

JOSEPH H. HUNT
Assistant Attorney General
ALEXANDER K. HAAS
Director, Federal Programs Branch
JACQUELINE COLEMAN SNEAD
Assistant Branch Director, Federal Programs Branch
OLIVIA HUSSEY SCOTT
Trial Attorney, Federal Programs Branch
U.S. Department of Justice, Civil Division
1100 L Street, N.W., Rm. 11112
Washington, D.C. 20005
Tel: (202) 616-8491
Fax: (202) 616-8470
Email: Olivia.Hussey.Scott@usdoj.gov

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

UNITED STATES OF AMERICA,)
)
By the Department of Justice)
1100 L Street, N.W.)
Washington, D.C. 20005)
)
Plaintiff,)
)
v.)
)
DURWIN LAIRY,)
)
612 Rock Creek Church Rd., N.W.,)
Washington, D.C. 20010)
)
Defendant.)

Case No. 1:19-cv-2488

COMPLAINT

Plaintiff, the United States of America, files this action pursuant to the Ethics in Government Act, 5 U.S.C. app. 4 § 101, *et seq.* (2006) (“EIGA”), against Durwin Lairy for civil penalties for knowingly and willfully failing to file the required public financial disclosure report after his employment terminated with the U.S. Department of Energy (“DOE”).

Jurisdiction and Venue

1. This Court has jurisdiction pursuant to 5 U.S.C. app. 4 § 104(a) and 28 U.S.C. §§ 1331 and 1345.

2. Venue is proper in this judicial district pursuant to 5 U.S.C. app. 4 § 104(a) and 28 U.S.C. § 1391(b) because this judicial district is where Mr. Lairy resides and where a substantial part of the events and omission giving rise to the claim occurred.

Parties

3. Plaintiff is the United States of America.

4. Defendant Durwin Lairy is a former consultant in DOE's Office of Economic Impact and Diversity. While he was employed with the DOE, Mr. Lairy's office was located in Washington, D.C.

Statutory Background

5. The EIGA requires individuals who occupy covered positions to file a final public financial disclosure report on or before the thirtieth day after leaving their position (hereinafter, a "termination report"), unless they have accepted another covered position. 5 U.S.C. app. 4 § 101(e).

6. Among the positions covered by § 101 are "employee[s] in the [E]xecutive [B]ranch" whose "basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule." 5 U.S.C. app. 4 § 101(f)(3).

7. Section 104(a) of the EIGA authorizes the Attorney General to bring a civil action in federal district court against any individual "who knowingly and willfully fails to file or report any information that such individual is required to report" under the EIGA. 5 U.S.C. app 4 § 104(a).

8. The EIGA provides that a court may assess a civil penalty of up to \$50,000 against an individual who knowingly and willfully fails to file a required public financial disclosure report. 5 U.S.C. app 4 § 104(a)(1). This amount is adjusted upward for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990. 28 U.S.C. § 2461, note. As of this filing, the maximum civil penalty adjusted for inflation is \$60,517. 5 C.F.R. § 2634.701(a).

Factual Background

9. Beginning October 17, 2016, Mr. Lairy was employed as a consultant in the DOE's Office of Economic Impact and Diversity, a position within the Executive Branch.

10. Mr. Lairy's salary was greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule in 2017. *See* 5 U.S.C. app. 4 § 101(f)(3); United States Office of Personnel Management, Salary Table for 2017, effective in January 2017, available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2017/general-schedule/>.

11. Mr. Lairy filed a new entrant financial disclosure report required under the EIGA.

12. Mr. Lairy also filed an annual financial disclosure report during his employment as required under the EIGA.

13. Mr. Lairy's employment as a DOE consultant was terminated effective September 20, 2017.

14. Mr. Lairy did not accept another government position covered by section 101 of the EIGA after the termination of his employment with DOE.

15. On or before October 20, 2017, DOE advised Mr. Lairy of his obligation under the EIGA to file a termination financial disclosure report within 30 days of his termination date,

or that same day. Specifically, on October 20, 2017, an employee in the DOE's Office of the Assistant General Counsel for General Law ("DOE Employee") notified Mr. Lairy of this obligation via an email sent to the personal email address that Mr. Lairy had provided to DOE in connection with his employment (hereinafter "provided email address").

16. Mr. Lairy responded to DOE's October 20, 2017 email, identified in paragraph 15 above, that same day to request an extension of the deadline.

17. The DOE Employee responded to Mr. Lairy's October 20, 2017 email request, identified in paragraph 16 above, and granted him an extension until November 20, 2017 to file his report.

18. On November 15, 2017, the DOE Employee sent an email to Mr. Lairy's provided email address reminding him of the November 20, 2017 deadline, and of the \$200 late filing fee incurred for late filing. Mr. Lairy did not respond to that communication.

19. Mr. Lairy did not file his required termination report on or before November 20, 2017.

20. Thereafter, the DOE Employee repeatedly attempted to contact Mr. Lairy by email to the provided email address and by certified letter to the home address he provided DOE. By emails dated November 29, 2017, and November 14, 2018, and certified letters dated December 12, 2017, and January 11, 2018, DOE advised Mr. Lairy that he had failed to timely file his termination report; he had incurred the \$200 late filing fee; and he could be assessed a civil penalty of up to \$50,000. The communications also enclosed instructions for filing the overdue termination report and mailing his \$200 late filing payment.

21. On January 9, 2018, Mr. Lairy signed the return receipt card for the December 12, 2017 certified letter.

22. Mr. Lairy responded by email on December 11, 2018. In that email, Mr. Lairy admitted that he had “received notification from the DOE regarding filing [his] report,” “apologize[d] for [his] lack of communication,” and claimed he was “ready to tackle this issue.”

