

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:23-CV-1173**

EDITH ROSENTHAL, Executrix of the Estate of )  
BOBBY LEE ROSENTHAL, Deceased )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Defendant. )  
 )

**COMPLAINT  
JURY TRIAL DEMANDED**

Plaintiff Edith Rosenthal (“Plaintiff”), Executrix of the Estate of Bobby Lee Rosenthal (“Mr. Rosenthal”), files this Complaint against Defendant United States of America (“Defendant” or “Government”). This Complaint alleges a federal cause of action and is brought pursuant to § 804(b) of the Camp Lejeune Justice Act (“CLJA”), Pub. L. No. 117-168, Tit. VIII, § 804, 136 Stat. 1802. Plaintiff alleges the following:

**INTRODUCTION**

1. This is a CLJA case in which the Government has already admitted that the service member developed a severe illness as a result of exposure to contaminated water at Camp Lejeune. Mr. Rosenthal was a Vietnam-era Marine veteran who spent several months training at Camp Lejeune in 1967 and later in life developed [REDACTED]. In 2017, the Government, through the Department of Veterans Affairs (“VA”), acknowledged that Mr. Rosenthal’s CLL Cancer was connected to his exposure to contaminated water at Camp Lejeune and assigned him a 100% disability rating based on that determination. Unfortunately, Mr. Rosenthal later passed away in [REDACTED] as a direct result of complications encountered while undergoing chemotherapy to treat his [REDACTED] Cancer.

2. Given the Government's acknowledgment that the water contamination at Camp Lejeune caused Mr. Rosenthal's CLL Cancer, liability should not be in dispute. This action seeks redress for the fatal harm inflicted on Mr. Rosenthal.

### **BACKGROUND ON THE CAMP LEJEUNE WATER CONTAMINATION**

3. Between the mid-1950s and the mid-1980s, the Government caused hundreds of thousands of service members and civilians at Marine Corps Base Camp Lejeune ("Camp Lejeune") to be exposed to toxic water contamination.

4. In violation of military governing orders and other law, and despite studies, surveys, and inquiries regarding the Camp Lejeune water supply, the Government and its agents failed to exclude toxic chemicals from industrial facilities, fuel tanks, waste dumps and other improper waste-disposal practices, and dry-cleaning operations from Camp Lejeune's water and failed to inform personnel at Camp Lejeune of the contamination after it had been discovered.

5. Inhabitants of Camp Lejeune thus unknowingly drank, bathed in, cooked with, swam in, breathed, and were otherwise exposed to a variety of contaminants, including carcinogens.

6. Due to this exposure, service members, their families, and civilians who were at Camp Lejeune beginning in the 1950s and through the 1980s have contracted serious diseases and conditions.

7. After decades of neglect, delay, and obfuscation, the Government finally admitted, to some degree, the extent of the water contamination in 2008, when pursuant to an express congressional mandate, the Marine Corps began notifying veterans and family members of their potential exposure.

8. Shortly thereafter, victims of Camp Lejeune began filing lawsuits under the Federal Tort Claims Act, seeking medical care and benefits. But instead of providing the necessary care to servicemembers and others, the Government evaded liability by invoking North Carolina's ten-year statute of repose, which operated to bar all of the claims even though the government's misconduct had come to light only after the statutory period had run.

9. Finally, on August 10, 2022, the Honoring our PACT Act of 2022, Pub. L. No. 117-168 ("Pact Act") was signed into law. The Pact Act incorporates at Section 804 the Camp Lejeune Justice Act ("CLJA"). The CLJA establishes a cause of action permitting individuals who were harmed by the contaminated water at Camp Lejeune to seek compensatory relief in this Court.

10. Under § 804(d) of the CLJA, "an individual . . . who resided, worked, or was otherwise exposed (including in utero exposure) for not less than 30 days during the period beginning on August 1, 1953, and ending on December 31, 1987, to water at Camp Lejeune, North Carolina, that was supplied by, or on behalf of, the United States may bring an action in the United States District Court for the Eastern District of North Carolina to obtain appropriate relief for harm that was caused by exposure to the water at Camp Lejeune."

