

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

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DISTRICT OF COLUMBIA,	)	
a municipal corporation,	)	
441 Fourth Street, N.W.	)	
Washington, D.C. 20001,	)	Civil Action No.
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
OPEN TECHNOLOGY FUND,	)	
2025 M Street, N.W., Suite 300	)	
Washington, D.C. 20036,	)	
	)	
Defendant.	)	

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**COMPLAINT TO RESOLVE  
CONTESTED NONPROFIT CORPORATE ACTION**

Plaintiff, the District of Columbia (the “District”), through its Attorney General, brings this action against Defendant Open Technology Fund (“OTF”), a District of Columbia nonprofit corporation, pursuant to D.C. Code §§ 20-401.20, *et seq.*, to resolve contested nonprofit corporation actions. In support of its Complaint, the District states as follows:

**INTRODUCTION**

1. Defendant Open Technology Fund (“OTF”) is a District of Columbia nonprofit corporation established for the public purpose of facilitating access to circumvention and communications technologies to journalists and audiences in countries where access to independent media is restricted. OTF works with other grantee organizations that are funded by the United States Agency for Global Media (“USAGM”) to promote freedom of access to independent, objective journalism overseas.

2. USAGM is an independent arm of the United States government that operates various media networks, including the Voice of America. Michael Pack was confirmed as the new Chief Executive Officer (“CEO”) of USAGM on June 4, 2020.

3. Shortly after being sworn in as the CEO of USAGM, Pack removed OTF’s Board of Directors and putatively installed a new Board of Directors of his choosing. Pack also moved to replace officers of OTF and asked his replacement Board to ratify his acts. Pack lacks authority to take these actions, making his removal and replacement of the Board and steps to remove officers *ultra vires* and illegal.

4. As an independent District nonprofit organization, the composition and governance of OTF’s Board of Directors is governed by the District’s Nonprofit Corporation Act (“NCA”), OTF’s Articles of Incorporation, and its bylaws. None of those sources grants the USAGM CEO the authority to remove and replace OTF’s Board of Directors or its officers. OTF’s original Board has instituted a challenge to Pack’s actions, issued a resolution disavowing the removal and replacement of the Board and officers, and provided the Attorney General notice of the dispute.

5. To prevent continued disruption to OTF’s abilities to carry out its nonprofit purpose, the District seeks a declaration from the Court recognizing the original Board as valid and voiding Pack’s replacement of that original Board and any OTF officers. To the extent necessary, the District also requests that that Court hold a meeting with affected parties, including the Attorney General, to resolve any disputed provisions within OTF’s bylaws regarding the authority to remove and select directors and officers.

### **PARTIES**

6. Plaintiff District of Columbia (“District”), a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the

government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is also responsible for ensuring District nonprofits operate for their specified public purposes and is specifically tasked with bringing suits in the Superior Court concerning contested corporate actions of District nonprofits. D.C. Code §§ 29-401.23 and 29-401.60.

7. Defendant Open Technology Fund (“OTF”) is an independent 501(c)(3) nonprofit organization incorporated under District of Columbia law. Its principal office is located in Washington, D.C., and it is registered to do business in Washington, D.C.

### **JURISDICTION**

8. The Court has jurisdiction over the subject matter of this case pursuant to D.C. Code §§ 11-921(a)(6) and 29-412.22.

9. The Court has personal jurisdiction over Defendant pursuant to D.C. Code §§ 13-422 and 13-423.

### **THE LEGAL FRAMEWORK GOVERNING CONTESTED NONPROFIT CORPORATE ACTIONS**

10. The District’s Nonprofit Corporation Act (“NCA”) regulates the governance of nonprofit organizations incorporated under District of Columbia law. Relevant provisions govern the establishment and composition of a board of directors, including procedures for the selection and removal of directors from the board. D.C. Code §§ 29-406.01 *et seq.* The general presumption under the NCA is that the board of directors is responsible for removing directors. *See* D.C. Code § 29-406.08(b), (c).

11. The NCA also broadly empowers the Attorney General to police nonprofits incorporated under District law, including the ability to intervene in or commence proceedings in matters of nonprofit governance for which notice must be given to the Attorney General under the NCA. D.C. Code § 29-401.60(b). One such matter is when there is a proceeding involving a contested corporate action by a charitable corporation. *Id.* § 29-401.23.

12. The NCA defines a “corporate action” that may be subject to Superior Court review to include “the suspension, removal, or expulsion of members, delegates, directors, members of a designated body, or officers of a nonprofit corporation.” *Id.* § 29-401.20(1).

13. If the nonprofit corporation’s bylaws include “a means of resolving a challenge to a corporate action... the Superior Court may enforce the articles or bylaws if appropriate.” D.C. Code § 20-401.22(c). When the bylaws contain no such provision, or if such a provision cannot effectively be enforced, then the “Superior Court may hear and determine the validity of the [contested] corporate action.” *Id.* § 20-401.22(a). “If it is determined that no valid corporate action has been taken, the Superior Court may order a meeting to be held in accordance with § 29-401.21.” *Id.* § 20-401.22(b).

