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FILED
2012 OCT 26 PM 2:46
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

5 Attorneys for Plaintiffs JIM MERAM and MAYSOON MERAM

DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 JIM MERAM an individual; and MAYSOON
11 MERAM, an individual,

CASE NO. 12CV2612 H WMC

12 Plaintiffs,

COMPLAINT

13 v.

14 UNITED STATES DEPARTMENT OF
15 AGRICULTURE FOREST SERVICE; and
16 DOES 1 through 100, inclusive

16 Defendants.

18
19 Plaintiffs JIM MERAM and MAYSOON MERAM (collectively "Plaintiffs"), by and through their
20 undersigned counsel, bring this Complaint against the above-named Defendant and in support thereof state
21 and allege the following upon information and belief:

22 NATURE OF THE ACTION

23 1. This is a wrongful death action against the United States under the Federal Tort Claims Act,
24 28 U.S.C. §§ 1346(b) and 2671, et seq., arising out of the tragic death of Plaintiffs' 16-year old son, Joseph
25 Meram, while he was hiking with family members in the Cleveland National Forest on July 6, 2011, in an
26 area known as Cedar Creek Falls in Ramona, California ("Cedar Creek Falls"), on land owned, controlled,
27 operated, supervised, managed, secured, and maintained by the United States Department of Agriculture
28 Forest Service ("U.S. Forest Service").

ORIGINAL

1 2. Despite a clear trend of increasing fatalities and serious injuries at Cedar Creek Falls
2 (including a notorious history of tragedies over the Fourth of July weekend), soaring rates of helicopter
3 rescues, and complaints from the local community concerning the dangerous conditions at Cedar Creek
4 Falls, the U.S. Forest Service sat idly and took no meaningful corrective action to make Cedar Creek Falls
5 safer until *after* Joseph Meram lost his life.

6 3. Time was of the essence, but the U.S. Forest Service ignored the barrage of emails, letters,
7 and phone calls from concerned residents, ignored the pleas from the local District Ranger to close Cedar
8 Creek Falls and address what she termed an “emergency situation,” and failed to undertake mandatory
9 duties to ensure public safety.

10 4. Indeed, weeks, days, and even hours before Joseph Meram perished, the local District
11 Ranger and other local officials pleaded with their superiors at the U.S. Forest Service to address the
12 “emergency situation” at Cedar Creek Falls. Internal U.S. Forest Service documents show that, as far back
13 as June 2011 (and likely much earlier), the U.S. Forest Service was preparing to close Cedar Creek Falls
14 until they implemented basic safety measures to address the dangerous conditions at Cedar Creek Falls and
15 prevent the loss of additional human lives. These proposed safety measures included, among other things,
16 implementing a permitting system, installing barriers at the cliff faces, improving trail safety, providing
17 volunteer rangers or patrol personnel, installing water fountains, and adding additional signs to warn of
18 the dangers and provide directional assistance to the growing hordes of hikers at Cedar Creek Falls. Each
19 of these measures could have independently prevented Joseph Meram’s tragic and premature death on July
20 6, 2011.

21 5. After one hour and fifteen minutes of hiking with family members at Cedar Creek Falls,
22 Joseph Meram – who was equipped with water – lost his footing, slipped, and fell over 80 feet to his death
23 at approximately 11:30 a.m., hitting his head on boulders along the way.

24 **JURISDICTION AND VENUE**

25 6. This action is brought pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§
26 1346(b) and 2671, et seq., which vests exclusive subject-matter jurisdiction of Federal Tort Claims
27 litigation in the Federal District Court. Liability of the United States is predicated specifically on 28 U.S.C.
28 §§ 1346(b)(1) and 2674 because the wrongful death and resulting damages that form the basis of this

1 complaint were proximately caused by the negligence, wrongful acts and/or omissions of employees of the
2 United States of America through its agency, the United States Department of Agriculture Forest Service.
3 These employees were acting within the course and scope of their office or employment, under
4 circumstances where the United States of America, if a private person, would be liable to the Plaintiffs in
5 the same manner and to the same extent as a private individual under the laws of the State of California.