11. To meet the burden of proof under the CLJA, a plaintiff need only "produce evidence showing that the relationship between exposure to the water at Camp Lejeune and the harm is . . . sufficient to conclude that a causal relationship is at least as likely as not." § 804(c)(2).

### **THE PARTIES, JURISDICTION, AND VENUE**

12. Bobby Lee Rosenthal ("Mr. Rosenthal") was stationed at Camp Lejeune from approximately January 10, 1967 until approximately May 3, 1967, and was thus exposed for not less than thirty (30) days to contaminated water supplied by the Government. Following his service at Camp Lejeune, Mr. Rosenthal was diagnosed with CLL Cancer, which led to Guillain-Barre

Syndrome as a result of chemotherapy treatment, and which in turn led to his death in 2020. There is overwhelming evidence that the contaminants found in the water at Camp Lejeune caused, or were as likely as not the cause of, Mr. Rosenthal's injuries and death. Plaintiff, Mr. Rosenthal's widow and the Executrix of his Estate, now seeks compensation under the CLJA for the wrongful death of her husband, including compensation related, but not limited, to substantial medical costs, loss of income, pain and suffering, and loss of consortium, all caused by the Government's decades-long failure to ensure the safety of the water at Camp Lejeune.

13. Plaintiff's intestate, Mr. Rosenthal, died on [REDACTED]. Plaintiff has been appointed Executrix of the Estate of Mr. Rosenthal and is acting as such in the institution of this action.

14. At all times relevant, Plaintiff and Mr. Rosenthal were citizens of the State of Georgia.

15. The Government is responsible for damages caused by its military and civil service components, including the United States Navy, the United States Marine Corps, and all related facilities operating on and around Camp Lejeune during the relevant period. The Government has waived its sovereign immunity from suit pursuant to § 804(f) of the CLJA.

16. The United States District Court for the Eastern District of North Carolina has exclusive jurisdiction over and is the exclusive venue for any action under the CLJA pursuant to § 804(d). This Court also has subject matter jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States. Moreover, the amount in controversy exceeds \$75,000, exclusive of interest and costs.

## DISPOSITION BY FEDERAL AGENCY

17. On January 18, 2023, more than six months prior to the filing of this action, Plaintiff duly submitted an administrative claim for compensation with the United States Department of the Navy pursuant to § 804(h) of the CLJA and 28 U.S.C. § 2675.

18. The claim was constructively denied pursuant to 28 U.S.C. § 2675(a) because the Department of the Navy failed to make a final disposition of the claim within six months of its filing.

19. In fact, the Department of the Navy has failed to make any response whatsoever to the claim. Plaintiff is informed and believes that the Navy has similarly failed to make any meaningful response to thousands of similar administrative claims arising from the Camp Lejeune water contamination.

20. Plaintiff has thereby satisfied the exhaustion requirements of the CLJA concerning administrative remedies.

## FACTUAL ALLEGATIONS

### **I. The Water at Camp Lejeune was Severely Contaminated and the Government Failed to Conduct Testing of the Water in Violation of Governing Orders and Basic Duties of Care.**

21. Camp Lejeune, located in Onslow County, North Carolina, has served as a major training and service facility for the Marine Corps since 1941.

22. From the early 1950s to the mid-1980s, nearly one million service members, their families, and others resided at, worked on, and visited the base at various points in time.

23. At all times relevant, the Government owned, controlled, and/or operated Camp Lejeune, including its water supply and distribution system.

24. The Government distributed contaminated water to those on base through three main water-distribution systems: Hadnot Point (service beginning in 1942); Tarawa Terrace

(service beginning in 1952); and Holcomb Boulevard (service beginning in 1972). Each of those systems consisted of raw water collection wells, a water treatment plant, and a distribution system.

25. The following map, reproduced from a 2017 government report, depicts the three areas (Hadnot Point in green, Tarawa Terrace in orange, and Holcomb Boulevard in pink):



26. Beginning in the 1950s, toxic chemicals from various sources, including unlined landfills, improper disposal of chemicals, poor disposal practices, a local dry-cleaning business, and leaking storage tanks, seeped into the soil and groundwater of Camp Lejeune and contaminated many of the wells used to supply Camp Lejeune's water treatment plants.

27. For many years, the Government failed to conduct testing of the water in violation of governing orders and basic duties of care.