14. When a corporate action has been taken without a valid meeting of the Board of Directors as required by the nonprofit corporation’s bylaws, “the Superior Court may summarily order a meeting to be held upon the application of... the Attorney General for the District of Columbia in the case of a charitable corporation.” *Id.* § 20-401.21(a). The Superior Court has the authority to “appoint an individual to hold the meeting under such orders and powers as the Superior Court may consider proper, and may take such action as may be required to give due notice of the meeting and convene and conduct the meeting in the interests of justice.” *Id.* § 20-401.21(b).

15. The Superior Court must provide “notice of the pendency of the proceedings” to resolve contested corporate actions “to all persons affected thereby.” *Id.* § 20-401.22(b).

**FACTS RELATED TO CONTESTED CORPORATION ACTION OF ATTEMPTED  
REMOVAL OF OTF’S BOARD OF DIRECTORS AND OFFICERS**

16. Formerly a program within Radio Free Asia – one of the broadcast networks overseen by the USAGM – in 2019, OTF became an independent nonprofit corporation incorporated under District of Columbia law and is recognized as a 501(c)(3) organization.

17. Throughout its existence, OTF has focused on promoting “worldwide expansion of unrestricted access by the public to information on the internet” by providing “circumvention and secure communications technologies” to journalists and others living in countries where access to independent media is restricted. OTF Bylaws, § 2.2.

18. Although a standalone organization, OTF helps with coordination across the broadcast networks operating under USAGM and provides access to circumvention technologies to journalists who contribute to these networks. To help fulfill this mission, OTF receives annual grants from USAGM. It received its first USAGM grant on September 26, 2019.

19. When it restructured as an independent District nonprofit corporation, OTF’s bylaws called for the creation of a Board of Directors. This original Board consisted of technical experts and individuals who were serving on the USAGM Board of Governors at the time OTF’s articles of incorporation and bylaws were adopted. These members include Leon Aron, Ambassador Ryan Crocker, Michael Kempner, Ambassador Karen Kornbluh, Ben Scott, William Schneider, and Chairman of the Board Kenneth Weinstein.

20. Michael Pack was first nominated to be Chief Executive Officer (“CEO”) of USAGM by President Trump in 2018. Pack’s appointment was confirmed by the Senate on June 4, 2020, and he was sworn in as CEO of USAGM on June 8, 2020.

21. On June 17, 2020, Michael Pack asserted authority to remove OTF's operational head and the members of its Board of Directors. Pack also claimed authority to install a replacement Board of Directors. In doing so, Pack relied on his "authorities as Chief Executive Officer (CEO) of the United States Agency for Global Media (USAGM), including under 22 USC 6209(d) and [OTF's] bylaws," as stated in a letter to the purportedly ousted CEO of OTF.

22. Pack appointed the following individuals as the purported new Board of Directors:

- Jonathan Alexandre (Senior Counsel, Liberty Counsel Action),
- Robert Bowes (Senior Advisor to the Secretary, U.S. Department of Housing and Urban Development),
- Bethany Kozma (Deputy Chief of Staff, United States Agency for International Development),
- Rachel Semmel (Communications Director, Office of Management and Budget),
- Emily Newman (Chief of Staff, USAGM), and
- Michael Pack (CEO, USAGM) as Chairman.

23. The following day, Pack asserted purported authority to remove Laura Cunningham from her position as OTF President. Cunningham at the time had also assumed the role of acting CEO of OTF.

24. On June 23, 2020, the original OTF Board of Directors filed an action challenging Pack's authority to remove and replace the original Board of Directors. *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH (D.D.C. June 23, 2020).

25. On July 2, 2020, the District Court issued an opinion denying OTF's motion for a temporary restraining order and preliminary injunction. The court found that the plain language

of Section 6209(d) of the International Broadcasting Act (“IBA”) did *not* grant Pack remove-and-replace authority for OTF’s Board of Directors. *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH, at 19 (D.D.C. July 2, 2020). The court proceeded, however, to attempt to interpret OTF’s bylaws in conjunction with the grant agreement between OTF and USAGM, finding that this combination of documents may confer remove-and-replace authority on the USAGM CEO. *Id.* at 24. The OTF Board of Directors has noticed an appeal of this decision.

26. On July 3, 2020, Pack informed OTF that he was appointing an acting CEO.

27. The General Counsel of OTF responded to Pack on July 6, 2020, informing him that the original Board of Directors did not accept Pack’s appointment of the new acting CEO and that Pack’s remove-and-replace authority was still the subject of ongoing litigation.

28. On the evening of July 6, Pack informed OTF that the Board of Directors he purportedly appointed had ratified Pack’s appointment of an acting CEO.

29. In the following days, USAGM personnel repeatedly attempted to effectuate the purported acting CEO’s onboarding process and enter OTF’s office space, but OTF continued to advise Pack and representatives from USAGM that such efforts would be rejected in light of the ongoing litigation and the original Board’s position that it retained governance authority over OTF.

30. On July 10, 2020, the original OTF Board of Directors met to take emergency action disavowing Pack’s removal and replacement of the OTF Board and officers. At this meeting, the original Board of Directors passed resolutions rejecting Pack’s dismissal and replacement of the original Board of Directors and affirming the status quo of OTF leadership, including Cunningham’s position as President and acting CEO of OTF.

