

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.)

I. (a) PLAINTIFFS

Matthew Lewis d/b/a US Finish

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

Raymond James Native American Housing Opportunities Fund, II, LLC

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Gregory J. Miner; Batemen Seidel, 888 SW 5th Ave., Ste. 1250, Portland OR 97204; 503-972-9932

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)

- | | | | |
|---|--|---|---|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input checked="" 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 |

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 checked="" 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 LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<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 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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 <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	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input 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	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

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):

28 USC 1332, 1441 and 1446

Brief description of cause:

Equitable claim of unjust enrichment and quantum meruit

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 1,742,830.89

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/23/2011

SIGNATURE OF ATTORNEY OF RECORD

Gregory J. Miner, WSBA 34699

FOR OFFICE USE ONLY

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

1 **Gregory J. Miner**
2 **Washington State Bar No. 34699**
3 BATEMAN SEIDEL MINER BLOMGREN
4 CHELLIS & GRAM, P.C.
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9 gminer@batemanseidel.com
10 *Of Attorneys for Defendant Raymond James Native*
11 *American Housing Opportunities Fund II, L.L.C.*

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1 court action against the Tulalip Housing Limited Partnership #3, a Washington
2 Limited Partnership; Mike Alva and Patti Gobin; and Chuck James and Jane Doe
3 James (collectively "**Defendants**"); and the Fund.

4 3. The Complaint was served on the Fund's registered agent on July 11, 2011. The
5 Fund filed its Notice of Appearance on July 27, 2011. A true and correct copy of
6 the Fund's Notice of Appearance is attached hereto as Exhibit 2.

7 4. On July 29, 2011, the Fund submitted its Rule 12(b)(2) and 12(b)(6) Motions to
8 Dismiss. A true and correct copy of the Fund's Motions to Dismiss,
9 Memorandum in Support, and Declaration of Ronald M. Diner are attached as
10 Exhibit 3.

11 5. Plaintiff submitted his Opposition to the Fund's Motions to Dismiss on August 8,
12 2011. A true and correct copy of Plaintiff's Opposition to the Fund's Motions to
13 Dismiss and Declaration of George W. Akers are attached as Exhibit 4.

14 6. On August 10, 2011, the Snohomish County Superior Court denied the Fund's
15 Rule 12(b)(2) Motion to Dismiss and struck the Fund's Rule 12(b)(6) Motion to
16 Dismiss without prejudice so that it could be resubmitted to the Court. A true and
17 correct copy of the Court's Order is attached as Exhibit 5.

18 7. On August 10, 2011, Plaintiff's counsel submitted a Notice of Unavailability,
19 stating that he would be unavailable until October 3, 2011. A true and correct
20 copy of the Notice of Unavailability is attached as Exhibit 6.

21 8. The Fund submitted its Answer and Affirmative Defenses on August 19, 2011. A
22 true and correct copy of the Fund's Answer and Affirmative Defenses is attached
23 hereto as Exhibit 7.

24 9. On August 23, 2011, Defendants, but not the Fund, submitted a Motion to
25 Dismiss for lack of personal jurisdiction and failure to join a necessary and
26 indispensable party. A true and correct copy of the Calendar Notice; Motion to

Dismiss; and the Declarations of Michael Alva, Michael Taylor, Charles James, and Melvin Sheldon are attached as Exhibit 8.

10. On August 29, 2011, Plaintiff submitted its Opposition to Defendants' Motion to Dismiss. A true and correct copy of the Opposition and the Declaration of George W. Akers are attached as Exhibit 9. Defendants submitted their Reply to Plaintiff's Opposition to their Motion to Dismiss on August 30, 2011. A true and correct copy of Defendants' Reply is attached as Exhibit 10.

11. On August 31, 2011, the state court orally dismissed all the defendants from the state court action other than the Fund (the Fund was not included in Defendants' Motion to Dismiss). The Court's Order dismissing Defendants was signed and entered on September 16, 2011. A true and correct copy of the September 16, 2011 Order is attached as Exhibit 11. The Fund is now the only remaining defendant in state court action.

12. Also on August 31, 2011, the Fund submitted its First Amended Answer and Affirmative Defenses. A true and correct copy of the Fund's First Amended Answer and Affirmative Defenses is attached hereto as Exhibit 12.

13. On September 2, 2011, the Fund submitted a Motion to Dismiss pursuant to CR 12(b)(1) for lack of personal jurisdiction and pursuant to CR 12(b)(7) for failure to join a necessary and indispensable party. A true and correct copy of the Fund's Motion to Dismiss is attached as Exhibit 13.

