IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

STUART ANGLIN Plaintiff vs. UNITED STATES OF AMERICA Defendant.	Civil Action No.: **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiff Stuart Anglin individually, and on behalf of all others similarly situated, by and through counsel, brings this action against The United States of America. Plaintiff's allegations herein are based upon personal knowledge and belief as to his own acts and upon the investigation of his counsel and information and belief as to all other matter.

INTRODUCTION

1. This is a class action lawsuit brought against **THE UNITED STATES OF AMERICA** by Plaintiff on behalf of himself and similarly situated individuals of Cherokee descent.

JURISDICTION AND VENUE

2. This Court has original jurisdiction under 28 U.S.C. § 1331. "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Plaintiff seeks preliminary and permanent injunctive relief and declaratory relief under 28 U.S.C. §§ 2201 and 2202.

3. Venue is proper in this Court pursuant to 28 U.S.C. 1391.

THE PARTIES

Plaintiff

4. The Plaintiff STUART ANGLIN is a citizen of the State of Delaware.

Defendant

5. The Defendant is the **UNITED STATES OF AMERICA**.

FACTUAL ALLEGATIONS

6. The Cherokees were before the coming of the white man located in the southeastern part of the now existing United States, primarily in the Carolinas, Eastern Tennessee, Kentucky, Virginia and Northern Georgia. After the coming of the Europeans, the Cherokees began a protracted yet peaceful retreat and endured the gradual diminution of their territorial land. From 1721 though 1866, the Cherokees ceded an incredible amount of land in the hope of obtaining security and peace and keeping their people together. All told, 81,220,374 acres equaling 126,906 square miles were lost by the Cherokees through treaties leaving them today with approximately less than 5 million acres left.

7. By 1828, the Cherokee peoples only owned approximately 4 million acres in the lands east of the Mississippi along with 7 million acres west of the Mississippi obtained through land trades in prior treaties. It was the 4 million acres east of the Mississippi that the United States wanted and would and as history has shown would be willing to kill thousands to get

8. At the time of President Andrew Jackson's election in 1828, the Cherokee had adopted the settled way of life of the surrounding—and encroaching—white society. They were consequently known, along with the Creek, Seminole, Chickasaw, and Choctaw, as one of the "Five Civilized Tribes." "Civilization," however, proved to be not enough, and the Jackson administration forced most of these tribes west during the first half of the 1830s, clearing southern territory for the use of whites.

9. In 1830, Congress had passed the Indian Removal Act giving the President specific authority to seize Indian lands and forcibly remove them. This Act was passed specifically with the intention of giving President Jackson the means and authority to take the Cherokee lands. The intention behind the Act was to intimidate the Indians to sell their land below the market price that the government would have to pay if it outright seized the land

10. In furtherance of the plan to get all Cherokee lands, the government had to know how many Cherokee there were and where they were located. In the fall of 1835, a census was taken by the War Department to count the Cherokee residing in Alabama, Georgia, North/South Carolina, and Tennessee, totaled: 18,335 people. Tensions between the indigenous Cherokee and white settlers developed over ownership of the land rich in gold deposits and fertile soil that could be used for farming cotton.

11. In October 1835, Principal Chief John Ross and an Eastern visitor, John Howard Payne, were kidnapped from Ross' Tennessee home by a renegade group of the Georgia militia to keep him from representing his people in treaty negotiations for the sake of Cherokee land to the United States.

12. When the treaty negotiations failed Chief Ross was released, and along with a delegation of tribal leaders traveled to Washington, DC to negotiate with President Andrew Jackson. From October 1835 through December 1835 Chief Ross met with President Jackson and his agents to discuss the possibility that Cherokee might give up some of their land for money and land to the east of the Mississippi River. The negotiations appeared heading for success with Jackson and Ross close to finalizing a deal at an amount of approximately $7,902,000.

13. However unknown to Chief Ross, Jackson was pursuing a twin negotiation scheme. While President Jackson was negotiating with Chief Ross in Washington, his U.S. Agent John F. Schermerhorn gathered a group of dissident Cherokee in the home of Elias Boudinot at the tribal capital, New Echota, Georgia. There on December 29, 1835, this dissident group signed the unauthorized Treaty of New Echota, which sold Cherokee land east of the Mississippi in Indian Territory. No mention of Indian removal was in the treaty as approved. This agreement was never accepted by the elected tribal leadership or a majority of the Cherokee people as required under Cherokee law.