28. In 1979, the United States Environmental Protection Agency ("EPA") promulgated regulations governing drinking water under the Safe Drinking Water Act of 1974, 42 U.S.C. §§ 300f *et seq.* To comply with those regulations, the Camp Lejeune water utility began testing drinking water at the base.

29. In the early 1980s, testing determined that the drinking water at both the Hadnot Point and the Tarawa Terrace water treatment plants were contaminated by volatile organic compounds ("VOCs") far in excess of safe levels.

30. The contamination of the Hadnot Point water originated from multiple sources including leaking underground storage tanks, industrial area spills, and waste disposal sites. Specifically, the water from the Hadnot Point plant was contaminated by trichloroethylene ("TCE"), a degreasing solvent for metal equipment. Moreover, in 1979, it was discovered that the Hadnot Point Fuel Farm, comprised of fuel tanks storing hundreds of thousands of gallons of fuel, had leaked an estimated 20,000 to 30,000 gallons of fuel into the ground and the underground aquifer.

31. In 1982, the United States Navy commissioned an assessment of the water, which found that the level of TCE in the Hadnot Point plant was as high as 1,400 parts per billion—280 times the current EPA maximum contaminant level for TCE of 5 parts per billion.

32. In addition, the water from the Hadnot Point water distribution system was also contaminated by other VOCs, including perchloroethylene or tetrachloroethylene (“PCE”) (a solvent primarily used in dry-cleaning operations), benzene, and vinyl chloride.

33. The Agency for Toxic Substances and Disease Registry (“ATSDR”), an agency of the U.S. Department of Health and Human Services, has estimated that at least one VOC found in the Hadnot Point drinking water exceeded its current EPA maximum contaminant level at all times from August 1953 to January 1985.

34. The water from the Tarawa Terrace water treatment plant was also contaminated with PCE. In 1985, a PCE level of 215 parts per billion was detected. As with TCE, the current EPA maximum contaminant level for PCE is only 5 parts per billion.

35. The PCE in the Tarawa Terrace water was, at least in part, the result of the waste disposal practices at ABC One-Hour Cleaners, an on-base dry cleaner.

36. The ATSDR later estimated that PCE concentrations in Tarawa Terrace drinking water exceeded the current EPA maximum contaminant level from November 1957 to February 1987.

37. In addition to the Hadnot Point and Tarawa Terrace distribution systems, water in the Holcomb Boulevard area was also serviced by contaminated water. Before 1972, the Holcomb Boulevard area was supplied with water by the Hadnot Point System. When the Holcomb Boulevard distribution system began operating in 1972, the distribution system continued to intermittently receive contaminated Hadnot Point drinking water until 1985.

38. On information and belief, the Navy’s inadequate water safety practices also allowed other toxic chemicals to contaminate the water supply on Camp Lejeune, including lead and perfluoroalkyl and polyfluoroalkyl substances (“PFAS”).



39. Hadnot Point was—and still is—Camp Lejeune’s Command and Control Center, serving as an administrative and housing hub for over 35,000 Marines and civilians. This section of base has been host to the 2d Marine Division, 6th Marine Regiment, 2d Marine Logistics Group, II Marine Expeditionary Force, original Naval Hospital Command (until 1982), Camp Lejeune’s Supply and Industrial area, and approximately seventy barracks, which housed single enlisted Marines.

40. Further, Camp Lejeune’s premier social, recreational, educational, medical, and spiritual sites were located within the areas of Camp Lejeune serviced by contaminated water. The Hadnot Point area of Camp Lejeune, which was serviced by the Hadnot Point water distribution plant, was the nerve center of Camp Lejeune. It is the most concentrated area of the base and boasts key infrastructure, such as the Central Marine Corps Exchange, the main commissary, the Hadnot Point Hostess House, Bonnyman Bowling Center, the Base Library, Catholic, Protestant, and Jewish Chapels, the Area 2 indoor pool (used for training and open to service-members and their families), the Camp Cafeteria, six gymnasiums and fitness centers, the Base Theater, an enlisted service club, multiple base barber and beauty shops, a craft/hobby shop, Marston Pavilion, and the main Dental Clinic.

