised its personnel and that this negligence allegedly resulted in chronic renal failure due to his ingestion of performance enhancing drugs and/or the illegal use of prescription medications while wrestling at TNA, iii) he supposedly suffered from racial discrimination in connection with among other things having to portray the Hispanic wrestling character "Konnan" (a role he portrayed long before he was an independent contractor with TNA), and iv) TNA supposedly committed trademark infringement in connection with TNA's use of the logo "LAX." Latin American Exchange, or LAX, was a trio of Hispanic "stage characters" created by Defendant and other wrestlers.

17. In the demand letter and the attached draft complaint, Defendant complained, *inter alia*, that TNA's actions violated 42 U.S.C. § 1981 because TNA directed him to conform his performance to particular "Hispanic stereotypes." Specifically, Defendant claimed TNA

directed him to speak in a Spanish slang or Spanish accent, directed him to dress and adopt particular characteristics of a Latino street gang, directed him to use “racially charged” language towards a Caucasian wrestler, and hit another wrestler with a tequila bottle. Defendant also complained that, in connection with his providing “professional wrestling services,” TNA management referred to certain people as “brownies,” “Mexicans,” and drunken Puerto Ricans.” Defendant further baldly asserted that TNA paid “minority performers substantially less than other similarly situated non-minority performers.” Finally, despite suspending Defendant before he raised any issues of racial discrimination, Defendant complained that TNA retaliated against him for making complaints of racial discrimination.

18. While Defendant suggests that he complained to TNA concerning racial discrimination, he continued to perform for TNA and accept compensation from TNA rather than pursue other opportunities which he has admitted were available to him. Defendant continued to provide services to TNA, portray his “Konnan” character, and participate in the creatively developed story lines well after Defendant suggests these events took place. As is evidenced by his continued participation and use of his own previously existing character, Defendant was simply not offended by TNA’s conduct.

19. Notwithstanding Defendant’s allegations, throughout Defendant’s contractual relationship with TNA, Defendant and TNA collaborated and developed the use of the “Konnan” character in its story line, which included creative elements related to racially-related topics as part of its entertainment and marketing. To the extent any of the comments relating to race that Defendant allegedly heard, or participated in, were actually uttered, they were part of, and necessary to, the creative process, and facilitated TNA’s successful development of its entertainment product. Like casting for any entertainment role, TNA used Defendant for the

Konnan character and its story lines because his physical appearance met its requirements for this character and its story lines. TNA did not treat Defendant less favorably because of his race, or subject him to a racially hostile environment. Instead, this was an entertainment role Defendant chose to play and helped to create.

20. All conditions precedent to bringing this suit and all claims made herein have occurred or have been waived.

### **COUNT 1: BREACH OF CONTRACT**

21. TNA incorporates paragraphs 1-20 as though fully set forth herein.

22. TNA entered into the Independent Contractor Agreements with Defendant.

23. TNA relied upon Defendant's representations and warranties expressly provided therein, as well as the covenants, releases and promises contained in the Addenda attached thereto.

24. Defendant, in two separate agreements, released TNA and its parents, officers and employees, from any and all liability all claims for damages, including any losses for any alleged personal or bodily injuries, he "MAY HAVE OR THAT [HE] MAY EVER HAVE IN THE FUTURE" in connection with his professional wrestling activities, even if caused by TNA's negligence.<sup>1</sup>

25. Defendant, in two separate agreements, also agreed to defend, indemnify, and save and hold harmless TNA and its parents, officers and employees for and from any costs and expenses (including attorneys' fees and costs) incurred by them in connection with any personal or bodily injury to Defendant, even if caused by TNA's negligence or otherwise.

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<sup>1</sup> The release as well as the indemnification provisions in the Addendum to the Independent Contractor Agreements are bolded and/or stated in all capital letters. Thus, these provisions meet the express negligence and conspicuousness requirements, as spelled out by applicable case law.



26. Defendant, in two separate agreements, likewise promised and agreed not to file suit, make a demand or assert a claim against TNA or its parents, officers or employees, for any damages or losses, including personal or bodily injuries he may suffer that allegedly arise out of his professional wrestling activities, even if such alleged losses were caused by TNA's negligence.

27. Defendant has breached and anticipatorily breached the Independent Contractor Agreements by asserting personal and bodily injury claims referred to above, and by threatening to file suit against TNA.

28. Defendant further breached the 2005 Independent Contractor Agreement because he failed to show up at two or more scheduled events which ultimately led to his suspension.

29. As a direct result of Defendant's breach, TNA has been forced to incur attorneys' fees and other costs in connection with defending against the threatened claims and prosecuting the causes of action in this Complaint. TNA has suffered and seeks all actual, incidental, consequential and special damages caused by Defendant's breach of the Independent Contractor Agreements.