31. By no later than July 10, 2020, the original OTF Board of Directors provided the Attorney General notice of its lawsuit challenging Pack's actions and the original OTF Board of Director's resolutions to disavow Pack's attempts to assert control of OTF.

32. Pack's purported removal and replacement of the OTF's original Board of Directors has impacted OTF's ability to effectively carry out its nonprofit purposes. Without clarity as to which Board is properly in place, OTF is effectively left leaderless and incapable of authorizing decisions on behalf of the nonprofit corporation that allow it to carry out its functions, including an inability to authorize funding for partner organizations or provide support for potential partner organizations. This sudden upheaval in leadership also leaves employees of the organization at risk of losing their jobs.

33. Neither OTF's bylaws nor the IBA, as incorporated by reference in the bylaws, provides the USAGM CEO with the removal and replacement authority Pack claims.

34. Mirroring the NCA, OTF's bylaws presume that the Board of Directors is responsible for both election and removal of directors. Section 5.2 of the bylaws provides for the election of individual directors by majority vote of the Board of Directors, and the Board of Directors may also fill any vacancy "occurring on the Board due to resignation or removal" by a majority vote "of the remaining Directors."

35. Section 6.12 of OTF's bylaws contains the only clear mechanism for removal of directors: "Any Director may be removed from office for cause by the vote of two-thirds (2/3) of those Directors present at a meeting of the Board of Directors at which a quorum is present, provided that all Directors, including the Director to be removed are provided no less than ten (10) days' notice of such meeting." OTF Bylaws, § 6.12.



36. The IBA contains no provision that grants the USAGM CEO authority to remove the directors of an independent grantee organization like OTF.

37. The dispute resolution mechanism in OTF's bylaws cannot effectively address the issue of competing Boards of Directors. Section 14.0 of OTF's bylaws allows members of the Board of Directors and other parties to challenge a corporate action, and "[s]uch contest or other challenge of the validity of an action taken by the Corporation or the Board of Directors shall be submitted for final disposition to the Board of Directors who shall resolve such challenge by a majority vote of all of the then-existing members of the Board of Directors." No such vote can meaningfully take place when the dispute at issue concerns the composition of the Board of Directors.

38. The only proper forum for contesting the removal and replacement of OTF's Board of Directors and CEO under the NCA is the Superior Court.

### **Count I**

#### **(Request for Declaration of Validity of Contested Corporation Action and Other Relief Pursuant to the District's Nonprofit Corporation Act)**

39. The District repeats and realleges Paragraphs 1 through 38 as if set forth fully in this Paragraph.

40. There presently exists disputes as to the proper governance of OTF due to Pack's asserted removal and replacement of OTF's Board of Directors and OTF officers.

41. The District's Nonprofit Corporation Act establishes the Superior Court as the proper forum for resolving contested corporate actions of District nonprofit corporations. Those disputes are to be resolved by the Superior Court pursuant to the procedures and substantive provisions set out in D.C. Code § 29-401.20, *et seq.*

42. Pack's assertion of authority to remove and replace the OTF Board of Directors is inconsistent with the District's Nonprofit Corporation Act and OTF's relevant governance documents.

43. Pack's removal and replacement of the OTF Board of Directors and any OTF officers was *ultra vires* and should be declared invalid.

44. The Superior Court should use its authority under D.C. Code §§ 29-401.21-22 to resolve these disputes, including convening a meeting of the interested parties pursuant to D.C. § 29-401.21 as necessary, and provide notice of the proceedings to resolve these disputes to all members of the competing Boards of Directors pursuant to § 29-401.22.

#### **Prayer for Relief**

WHEREFORE, the District requests that this Court:

- a. Declare that the removal of OTF's Board of Directors by USAGM CEO Michael Pack was unauthorized under OTF's bylaws, such that the removed Board of Directors is the valid, operating Board;
- b. Declare that any other actions by USAGM CEO Michael Pack and/or the replacement Board of Directors are invalid;
- c. Alternatively, if the Court finds that OTF's bylaws are ambiguous as to removal of the Board of Directors, order a meeting to be held, and appoint an individual to hold the meeting, with the participation of the Attorney General, to determine which Board of Directors is the valid, acting Board; and
- d. Order such other relief as the Court determines to be just and proper.

Date: July 20, 2020

Respectfully submitted,

KARL A. RACINE  
Attorney General for the District of Columbia

KATHLEEN KONOPKA  
Deputy Attorney General  
Public Advocacy Division

/s/ Jimmy R. Rock  
JIMMY R. ROCK (#493521)  
Assistant Deputy Attorney General  
Public Advocacy Division

/s/ Catherine Jackson  
CATHERINE JACKSON (#1005415)  
Chief, Public Integrity Section

/s/ Nicole S. Hill  
JENNIFER JONES (# 4673125)\*  
Senior Trial Counsel  
NICOLE HILL (#888324938)  
Assistant Attorney General  
Office of the Attorney General  
441 Fourth St., N.W., Suite 600-South  
Washington, D.C. 20001  
(202) 727-4171 (phone)  
(202) 730-1868 (fax)  
nicole.hill@dc.gov

**Attorneys for the District of Columbia**

\* Admitted to practice only in New York. Practicing in the District of Columbia under the direct supervision of Kathleen Konopka, a member of the D.C. Bar, pursuant to D.C. Court of Appeals Rule 49(c).