41. The Tarawa Terrace area of Camp Lejeune featured an Olympic-size swimming pool, the Tarawa Terrace Commissary, the main housing office, the base veterinarian, and Tarawa Terrace Elementary school.

42. The Holcomb Boulevard area of Camp Lejeune contained several schools, including Paradise Point pre-school, Stone Street Elementary School, Berkely Manor Elementary School, Brewster Middle School, and Lejeune High School, the Naval Regional Medical Center, the Paradise Point Officer’s Club, Paradise Point Officer’s Wives Club, two golf-courses, and the

base horse-back riding stables. Thus, the presence of key infrastructure within the contaminated areas of Camp Lejeune significantly increased the scope of exposure beyond simply residential or employment purposes.

## **II. Despite Urgent and Persistent Warnings about the Water Contamination at Camp Lejeune, the Government Failed to Inform Those in Harm's Way or Expeditiously Remedy the Water Supply.**

43. Contractors and military scientists repeatedly warned the Government about the water contamination, as testing throughout the early 1980s revealed the extent of the contamination. For example, in 1980, the U.S. Army Environmental Hygiene Agency ("USAEHA") laboratory tested the Hadnot Point water distribution system. When the test results came back, the Laboratory Chief of USAEHA handwrote: "Water is highly contaminated with low molecular weight halogenated hydrocarbons" on the test results that were delivered to the Navy.

44. After a second test in December 1980, a handwritten warning stated: "Heavy Organic interference [at CHCL2BR]. You need to analyze for chlorinated organics by GC/MS [gas chromatograph / mass spectrometer]." Finally, USAEHA delivered a third written warning in March of 1981, when the lab services chief, William Neal, wrote: "(w)ater highly contaminated with other chlorinated hydrocarbons (solvents!)."

45. Between May and August 1982, Grainger Laboratory ("Grainger"), which analyzed the Hadnot Point and Tarawa Terrace water distribution systems, informed the Government's base supervisory chemist, Elizabeth Betz, and the base Assistant chief of staff for Facilities, Colonel John T. Marshall, that both the Hadnot Point and Tarawa Terrace water systems were contaminated.

46. The following year, Grainger informed the State of North Carolina of the VOC problems discovered at Camp Lejeune. An Environmental Engineer at North Carolina's Water

Supply Branch, Division of Health Services requested analytical data sheets with this information, and six months later was denied by Colonel Marshall's replacement, Colonel Lilley.

47. Despite urgent and persistent warnings, the Government did not take any steps to close the contaminated wells until 1984, when benzene was found in the water at Hadnot Point.

48. The Government continued to move slowly even after that discovery. Wells were gradually removed from service over the course of 1984 and 1985. Between November 1984 and February 1985, a total of ten wells were removed from service. Testing performed in or about February 1985 found TCE in the water supply and distribution system as high as 1,148 ppb in the Berkeley Manor Elementary School area, within the Holcomb Boulevard area. The reading was the result of the worst-contaminated well, namely HP-651. This well was found to have 18,900 ppb of TCE, 400 ppb of PCE, 8,070 ppb of dichloroethylene, and 655 ppb of vinyl chloride. A month later, in March 1985, the PCE level at the bulk water storage tank for the Tarawa Terrace water supply system was measured at 215 ppb.

49. During the relevant times, the Government's public statements, media articles, and memoranda to base personnel did not disclose the true nature of the drinking water contamination. In April 1985, the base Commanding General informed base personnel: "minute (trace) amounts of several organic chemicals have been detected in the water. There are no definitive state or Federal regulations regarding safe levels of these compounds, but as a precaution, I have ordered closure of these wells." In September 1985, the Government's Environmental Engineer was quoted in the Raleigh News and Observer as saying that "people had not been directly exposed to the pollutants."

50. It was not until March 1987 that the contaminated water systems at Camp Lejeune were fully shut down.

51. So widespread was the base-wide contamination of the water that on October 4, 1989, Camp Lejeune was placed on the EPA's National Priorities List ("NPL") and declared a federal Superfund site.

### **III. Studies Have Confirmed Extreme Contamination of Camp Lejeune Water and Linked Contamination to Severe and Fatal Diseases.**

52. In 1997, the ATSDR completed a Public Health Assessment ("PHA") for Camp Lejeune, which concluded that individuals who served or resided there had been exposed to contaminants of concern in the drinking water. It declared those exposures to be a public health hazard.