14. Under both US and Cherokee Law, a treaty entered into fraudulently is not a legally binding agreement. The U. S. government knew the contract was fraudulent and it was against Cherokee law to secede land without consent of the legal Cherokee Council and violation of this law meant death.

15. When word came to Washington that dissident minority tribal members had pushed through a sham treaty for $5 million dollars on virtually the same terms rejected by the whole tribe in October, President Jackson, seeing an advantage, and further insisted that the dissident members further agree to give up the rights of the Cherokee people wishing to remain east of Mississippi for an additional payment of $600,000. Without seeking permission of the tribal council on such a significant change to the treaty, the dissidents agreed. This modification of the treaty was made even though the original vote for the treaty was only 71 for and 9 against out of a tribe of 18,000 members.

16. When Chief Ross realized that the revised treaty would be presented to President Jackson and realizing that if the Cherokee were not going to be allowed to stay east of the Mississippi, he offered to agree to the treaty if the price was raised to $20 million. President

Jackson refused and instead accepted the dissident treaty which was affirmed and ratified by the Senate by one vote. The Senate's ratification was made over Chief Ross's objections that the treaty was invalid.

17. A further legal point never considered by the court until now because Indians were not allowed at the time to go to the courts is that even for the sake of argument if the original treaty was valid, the delegation to Washington would never have been given authority to so drastically modify the treaty. The delegation on its own agreed to allow for the forced deportation under armed guard through the depth of winter causing the death of up to 1/3 of their people. The limited authority given to the delegation was normal authority given to modify minor points needed to affect an agreement but the agreement to the forced removal was such a major change as to create a new treaty on terms which the tribe had repeatedly rejected. For this reason alone the treaty was a sham and littler more than a screen to cover up a governmental taking for which the Fifth Amendment of the US Constitution required fair compensation.

VALUE OF THE LAND IN 1835 MONIES

18. John Ross estimated the value of Cherokee Land at $7.23 million after he factored in the loss value of the Georgia gold fields, which Jackson would not act to return. A conservative estimate by Professor Matthew T. Gregg in 2009 put Cherokee's land value for the 1838 market at $7,055,469.70, which was more than $2 million over the $5 million figure that the Senate agreed to pay.

ERRORS IN VALUATION

19. The US Government valued the land at $1.25 per acre which was the same as the artificially low price paid in the Treaty of 1819. That price did not consider the great developments since 1819 that dramatically raised the value of the land.

THE COTTON GIN

20. One of these major factors impacting the price of land was the invention of the cotton gin. Until widespread use of the cotton gin, short-staple cotton had been such an arduous crop to grow and process because of the time-consuming process of removing the sticky seeds from each of the individual bolls of cotton. This process took so long that it was nearly unprofitable to grow cotton. The increased ease of cotton production due to access to the cotton gin, invented in 1793 by Eli Whitney, which used teeth to comb through the fluffy fibers and remove all of the seeds in a much more efficient manner, led to a major rise in the production of cotton in the south near North Carolina, Tennessee and Georgia. Production of cotton increased from 750,000 bales in 1830 to 2.85 million bales in 1850, earning the south the nickname ***"King Cotton"*** for its success.

21. Matthew T. Gregg writes that "According to the 1835 Cherokee census enumerators, 1,707,900 acres in the Cherokee Nation in Georgia were tillable." This land was valuable farming land, with the ideal climate and the necessary 200 frost-free days for growing cotton, and would have been crucial in supporting the cotton industry's monumental growth, as would have increased ease of transportation due to railroads. The Cherokee Indians typically had small family farms and only planted what was needed to survive alongside hunting and gathering. However, some, Indians took advantage of the growing demand for cotton and began to farm it themselves, asking for cotton cards, cotton gins, and spinning wheels from the United States Government.

22. The Cherokees that did farm cotton in excess for selling became a threat to the settlers that were hoping to capitalize on the cotton industry by taking away not only valuable

farm land but also adding more cotton to the market which could reduce the demand and the price, thus prompting the pursuit of a removal treaty.

GOLD RESERVES

23. Between 1828 and to the present when gold mining ceased, a minimum of 870,000 ounces of gold were mined from the region where the Cherokee lands were taken and most of the gold is known to have been mined primarily off the lands of the Cherokee. In 1838, the price of gold was $20.73 per ounce. That means nearly $19 million of gold was taken off the Cherokee lands which they owned and for which they were never paid.