6 7. On November 22, 2011, in conformity with 28 U.S.C. § 2675, Plaintiffs presented a written
7 notice to the United States Department of Agriculture Forest Service, Pacific Southwest Region, setting
8 forth Plaintiffs' claim for damages ("Claim").¹ Six months having elapsed without response, all conditions
9 precedent to a suit under the Federal Tort Claims Act have been met.

10 8. Venue in this Court is proper under 28 U.S.C.A. § 1402(b) as the acts complained of
11 occurred in the Southern District of California.

12 **PARTIES**

13 9. The Plaintiffs, Jim Meram and Maysoon Meram, the parents of Joseph Meram, are and at
14 all times herein have been, residents of the City of El Cajon, County of San Diego, State of California, and
15 presently reside at 1502 Burris Drive, El Cajon, California, 92019.

16 10. The Defendant, the United States Department of Agriculture Forest Service, is subject to
17 suit under the provisions of the Federal Tort Claims Act, 28 U.S.C.A. §§ 1346(b), 2671–2680.

18 **FACTUAL ALLEGATIONS**

19 **U.S. Forest Service Knew of the Hazardous Conditions at Cedar Creek Falls.**

20 11. The Cleveland National Forest is federal land managed by the U.S. Forest Service.

21 12. The U.S. Forest Service had knowledge of the dangerous conditions at Cedar Creek Falls.
22 Indeed, there have been an increasing number of deaths, serious injuries, and rescues at Cedar Creek Falls
23 over the past decade, including the weekend before Joseph Meram's tragic death.

24 13. During the claim process, Plaintiffs issued Freedom of Information Act ("FOIA") requests
25 to the U.S. Forest Service. After several months, the U.S. Forest Service produced a limited number of

26
27 _____
28 ¹ Pursuant to the Forest Service's request, on February 28, 2012, Plaintiffs resubmitted
separate claim forms for Jim Meram and Maysoon Meram.

1 internal documents which demonstrate its prior knowledge of the dangerous conditions at Cedar Creek
2 Falls and its repeated failure to undertake mandatory duties to ensure public safety at Cedar Creeks Falls.
3 Plaintiffs believe that the discovery process will reveal much more evidence demonstrating the U.S. Forest
4 Service's reckless disregard for the public safety hazards at Cedar Creek Falls.

5 14. Documents produced pursuant to Plaintiffs' FOIA request which evidence the U.S. Forest
6 Service's prior knowledge of the hazardous conditions at Cedar Creek Falls before it increased access to
7 that area include but are not limited to the following:

8 a. A January 15, 2002 report to the U.S. Forest Service entitled "Limiting Public
9 Access to Cedar Creek Falls" concluding **"I would like to reiterate that I feel the
10 USFS is neglecting an area that needs closer regulating. There are numerous
11 hazards as stated above that can only be alleviated by regulating and enforcing
12 the use of Cedar Creek Falls. We need to limit the access routes, control the
13 number of persons using the area and enforce the rules people are required to
14 follow while recreating there. Only then will the Forest Service be able to
15 ensure that the Falls area is preserved, while still providing for the safety of
16 the public we serve."** (Emphasis added.)

17 b. A July 26, 2006 memo to the U.S. Forest Service from Todd Barrow stating:
18 **"increasing access will only bring "inexperienced hikers to the area and will
19 increase the hazard . . . The heat is the killer, not the difficulty of the hike.
20 Creating easier access increases this safety concern, not eliminates it."**
21 (Emphasis added.)

22 c. A September 5, 2006 memo to the U.S. Park Service from Kathleen Kennedy
23 stating: **"My concern with this trailhead is that it will invite more unprepared hikers
24 to attempt to hike down to Cedar Creek Falls. Too many hikers have either died
25 down there or have had to be rescued at the expense of the tax payers . . . How
26 many people have died at Cedar Creek Falls? How many rescues have been
27 made this year alone? How much money does it cost the County to rescue
28 hikers? . . . At the very least, more warning signs need to be posted about the**

1 difficulty of that trail and the statistics of hikers rescued from there. The signs need
2 to be on the trail (50-100 yards down) as hikers head down the trail, not just at the
3 beginning." (Emphasis in original.)