53. In 2009, the ATSDR PHA was removed from the agency's website after new information was uncovered indicating that benzene had been present in the Hadnot Point water system.

54. After the removal of the PHA, the ATSDR then completed five additional health studies of Camp Lejeune, which included:

- a. A 2013 study of in utero and infant exposures to contaminated drinking water suggested an association between drinking water contaminants and neural tube defects. The study found an increased risk of birth defects and certain childhood cancers;
- b. A 2014 study compared mortality rates among Marine and naval personnel stationed at Camp Lejeune with mortality rates for Marine Corps personnel stationed at Camp Pendleton, a Marine Corps base located in California. The study found an elevated mortality rate for the Camp Lejeune personnel for several causes of death, including multiple myeloma, Hodgkin's lymphoma, and cancers of the kidney, liver, esophagus, and cervix;

- c. A 2014 study which found that civilians who worked at Camp Lejeune from 1973 to 1985 had elevated mortality hazard ratios for kidney cancer, leukemias, multiple myelomas, rectal cancer, oral cavity cancer, and Parkinson's disease;
- d. A 2014 study of mothers who lived at Camp Lejeune at the time of delivery suggested associations between TCE exposure and low birth weight and other birth issues. It also found an association between PCE exposure and the risk of preterm birth and an association between benzene exposure and term low birth weight; and
- e. A 2015 study focused on the occurrence and onset of male breast cancer that found exposure to the contaminated drinking water resulted in an increased risk of early onset male breast cancer.

55. In addition to those studies, the ATSDR employed water-modeling techniques and historical reconstruction to estimate concentrations of particular contaminants in drinking water over time and to determine the level and duration of human exposure to contaminated drinking water.

56. In January 2017, the ATSDR published a revised PHA for Camp Lejeune. The revised PHA reached a number of conclusions about the water contamination at Camp Lejeune:

- a. **Hadnot Point:** As to the Hadnot Point Water System, the 2017 PHA concluded that “residents, workers, Marine and naval personnel, and Marines-in-training at MCB Camp Lejeune were in the past exposed to contaminants in drinking water supplied by the Hadnot Point [water treatment plant].” It further concluded that “this contaminant exposure was

at levels that could have harmed their health” and that “[t]he estimated levels to which all the above-mentioned groups of people were exposed could have resulted in an increased cancer risk and increased potential of experiencing adverse, noncancer health effects.” According to the ATSDR, “[t]richloroethylene (TCE) and vinyl chloride were the chemicals that contributed most to the increased cancer risk.”

- b. **Tarawa Terrace:** As to the Tarawa Terrace system, the 2017 PHA concluded that it “might have harmed the health of young children,” including through “an increased risk of cancer.”
- c. **Holcomb Point:** As to the Holcomb Boulevard system, the 2017 PHA concluded that prior to 1972, when the Holcomb Boulevard water system was served by the Hadnot Point water treatment plant, residents’ exposure to contaminants “could have resulted in an increased cancer risk and increased potential of experiencing adverse, noncancer health effects.”
- d. **Lead Exposure:** The 2017 PHA concluded that “past exposure to lead found in tap water at 19 locations could have harmed people’s health.”
- e. **Other Exposures:** The 2017 PHA concluded that Marines and civilians who trained in indoor swimming pools in the Hadnot Point area between the early 1950s and 1985, as well as civilians who worked at laundry facilities, were exposed to contaminants at levels that might have harmed their health.

57. Further, the ATSDR completed several epidemiological studies to determine if Marines, Navy personnel and civilians residing and working on Camp Lejeune were at increased

risk for certain health effects as a result of exposure to water contaminated with VOCs. The 2017 ATSDR report concluded, in terms of designating presumptive service-related diseases at that time, that a causal relationship existed between the following diseases and the contaminants in the Camp Lejeune water supply or that a causal relationship was at least as likely as not: kidney cancer; non-Hodgkin's lymphoma; multiple myeloma; leukemia; liver cancer; bladder cancer; Parkinson's disease; end-stage renal disease; systematic sclerosis/scleroderma; and cardiac defects.