24. Tensions between the State of Georgia and the Cherokee Nation were brought to a crisis by the discovery of gold in 1828. Hopeful gold speculators began trespassing on Cherokee lands. Georgia wanted the Cherokee gold and moved to extend state laws over Cherokee tribal lands in 1830. This matter went to the U.S. Supreme Court. In 1831, the Marshall Court ruled that the Cherokee were not a sovereign and independent nation, and therefore refused to hear the case. However, in ***Worchester v. State of Georgia*** in1832, the Supreme Court ruled that Georgia could not impose laws in Cherokee territory, since only the national government — not state governments — had authority in Indian affairs.

25. President Andrew Jackson has often been quoted as defying the Supreme Court with the words, "John Marshall has made his decision; now let him enforce it!" With the Indian Removal Act of 1830, the US Congress had given Jackson authority to negotiate removal treaties, exchanging Indian land in the East for land west of the Mississippi River. President Jackson used the dispute with Georgia to put pressure on the Cherokee to sign a removal treaty.

INTRINSIC LOCATION VALUE

26. It is axiomatic that in real property, value is primarily determined by three factors: location, location and location.

27. The Cherokee lands in Georgia were settled upon by the Cherokee for the simple reason that they were and still are the shortest and most easily traversed route between the only fresh water sourced settlement location at the southeastern tip of the Appalachian range (the Chattahoochee River), and the natural passes, ridges, and valleys which lead to the Tennessee River at what today is Chattanooga.

28. Furthermore, for Chattanooga there was and is the potential for a year-round water transport to St. Louis and the west (via the Ohio and Mississippi rivers), or to as far east as Pittsburgh, PA.

29. None of those factors were considered in setting the unauthorized treaty price for the land at $5 million

THE TRAIL OF TEARS

30. The process of Cherokee removal took place in three stages. It began with the voluntary removal of those in favor of the treaty, who were willing to accept government support and move west on their own in the two years after the signing of the ***Treaty of New Echota*** in 1835. Most of the Cherokee, including Chief John Ross, were outraged and unwilling to move. They did not believe the government would take any action against them if they elected to stay. However, the U.S. army was sent in, and the forced removal stage began. The Cherokee were herded violently into internment camps, where they were kept for the summer of 1838. The actual transportation west was delayed by intense heat and drought, but in the fall, the Cherokee reluctantly agreed to transport themselves west under the supervision of Chief Ross in the reluctant removal stage.

31. The deaths and desertions in the Army's boat detachments caused Gen Scott to suspend the Army's Removal efforts, and the remaining Cherokee were put into eleven internment camps, mostly located in present day Chattanooga, Tennessee, at Red Clay, Bedwell Springs, Chatata, Mouse Creek, Rattlesnake Springs, Chestoee, and Calhoun (site of the former Cherokee Agency) located within Bradley County, Tennessee, and one camp Fort Payne in Alabama.

32. The Cherokee remained in the camps during the summer of 1838 and were plagued by dysentery and other illnesses, which led to 353 deaths. A group of Cherokee petitioned General Scott for a delay until cooler weather made the journey less hazardous. This was granted; meanwhile Chief Ross, finally accepting defeat, managed to have the remainder of the removal turned over to the supervision of the Cherokee Council. Although there were some objections within the U.S. government because of the additional cost, General Scott awarded a contract for removing the remaining 11,000 Cherokee under the supervision of Principal Chief Ross, with expenses to be paid by the Army, which outraged President Jackson.

33. As a result, the government forced the Indians themselves to pay the cost of their own forced removal. The government charged $1,111,284.70 million of the $5 million for the expense of their removal. It was not until 1906, that the US Supreme Court in ***United States v. Cherokee Nation, 202 U.S. 101*** found that was wrong and ordered the government to return the $1.1 million plus 5 percent interest from 1838.

SECOND TRAIL OF TEARS

34. The government learned from its dealing with the Cherokee in the ***First Trail of Tears*** but not for the better and did it all over again in the 1890's when it seized the Cherokee

Strip. The Federal government again wanted the Indian land but did not want to pay fair market value for it so it did everything over again.

35. To force the Cherokees to sell the land, the President embarked on a plan to impoverish the tribe by denying them income from Indian leases needed for them to survive just as President Jackson had refused to pay annuity payments required under the previous treaties to break the tribe. Then the government passed the Curtis Act which like the Indian Removal Act gave the President the right to take the land and forcibly remove the Indians off the land. The tribe which was facing another forced removal, entered a treaty once again under the guns of United States soldiers for a price only fraction of the what the land was worth. This sale bankrupted the tribe and destroyed its government. As a result, the tribe was without any government for nearly 40 years.