4 15. Documents produced pursuant to Plaintiffs' FOIA request which evidence the U.S. Forest
5 Service's prior knowledge that the dangerous conditions at Cedar Creek Falls required remedial measures
6 include but are not limited to the following:

- 7 a. A May 11, 2011 letter to Supervisor Dianne Jacob from U.S. Forest Supervisor
8 Williams Metz (which copied U.S. Forest Service District Ranger Joan Friedlander)
9 describing public safety concerns and reporting that: "there were **48-helicopter**
10 **rescues at Cedar Creek Falls over the past year.**" The May 2011 letter further
11 references the "**longstanding concerns from San Diego County regarding the**
12 **considerable risks to the general public and costs associated with rescues that**
13 **involve both Federal and County levels of government.**" A list of "Talking
14 points" is attached to the letter which notes: "There were 6 rescues (5 dehydration,
15 1 heart) out of 1,000 visitors on Saturday alone . . . **Cedar Falls had the highest**
16 **number of rescues.** Further, 90% of the rescues involve airlifting individuals from
17 the site . . . (at) **a cost of \$26,000 . . .**" (Emphasis added.) Also attached to the May
18 2011 letter is a list of action items including "Recommendations" regarding
19 "signage and pamphlets displaying map and safety precautions" and a "Closure
20 order." The specific additional action items for Cedar Creek Falls include signs that
21 state "Proceed or enter at your own risk," "Warning or caution," "User created trail
22 not maintained," "Strenuous Steep terrain," "Falling tripping, loose soils,
23 dehydrations," and "**Falls closed to hiking and climbing due to dangerous**
24 **conditions.**" Among the additional recommendations for signs was an
25 "interpretative signs Kiosk," "Stay on trail," "Directional signing esp at
26 bottom," "General all hazards alert," "Direct them away from climbing and
27 user created trails to top of falls," "Order Post," "Close partitions to
28 hiking/climbing," and "Directional signing to falls." (Emphasis added.)

- 1 b. A June 12, 2011 memo to District Ranger Joan Friedlander reporting that: "From
2 a financial standpoint the San Diego County Sheriff's helicopter will be working
3 overtime. Today is Sunday, and we have heard the helicopter at least 4 times. **Last**
4 **year there were over 40 rescues from this area.** That was last summer when we
5 typically had 15 or 20 cars at the trail head. Does the county have unlimited
6 resources to handle the same number or more? **Can you live with the thought**
7 **that people may die in this area . . . Please let's work together to save this**
8 **whole area before something bad happens.**" (Emphasis added.)
- 9 c. A June 24, 2011 email from District Ranger Joan Friedlander to Anthony Rose
10 stating that **Cedar Creek Falls "needs emergency action . . . regardless of the**
11 **status of the [closure] order."** (Emphasis added.) District Ranger Joan
12 Friedlander asked Mr. Rose to forward this information to the Office of General
13 Counsel.
- 14 d. A U.S. Forest Service Briefing Paper dated June 28, 2011 (which again District
15 Ranger Joan Friedlander as a contact person) stating: "Cedar Creek Falls has long
16 been a popular recreational destination for forest users. **Historically, the rugged**
17 **access to this back country destination and water attraction has resulted in**
18 **numerous serious injuries including fatalities over the past several decades.**
19 **During the 2010 calendar year, rescue personnel conducted a total of 48**
20 **helicopter medical assist calls to the Cedar Falls area.** Ninety percent of these
21 calls were related to dehydration, the remainder associated with dangerous jumping
22 and diving off 70 ft cliffs." (Emphasis added.)
- 23 e. A June 30, 2011 memo from Joan Friedlander regarding the Forest Order for Cedar
24 Creek Falls, which references the changes that she made to that order which would
25 have been about one week before the subject accident. Unfortunately, that Order
26 No. 2 11 05 was not issued until two days after Joseph Meram perished.
- 27 f. A July 2, 2011 memo (on which District Ranger Joan Friedlander was copied) with
28 the subject line "Pleading for Help," stating: "**Maybe it is time to permanently**

1 close the trail as the Forest Service eventually did in Black Canyon when they
2 had the same problems there." (Emphasis added.) This memo was sent four days
3 before Joseph Meram fell to his death.