#### **IV. Congress and the Executive Branch Acknowledge the Harm Caused by Exposure to Contaminated Water at Camp Lejeune.**

58. Through statutory enactments and regulatory actions, Congress and the Executive Branch have both recognized the link between exposure to Camp Lejeune's contaminated water and a number of serious diseases and conditions.

59. In 2012, Congress enacted the Honoring America's Veterans and Caring for Camp Lejeune Families Act, Pub. L. No. 112-554, 126 Stat. 1165. Title I of the statute is entitled the "Janey Ensminger Act" in honor of the nine-year-old daughter of Marine Jerry Ensminger, who died of cancer after exposure to the water at Camp Lejeune. *Id.* § 101, 126 Stat. 1167. The Act provided that veterans and their families (including babies who were in utero) who served or resided at Camp Lejeune for at least 30 days between 1957 and 1987 are entitled to receive hospital care and medical benefits for 15 specified illnesses or conditions without having to prove a connection between a veteran's military service and the illness or condition. 38 U.S.C. §§ 1710(e)(1)(F), 1787(a) (2012).

60. Those 15 illnesses and conditions specified in the Act were: esophageal cancer, lung cancer, breast cancer, bladder cancer, kidney cancer, leukemia, multiple myeloma, myelodysplastic syndromes, renal toxicity, hepatic steatosis, female infertility, miscarriage, scleroderma, neurobehavioral effects, and non-Hodgkin's lymphoma. 38 U.S.C. § 1710(e)(1)(F).

61. Congress later expanded the pool of victims eligible for hospital care and medical benefits to include individuals who had served or resided at Camp Lejeune as early as August 1, 1953. Consolidated and Further Continuing Appropriations Act, 2015, Div. I, Tit. I, § 243, Pub. L. No. 113-235 (codified at 38 U.S.C. § 1710(e)(1)(F)).

62. In January 2017, the U.S. Department of Veterans Affairs (“VA”) promulgated a regulation establishing that veterans exposed to the water at Camp Lejeune were entitled to certain disability benefits. See Final Rule, Diseases Associated with Exposure to Contaminants in the Water Supply at Camp Lejeune, 82 Fed. Reg. 4173 (Jan. 13, 2017). This regulation provided that a veteran who served at least 30 days at Camp Lejeune between August 1, 1953, and December 31, 1987, “shall be presumed to have been exposed during such service to the contaminants in the water supply.” 38 C.F.R. § 3.307(a)(7)(iii). The regulation further provided that if the veteran developed one of eight listed diseases, the VA “will presume that the individual concerned became disabled during that service” for certain purposes. 38 C.F.R. § 3.307(a)(7)(iv). Those eight diseases included bladder cancer, kidney cancer, adult leukemia, multiple myeloma, aplastic anemia and other myelodysplastic syndromes, non-Hodgkin’s lymphoma, and two diseases not covered by the Janey Ensminger Act (liver cancer and Parkinson’s disease). 38 C.F.R. § 3.309(f).

63. Although the 2017 rule provided certain disability benefits to servicemembers, it did not provide other forms of compensation to them, nor did it provide any compensation for non-servicemembers who were injured by the contaminated water at Camp Lejeune.

## **V. Congress Enacts the Camp Lejeune Justice Act.**

64. On August 10, 2022, President Biden signed the Camp Lejeune Justice Act (“CLJA”) into law. The CLJA superseded prior judicial rulings that had dismissed claims brought by Camp Lejeune victims under the FTCA and established a new federal cause of action



specifically for those affected by the water at Camp Lejeune. Section 804(b) of the CLJA provides that:

An individual, including a veteran (as defined in section 101 of title 38, United States Code), or the legal representative of such an individual, who resided, worked, or was otherwise exposed (including in utero exposure) for not less than 30 days during the period beginning on August 1, 1953, and ending on December 31, 1987, to water at Camp Lejeune, North Carolina, that was supplied by, or on behalf of, the United States may bring an action in the United States District Court for the Eastern District of North Carolina to obtain appropriate relief for harm that was caused by exposure to the water at Camp Lejeune.