**Superior Court of the District of Columbia**  
**CIVIL DIVISION**  
**Civil Actions Branch**  
**500 Indiana Avenue, N.W., Suite 5000 Washington, D.C. 20001**  
**Telephone: (202) 879-1133 Website: www.dccourts.gov**

District of Columbia, a government corporation

Plaintiff

vs.

Case Number \_\_\_\_\_

Open Technology Fund, a non-profit organization  
 SERVE: Lauren Turner, Registered Agent/General Counsel  
 2101 L Street, N.W., Suite 300  
 Washington, D.C. 20037

Defendant

**SUMMONS**

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty one (21) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within seven (7) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Nicole Hill

*Clerk of the Court*

Name of Plaintiff's Attorney

D.C. Office of the Attorney General

By \_\_\_\_\_

Address  
441 4th Street N.W., Suite 600S Washington D.C. 20001

Deputy Clerk

(202) 727-4171

Date \_\_\_\_\_

Telephone

如需翻译, 请打电话 (202) 879-4828      Veuillez appeler au (202) 879-4828 pour une traduction      Để có một bản dịch, hãy gọi (202) 879-4828  
 법원을 위하여, (202) 879-4828로 전화하십시오      የአግርኛ ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

**IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.**

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

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 Veá al dorso la traducción al español



TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA

DIVISIÓN CIVIL

Sección de Acciones Civiles

500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001

Teléfono: (202) 879-1133 Sitio web: www.dccourts.gov

Demandante

contra

Número de Caso:

Demandado

CITATORIO

Al susodicho Demandado:

Por la presente se le cita a comparecer y se le requiere entregar una Contestación a la Demanda adjunta, sea en persona o por medio de un abogado, en el plazo de veintiún (21) días contados después que usted haya recibido este citatorio, excluyendo el día mismo de la entrega del citatorio. Si usted está siendo demandado en calidad de oficial o agente del Gobierno de los Estados Unidos de Norteamérica o del Gobierno del Distrito de Columbia, tiene usted sesenta (60) días, contados después que usted haya recibido este citatorio, para entregar su Contestación. Tiene que enviarle por correo una copia de su Contestación al abogado de la parte demandante. El nombre y dirección del abogado aparecen al final de este documento. Si el demandado no tiene abogado, tiene que enviarle al demandante una copia de la Contestación por correo a la dirección que aparece en este Citatorio.

A usted también se le requiere presentar la Contestación original al Tribunal en la Oficina 5000, sito en 500 Indiana Avenue, N.W., entre las 8:30 a.m. y 5:00 p.m., de lunes a viernes o entre las 9:00 a.m. y las 12:00 del mediodía los sábados. Usted puede presentar la Contestación original ante el Juez ya sea antes que usted le entregue al demandante una copia de la Contestación o en el plazo de siete (7) días de haberle hecho la entrega al demandante. Si usted incumple con presentar una Contestación, podría dictarse un fallo en rebeldía contra usted para que se haga efectivo el desagravio que se busca en la demanda.

SECRETARIO DEL TRIBUNAL

Nombre del abogado del Demandante

Por:

Dirección

Subsecretario

Fecha

Teléfono

如需翻译,请打电话 (202) 879-4828

Veillez appeler au (202) 879-4828 pour une traduction

Dé có môt bài dịch, hãy gọi (202) 879-4828

如需翻译,请打电话 (202) 879-4828

如需翻译,请打电话 (202) 879-4828

IMPORTANTE: SI USTED INCUMPLE CON PRESENTAR UNA CONTESTACIÓN EN EL PLAZO ANTES MENCIONADO O, SI LUEGO DE CONTESTAR, USTED NO COMPARECE CUANDO LE AVISE EL JUZGADO, PODRÍA DICTARSE UN FALLO EN REBELDÍA CONTRA USTED PARA QUE SE LE COBRE LOS DAÑOS Y PERJUICIOS U OTRO DESAGRAVIO QUE SE BUSQUE EN LA DEMANDA. SI ESTO OCURRE, PODRÍA RETENÉRSELE SUS INGRESOS, O PODRÍA TOMÁRSELE SUS BIENES PERSONALES O BIENES RAÍCES Y SER VENDIDOS PARA PAGAR EL FALLO. SI USTED PRETENDE Oponerse a esta acción, NO DEJE DE CONTESTAR LA DEMANDA DENTRO DEL PLAZO EXIGIDO.

Si desea conversar con un abogado y le parece que no puede pagarle a uno, llame pronto a una de nuestras oficinas del Legal Aid Society (202-628-1161) o el Neighborhood Legal Services (202-279-5100) para pedir ayuda o venga a la Oficina 5000 del 500 Indiana Avenue, N.W., para informarse sobre otros lugares donde puede pedirayuda al respecto.

Ve al dorso el original en inglés
See reverse side for English original

# Superior Court of the District of Columbia

## CIVIL DIVISION- CIVIL ACTIONS BRANCH INFORMATION SHEET

District of Columbia \_\_\_\_\_ Case Number: \_\_\_\_\_

vs Date: July 20, 2020

Open Technology Fund \_\_\_\_\_  One of the defendants is being sued  
in their official capacity.