36. Finally in 1961 the tribe sued in the Indian Claims Commission for the fair value of the land it was forced to sell and was awarded a judgment of $14 million dollars with interest plus a finding that the treaty was really a taking and the price paid was actually only 1/3 of its actual value.

37. The Court concluded:

> "The Cherokee Nation. Which had the fee simple title to the subject land at the commencement of negotiations under the ACT of March 2, 1889 was not inclined to give up its land. For a number of years the petitioner had been receiving monetary benefits from the lease of these lands to cattle men. This arrangement between the Cherokee Nation and the cattle industry had enjoyed the tacit approval of the Department of the Interior. It was only when the Cherokees expressed a reluctance to cede the subject tract that officials of the United States questioned the validity of the leases. The proclamation of the President declaring the leases illegal and void and the order of removal of the cattle from the Outlet were obtained through the efforts of the Secretary of the Interior after the Fairchild Commission had informed him thast he believed the Cherokees would not come to terms as long as they could secure revenue front the leasing of the lands.
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> The Cherokees became aware of the constant clamor by the public and Congress for the opening of the lands to white settlement and the evident disposition of Congress to secure the lands without the consent of the petitioner
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> There was no arm's length bargaining between the parties to the negotiation. The Cherokees were subject to duress in obtaining from them a cessation of the subject land"

38. This suit follows the precedent of the 1961 case and seeks payment for the land taken by the Federal Government determined at that time and not the laughably low $5 million price set by the government by intimidation and chicanery

39. The ***Trail of Tears*** is generally considered to be one of the most regrettable episodes in American history. To commemorate the event, the U S Congress designated the ***Trail of Tears National Historic Trail.*** It stretches across nine states for 2,200 miles (3,500 km).

40. In 2004, during the 108th Congress, ***Senator Sam Brownback*** (Republican of Kansas) introduced a joint resolution (Senate Joint Resolution 37) to "offer an apology to all Native Peoples on behalf of the United States" for past "ill-conceived policies" by the United States Government regarding Indian Tribes. It passed in the US Senate in February 2008.

41. There can be no justice or redress for those who died in a death march of 2,200 miles in the midst of the worst winter known until then while under guard of United States soldiers. No lawsuit is allowed to be made for wrongful death of the Cherokee because, in practice, it was not against the law to kill Indians. Accordingly, the only remedy, as little as it is, is limited to what is being taken herein,

1. a suit for the land that was never properly paid for or used by for by federal government and which it still owns, as well as

2. a suit for the fair market value of the land which the federal government took and which cannot be returned these causes of action are discussed below.

42. Following the Senate ratification of the Treaty of 1835, Chief Ross drew up a petition asking Congress to void the treaty—a petition which he personally delivered to Congress in the spring of 1838 with almost 16,000 signatures attached. This was nearly as many persons as the Cherokee Nation East had within its territory, according to the 1835 Henderson Roll, including women and children, who had no vote.

43. Below is the now famous ***"Our Hearts is Sickened"*** petition to the United States by Chief Ross to set aside the sham treaty of 1835. The ignored plea for justice is again brought before the United States for partial redress of the wrongs done in its name.

> "It is well known that for a number of years past we have been harassed by a series of vexations, which it is deemed unnecessary to recite in detail, but the evidence of which our delegation will be prepared to furnish. With a view to bringing our troubles to a close, a delegation was appointed on the 23rd of October, 1835, by the General Council of the nation, clothed with full powers to enter into arrangements with the Government of the United States, for the final adjustment of all our existing difficulties. The delegation failing to effect an arrangement with the United States commissioner, then in the nation, proceeded, agreeably to their instructions in that case, to Washington City, for the purpose of negotiating a treaty with the authorities of the United States.
> After the departure of the Delegation, a contract was made by the Rev. John F. Schermerhorn, and certain individual Cherokees, purporting to be a "treaty, concluded at New Echota, in the State of Georgia, on the 29th day of December, 1835, by General William Carroll and John F. Schermerhorn, commissioners on the part of the United States, and the chiefs, headmen, and people of the Cherokee tribes of Indians." A spurious Delegation, in violation of a special injunction of the general council of the nation, proceeded to Washington City with this pretended treaty, and by false and fraudulent representations supplanted in the favor of the Government the legal and accredited Delegation of the Cherokee people, and obtained for this instrument, after making important alterations in its provisions, the recognition of the United States Government. And now it is presented to us as a treaty, ratified by the Senate, and approved by the President [Andrew Jackson], and our acquiescence in its requirements demanded, under the sanction of the displeasure of the United States, and the threat of summary compulsion, in case of refusal. It comes to us, not through our legitimate authorities, the known and usual medium of communication between the Government of the United States and our nation, but through the agency of a complication of powers, civil and military.