**COUNT TWO: ACTION FOR DECLARATORY JUDGMENT**

30. TNA incorporates paragraphs 1-29 as though fully set forth herein.

31. TNA brings this declaratory judgment pursuant to both Federal Rule of Civil Procedure 57 and 28 U.S.C. Sections 2201 and 2202 because an actual dispute exists relating to the interpretation, scope and application of the Independent Contractor Agreements, and as to whether the conduct complained about by Defendant can or does amount to any violation of 42 U.S.C. § 1981.

32. As described above, the Independent Contractor Agreements have the effect of limiting Defendant's ability to bring the causes of action he contemplates. Accordingly, TNA requests a declaration by the Court that:

- (a) Texas law applies to all of the controversies between the parties arising out of the Independent Contractor Agreements.
- (b) Defendant was at all relevant times an independent contractor of TNA, and was never an employee of TNA.
- (c) To the extent Plaintiff's employees or contractors purportedly provided Defendant with illegal performance enhancing drugs or prescription medications they did so outside the scope of their employment with Plaintiff or without Plaintiff's authorization, and therefore Plaintiff cannot be liable for such conduct.
- (d) All present and future claims of Defendant for personal and bodily injury against TNA and its parents, officers, employees and agents have been released.
- (e) TNA did not violate 42 U.S.C. § 1981 by creating, developing and/or directing Defendant, an actor, to participate in particular racially-related conduct, as alleged by Defendant.
- (f) TNA did not violate 42 U.S.C. § 1981 by casting Defendant, an actor, in part because of his particular physical appearance to play a role that depicts particular Latin American wrestlers engaged in racially-related conduct, as alleged by Defendant.
- (g) TNA did not violate 42 U.S.C. § 1981 by using certain racially-related words or conduct, as alleged by Defendant, during the creative process in developing its entertainment product which includes issues addressing race and other politically based issues.
- (h) TNA did not violate 42 U.S.C. § 1981 by using certain racially-related words or conduct, or creating, developing and/or directing Defendant, an actor, to participate in particular racially-related conduct, if established as alleged by Defendant, during the creative process in developing its entertainment product which includes issues addressing race and other politically based issues, because, *inter alia*, the direction, words, conduct, if established, and physical appearance, are necessary to the creative environment and the created entertainment product.

- (i) TNA did not violate 42 U.S.C. § 1981 by compensating Defendant differently because of his race, or retaliating against him because of complaints of racial harassment, because such allegations are false.
- (j) TNA did not violate 42 U.S.C. § 1981 because Defendant's conduct and participation with TNA over a number of years, pursuant to the Independent Contractor Agreements and otherwise, waives and estops Defendant from claiming any subjective or objective offense to TNA's alleged conduct.
- (k) TNA did not violate 42 U.S.C. § 1981 because its actions and speech are consistent with the First Amendment of the United States Constitution in creating and performing story lines that utilize particular characters, story lines, and themes, and the restraint of such actions by a Court, or a statute, would violate the United States Constitution.
- (l) TNA did not violate 42 U.S.C. § 1981 because Defendant voluntarily entered into the Independent Contractor Agreements knowing that the contracts required him to portray characters of Hispanic origin, including the Konnan character.
- (m) Plaintiff's alleged violations of the U.S.C. § 1981 are barred by applicable statute of limitations.
- (n) TNA has had a legal right to use the LAX logo, regardless of whether the logo was created by Defendant, pursuant to the August 2005 Independent Contractor Agreement and has not violated any applicable trademark statutes or laws.

#### **ATTORNEYS' FEES**

33. TNA hereby requests all of its attorneys fees and costs incurred in connection with prosecuting this case and defending against Defendants claims and assertions. This relief is sought i) as damages for the breaches by Defendant of the Independent Contractor Agreements, ii) pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. Sections 2201 and 2202, and iii) pursuant to Chapter 38 of the TEX. CIV. PRAC. & REM. CODE.

**II.**  
**PRAYER**

For the above reasons, Plaintiff respectfully requests that Defendant be served with process, and that upon final hearing of this case, the Court enter a judgment awarding Plaintiff the following relief:

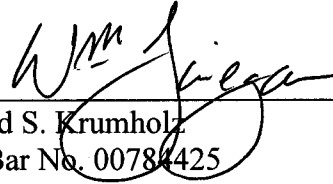
- (a) all actual, incidental, consequential and special damages resulting from Defendant's breach of the Independent Contractor Agreements.
- (b) all attorneys' fees and costs incurred in connection with prosecuting this case and defending against Defendant's claims and demands.
- (c) All pre- and post-judgment interest as allowed by law.
- (d) the following declarations:
  - (i) Texas law applies to all of the controversies between the parties arising out of the Independent Contractor Agreements.
  - (ii) Defendant was at all relevant times an independent contractor of TNA, and was never an employee of TNA.
  - (iii) All present and future claims of Defendant for personal and bodily injury against TNA and its parents, officers, employees and agents have been released.
  - (iv) To the extent Plaintiff's employees or contractors purportedly provided Defendant with illegal performance enhancing drugs or prescription medications they did so outside the scope of their employment with Plaintiff or without Plaintiff's authorization.
  - (v) TNA did not violate 42 U.S.C. § 1981 by creating, developing and/or directing Defendant, an actor, to participate in particular racially-related conduct, as alleged by Defendant.
  - (vi) TNA did not violate 42 U.S.C. § 1981 by casting Defendant, an actor, in part because of his particular physical appearance to play a role that depicts particular Latin American wrestlers engaged in racially-related conduct, as alleged by Defendant.

