

**ORIGINAL
FILED**

APR 22 2024

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

Mark Baker
9450 SW Gemini Dr. PMB 44671
Beaverton, OR 97008
Pro Se

**BEFORE THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**COMPLAINT AND REQUEST FOR COERCIVE RELIEF
FDA REGULATION OF LIGHT EMITTING DIODE
PRODUCTS**

MARK BAKER,
Plaintiff,

vs.

UNITED STATES FOOD AND DRUG
ADMINISTRATION; JEFFREY SHUREN, in
his official capacity as Director of the FDA
Center for Devices and Radiological Health,
ROBERT M. CALIFF, in his official capacity
as Commissioner of Food and Drugs; UNITED
STATES HEALTH AND HUMAN
SERVICES; and XAVIER BECERRA, in his
official capacity as Secretary of the Department
of Health and Human Services,

Defendants.

Case No.: 2:24-CV0278-KJM DB PS

APPLICATION FOR ENTRY OF DEFAULT
AGAINST: Defendants US HHS, US FDA,
Xavier Becerra, Robert Califf, and Jeffrey
Shuren

To the clerk of the United States District Court for the Eastern District of California:

As provided by Rule 55 of the Federal Rules of Civil Procedure, Plaintiff Mark Baker requests that the clerk enter the default of the following Defendants for failure to plead or otherwise defend against this action in a timely manner:

United States Food and Drug Administration

- 1) As evidenced by the proof of service on file with this Court, the above-named Defendant was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on February 20, 2024.
- 2) The applicable time limit for the above-named Defendant to appear or otherwise respond to this action expired on April 20, 2024.

United States Department of Health and Human Services

- 1) As evidenced by the proof of service on file with this Court, the above-named Defendant was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on February 20, 2024.
- 2) The applicable time limit for the above-named Defendant to appear or otherwise respond to this action expired on April 20, 2024.

Xavier Becerra In His Official Capacity as Secretary of HHS

- 1) As evidenced by the proof of service on file with this Court, the above-named Defendant was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on February 20, 2024.
- 2) The applicable time limit for the above-named Defendant to appear or otherwise respond to this action expired on April 20, 2024.

Robert Califf In His Official Capacity as Commissioner of the FDA

- 1) As evidenced by the proof of service on file with this Court, the above-named Defendant was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on February 20, 2024.
- 2) The applicable time limit for the above-named Defendant to appear or otherwise respond to this action expired on April 20, 2024.

Jeffrey Shuren In His Official Capacity as Director of the FDA CDRH

- 1) As evidenced by the proof of service on file with this Court, the above-named Defendant was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on February 20, 2024.
- 2) The applicable time limit for the above-named Defendant to appear or otherwise respond to this action expired on April 20, 2024.

The above-named Defendants have failed to plead or otherwise respond to the complaint.

This request is based on the attached Declaration of Plaintiff.

Dated: April 22, 2024

Respectfully submitted,

Signature: Mark Baker

Mark Baker

DECLARATION OF PLAINTIFF

I, Mark Baker, declare as follows:

1. I am the Plaintiff in this action. If called as a witness, I could and would completely testify thereto.

Defendant US Health and Human Services

2. Defendant US Health and Human Services was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on February 20, 2024, as evidenced by the proof of service on file with this Court.
3. Under Rule 12, Defendant US Health and Human Services was required to plead or otherwise respond to the complaint by April 20, 2024. The time to plead or otherwise respond to complaint has not been extended by any agreement of the parties or any order of the Court.
4. Defendant US Health and Human Services has failed to serve or file a pleading or otherwise respond to the complaint. The applicable time limit for responding to the complaint has expired.
5. Defendant US Health and Human Services is not a minor or an incompetent person.
6. Defendant US Health and Human Services is not currently in the military service, and therefore the Servicemembers Civil Relief Act does not apply.

Defendant US Food and Drug Administration

7. Defendant US Food and Drug Administration was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on February 20, 2024, as evidenced by the proof of service on file with this Court.
8. Under Rule 12, Defendant US Food and Drug Administration was required to plead or otherwise respond to the complaint by April 20, 2024. The time to plead or otherwise respond to complaint has not been extended by any agreement of the parties or any order of the Court.
9. Defendant US Food and Drug Administration has failed to serve or file a pleading or otherwise respond to the complaint. The applicable time limit for responding to the complaint has expired.
10. Defendant US Food and Drug Administration is not a minor or an incompetent person.
11. Defendant US Food and Drug Administration is not currently in the military service, and therefore the Servicemembers Civil Relief Act does not apply.