By the stipulations of this instrument, we are despoiled of our private possessions, the indefeasible property of individuals. We are stripped of every attribute of freedom and eligibility for legal self-defence. Our property may be plundered before our eyes; violence may be committed on our persons; even our lives may be taken away, and there is none to regard our complaints. We are denationalized; we are disfranchised. We are deprived of membership in the human family! We have neither land nor home, nor resting place that can be called our own. And this is effected by the provisions of a compact which assumes the venerated, the sacred appellation of treaty.

We are overwhelmed! Our hearts are sickened, our utterance is paralized, when we reflect on the condition in which we are placed, by the audacious practices of unprincipled men, who have managed their stratagems with so much dexterity as to impose on the Government of the United States, in the face of our earnest, solemn, and reiterated protestations.

The instrument in question is not the act of our Nation; we are not parties to its covenants; it has not received the sanction of our people. The makers of it sustain no office nor appointment in our Nation, under the designation of Chiefs, Head men, or any other title, by which they hold, or could acquire, authority to assume the reins of Government, and to make bargain and sale of our rights, our possessions, and our common country. And we are constrained solemnly to declare, that we cannot but contemplate the enforcement of the stipulations of this instrument on us, against our consent, as an act of injustice and oppression, which, we are well persuaded, can never knowingly be countenanced by the Government and people of the United States; nor can we believe it to be the design of these honorable and highminded individuals, who stand at the head of the Govt., to bind a whole Nation, by the acts of a few unauthorized individuals. And, therefore, we, the parties to be affected by the result, appeal with confidence to the justice, the magnanimity, the compassion, of your honorable bodies, against the enforcement, on us, of the provisions of a compact, in the formation of which we have had no agency.

In truth, our cause is your own; it is the cause of liberty and of justice; it is based upon your own principles, which we have learned from yourselves; for we have gloried to count your [George] Washington and your [Thomas] Jefferson our great teachers; we have read their communications to us with veneration; we have practised their precepts with success. And the result is manifest. The wildness of the forest has given place to comfortable dwellings and cultivated fields, stocked with the various domestic animals. Mental culture, industrious habits, and domestic enjoyments, have succeeded the rudeness of the savage state.

We have learned your religion also. We have read your Sacred books. Hundreds of our people have embraced their doctrines, practised the virtues they teach, cherished the hopes they awaken, and rejoiced in the consolations which they afford. To the spirit of your institutions, and your religion, which has been imbibed by our community, is mainly to be ascribed that patient endurance which has characterized the conduct of our people, under the

> laceration of their keenest woes. For assuredly, we are not ignorant of our condition; we are not insensible to our sufferings. We feel them! we groan under their pressure! And anticipation crowds our breasts with sorrows yet to come. We are, indeed, an afflicted people! Our spirits are subdued! Despair has well nigh seized upon our energies! But we speak to the representatives of a Christian country; the friends of justice; the patrons of the oppressed. And our hopes revive, and our prospects brighten, as we indulge the thought. On your sentence, our fate is suspended; prosperity or desolation depends on your word. To you, therefore, we look! Before your august assembly we present ourselves, in the attitude of deprecation, and of entreaty. On your kindness, on your humanity, on your compassion, on your benevolence, we rest our hopes. To you we address our reiterated prayers. Spare our people! Spare the wreck of our prosperity! Let not our deserted homes become the monuments of our desolation! But we forbear! We suppress the agonies which wring our hearts, when we look at our wives, our children, and our venerable sires! We restrain the forebodings of anguish and distress, of misery and devastation and death, which must be the attendants on the execution of this ruinous compact.
> In conclusion, we commend to your confidence and favor, our well-beloved and trust-worthy brethren and fellow-citizens, John Ross, Principal Chief, Richard Taylor, Samuel Gunter, John Benge, George Sanders, Walter S. Adair, Stephen Foreman, and Kalsateehee of Aquohee, who are clothed with full powers to adjust all our existing difficulties by treaty arrangements with the United States, by which our destruction may be averted, impediments to the advancement of our people removed, and our existence perpetuated as a living monument, to testify to posterity the honor, the magnanimity, the generosity of the United States. And your memorialists, as in duty bound, will ever pray."
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> Signed by Ross, George Lowrey, Edward Gunter, Lewis Ross, thirty-one members of the National Committee and National Council, and 2,174 others.