Name: <i>(Please Print)</i> <b>Nicole Hill</b>	Relationship to Lawsuit <input checked="" type="checkbox"/> Attorney for Plaintiff <input type="checkbox"/> Self (Pro Se) <input type="checkbox"/> Other: _____
Firm Name: <b>DC Office of the Attorney General</b>	
Telephone No.: <b>(202) 727-4171</b> Six digit Unified Bar No.: <b>888324938</b>	

TYPE OF CASE:  Non-Jury       6 Person Jury       12 Person Jury  
 Demand: \$ \_\_\_\_\_ Other: Declaration to recognize original Board members

PENDING CASE(S) RELATED TO THE ACTION BEING FILED  
 Case No.: \_\_\_\_\_ Judge: \_\_\_\_\_ Calendar #: \_\_\_\_\_  
 Case No.: \_\_\_\_\_ Judge: \_\_\_\_\_ Calendar#: \_\_\_\_\_

NATURE OF SUIT: <i>(Check One Box Only)</i>		
<b>A. CONTRACTS</b>	<b>COLLECTION CASES</b>	
<input type="checkbox"/> 01 Breach of Contract <input type="checkbox"/> 02 Breach of Warranty <input type="checkbox"/> 06 Negotiable Instrument <input type="checkbox"/> 07 Personal Property <input type="checkbox"/> 13 Employment Discrimination <input type="checkbox"/> 15 Special Education Fees	<input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent <input type="checkbox"/> 27 Insurance/Subrogation <input type="checkbox"/> 07 Insurance/Subrogation <input type="checkbox"/> 28 Motion to Confirm Arbitration Award (Collection Cases Only)	<input type="checkbox"/> 16 Under \$25,000 Consent Denied <input type="checkbox"/> 18 OVER \$25,000 Consent Denied <input type="checkbox"/> 26 Insurance/Subrogation <input type="checkbox"/> 34 Insurance/Subrogation
<b>B. PROPERTY TORTS</b>		
<input type="checkbox"/> 01 Automobile <input type="checkbox"/> 03 Destruction of Private Property <input type="checkbox"/> 05 Trespass <input type="checkbox"/> 02 Conversion <input type="checkbox"/> 04 Property Damage <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a)		
<b>C. PERSONAL TORTS</b>		
<input type="checkbox"/> 01 Abuse of Process <input type="checkbox"/> 10 Invasion of Privacy <input type="checkbox"/> 17 Personal Injury- (Not Automobile, Not Malpractice) <input type="checkbox"/> 02 Alienation of Affection <input type="checkbox"/> 11 Libel and Slander <input type="checkbox"/> 18 Wrongful Death (Not Malpractice) <input type="checkbox"/> 03 Assault and Battery <input type="checkbox"/> 12 Malicious Interference <input type="checkbox"/> 19 Wrongful Eviction <input type="checkbox"/> 04 Automobile- Personal Injury <input type="checkbox"/> 13 Malicious Prosecution <input type="checkbox"/> 20 Friendly Suit <input type="checkbox"/> 05 Deceit (Misrepresentation) <input type="checkbox"/> 14 Malpractice Legal <input type="checkbox"/> 21 Asbestos <input type="checkbox"/> 06 False Accusation <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) <input type="checkbox"/> 22 Toxic/Mass Torts <input type="checkbox"/> 07 False Arrest <input type="checkbox"/> 16 Negligence- (Not Automobile, Not Malpractice) <input type="checkbox"/> 23 Tobacco <input type="checkbox"/> 08 Fraud <input type="checkbox"/> 24 Lead Paint		

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# Information Sheet, Continued

## C. OTHERS

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|---|---|
| <input type="checkbox"/> 01 Accounting                                  | <input type="checkbox"/> 17 Merit Personnel Act (OEA)   |
| <input type="checkbox"/> 02 Att. Before Judgment                        | (D.C. Code Title 1, Chapter 6)  |
| <input type="checkbox"/> 05 Ejectment                                   | <input type="checkbox"/> 18 Product Liability   |
| <input type="checkbox"/> 09 Special Writ/Warrants<br>(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,<br>Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication                        | <input type="checkbox"/> 29 Merit Personnel Act (OHR)   |
| <input type="checkbox"/> 11 Writ of Replevin                            | <input type="checkbox"/> 31 Housing Code Regulations  |
| <input type="checkbox"/> 12 Enforce Mechanics Lien                      | <input type="checkbox"/> 32 Qui Tam   |
| <input checked="" type="checkbox"/> 16 Declaratory Judgment             | <input type="checkbox"/> 33 Whistleblower   |

## II.

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> 03 Change of Name                                 | <input type="checkbox"/> 15 Libel of Information                                    | <input type="checkbox"/> 21 Petition for Subpoena<br>[Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic                      | <input type="checkbox"/> 19 Enter Administrative Order as<br>Judgment [ D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien                   |
| <input type="checkbox"/> 08 Foreign Judgment/International                 | 2-1802.03 (h) or 32-151 9 (a)]  | <input type="checkbox"/> 23 Rule 27(a)(1)<br>(Perpetuate Testimony)  |
| <input type="checkbox"/> 13 Correction of Birth Certificate                | <input type="checkbox"/> 20 Master Meter (D.C. Code §                               | <input type="checkbox"/> 24 Petition for Structured Settlement       |
| <input type="checkbox"/> 14 Correction of Marriage<br>Certificate          | 42-3301, et seq.)   | <input type="checkbox"/> 25 Petition for Liquidation                 |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle)  |   |  |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) |   |  |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other)    |   |  |