Defendant Xavier Becerra In His Official Capacity as Secretary of HHS

12. Defendant Xavier Becerra In His Official Capacity as Secretary of HHS was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on February 20, 2024, as evidenced by the proof of service on file with this Court.

13. Under Rule 12, Defendant Xavier Becerra In His Official Capacity as Secretary of HHS was required to plead or otherwise respond to the complaint by April 20, 2024. The time to plead or otherwise respond to complaint has not been extended by any agreement of the parties or any order of the Court.
14. Defendant Xavier Becerra In His Official Capacity as Secretary of HHS has failed to serve or file a pleading or otherwise respond to the complaint. The applicable time limit for responding to the complaint has expired.
15. Defendant Xavier Becerra In His Official Capacity as Secretary of HHS is not a minor or an incompetent person.
16. Defendant Xavier Becerra In His Official Capacity as Secretary of HHS is not currently in the military service, and therefore the Servicemembers Civil Relief Act does not apply.

Defendant Robert Califf In His Official Capacity as Commissioner of FDA

17. Defendant Robert Califf In His Official Capacity as Commissioner of FDA was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on February 20, 2024, as evidenced by the proof of service on file with this Court.
18. Under Rule 12, Defendant Robert Califf In His Official Capacity as Commissioner of FDA was required to plead or otherwise respond to the complaint by April 20, 2024. The time to plead or otherwise respond to complaint has not been extended by any agreement of the parties or any order of the Court.
19. Defendant Robert Califf In His Official Capacity as Commissioner of FDA has failed to serve or file a pleading or otherwise respond to the complaint. The applicable time limit for responding to the complaint has expired.
20. Defendant Robert Califf In His Official Capacity as Commissioner of FDA is not a minor or an incompetent person.
21. Defendant Robert Califf In His Official Capacity as Commissioner of FDA is not currently in the military service, and therefore the Servicemembers Civil Relief Act does not apply.

Defendant Jeffrey Shuren In His Official Capacity as Director of FDA CDRH

22. Defendant Jeffrey Shuren In His Official Capacity as Director of FDA CDRH was served pursuant to Rule 4 of the Federal Rules of Civil Procedure on February 20, 2024, as evidenced by the proof of service on file with this Court.
23. Under Rule 12, Defendant Jeffrey Shuren In His Official Capacity as Director of FDA CDRH was required to plead or otherwise respond to the complaint by April 20, 2024. The time to plead or otherwise respond to complaint has not been extended by any agreement of the parties or any order of the Court.
24. Defendant Jeffrey Shuren In His Official Capacity as Director of FDA CDRH has failed to serve or file a pleading or otherwise respond to the complaint. The applicable time limit for responding to the complaint has expired.
25. Defendant Jeffrey Shuren In His Official Capacity as Director of FDA CDRH is not a minor or an incompetent person.

26. Defendant Jeffrey Shuren In His Official Capacity as Director of FDA CDRH is not currently in the military service, and therefore the Servicemembers Civil Relief Act does not apply.

I have attached to this declaration a true and correct copy of the proof of service on file with this Court for the above-named Defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2024 in Esparto, California

Signature: Mark Baker
Mark Baker
Plaintiff in Pro Per

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, Bar number, and address): Mark Baker <mbaker@softlights.org> 9450 SW Gemini Dr Beaverton, OR 97008 TELEPHONE NO.: 408-455-9233 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): MARK BAKER	FOR COURT USE ONLY
United States District Court, Eastern District of California STREET ADDRESS: 501 I St. Suite 4-200 MAILING ADDRESS: 501 I St. Suite 4-200 CITY AND ZIP CODE: Sacramento 95814 BRANCH NAME: Robert T. Matsui Federal Courthouse	
PLAINTIFF/PETITIONER: MARK BAKER	CASE NUMBER:
DEFENDANT/RESPONDENT: UNITED STATES FOOD AND DRUG ADMINISTRATION; ET AL	2:24-CV-00278-KJM-DB
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: REF-14825420

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of (specify documents):
SUMMONS; COMPLAINT

3. a. Party served (specify name of party as shown on documents served):
US Food and Drug Administration

b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b whom substituted service was made) (specify name and relationship to the party named in item 3a):

4. Address where the party was served:
10903 New Hampshire Ave, Silver Spring, MD 20903

5. I served the party (check proper box)

a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): at (time):

b. **by substituted service.** On (date): **02/20/2024** at (time): **12:00 PM** I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
Christina Brown, I delivered the documents to Christina Brown who identified themselves as the employee with identity confirmed by subject saying yes when named. The individual accepted service with direct delivery. The individual appeared to be a blonde-haired white female contact 35-45 years of age, 5'4"-5'6" tall and weighing 160-180 lbs.