44. What more can be said except that upwards of 18000 were forcibly removed and put into a death March of 2200 miles in the middle of a horrible winter under the gun point of the United States Army and it was the Indians who were considered uncivilized.

CLASS ACTION ALLEGATIONS

45. This action is brought, and may properly proceed, as a class action, pursuant to Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure.

46. Plaintiff seeks certification of a Class defined as follows:

Nationwide Class:

47. All persons in the United States of Cherokee descent.

48. Plaintiff reserves the right to modify, change, or expand the class definitions if discovery and/or further investigation reveal that they should be expanded or otherwise modified. Plaintiff reserves the right to file an amended complaint so as to allow additional individuals to join as representative Plaintiffs.

49. Such additional persons if they wish t0 join the action Plaintiffs would add to this suit to more fully represent the more than 810,000 persons who identified themselves of being of Cherokee ancestry in the 2010 census

50. **Numerosity**: The Class is so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Class is unknown at this time, Plaintiff believes, and on that basis allege, that at least hundreds of thousands of persons exist who are of Cherokee Descent and could a similar as this.

51. **Existence/Predominance of Common Questions of Fact and Law**: Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting individual Class members. These common legal and factual questions include, but are not limited to:

(a) Did the United States force the Cherokee Nation to sell its land in 1835 for below fair market value?
(b) Were the Cherokee people forced to take less than fair market value for the their land?
(c) What was the fair market value of the Cherokee People's land in 1838?
(d) Should the United States pay as damages for the taking of the Cherokee Nation's calculated as the difference between the fair market value of the land in 1835 minus the $5 million paid for the land?

(e) Should the United States return to the Cherokee Nations those lands which it seized that have not been paid for and have not been or very little used for the public good.

52. **Typicality**: Plaintiff's claims are typical of the claims of the Class and Class members were injured in the same manner by Defendant's uniform course of conduct alleged herein. Plaintiff and all Class members have the same claims against defendant relating to the conduct alleged herein, and the same events giving rise to Plaintiff's claims for relief are identical to the giving rise to the claims of all Class Members. Plaintiff and all Class members sustained monetary and economic injuries including, but not limited to, ascertainable losses arising out of Defendant's wrongful conduct of seizing and then not adequately paying fair compensation for Cherokee Indian Lands under the supposed ***Treaty of New Echota*** 1835. Plaintiff is advancing the same claims and legal theories on behalf of himself and all absent Class Members.

53. **Adequacy**: Plaintiff is an adequate representative for the Class because his interests do not conflict with the interests of the Class that he seeks to represent. Plaintiff has retained counsel competent and highly experienced in complex litigation and they intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff and his counsel.

54. **Superiority**: A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiff and members of the Class. The injury suffered by each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them by Defendant. Even if Class members could afford such

individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, an economy of scale, and comprehensive supervision by a single court. Upon information and belief, members of the Class can be readily identified and notified.

55. Defendant has acted, and refuses to act, on grounds generally applicable to the Class, hereby making appropriate final equitable and injunctive relief with respect to the Class as a whole.

CLAIMS FOR RELIEF
COUNT I

VIOLATION OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION FOR THE TAKING OF CHEROKEE LANDS WITHOUT JUST COMPENSATION REMEDY SOUGHT: THE RIGHT OF RETURN TO THE CHEROKEE PEOPLE THOSE LANDS THAT WERE SEIZED. NOT ADEQUATELY PAID FOR, NEVER OR SLIGHTLY USED FOR THE PUBLIC GOOD AND STILL UNDER DEFENDANT'S CONTROL

56. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully set forth at length herein.

57. The Fifth Amendment of the United States Constitution reads as follows:

> **"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."**

58. Of the more than 4 million acres seized by the Defendant United States of America and for which the price was far below market value at $1.25 per acre, the Plaintiff wants returned to the Cherokee People such lands which are still in the Defendant's possession and which the Defendant has not used for the public good or has not used very much for the public good. More public good would be accomplished by the return of such unused or seldom used lands to the Cherokee people. Furthermore, it would cost the Defendant significantly in higher monetary damages not to return such lands. Should the Defendant keep such lands then it will have to pay their fair market for then in 1835 which is the difference per acre between the $1.25 per acre originally paid subtracted from the actual fair market value per acre determined in this lawsuit plus interest at five percent (5%) per year for 185 years.

59. Plaintiff seeks an order that the return of any Cherokee lands in the hands of the Defendant be made to a Cherokee tribe agreeable to a majority of the Cherokee people which will hold and maintain said lands for the benefit of all Cherokee People.