## D. REAL PROPERTY

- |  |  |
|--|--|
| <input type="checkbox"/> 09 Real Property-Real Estate                | <input type="checkbox"/> 08 Quiet Title                                  |
| <input type="checkbox"/> 12 Specific Performance                     | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted           |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain)            | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied            |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale       | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) |  |

/s/ Nicole S. Hill

Attorney's Signature

July 20, 2020

Date

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

_____ )	
DISTRICT OF COLUMBIA, )	
a municipal corporation, )	
441 Fourth Street, N.W. )	Civil Action No. 2020 CA 003158 B
Washington, D.C. 20001, )	
)	
Plaintiff, )	
)	
v. )	
)	
OPEN TECHNOLOGY FUND, )	
2025 M Street, N.W., Suite 300 )	
Washington, D.C. 20036, )	
)	
Defendant. )	
_____ )	

**COMPLAINT TO RESOLVE  
CONTESTED NONPROFIT CORPORATE ACTION**

Plaintiff, the District of Columbia (the “District”), through its Attorney General, brings this action against Defendant Open Technology Fund (“OTF”), a District of Columbia nonprofit corporation, pursuant to D.C. Code §§ 20-401.20, *et seq.*, to resolve contested nonprofit corporation actions. In support of its Complaint, the District states as follows:

**INTRODUCTION**

1. Defendant Open Technology Fund (“OTF”) is a District of Columbia nonprofit corporation established for the public purpose of facilitating access to circumvention and communications technologies to journalists and audiences in countries where access to independent media is restricted. OTF works with other grantee organizations that are funded by the United States Agency for Global Media (“USAGM”) to promote freedom of access to independent, objective journalism overseas.



2. USAGM is an independent arm of the United States government that operates various media networks, including the Voice of America. Michael Pack was confirmed as the new Chief Executive Officer (“CEO”) of USAGM on June 4, 2020.

3. Shortly after being sworn in as the CEO of USAGM, Pack removed OTF’s Board of Directors and putatively installed a new Board of Directors of his choosing. Pack also moved to replace officers of OTF and asked his replacement Board to ratify his acts. Pack lacks authority to take these actions, making his removal and replacement of the Board and steps to remove officers *ultra vires* and illegal.

4. As an independent District nonprofit organization, the composition and governance of OTF’s Board of Directors is governed by the District’s Nonprofit Corporation Act (“NCA”), OTF’s Articles of Incorporation, and its bylaws. None of those sources grants the USAGM CEO the authority to remove and replace OTF’s Board of Directors or its officers. OTF’s original Board has instituted a challenge to Pack’s actions, issued a resolution disavowing the removal and replacement of the Board and officers, and provided the Attorney General notice of the dispute.

5. To prevent continued disruption to OTF’s abilities to carry out its nonprofit purpose, the District seeks a declaration from the Court recognizing the original Board as valid and voiding Pack’s replacement of that original Board and any OTF officers. To the extent necessary, the District also requests that that Court hold a meeting with affected parties, including the Attorney General, to resolve any disputed provisions within OTF’s bylaws regarding the authority to remove and select directors and officers.

### **PARTIES**

6. Plaintiff District of Columbia (“District”), a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the

government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is also responsible for ensuring District nonprofits operate for their specified public purposes and is specifically tasked with bringing suits in the Superior Court concerning contested corporate actions of District nonprofits. D.C. Code §§ 29-401.23 and 29-401.60.

7. Defendant Open Technology Fund (“OTF”) is an independent 501(c)(3) nonprofit organization incorporated under District of Columbia law. Its principal office is located in Washington, D.C., and it is registered to do business in Washington, D.C.

### **JURISDICTION**

8. The Court has jurisdiction over the subject matter of this case pursuant to D.C. Code §§ 11-921(a)(6) and 29-412.22.

9. The Court has personal jurisdiction over Defendant pursuant to D.C. Code §§ 13-422 and 13-423.

### **THE LEGAL FRAMEWORK GOVERNING CONTESTED NONPROFIT CORPORATE ACTIONS**

10. The District’s Nonprofit Corporation Act (“NCA”) regulates the governance of nonprofit organizations incorporated under District of Columbia law. Relevant provisions govern the establishment and composition of a board of directors, including procedures for the selection and removal of directors from the board. D.C. Code §§ 29-406.01 *et seq.* The general presumption under the NCA is that the board of directors is responsible for removing directors. *See* D.C. Code § 29-406.08(b), (c).

11. The NCA also broadly empowers the Attorney General to police nonprofits incorporated under District law, including the ability to intervene in or commence proceedings in matters of nonprofit governance for which notice must be given to the Attorney General under the NCA. D.C. Code § 29-401.60(b). One such matter is when there is a proceeding involving a contested corporate action by a charitable corporation. *Id.* § 29-401.23.