65. The CLJA expressly incorporates the FTCA's requirement that a claim must be presented to the relevant federal agency before the judicial action may proceed (but does not incorporate the entirety of the FTCA itself). § 804(h) of the CLJA (citing 28 U.S.C. § 2675). Specifically, before initiating an action under the CLJA in the Eastern District of North Carolina, an individual must first file an administrative claim with the Department of the Navy. In accordance with the FTCA, if the Department of the Navy fails to make a final disposition of a claim within six months of its filing, the claim is "deemed" denied, allowing the claimant to file an action in court. 28 U.S.C. § 2675(a).

66. To meet the burden of proof under the CLJA, a plaintiff need only "produce evidence showing that the relationship between exposure to the water at Camp Lejeune and the harm is— (A) sufficient to conclude that a causal relationship exists; or (B) sufficient to conclude that a causal relationship is at least as likely as not." Section 804(c)(2)(A) & (B) of the CLJA.

67. The CLJA includes its own statute of limitations and expressly makes inapplicable any other statute of repose or statute of limitations. Section 804(j) of the CLJA. The CLJA's own new statute of limitations provides that "[a] claim in an action under this section may not be commenced after the later of— (A) the date that is 2 years after the date of enactment of this Act;

or (B) the date that is 180 days after the date on which the claim is denied under section 2675 of title 28, United States Code.” Section 804(j)(2) of the CLJA.

**VI. Bobby Lee Rosenthal’s Service at Camp Lejeune and Diagnosis.**

68. Bobby Lee Rosenthal, who came from a family with a deep commitment to military service, enlisted in the Marines in November 1966. After completing Basic Training at Parris Island, Mr. Rosenthal was stationed at Camp Lejeune from approximately January 10, 1967 to approximately May 3, 1967.

69. During his time at Camp Lejeune, Mr. Rosenthal completed Advanced Individual Training, Marine Corps Engineer School, and, upon information and belief, conducted artillery training at French Creek, which is located within the contaminated Hadnot Point area.

70. While stationed at Camp Lejeune, Mr. Rosenthal regularly moved throughout the base and, on information and belief, was exposed to water polluted and contaminated as described herein with chemicals including but not limited to TCE, PCE, vinyl chloride, and benzyne. Mr. Rosenthal drank the water and used it for bathing, cooking, and swimming.

71. Specifically, Mr. Rosenthal conducted training at the Indoor Training Pool in Building 236, located in the Hadnot Point Area of Camp Lejeune. He was also a devout and regular churchgoer, attending Sunday services at Camp Lejeune’s Protestant Chapel in Building 16, also located in the Hadnot Point Area. Both locations are less than 1000 feet from the Hadnot Point Water Treatment Plant.

72. During Mr. Rosenthal’s visits to these areas and those nearby, he was specifically exposed to (and indeed, in the case of the Indoor Training Pool, submersed in) contaminated water, directly leading to his development of CLL Cancer later in life, as the United States has already admitted.

73. Per the Government's orders, Mr. Rosenthal was stationed at Camp Lejeune, and he was unable to mitigate his damages as the result of the Government's failure and refusal to provide its readily available knowledge of the historical facts and information concerning the water contamination.

74. In 2008, Mr. Rosenthal was diagnosed with [REDACTED], a type of [REDACTED]. [REDACTED] is one of the diseases that the Government has admitted is linked to, and which the Government considers presumptively connected to, the contaminated water at Camp Lejeune.

75. Mr. Rosenthal's lifestyle was severely impacted during the years he suffered from [REDACTED]. Mr. Rosenthal's diagnoses required constant visits to the doctor and repeated medical treatments, including multiple rounds of chemotherapy. In 2017, Mr. Rosenthal moved from his home in [REDACTED] to be closer to medical care and his son, who assisted in caring for him.

76. Mr. Rosenthal endured four to five chemotherapy regimens, the first beginning in November 2009. A short remission of approximately three months followed each treatment, but Mr. Rosenthal's cancer always returned, eventually requiring an aggressive form of chemotherapy in 2019. As a result of recurring chemotherapy treatments, Mr. Rosenthal experienced debilitating physical symptoms, including but not limited to severe weight loss.

77. Prior to his diagnosis, Mr. Rosenthal enjoyed doing physical work on his rental properties. His ability to engage in this work deteriorated at the onset of his condition and the beginning of chemotherapy treatments.

78. In March 2020, shortly after completing his last and most intense chemotherapy treatment Mr. Rosenthal was also diagnosed with [REDACTED].

[REDACTED]

79. [REDACTED]

[REDACTED]

80. Between [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

81. [REDACTED]

[REDACTED]

[REDACTED]

82. On January 18, 2023, Plaintiff presented an administrative claim for compensation to the United States Navy pursuant to 28 U.S.C. § 2675. The Navy never responded to the claim beyond acknowledging that it had been filed.

**COUNT ONE: CAMP LEJEUNE JUSTICE ACT**

83. Plaintiff respectfully incorporates by reference the allegations of the preceding paragraphs.

84. Bobby Lee Rosenthal was present at Camp Lejeune, North Carolina for not less than thirty (30) days between August 1, 1953 and December 31, 1987.

85. While at Camp Lejeune Mr. Rosenthal was exposed to water that was supplied by, or on behalf of, the Government.

86. Mr. Rosenthal suffered from serious conditions, including █████ Cancer, which caused him to lose his life.

87. The United States has previously acknowledged that Mr. Rosenthal's █████ Cancer was connected to his exposure to contaminated water at Camp Lejeune, and granted him VA disability benefits based on that determination.

88. A causal relationship exists between Mr. Rosenthal's █████ Cancer and his exposure to water at Camp Lejeune: the exposure is at least as likely as not to have caused Mr. Rosenthal's serious conditions and eventual death, as required by § 804(c)(2) of the CLJA.

89. On January 18, 2023, Plaintiff presented an administrative claim for compensation to the United States Navy pursuant to 28 U.S.C. § 2675. The claim was constructively denied under 28 U.S.C. § 2675(a) because the Navy failed to dispose of the claim within six months of the date of filing. Indeed, the Navy never responded to the claim beyond acknowledging that it had been filed.

90. Plaintiff seeks damages under the CLJA for the wrongful death of her husband, including compensation related, but not limited, to substantial medical costs, loss of income, pain and suffering, and loss of consortium. As a direct and proximate result of the Government's actions and failures to act, Plaintiff is entitled to recover at trial at least \$10,012,000, plus pre- and post-judgment interest, costs, and attorneys' fees as allowed by law.

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully prays that this Court enter judgment against Defendant and award recovery as follows:

1. For compensatory and non-compensatory damages of \$10,012,000.00.
2. For costs, interest, and attorneys' fees as provided by law; and

3. For any and all appropriate relief which this Court may deem just and proper.

**JURY TRIAL DEMAND**

Plaintiff demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and § 804 of the CLJA.

This 19th day of July 2023

Respectfully submitted,

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Stephen R. Berlin  
Stephen R. Berlin (NC Bar #12317)  
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# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

### I. (a) PLAINTIFFS

EDITH ROSENTHAL, Executrix of the Estate of BOBBY LEE ROSENTHAL, Deceased

(b) County of Residence of First Listed Plaintiff Walton County, GA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment.

### DEFENDANTS

United States of America

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)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | 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"/>   | <input type="checkbox"/> 6 |

### IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 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"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander		<b>INTELLECTUAL PROPERTY RIGHTS</b>	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<b>LABOR</b>	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<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"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 720 Labor/Management Relations	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
		<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>		<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b>	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<b>Habeas Corpus:</b>	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 510 Motions to Vacate Sentence		<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 444 Amer. w/Disabilities - Employment	<input type="checkbox"/> 530 General	<b>IMMIGRATION</b>	<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 445 Amer. w/Disabilities - Other	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 462 Naturalization Application	
	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<b>Other:</b>	<input type="checkbox"/> 465 Other Immigration Actions	
	<input type="checkbox"/> 448 Education	<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 - Transfer
- 8 Multidistrict Litigation - Direct File

### VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
§ 804(b) of the Camp Lejeune Justice Act ("CLJA"), Pub. L. No. 117-168, Tit. VIII, § 804, 136 Stat. 1802  
Brief description of cause:  
Claim for relief for exposure to contaminated water at Camp Lejeune

### VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 10,012,000.00 CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

### VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 07/19/2023 SIGNATURE OF ATTORNEY OF RECORD Stephen R. Berlin

### FOR OFFICE USE ONLY



ATTACHMENT

I. (c) Attorneys

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