- (vii) TNA did not violate 42 U.S.C. § 1981 by using certain racially-related words or conduct, if established as alleged by Defendant, during the creative process in developing its entertainment product which includes issues addressing race and other politically based issues.
- (viii) TNA did not violate 42 U.S.C. § 1981 by using certain racially-related words or conduct, or creating, developing and/or directing Defendant, an actor, to participate in particular racially-related conduct, as alleged by Defendant, during the creative process in developing its entertainment product which includes issues addressing race and other politically based issues, because, *inter alia*, the direction, words, conduct, if established, and physical appearance, are necessary to the creative environment and the created entertainment product.
- (ix) TNA did not violate 42 U.S.C. § 1981 by compensating Defendant differently because of his race, or retaliating against him because of complaints of racial harassment, because such allegations are false.
- (x) TNA did not violate 42 U.S.C. § 1981 because Defendant's conduct and participation with TNA over a number of years, pursuant to the Independent Contractor Agreements and otherwise, waives and estops Defendant from claiming any subjective or objective offense to TNA's alleged conduct.
- (xi) TNA did not violate 42 U.S.C. § 1981 because its actions and speech are consistent with the First Amendment of the United States Constitution in creating and performing story lines that utilize particular characters, story lines, and themes, and the restraint of such actions by a Court, or a statute, would violate the United States Constitution.
- (xii) TNA did not violate 42 U.S.C. § 1981 because Defendant voluntarily entered into the Independent Contractor Agreements knowing that the contracts required him to portray characters of Hispanic origin, including the Konnan character.
- (xiii) Plaintiff's alleged violations of 42 U.S.C. § 1981 are barred by applicable statute of limitations.
- (xiv) TNA has had a legal right to use the LAX logo, regardless of whether the logo was created by Defendant, pursuant to the August 2005 Independent Contractor Agreement and has not violated any applicable trademark statutes or laws.

(e) All other relief to which Plaintiff may show itself to be justly entitled.

DATED: March 26, 2008

Respectfully submitted,



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Richard S. Krumholz  
State Bar No. 00784425  
William P. Finegan  
State Bar No. 07008700

2200 Ross Avenue, Suite 2800  
Dallas, Texas 75201-2784  
Telephone: 214/855-8000  
Facsimile: 214/855-8200

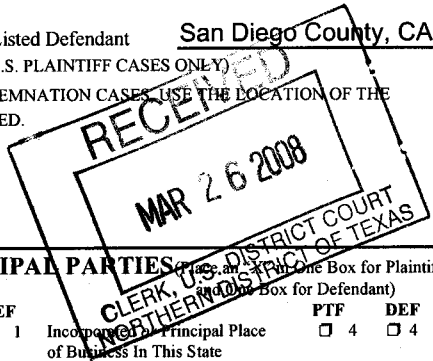
ATTORNEYS FOR PLAINTIFFS  
TNA ENTERTAINMENT, LLC

OF COUNSEL:  
FULBRIGHT & JAWORSKI L.L.P.

JS 44 (Rev. 12/07)

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 THE REVERSE OF THE FORM.)

<p><b>I. (a) PLAINTIFFS</b>                  TNA Entertainment, LLC</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Davidson County, TN</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p><b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b>                  Richard S. Krumholz, Fulbright &amp; Jaworski L.L.P., 2200 Ross Avenue, Suite 2800, Dallas, TX 75201; (214) 855-8000</p>	<p><b>DEFENDANTS</b>                  Charles "Carlos" Ashenoff, pka "Konnan"</p> <p>County of Residence of First Listed Defendant <u>San Diego County, CA</u>                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (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><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and "DEF" in One Box for Defendant) (For Diversity Cases Only)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated and Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated and 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
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**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"/> 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 (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></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	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></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"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p><b>SOCIAL SECURITY</b></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)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<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	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**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):  
28 USC § 2201 and 2202

Brief description of cause: Breach of contract and request for declaratory judgment action based on breach of independent contractor agreement.

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    **DEMAND \$** \_\_\_\_\_    **DECLARATORY JUDGMENT**    **JURY DEMAND:**     Yes     No

**VIII. RELATED CASE(S) PENDING OR CLOSED** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: 03/26/2008    SIGNATURE OF ATTORNEY OF RECORD:

**FOR OFFICE USE ONLY**

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