12. The NCA defines a “corporate action” that may be subject to Superior Court review to include “the suspension, removal, or expulsion of members, delegates, directors, members of a designated body, or officers of a nonprofit corporation.” *Id.* § 29-401.20(1).

13. If the nonprofit corporation’s bylaws include “a means of resolving a challenge to a corporate action... the Superior Court may enforce the articles or bylaws if appropriate.” D.C. Code § 20-401.22(c). When the bylaws contain no such provision, or if such a provision cannot effectively be enforced, then the “Superior Court may hear and determine the validity of the [contested] corporate action.” *Id.* § 20-401.22(a). “If it is determined that no valid corporate action has been taken, the Superior Court may order a meeting to be held in accordance with § 29-401.21.” *Id.* § 20-401.22(b).

14. When a corporate action has been taken without a valid meeting of the Board of Directors as required by the nonprofit corporation’s bylaws, “the Superior Court may summarily order a meeting to be held upon the application of... the Attorney General for the District of Columbia in the case of a charitable corporation.” *Id.* § 20-401.21(a). The Superior Court has the authority to “appoint an individual to hold the meeting under such orders and powers as the Superior Court may consider proper, and may take such action as may be required to give due notice of the meeting and convene and conduct the meeting in the interests of justice.” *Id.* § 20-401.21(b).

15. The Superior Court must provide “notice of the pendency of the proceedings” to resolve contested corporate actions “to all persons affected thereby.” *Id.* § 20-401.22(b).

**FACTS RELATED TO CONTESTED CORPORATION ACTION OF ATTEMPTED  
REMOVAL OF OTF’S BOARD OF DIRECTORS AND OFFICERS**

16. Formerly a program within Radio Free Asia – one of the broadcast networks overseen by the USAGM – in 2019, OTF became an independent nonprofit corporation incorporated under District of Columbia law and is recognized as a 501(c)(3) organization.

17. Throughout its existence, OTF has focused on promoting “worldwide expansion of unrestricted access by the public to information on the internet” by providing “circumvention and secure communications technologies” to journalists and others living in countries where access to independent media is restricted. OTF Bylaws, § 2.2.

18. Although a standalone organization, OTF helps with coordination across the broadcast networks operating under USAGM and provides access to circumvention technologies to journalists who contribute to these networks. To help fulfill this mission, OTF receives annual grants from USAGM. It received its first USAGM grant on September 26, 2019.

19. When it restructured as an independent District nonprofit corporation, OTF’s bylaws called for the creation of a Board of Directors. This original Board consisted of technical experts and individuals who were serving on the USAGM Board of Governors at the time OTF’s articles of incorporation and bylaws were adopted. These members include Leon Aron, Ambassador Ryan Crocker, Michael Kempner, Ambassador Karen Kornbluh, Ben Scott, William Schneider, and Chairman of the Board Kenneth Weinstein.

20. Michael Pack was first nominated to be Chief Executive Officer (“CEO”) of USAGM by President Trump in 2018. Pack’s appointment was confirmed by the Senate on June 4, 2020, and he was sworn in as CEO of USAGM on June 8, 2020.

21. On June 17, 2020, Michael Pack asserted authority to remove OTF's operational head and the members of its Board of Directors. Pack also claimed authority to install a replacement Board of Directors. In doing so, Pack relied on his "authorities as Chief Executive Officer (CEO) of the United States Agency for Global Media (USAGM), including under 22 USC 6209(d) and [OTF's] bylaws," as stated in a letter to the purportedly ousted CEO of OTF.

22. Pack appointed the following individuals as the purported new Board of Directors:

- Jonathan Alexandre (Senior Counsel, Liberty Counsel Action),
- Robert Bowes (Senior Advisor to the Secretary, U.S. Department of Housing and Urban Development),
- Bethany Kozma (Deputy Chief of Staff, United States Agency for International Development),
- Rachel Semmel (Communications Director, Office of Management and Budget),
- Emily Newman (Chief of Staff, USAGM), and
- Michael Pack (CEO, USAGM) as Chairman.

23. The following day, Pack asserted purported authority to remove Laura Cunningham from her position as OTF President. Cunningham at the time had also assumed the role of acting CEO of OTF.

24. On June 23, 2020, the original OTF Board of Directors filed an action challenging Pack's authority to remove and replace the original Board of Directors. *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH (D.D.C. June 23, 2020).

25. On July 2, 2020, the District Court issued an opinion denying OTF's motion for a temporary restraining order and preliminary injunction. The court found that the plain language

of Section 6209(d) of the International Broadcasting Act (“IBA”) did *not* grant Pack remove-and-replace authority for OTF’s Board of Directors. *Open Technology Fund v. Pack*, No. 1:20-cv-01710-BAH, at 19 (D.D.C. July 2, 2020). The court proceeded, however, to attempt to interpret OTF’s bylaws in conjunction with the grant agreement between OTF and USAGM, finding that this combination of documents may confer remove-and-replace authority on the USAGM CEO. *Id.* at 24. The OTF Board of Directors has noticed an appeal of this decision.