- 4 g. A July 3, 2011 memo (on which District Ranger Joan Friedlander was again copied)
5 with the same "**Pleading for help**" subject line stating: "**I understand that there**
6 **were 6 helicopter rescues yesterday. How much of our taxpayers money does**
7 **that cost us???** I talked with xxx who is a trained search and rescue person who
8 was riding his horse on the trail yesterday for a while in the afternoon. Three times
9 he had to put people on his horse to bring them up to the trail head because they
10 said they couldn't make it the rest of the way. **He also gave out a lot of water.**"
11 (Emphasis added.) This was only three days before Joseph Meram became
12 exhausted, dehydrated, lost, disoriented, and fell to his death.

13 16. Documents produced pursuant to Plaintiffs' FOIA request which evidence the U.S. Forest
14 Service's actions subsequent to Joseph Meram's death include but are not limited to the following:

- 15 a. Forest Order No. 2 11 05 stating in pertinent part: "**Though not a complete list,**
16 **the following incidents exemplify the importance of implementing this Forest**
17 **Order. During the Fourth of July weekend of 1998, a young man died after**
18 **drinking and lost his footing in an attempt to jump from the top of a 75 foot**
19 **cliff. In 2003, two young men were rescued in separate incidents. One youth**
20 **broke his back in four places, the other suffered paralysis. On the July 8,**
21 **2005, a 17 year old broke his neck diving into the pool. At this time the U.S.**
22 **Forest Service erected a sign indicating danger. In September of 2005, a 26 year**
23 **old was permanently paralyzed jumping from the 75 foot cliff. At times, the**
24 **water is 25 feet deep and then unknown to cliff jumpers and divers, evaporates to**
25 **only 4 to 12 feet depths as the water typically dries up as summer progresses.**
26 **According to the San Diego Sheriff's Office, Cedar Creek Falls and the San**
27 **Diego River Gorge trail leading to it have the highest amount of rescues in**
28 **the San Diego County Sheriff's jurisdiction . . . During the 2010 calendar year,**

1 rescue personnel conducted a total of 48 helicopter medical assist calls to the Cedar
2 Falls area. Ninety percent of these calls were related to dehydration, many of the
3 remainder associated with dangerous jumping and diving off 75 foot or taller cliffs.
4 **In the past month alone, on June 13, a person broke their leg in what could**
5 **have easily been a fatal jump that was documented on video by a visitor which**
6 **is available at District headquarters.”** (Emphasis added.)

7 b. A July 7, 2011 memo (on which District Ranger Joan Friedlander was copied) with
8 the subject line “Cedar Creek Falls closed due to death today” stating: “3 or 4 years
9 ago, a young man knocked on mom’s door seeking permission to use the phone.
10 He and his buddy were out at Cedar Creek Falls and **his friend slipped and fell**
11 **and hit the rocks. He had to leave him and run back to get help. His friend**
12 **was killed. This was a tragedy. I didn’t hear the news of this and yet it**
13 **happened. So yesterday’s death was not the first and it won’t be the last.”**
14 (Emphasis added).

15 c. An August 31, 2011 dialog notes stating, under the subheading “On Safety”:
16 **“Volunteer patrols could potentially be used more in the future to enhance**
17 **education and assistance efforts. Many stakeholders said that they are positive**
18 **that there is a great willingness by local volunteers to help that can be counted**
19 **on.”** (Emphasis added.) It appears that there were no Forest Rangers or volunteers
20 available to help direct park visitors on the very busy Fourth of July weekend of
21 2011.

22 17. As alleged above, many injuries and deaths at Cedar Creek Falls historically occurred during
23 the Fourth of July Weekend. One man died at Cedar Creek Falls during the Fourth of July weekend in
24 1998, and a 17-year old boy died at Cedar Creeks Falls on the Fourth of July weekend in 2005. Indeed,
25 the California Fire Department reported that, during the Fourth of July weekend in 2010, emergency crews
26 had to transport 10 or more injured, dehydrated, or heat-exhausted people out of Cedar Creek Falls. Eight
27 people were airlifted out of Cedar Creek Falls over the Fourth of July weekend in 2011. Several of these
28 people suffered heat exhaustion.

1 18. In light of growing concerns regarding the dangerous conditions at Cedar Creek Falls, the
2 U.S. Forest Service began drafting a “closure order” – which was in near-final form in June 2011 (and
3 likely much earlier). The U.S. Forest Service did not issue the closure order, however, until July 8, 2011
4 – two days after Joseph Meram perished at Cedar Creek Falls.

5 19. Ironically, the day Joseph Meram perished, Supervisor Dianne Jacob had scheduled a
6 meeting with the U.S. Forest Service and members of the community. According to a *Ramona Sentinel*
7 article dated July 14, 2011, this meeting was attended by 10 homeowners from the trailhead area,
8 representatives from CalFire and the county Traffic Advisory Committee, Lt. Cmdr. Todd Richardson
9 from the San Diego County Sheriff’s Department, Lt. Julie Sutton from the San Diego County Sheriff’s
10 Ramona substation, and William Metz, Cleveland National Forest supervisor. At the meeting, “pressure
11 mounted for closure of the falls and trail.” According to the article, the president of the San Diego Country
12 Estate Homeowners Association stated to the U.S. Forest Service: “**We all said just close it until you can
13 get your act together.**” (Emphasis added.)

14 **U.S. Forest Service Failed To Comply with NEPA and ARA.**

15 20. The U.S. Forest Service also failed to comply with mandatory duties under the National
16 Environmental Policy Act (“NEPA”). In the years leading up to Joseph Meram’s death, the U.S. Forest
17 Service acquired \$1.5 million from a San Diego River Conservancy (“SDRC”) grant, which was used to
18 improve the trails at Cedar Creek Falls and increase access to the area. In order to acquire these funds and
19 take these proposed actions, the U.S. Forest Service had to comply with the requirements of NEPA and
20 the Appeals Reform Act (ARA). The problem, however, was that the U.S. Forest Service had not yet
21 begun the NEPA process, which normally would have taken one to two years to complete. The deadline
22 to submit the project proposal to the SDRC was fast-approaching, so the NEPA process was “cut short”
23 and “pencil whipped” to get the package ready for submittal to the SDRC, according to an anonymous U.S.
24 Forest Service employee with extensive knowledge of the NEPA process surrounding the SDRC grant at
25 Cedar Creek Falls.

26 21. The NEPA process involves, among other things, an extensive analysis to determine the
27 effects of the proposed actions, including environmental, social, economic, and public health and safety
28 impacts. A large part of the NEPA process involves public and internal meetings with cooperators. These

1 meetings are intended to identify issues associated with the proposed project, including parking impacts,
2 increased use, and the ability of the U.S. Forest Service and other agencies to manage the area, including
3 enforcement of rules, increased fire threat, and search and rescues. These are the very same issues the U.S.
4 Forest Service faced after the project was "completed" and opened for use.

5 22. Since the NEPA process was cut short, these issues were never identified or mitigated, but
6 the SDRC grant money was allocated and the project moved forward. Many U.S. Forest Service
7 employees were not even aware of these developments until after the project was moving forward. As a
8 result, the trail head and trail were funded and built but none of the impending issues were ever properly
9 identified or dealt with. Consequently, the area was overwhelmed with visitors, and the U.S. Forest service
10 made a number of knee-jerk reactions and decisions to deal with the overcrowding and overuse (including
11 starting stakeholder meetings with the public, which should have been part of the NEPA process). During
12 the buildup of the trail, certain U.S. Forest Service employees provided input regarding the dangerous
13 conditions at Cedar Creek Falls, but no decisive action was taken until after Joseph Meram lost his life.
14 The \$1.5 million in improvements had the intended effect of increasing access, but they did nothing to
15 make Cedar Creek Falls safer and to prevent additional deaths and injuries.

16 23. A document prepared for an August 17, 2011 meeting between the U.S. Forest Service and
17 various stakeholders in the Cedar Creek Falls trailhead development project entitled "Briefing on the
18 expiration of the Cedar Creek Falls closure" stated: **"Over the July 4, 2011 weekend, there were 6**
19 **helicopter rescues and several assists.** All of the incidents were heat related except for one individual
20 reporting heart problems . . . There have been increasing numbers of jumping and diving into the falls,
21 despite prohibitions and these are being videotaped and posted on Cedar Creek Facebook page or on
22 U-tube--thus encouraging more use. **Despite temperatures of 104 degrees and higher this weekend,**
23 **people who were unfit and ill prepared came in droves. Recreation estimates 750-1000 people per**
24 **day Saturday and Sunday** though Monday was not near as busy. There were elderly, unfit individuals,
25 people with babies strapped on their chests, toddlers, young children and dogs, many of whom might not
26 be able to safely make the journey in extreme heat and ignored signage and our warnings by our personnel
27 (some turned around) . . . **Water has not been turned on at the trailhead due to problems with getting**
28 **an agreement through many agencies processes."** (Emphasis added.)

1 24. Another document prepared for the same August 17, 2011 meeting entitled "Talking points"
2 stated: "The problems that were brought to my attention 4 years ago were: Public safety concerns on 2
3 fronts: people getting dehydrated and airlifted out of the area and deaths and severe injury from people
4 diving or jumping from the falls. **The tragic fatality of a teenager on July 6, wasn't the first, nor will**
5 **it likely be the last.**" (Emphasis added.)

6 25. Minutes of the same August 17, 2011 meeting stated: "We must manage the access to this
7 recreational area and manage the influx of recreation use to ensure for adequate safety. Access results in
8 consequential impact to safety and the land . . . Improvement of the trailhead had positive and negative
9 results--easier accessibility for all coupled with an increase in partying. This resulted in the (incorrect)
10 perception that casual hikers can get down to the falls (and back up) easily. In 30 years of experience we
11 have always had management challenges and rescues, but the magnitude has increased dramatically in the
12 past year. Now we have an 'oversubscribed' resource. . . **So far education has been inadequate to send**
13 **the message to people that it is a difficult hike. The improved trailhead gives a false impression."**
14 (Emphasis added.)

15 26. A draft U.S. Forest Service Briefing Paper dated March 29, 2012 stated: "On March 19,
16 2012, the U.S. District Court, Eastern District of California found that **the Forest Service (FS) regulations**
17 **exempting project decisions from notice, comment, and appeal when categorically excluded (CE)**
18 **from further analysis are in violation of the Appeals Reform Act (ARA)** and enjoined the FS from
19 following these regulations." (Emphasis added.) Thus, the U.S. Forest Service violated the ARA when it
20 unlawfully increased the access to Cedar Creek Falls without following the required notice, comment and
21 appeal procedures. **Furthermore, the U.S. Forest Service knew that these regulations had been**
22 **previously struck down by the Federal District Court and the Ninth Circuit Court of Appeals in**
23 **rulings issued in 2005 and 2006, respectively, yet it proceeded to disregard the ARA when it**
24 **unlawfully increased the access and the risks to users of Cedar Creek Falls.**

25 27. That same draft Briefing Paper states: "With the expiration of the Forest order on April 1,
26 2012, the entire trail system and the falls will become open for public use, use of alcohol on site and the
27 (sic) allow for cliff jumping (from heights over 75 ft) will resume. **The chances for a repeat fatality**
28 **(claim already filed against the Forest Service) is high.**" (Emphasis in original.)

Joseph Meram's Fatal Accident.

1
2 28. On July 6, 2011, Plaintiffs' son, Joseph Meram (age 16), along with his minor sister, Sarah
3 Meram, and four of their cousins, Fannr Korkis, Zaid Razukki, Dalia, and Lourd took a hiking trip to Cedar
4 Creek Falls in the Cleveland National Forest.