23. Because Mr. Lairy claimed in his email that he had “made attempts to login and file the report however [his] email address is not in the system,” the DOE Employee who had contacted him previously attempted over several email exchanges between December 11, 2018, and January 8, 2019, to help Mr. Lairy resolve his technical problems using the filing system.

24. Mr. Lairy’s technical difficulties extended into January 2019, when the Federal Government shutdown due to a lapse in appropriations. He was advised that “[d]ue to the lapse in appropriations [further] technical support . . . [was] not [then] available” but would resume after “those affected by the lapse in appropriations have returned to work.”

25. On February 12, 2019, following the restoration of appropriations, the DOE Employee advised Mr. Lairy by email to his provided email address that “[a]pparently, [his] access [to the electronic filing system] had been removed” but since had “been reinstated” and therefore he should “go in and access the report and complete and submit as soon as possible.” That email also reminded Mr. Lairy about the \$200 late filing fee. Mr. Lairy did not respond to the February 12, 2019 email.

26. On April 10, 2019, the DOE Employee sent another email to Mr. Lairy’s provided email address giving him a “final opportunity” “to complete and submit th[e] required report.” Mr. Lairy did not respond or avail himself of that opportunity.

27. To date, Mr. Lairy has not filed his required termination report or paid the \$200 late fee.

28. Pursuant to the regulations of the Executive Office of the Government Ethics, 5 C.F.R. § 2634.701, the DOE referred this matter to the Department of Justice for commencement of an action authorized by 5 U.S.C. app. 4 § 104(a), and the action was authorized on July 15, 2019.

Count I

29. The United States re-alleges and incorporates by reference the allegations made in paragraphs 1 through 28 above.

30. Mr. Lairy has been aware since on or before October 20, 2017, that he was subject to the EIGA's requirement that he file a termination financial disclosure report within thirty days of the termination of his employment within the Executive Branch.

31. DOE personnel repeatedly informed Mr. Lairy in writing of his obligation to file his termination financial disclosure report.

32. Notwithstanding the numerous attempts to obtain his compliance, Mr. Lairy has not filed his termination financial disclosure report even though his employment within the Executive Branch ended, as of this filing, more than 690 days ago.

33. Mr. Lairy violated the EIGA by knowingly and willfully failing to file his termination financial disclosure report.

Prayer for Relief

WHEREFORE, the United States of America respectfully requests that the Court issue a decision and judgment:

- (1) Requiring Durwin Lairy to file his termination financial disclosure report and to pay the late filing fee;
- (2) Assessing a civil penalty against Durwin Lairy in an amount up to \$60,517;

- (3) Awarding the United States its costs incurred herein; and
- (4) Awarding the United States such other and further relief as it deems just and proper.

Dated: August 16, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

ALEXANDER K. HAAS
Director, Federal Programs Branch

JACQUELINE COLEMAN SNEAD
Assistant Branch Director, Federal Programs Branch

/s/ Olivia Hussey Scott

OLIVIA HUSSEY SCOTT
Trial Attorney, Federal Programs Branch
U.S. Department of Justice, Civil Division
1100 L St. N.W., Rm. 11112
Washington, D.C. 20005
Telephone: (202) 616-8491
Fax: (202) 616-8470
Email: Olivia.Hussey.Scott@usdoj.gov

Counsel for the United States of America

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

I. (a) PLAINTIFFS United States of America (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>(EXCEPT IN U.S. PLAINTIFF CASES)</u>	DEFENDANTS Durwin Lairy COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>D.C.</u> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>																								
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Olivia Hussey Scott, Trial Attorney, Federal Programs Branch, Civil Division, U.S. DOJ 1100 L Street, N.W., Rm. 11112, Washington, D.C. 20005 (202) 616-8491	ATTORNEYS (IF KNOWN)																								
II. BASIS OF JURISDICTION <small>(PLACE AN x IN ONE BOX ONLY)</small> <input checked="checked" type="radio"/> 1 U.S. Government Plaintiff <input type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES <small>(PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!</small> <table border="1"><thead><tr><th></th><th>PTF</th><th>DFT</th><th></th><th>PTF</th><th>DFT</th></tr></thead><tbody><tr><td>Citizen of this State</td><td><input type="radio"/> 1</td><td><input type="radio"/> 1</td><td>Incorporated or Principal Place of Business in This State</td><td><input type="radio"/> 4</td><td><input type="radio"/> 4</td></tr><tr><td>Citizen of Another State</td><td><input type="radio"/> 2</td><td><input type="radio"/> 2</td><td>Incorporated and Principal Place of Business in Another State</td><td><input type="radio"/> 5</td><td><input type="radio"/> 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td><input type="radio"/> 3</td><td><input type="radio"/> 3</td><td>Foreign Nation</td><td><input type="radio"/> 6</td><td><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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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																				

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"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/ Malpractice <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"/> C. Administrative Agency Review <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"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
<input checked="checked" type="radio"/> E. General Civil (Other) OR <input type="radio"/> F. Pro Se General Civil			
Real Property <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property Personal Property <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	Bankruptcy <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 Prisoner Petitions <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 Property Rights <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	Federal Tax Suits <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 Forfeiture/Penalty <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other Other Statutes <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 checked="checked" type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> G. Habeas Corpus/ 2255 <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"/> H. Employment Discrimination <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"/> I. FOIA/Privacy Act <input 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"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <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"/> L. Other Civil Rights (non-employment) <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"/> M. Contract <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"/> N. Three-Judge Court <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. app. 4 104(a) - for civil penalties for knowingly and willfully failing to file a required public financial disclosure report

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ 60,517	Check YES only if demanded in complaint JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 8/16/2019	SIGNATURE OF ATTORNEY OF RECORD: /s/ Olivia Hussey Scott
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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.

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

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

ANGELA D. CAESAR, 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: