

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TEXAS DEPARTMENT OF AGRICULTURE,
AND TEXAS GENERAL LAND OFFICE,

Defendants.

Civil Action No. 1:12-cv-620

Jury Trial Demanded

COMPLAINT

Plaintiff United States of America alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”).

2. This Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f), 28 U.S.C. § 1331, and 28 U.S.C. § 1345.

3. Defendants Texas Department of Agriculture (“TDA”) and Texas General Land Office (“GLO”), as well as their predecessor, the Texas Department of Rural Affairs (“TDRA”), are public agencies and/or instrumentalities of the State of Texas, which maintain places of business in this judicial district, and a substantial part of the events giving rise to this action took place in this judicial district.

4. The TDA and the GLO are persons within the meaning of 42 U.S.C. § 2000e(a), and employers within the meaning of 42 U.S.C. § 2000e(b).

5. The TDRA ceased to exist as a separate State agency as of October 2011. Pursuant to Texas Senate Bill 1, “all money, contracts, leases, rights, and obligations of the TDRA [were] transferred to the Office of Rural Affairs in the Department of Agriculture.” Texas Senate Bill 1 also provided that “all money, contracts, leases, rights, and obligations of the TDRA related to disaster recovery funds [were] transferred to the designated agency,” which the Governor later designated as the GLO.

6. The TDA is named as a Defendant in this case because it is a successor in liability for the TDRA.

7. The GLO is named as a Defendant in this case because it is a successor in liability for the TDRA.

8. Monica Bosquez Mota (then Monica Bosquez, hereinafter “Bosquez Mota”) began working as a Program Specialist VII for the Disaster Recovery Division of the TDRA on or about January 1, 2009. Her starting salary was approximately \$62,000 a year.

9. Tina Lewis (“Lewis”) began working as a Program Specialist VII for the Disaster Recovery Division of the TDRA on or about January 1, 2009. Her starting salary was approximately \$62,000 a year.

10. Dalinda Newby (“Newby”) began working as a Program Specialist VII for the Disaster Recovery Division of the TDRA on or about January 20, 2009. Her starting salary was approximately \$62,000 a year.

11. Program Specialist VIIs in the Disaster Recovery Division all performed work requiring substantially the same responsibility.

12. After Bosquez Mota learned that all female Program Specialist VIIs in the Disaster Recovery Division were compensated at significantly lower levels than similarly

situated male Program Specialist VIIIs who performed substantially the same work in the Disaster Recovery Division, Bosquez Mota filed an internal complaint with the TDRA, alleging sex discrimination in compensation.

13. Bosquez Mota and Lewis repeatedly inquired with TDRA management about the significant salary disparities among similarly situated female and male Program Specialist VIIIs performing substantially the same work, to no avail.

14. Bosquez Mota filed a timely charge of discrimination (Charge No. 451-2009-02302) against the TDRA with the Equal Employment Opportunity Commission (“EEOC”) on October 8, 2009, in which she alleged, *inter alia*, that she had been subjected to discrimination in compensation based on sex.

15. In April 2010, the TDRA analyzed the salaries of all Program Specialist VIIIs in the Disaster Recovery Division, and, in an internal memorandum, TDRA management stated that the salaries of all four female Program Specialist VIIIs “fell significantly short of the expected values,” as compared to male Program Specialist VIIIs. The four female Program Specialist VIIIs, Bosquez Mota, Lewis, Newby, and another female Program Specialist VII named in the internal document, were compensated between approximately \$62,000 and \$72,522 a year. The male Program Specialist VIIIs, named in the internal document, were compensated between approximately \$79,631 and \$95,157 a year.

16. As a result of the salary assessment, the TDRA gave salary increases to all four female Program Specialist VIIIs, calling such increases an “Equity Adjustment.” This Equity Adjustment brought the women’s compensation closer, but not equal to, the salaries of similarly situated men performing substantially the same work. None of the four male Program Specialist VIIIs were given salary increases as part of the Equity Adjustment.

17. The Equity Adjustment was made effective in April 2010 for Bosquez Mota, Lewis, and Newby, and was granted prospectively only.

18. On or about February 7, 2011, the employees of the Disaster Recovery Division were notified that the division would be abolished, effective February 28, 2011.

19. Upon information and belief, the Executive Director of the TDRA, Charles Stone (“Stone”), selected a group of employees to remain employed with the TDRA following the dissolution of the Disaster Recovery Division.

20. Upon information and belief, there was no application process for these remaining positions.

21. Upon information and belief, Stone selected two Program Specialist VIIs to stay with the TDRA, and both selected were male.

22. Stone did not select Bosquez Mota, Lewis, or Newby to stay with the TDRA. As a result, their employment with the TDRA was terminated.

23. Bosquez Mota was hired by the Texas Department of Housing and Community Affairs (“TDHCA”) and began work there on or about March 2011. The TDHCA’s disaster relief efforts were merged with the GLO on or about September 2011, and Bosquez Mota was transferred to the GLO, where she is presently employed.

24. Lewis was hired by HNTB, a private contractor, and began work there on or about March 2011.

25. Newby was unemployed for five months before being hired by TDHCA on or about August 2011, where she is presently employed.

26. Pursuant to Section 706 of Title VII, as amended, 42 U.S.C. § 2000e-5, the EEOC investigated the charge of discrimination filed by Bosquez Mota and issued a Letter of

Determination on March 10, 2011, finding that there is reasonable cause to believe that Bosquez Mota and a class of women were compensated less than similarly situated men performing substantially the same work, in violation of Title VII. The EEOC referred the matter to the United States Department of Justice after an unsuccessful attempt to conciliate the charge.

27. The TDRA's subsequent retaliation against Bosquez Mota, Lewis, and Newby through its termination of their employment was an outgrowth of their claims of sex discrimination in compensation and their acceptance of relief through the Equity Adjustment.

28. All conditions precedent to the filing of this Title VII sex discrimination in compensation and retaliation suit have been performed or have occurred.

STATEMENT OF CLAIMS

29. The TDA and GLO, as successors in interest to the TDRA, subjected Bosquez Mota, Lewis, and Newby to discrimination in compensation on the basis of sex, as well retaliation, in violation of Sections 703(a) and 704(a) of Title VII, among other ways, by:

- (a) compensating Bosquez Mota, Lewis, and Newby at significantly lower levels than similarly situated males performing substantially the same work in the Disaster Recovery Division for the period of time between the commencement of the women's employment with the Disaster Recovery Division and the institution of the "Equity Adjustment";
- (b) failing to make the women's salaries equivalent to similarly situated males performing substantially the same work following the "Equity Adjustment";
- (c) terminating Bosquez Mota, Lewis, and Newby in retaliation for their opposition to and participation in activity protected by Title VII; and
- (d) failing or refusing to take appropriate action to remedy the effects of the discriminatory treatment and retaliation.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court grant the following relief:

- (a) Enjoin the GLO from further discrimination in compensation against Bosquez Mota;
- (b) Enjoin the GLO from further retaliation against Bosquez Mota;
- (c) Enjoin the TDA and the GLO from engaging in sex discrimination in compensation and retaliation, in violation of Title VII, for any employee or applicant for employment.
- (d) Award backpay and all other appropriate monetary relief, including the value of lost employment benefits to Bosquez Mota, Lewis, and Newby in an amount to be determined at trial to make them whole for the loss they suffered as a result of the discriminatory conduct alleged in this Complaint;
- (d) Award Bosquez Mota, Lewis, and Newby any prejudgment interest on the amount of lost wages and benefits determined to be due;
- (e) Award compensatory damages to Bosquez Mota, Lewis, and Newby to fully compensate them for the pain, suffering, and medical expenses caused by the discriminatory conduct alleged in this Complaint, pursuant to and within the statutory limitations of Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a;
- (f) Order the TDA and GLO to institute policies, practices, and programs to ensure a non-discriminatory workplace, including but not limited to implementing appropriate polices to ensure equal employment opportunity for their employees, and providing adequate training to all employees and officials regarding discrimination and retaliation;

(g) Award such additional relief as justice may require, together with the United States' costs and disbursements in this action.

JURY DEMAND

The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

BY:

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United States Attorney

BY:

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Attorneys for Plaintiff United States of America

JS 44 (Rev. 12/07)

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 THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS United States of America</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Amy Kurren and Leslie Gardner (see attachment)</p>	<p>DEFENDANTS Texas Department of Agriculture and Texas General Land Office</p> <p>County of Residence of First Listed Defendant <u>Travis</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) Texas Department of Agriculture: Timothy Earl Bray Texas General Land Office: Matthew R. Beatty (see attachment)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%;">PTF</td> <td style="width:10%;">DEF</td> <td style="width:40%;"></td> <td style="width:10%;">PTF</td> <td style="width:10%;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><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>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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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 type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <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	PERSONAL INJURY <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 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	<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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<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	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<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 checked="" 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 Habeas Corpus: <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	<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	<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))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION		
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

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):
Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.

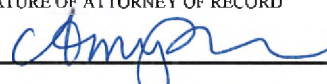
Brief description of cause:
Sex discrimination in compensation and retaliation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 260,000.00

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

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Yeakel/Austin DOCKET NUMBER 1:11-cv-00827-LY

DATE 07/11/2012 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM 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 service of pleading 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. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ATTACHMENT TO CIVIL COVER SHEET

United States of America v. Texas Department of Agriculture and Texas General Land Office

I. (c)

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VII. Requested in Complaint: Demand

The demand listed (\$260,000) is an approximation based on the best available evidence at this time.