5 29. They arrived at Cedar Creek Falls at approximately 10:00 a.m. Lourd, Zaid, and Dalia
6 decided to take a trail leading to the pond below the waterfalls. Joseph and Fannr, equipped with water
7 bottles and athletic shoes, decided to take a different trail, which they reasonably believed also led to the
8 same pond.

9 30. After hiking for a brief period of time, they reached a "T" in the trail, where they had to
10 decide whether to turn left or right. They saw no signs along the trail (directional or otherwise), so they
11 decided to go left, reasonably believing this would lead them down to the pond below the waterfalls –
12 where they could meet up with the rest of their family.

13 31. The weather was very hot and the terrain was difficult and steep, with no barriers to protect
14 them from the steep cliffs. Along the trail, Joseph and Fannr had difficulty maintaining their balance on
15 the steep terrain. They were hiking roughly 10 feet apart. Eventually, they realized they were lost, so they
16 asked various people for directions. Joseph took a break to say a prayer.

17 32. After hiking for about 1 hour and 15 minutes, Fannr turned around during the hike and
18 noticed that Joseph was no longer next to him. He heard a splash in the water below. Joseph had fallen
19 from the top of Cedar Creek Falls around 11:30 a.m., striking his head on boulders before landing in the
20 pool below. Joseph Meram was pronounced dead shortly thereafter at 12:10 p.m. in the ambulance after
21 he failed to respond to CPR efforts.

22 33. Joseph was not looking to jump over the waterfall. He fell fully clothed with his running
23 shoes and basketball shorts on, and his wallet and cell phone in his pockets. The autopsy report confirms
24 that Joseph Meram struck his head on the rocks when he fell and that there was no alcohol or drugs in his
25 system.

26 34. Joseph told his mother the night before that he was going to hike and that he had no
27 intention of jumping.

28 35. This widely publicized fatal accident was investigated by the U.S. Forest Service and

1 resulted in a closure of Cedar Creek Falls to the public to implement a number of safety measures. This
2 closure was extended, in the words of Brian Harris of the U.S. Forest Service, to “give the Forest Service
3 time to design and implement a management plan to address issues of public safety, overcrowding and
4 resource impacts.” To date, the trail Joseph Meram took on July 6, 2011 is still closed to the public.

5 **THE DISCRETIONARY FUNCTION EXCEPTION IS INAPPLICABLE.**

6 36. The discretionary function exception does not apply to the facts of this case because, with
7 respect to the expansion of the access to Cedar Creek Falls, the U.S. Forest Service violated the Forest
8 Service Decisionmaking and Appeals Reform Act of 1992, 16 U.S.C. Section 1612 (ARA). The ARA
9 called for public notice and comment and appeal procedures which would have highlighted the known
10 severe risks that necessarily followed from increasing public access to Cedar Creek Falls without taking
11 essential additional safety measures. In not considering the increased avoidable risks to the public safety,
12 the U.S. Forest Service further violated the National Environmental Policy Act of 1969, 42 U.S.C.A.
13 Section 4332. These violations were purposeful and reckless in that they were done, without regard to
14 public safety, solely to take advantage of government grant money made available on prohibitively short
15 deadlines. The expansion of access to Cedar Creek Falls was thus rushed through, without following
16 established procedures, and in violation of the law. The result was that the U.S. Forest Service created
17 an “emergency” situation which put the public at greatly increased risk of death and serious injury. These
18 violations of mandatory statutory duties were a proximate cause of the death of Joseph Meram.

19 37. The death of Joseph Meram was further caused by the failure of the U.S. Forest Service to
20 perform mandatory duties to make Cedar Creek Falls safe for the public through, among other things,
21 issuing the closure order drafted in June 2011, implementing a permitting system, installing barriers at the
22 cliff faces, improving trail safety, providing volunteer rangers or patrol personnel, installing water
23 fountains, and adding additional signs to warn of the dangers and provide directional assistance to hikers
24 at Cedar Creek Falls.