60. Plaintiff individually and on behalf of the other Class members, also seeks any and all other remedies available for the taking

COUNT II
FAIR COMPENSATION FOR LAND THAT WAS TAKEN AND NOT RETURNED

61. Plaintiff incorporates by reference each preceding and succeeding paragraph as though fully set forth at length herein.

62. The Fifth Amendment of the United States Constitution reads as follows:

> **"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or**

property, without due process of law; nor shall private property be taken for public use, without just compensation. "

63. Of the more than 4 million acres seized by the Defendant United States of America and for which the price was far below market value at $1.25 per acre, the Plaintiff seeks as damages the difference per acre between the $1.25 per acre originally paid subtracted from the actual fair market value per acre determined in this lawsuit plus interest at five percent (5%) per year for 185 years.

64. Plaintiff individually and on behalf of the other Class members, also seeks any and all other remedies available for the taking.

COUNT III
DECLARATORY RELIEF

65. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

66. Defendant seized the land of the Cherokee Nation in 1838 without just compensation and forced the expulsion the Cherokee People under armed guard of the soldiers of the United States off their land during the harshest winter of known memory up to that time wherein upon to 1/3 of the Cherokee men women and children starved, died of disease or froze to death during the forced resettlement

67. There exists an actual controversy, over which this Court has jurisdiction, between Plaintiff and Defendant concerning their respective rights, duties and obligations for which Plaintiff desire a declaration of rights under the US Constitution.

68. Plaintiff seeks a declaration of the parties' respective rights, duties and obligations related to the taking of the Cherokee land

69. Specifically, Plaintiff seeks a declaratory judgment as to whether the ***Treaty of New Echota 1835*** was a validly executed and adopted Treaty with the United States or one imposed upon the Cherokee Nation by force and coercion.

70. A judicial declaration is necessary in order that Plaintiff and the Class Members is necessary so as to determine how monetary damages are to be paid. If the execution of the treaty was coerced, then the taking of the Cherokee lands was from the Cherokee Nation, which owned them 1835, and not the Cherokee People directly. In that case, any monetary damages would be paid to the various state and federally recognized tribes based on population. For instance, as the Cherokee Nation in Oklahoma has approximately 350,000 of the approximately 500,000 recognized Cherokee people. As such, in this event, it would get at least seventy percent of the monetary damage recovery whereas a tribe with only 5000 members would get one percent of the monetary damages. In contrast, if the court finds that the treaty was actually both legally and properly created but was just underfunded them any monetary damages based on the low selling price would be paid to the Cherokee people directly based the state and federal tribal roles on a per capita basis as required under the Treaty.

71. The determination as to whether the taking of the land was under the terms of a valid Treaty or under the Federal power of eminent domain will not affect the calculation of damages against the Defendant. It will only determine to whom such damages would be paid.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby requests that this Court enter an Order against Defendant providing the following:

A. Certification of the proposed Class and/or Subclass, appointment of Plaintiff and his counsel to represent the proposed Class, and notice to the proposed Class to be paid by Defendant

B. The return of Cherokee lands in the hands of the Defendant that have not have used or used very little for the public good to a Cherokee tribe agreeable to a majority of the Cherokee people which will hold and maintain such lands for the benefit of all Cherokee people.

C. For the Cherokee lands not returned, the damages owed for the underpayment calculated as the difference for the fair market value per acre as determined in this action minus the $1.25 per acre paid by the Defendant

D. Injunctive relief declaring whether the Treaty of 1835 was invalid as a treaty and that it was the land of the Cherokee Nation that was taken by the Defendant

E Costs, restitution, damages, penalties, and disgorgement in an amount to be determined at trial;

F. An Order requiring Defendant to pay both pre- and post-judgment interest on any amounts awarded at five percent (5%) per year since 1835

G. An award of costs and attorneys' fees; and

H. For such other or further relief as may be appropriate.

JURY DEMAND

Plaintiff hereby demands a trial by jury for all claims so triable.