14. On September 6, 2011, Plaintiff submitted a Motion for Order Shortening Time and a Declaration of Jonathan R. Moore in support. The Snohomish County Superior Court entered an Order Shortening Time on September 7, 2011. A true and correct copy of the Motion, Declaration, and Order Shortening Time are attached as Exhibit 14.

15. Also on September 6, 2011, Plaintiff submitted a Motion to Continue the deadline

1 for Plaintiff's response to the Fund's Motion to Dismiss and the hearing on the
 2 Motion to Dismiss, as well as the Declaration of Jonathan R. Moore in support.
 3 The Court granted the Motion to Continue on September 7, 2011. A true and
 4 correct copy of the Motion, Declaration, and Order to Continue are attached as
 5 Exhibit 15. The new deadline for Plaintiff's response to the Fund's Motion to
 6 Dismiss was scheduled for September 25, 2011; the new hearing date was
 7 scheduled for October 14, 2011; and the discovery deadlines were stayed five
 8 weeks. Plaintiff has a pending Request for Production of Documents to the Fund,
 9 which response to the Request for Production of Documents has been extended to
 10 October 18, 2011 by the Court's Order. A true and correct copy of the new
 11 Calendar Note for the new hearing date is attached as Exhibit 16.

12 16. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332 on
 13 diversity of citizenship grounds and so this action may be removed to this Court
 14 by the Fund. Removal is pursuant to the provisions of 28 U.S.C. §1441 and
 15 §1446 in that it is a civil action where the matter in controversy exceeds the sum
 16 or value of \$75,000 and is between citizens of different states.

17 17. The Complaint alleged that Plaintiff Matthew Lewis is a Snohomish County,
 18 Washington resident doing business as US Finish. *See*, Ex. 1, ¶1.1. Therefore,
 19 Plaintiff is a citizen of the state of Washington. The Fund is an active Delaware
 20 limited liability company with its principal place of business located in St.
 21 Petersburg, Florida. *See*, Ex. 12, ¶3. Thus, the Fund is a citizen of the state of
 22 Delaware and the state of Florida. Plaintiff seeks an award for damages totaling
 23 \$1,742,830.89. *See*, Ex. 1, ¶¶4.4, 5.3. Complete diversity of citizenship exists
 24 between Plaintiff and Defendant. Information on complete diversity of
 25 citizenship of the remaining parties did not become readily ascertainable until, at
 26 the earliest, August 31, 2011 when the Snohomish County Superior Court orally

1 ruled that it was dismissing the other Defendants, or on September 16, 2011 when
2 the Snohomish County Superior Court signed the Order dismissing the other
3 defendants. *See*, Ex. 11; *see also*, *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 69, 117
4 S. Ct. 467 (1996) ("In a case not originally removable, a defendant who receives a
5 pleading or other paper indicating the post commencement satisfaction of federal
6 jurisdictional requirements-for example, by reason of the dismissal of a
7 nondiverse party-may remove the case to federal court within 30 days of receiving
8 such information"). Therefore, removal is appropriate pursuant to 28 U.S.C.
9 §§1332, 1441, and 1446.

10 18. A true and correct copy of this Notice of Removal is being filed this date with the
11 Clerk of the Superior Court, Snohomish County, Washington.

12 DATED this 23rd day of September, 2011.

13 

14 Gregory J. Miner
15 Washington State Bar No. 34699
16 BATEMAN SEIDEL MINER BLOMGREN
17 CHELLIS & GRAM, P.C.
18 888 SW Fifth Avenue, Ste. 1250
19 Portland, OR 97204
20 Telephone: 503.972.9932
21 Facsimile: 503.972.9952
22 gminer@batemanseidel.com
23 *Of Attorneys for Defendant Raymond James Native*
24 *American Housing Opportunities Fund II, L.L.C.*

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2011, I electronically filed the **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §1332, §1441 and §1446** with the Clerk of the court using the CM/ECF system which will send notification of such filing. I also certify that I served the same pleading on the following named person(s) on the date indicated below by regular mail to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at their last known address indicated below:

George W. Akers
Jonathan R. Moore
Montgomery Purdue Blankinship & Austin, PLLC
5500 Columbia Center
701 Fifth Avenue
Seattle, WA 98104
Of Attorneys for Plaintiff Matthew Lewis d/b/a US Finish

Mark A. Rowley
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1191 Second Ave., Suite 1800
Seattle, WA 98101

Michael E. Taylor
Tulalip Tribes
6406 Marine Dr.
Tulalip, WA 98271
Of Attorneys for Tulalip Housing Limited Partnership #3, Mike Alva and Patti Gobin, and Chuck James and Jane Doe James

DATED this 23rd day of September, 2011.



Gregory J. Miner