25 38. Thus, the negligent or willful and wanton conduct of the U.S. Forest Service in failing to,
26 among other things, comply with the ARA and NEPA, and issue the closure order and shut down Cedar
27 Creek Falls prior to the Fourth of July weekend in 2011, implement a permitting system, install barriers
28 at the cliff faces, improve trail safety, provide volunteer rangers or patrol personnel, install water fountains,

1 and add additional signs to warn of the dangers and provide directional assistance to hikers at Cedar Creek
2 Falls, is not protected by the discretionary function exception to the Federal Tort Claims Act, U.S.C.A. §
3 2680(a).

4 39. There is no evidence that any discretion was exercised by anyone in authority to take any
5 of these available and necessary steps to prevent serious injury and loss of life in the face of this admitted
6 "emergency situation." Rather, in the face of the known grave risks to the public, the U.S. Forest Service
7 did nothing to prevent this avoidable accident. As a result, Joseph Meram's promising life was tragically
8 cut short.

9 **CLAIM FOR RELIEF**

10 **(Negligence)**

11 40. Plaintiffs herein incorporate by reference paragraphs 1 through 39, inclusive, as though
12 fully set forth herein.

13 41. The negligent failure of the U.S. Forest Service to, among other things, comply with the
14 ARA and NEPA, and issue the closure order and shut down Cedar Creek Falls prior to the Fourth of July
15 weekend in 2011, implement a permitting system, install barriers at the cliff faces, improve trail safety,
16 provide volunteer rangers or patrol personnel, install water fountains, and add additional signs to warn of
17 the dangers and provide directional assistance to hikers at Cedar Creek Fall, was the proximate cause of
18 the Plaintiffs' injuries.

19 42. The failure of the U.S. Forest Service to, among other things, comply with the ARA and
20 NEPA, and issue the closure order and shut down Cedar Creek Falls prior to the Fourth of July weekend
21 in 2011, implement a permitting system, install barriers at the cliff faces, improve trail safety, provide
22 volunteer rangers or patrol personnel, install water fountains, and add additional signs to warn of the
23 dangers and provide directional assistance to hikers at Cedar Creek Falls, was willful, wanton, or grossly
24 negligent.

25 43. Plaintiffs have suffered severe and permanent harm as the proximate result of the U.S.
26 Forest Service's negligent or willful and wanton conduct.

27 ///

28 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the United States for damages for the wrongful death of their son, as set forth in the Plaintiffs' previously submitted Federal Tort Claims in this case, and for such further and additional relief as the Court deems just and proper under the circumstances.

LAW OFFICES OF CHARLES S. LIMANDRI, APC

By: 

Charles S. LiMandri
Teresa Mendoza
Attorneys for Plaintiffs
JIM MERAM and MAYSOON MERAM

Dated: October 25, 2012

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

JIM MERAM and MAYSOON MERAM

(b) County of Residence of First Listed Plaintiff San Diego County

(EXCEPT IN U.S. PLAINTIFF CASES) CLERK U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

BY [Signature]

(c) Attorneys (Firm Name, Address, and Telephone Number) LAW OFFICES OF CHARLES S. LIMANDRI, APC P.O. Box 9120, Rancho Santa Fe, CA 92067 Tel: (858) 759-9930

DEFENDANTS

UNITED STATES DEPARTMENT OF AGRICULTURE FOREST SERVICE, and DOES 1 through 100, inclusive

County of Residence of First Listed Defendant

CALIFORNIA

NOTE:

(IN U.S. PLAINTIFF CASES ONLY) IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

DEPUTY

Attorneys (If Known)

12CV2612 H WMC

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
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

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

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, PERSONAL PROPERTY, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 Recopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

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. § 2671, et seq.

Brief description of cause: Wrongful Death

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

10/25/2012

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT # 44093 AMOUNT \$350.00 APPLYING IFP JUDGE MAG. JUDGE

10-26-12

ORIGINAL

DUPLICATE

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS044093
Cashier ID: nsiefken
Transaction Date: 10/26/2012
Payer Name: LAW OFFICE OF CHARLES

CIVIL FILING FEE

For: LAW OFFICE OF CHARLES
Case/Party: D-CAS-3-12-CV-002612-001
Amount: \$350.00

CHECK

Check/Money Order Num: 7526
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$53.00
charged for any returned check.