DATED: February 25, 2020 **Gellert Scali Busenkell & Brown, LLC**

/s/ Charles J. Brown, III

CHARLES J. BROWN, III (3368)
1201 N. Orange Street, Suite 300
Wilmington DE 19801
Telephone 1-302-425-5800
email cbrown@gsbblaw.com

Tbe Law Office of Michael Lynn Gabriel
1903A Cooley Avenue
East Palo Alto, CA 94303
Telephone 1-650-888-9189
aetal@earthlink.net

Counsel for Plaintiff and the Putative Class

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

STUART ANGLIN

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Charles J. Brown, III, Esq. (DE 3368)
Gellert Scali Busenkell & Brown, LLC
1201 N. Orange Street, Suite 300, Wilmington DE 19801

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
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

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

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 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
❒ 110 Insurance	**PERSONAL INJURY**	**PERSONAL INJURY**	❒ 625 Drug Related Seizure of Property 21 USC 881	❒ 422 Appeal 28 USC 158	❒ 375 False Claims Act
❒ 120 Marine	❒ 310 Airplane	❒ 365 Personal Injury - Product Liability	❒ 690 Other	❒ 423 Withdrawal 28 USC 157	❒ 376 Qui Tam (31 USC 3729(a))
❒ 130 Miller Act	❒ 315 Airplane Product Liability	❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		**PROPERTY RIGHTS**	❒ 400 State Reapportionment
❒ 140 Negotiable Instrument	❒ 320 Assault, Libel & Slander	❒ 368 Asbestos Personal Injury Product Liability		❒ 820 Copyrights	❒ 410 Antitrust
❒ 150 Recovery of Overpayment & Enforcement of Judgment	❒ 330 Federal Employers' Liability	**PERSONAL PROPERTY**	**LABOR**	❒ 830 Patent	❒ 430 Banks and Banking
❒ 151 Medicare Act	❒ 340 Marine	❒ 370 Other Fraud	❒ 710 Fair Labor Standards Act	❒ 835 Patent - Abbreviated New Drug Application	❒ 450 Commerce
❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	❒ 345 Marine Product Liability	❒ 371 Truth in Lending	❒ 720 Labor/Management Relations	❒ 840 Trademark	❒ 460 Deportation
❒ 153 Recovery of Overpayment of Veteran's Benefits	❒ 350 Motor Vehicle	❒ 380 Other Personal Property Damage	❒ 740 Railway Labor Act	**SOCIAL SECURITY**	❒ 470 Racketeer Influenced and Corrupt Organizations
❒ 160 Stockholders' Suits	❒ 355 Motor Vehicle Product Liability	❒ 385 Property Damage Product Liability	❒ 751 Family and Medical Leave Act	❒ 861 HIA (1395ff)	❒ 480 Consumer Credit (15 USC 1681 or 1692)
❒ 190 Other Contract	❒ 360 Other Personal Injury		❒ 790 Other Labor Litigation	❒ 862 Black Lung (923)	❒ 485 Telephone Consumer Protection Act
❒ 195 Contract Product Liability	❒ 362 Personal Injury - Medical Malpractice		❒ 791 Employee Retirement Income Security Act	❒ 863 DIWC/DIWW (405(g))	❒ 490 Cable/Sat TV
❒ 196 Franchise				❒ 864 SSID Title XVI	❒ 850 Securities/Commodities/ Exchange
				❒ 865 RSI (405(g))	❒ 890 Other Statutory Actions
REAL PROPERTY	**CIVIL RIGHTS**	**PRISONER PETITIONS**		**FEDERAL TAX SUITS**	❒ 891 Agricultural Acts
❒ 210 Land Condemnation	❒ 440 Other Civil Rights	**Habeas Corpus:**		❒ 870 Taxes (U.S. Plaintiff or Defendant)	❒ 893 Environmental Matters
❒ 220 Foreclosure	❒ 441 Voting	❒ 463 Alien Detainee		❒ 871 IRS—Third Party 26 USC 7609	❒ 895 Freedom of Information Act
❒ 230 Rent Lease & Ejectment	❒ 442 Employment	❒ 510 Motions to Vacate Sentence			❒ 896 Arbitration
❒ 240 Torts to Land	❒ 443 Housing/ Accommodations	❒ 530 General			❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
❒ 245 Tort Product Liability	❒ 445 Amer. w/Disabilities - Employment	❒ 535 Death Penalty	**IMMIGRATION**		❒ 950 Constitutionality of State Statutes
☒ 290 All Other Real Property	❒ 446 Amer. w/Disabilities - Other	**Other:**	❒ 462 Naturalization Application		
	❒ 448 Education	❒ 540 Mandamus & Other	❒ 465 Other Immigration Actions		
		❒ 550 Civil Rights			
		❒ 555 Prison Condition			
		❒ 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)***:
28 U.S.C. §§ 2201 and 2202

Brief description of cause:
Class action seeking recovery for lands taken from the Cherokee people without just compensation.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
02/25/2020

SIGNATURE OF ATTORNEY OF RECORD
/s/ Charles J. Brown, III (DE 3368)

FOR OFFICE USE ONLY

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