- (1) **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
- (2) **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
- (3) **(physical address unknown)** a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
- (4) I thereafter caused to be mailed (by first class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc § 415.20). Documents were mailed on (date): from (city): or a declaration of mailing is attached.
- (5) I attach a **declaration of diligence** stating actions taken first to attempt personal service.

BY FAX



PLAINTIFF/PETITIONER: MARK BAKER	CASE NUMBER:
DEFENDANT/RESPONDENT: UNITED STATES FOOD AND DRUG ADMINISTRATION; ET AL	2:24-CV-00278-KJM-DB

- c. **by mail and acknowledgement of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): _____ (2) from (city): _____
- (3) with two copies of the *Notice and Acknowledgement of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgement of Receipt.*) (Code Civ. Proc., § 415.30)
- (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40)
- d. **by other means** (*specify means of service and authorizing code section*):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant.
- b. as the person sued under the fictitious name of (*specify*):
- c. as occupant.
- d. On behalf of (*specify*) **US Food and Drug Administration**
under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. **Person who served papers**

- a. Name: **Duclos Keusseu**
- b. Address: **8610 Shorthills Court, Clinton, MD 20735**
- c. Telephone number: **571-471-6851**
- d. The fee for service was: **\$ 75.00**
- e. I am:

- (1) not a registered California process server.
- (2) exempt from registration under Business and Professions Code section 22350(b).
- (3) registered California process server:
- (i) owner employee independent contractor. For: _____
- (ii) Registration No.: _____ Registration #: _____
- (iii) County: _____ County: _____

BY FAX



8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
or
9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 02/20/2024

Duclos Keusseu

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, Bar number, and address): Mark Baker <mbaker@softlights.org> 9450 SW Gemini Dr Beaverton, OR 97008 TELEPHONE NO.: 408-455-9233 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): MARK BAKER	FOR COURT USE ONLY
United States District Court, Eastern District of California STREET ADDRESS: 501 I St. Suite 4-200 MAILING ADDRESS: 501 I St. Suite 4-200 CITY AND ZIP CODE: Sacramento 95814 BRANCH NAME: Robert T. Matsui Federal Courthouse	
PLAINTIFF/PETITIONER: MARK BAKER	CASE NUMBER:
DEFENDANT/RESPONDENT: UNITED STATES FOOD AND DRUG ADMINISTRATION; ET AL	2:24-CV-00278-KJM-DB
DECLARATION OF REASONABLE DILIGENCE	Ref. No. or File No.: REF-14825420

Party to Serve:
US Food and Drug Administration

Documents:
SUMMONS; COMPLAINT

Service Address:
10903 New Hampshire Ave, Silver Spring, MD 20903

I declare the following attempts were made to effect service by personal delivery:
2/7/2024 8:56 PM: There was no answer at the address.

Person who performed diligence:
Duclos Keusseu
8610 Shorthills Court, Clinton, MD 20735
571-471-6851


I am not a registered California process server
 Registration No.:
 County:

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Date: 02/20/2024

BY FAX

 Duclos Keusseu
 (NAME OF PERSON WHO PERFORMED DILIGENCE)



 (SIGNATURE)



PROOF OF SERVICE BY MAIL

On April 22, 2024, I served the documents described as:

1. Application of Entry for Default
2. Declaration of Plaintiff

on all interested parties in this action by placing a true and correct copy thereof in a sealed envelope with first-class prepaid thereon, and deposited said envelope in the United States Mail at or in Sacramento, California, addressed to:

US Food and Drug Administration
10903 New Hampshire Ave.
Silver Spring, Maryland 20993

Robert Califf, FDA Commissioner
10903 New Hampshire Ave.
Silver Spring, Maryland 20993

Jeffrey Shuren, Director, FDA CDRH
10903 New Hampshire Ave.
Silver Spring, Maryland 20993

US Department of Health and Human Services
200 Independence Ave. SW
Washington, D.C. 20201

Xavier Becerra, Secretary, HHS
200 Independence Ave. SW
Washington, D.C. 20201

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2024 at Esparto, California

Signature: Mark Baker

Mark Baker