26. On July 3, 2020, Pack informed OTF that he was appointing an acting CEO.

27. The General Counsel of OTF responded to Pack on July 6, 2020, informing him that the original Board of Directors did not accept Pack’s appointment of the new acting CEO and that Pack’s remove-and-replace authority was still the subject of ongoing litigation.

28. On the evening of July 6, Pack informed OTF that the Board of Directors he purportedly appointed had ratified Pack’s appointment of an acting CEO.

29. In the following days, USAGM personnel repeatedly attempted to effectuate the purported acting CEO’s onboarding process and enter OTF’s office space, but OTF continued to advise Pack and representatives from USAGM that such efforts would be rejected in light of the ongoing litigation and the original Board’s position that it retained governance authority over OTF.

30. On July 10, 2020, the original OTF Board of Directors met to take emergency action disavowing Pack’s removal and replacement of the OTF Board and officers. At this meeting, the original Board of Directors passed resolutions rejecting Pack’s dismissal and replacement of the original Board of Directors and affirming the status quo of OTF leadership, including Cunningham’s position as President and acting CEO of OTF.

31. By no later than July 10, 2020, the original OTF Board of Directors provided the Attorney General notice of its lawsuit challenging Pack's actions and the original OTF Board of Director's resolutions to disavow Pack's attempts to assert control of OTF.

32. Pack's purported removal and replacement of the OTF's original Board of Directors has impacted OTF's ability to effectively carry out its nonprofit purposes. Without clarity as to which Board is properly in place, OTF is effectively left leaderless and incapable of authorizing decisions on behalf of the nonprofit corporation that allow it to carry out its functions, including an inability to authorize funding for partner organizations or provide support for potential partner organizations. This sudden upheaval in leadership also leaves employees of the organization at risk of losing their jobs.

33. Neither OTF's bylaws nor the IBA, as incorporated by reference in the bylaws, provides the USAGM CEO with the removal and replacement authority Pack claims.

34. Mirroring the NCA, OTF's bylaws presume that the Board of Directors is responsible for both election and removal of directors. Section 5.2 of the bylaws provides for the election of individual directors by majority vote of the Board of Directors, and the Board of Directors may also fill any vacancy "occurring on the Board due to resignation or removal" by a majority vote "of the remaining Directors."

35. Section 6.12 of OTF's bylaws contains the only clear mechanism for removal of directors: "Any Director may be removed from office for cause by the vote of two-thirds (2/3) of those Directors present at a meeting of the Board of Directors at which a quorum is present, provided that all Directors, including the Director to be removed are provided no less than ten (10) days' notice of such meeting." OTF Bylaws, § 6.12.

36. The IBA contains no provision that grants the USAGM CEO authority to remove the directors of an independent grantee organization like OTF.

37. The dispute resolution mechanism in OTF's bylaws cannot effectively address the issue of competing Boards of Directors. Section 14.0 of OTF's bylaws allows members of the Board of Directors and other parties to challenge a corporate action, and "[s]uch contest or other challenge of the validity of an action taken by the Corporation or the Board of Directors shall be submitted for final disposition to the Board of Directors who shall resolve such challenge by a majority vote of all of the then-existing members of the Board of Directors." No such vote can meaningfully take place when the dispute at issue concerns the composition of the Board of Directors.

38. The only proper forum for contesting the removal and replacement of OTF's Board of Directors and CEO under the NCA is the Superior Court.

### **Count I**

#### **(Request for Declaration of Validity of Contested Corporation Action and Other Relief Pursuant to the District's Nonprofit Corporation Act)**

39. The District repeats and realleges Paragraphs 1 through 38 as if set forth fully in this Paragraph.

40. There presently exists disputes as to the proper governance of OTF due to Pack's asserted removal and replacement of OTF's Board of Directors and OTF officers.

41. The District's Nonprofit Corporation Act establishes the Superior Court as the proper forum for resolving contested corporate actions of District nonprofit corporations. Those disputes are to be resolved by the Superior Court pursuant to the procedures and substantive provisions set out in D.C. Code § 29-401.20, *et seq.*



42. Pack's assertion of authority to remove and replace the OTF Board of Directors is inconsistent with the District's Nonprofit Corporation Act and OTF's relevant governance documents.

43. Pack's removal and replacement of the OTF Board of Directors and any OTF officers was *ultra vires* and should be declared invalid.

44. The Superior Court should use its authority under D.C. Code §§ 29-401.21-22 to resolve these disputes, including convening a meeting of the interested parties pursuant to D.C. § 29-401.21 as necessary, and provide notice of the proceedings to resolve these disputes to all members of the competing Boards of Directors pursuant to § 29-401.22.

#### **Prayer for Relief**

WHEREFORE, the District requests that this Court:

- a. Declare that the removal of OTF's Board of Directors by USAGM CEO Michael Pack was unauthorized under OTF's bylaws, such that the removed Board of Directors is the valid, operating Board;
- b. Declare that any other actions by USAGM CEO Michael Pack and/or the replacement Board of Directors are invalid;
- c. Alternatively, if the Court finds that OTF's bylaws are ambiguous as to removal of the Board of Directors, order a meeting to be held, and appoint an individual to hold the meeting, with the participation of the Attorney General, to determine which Board of Directors is the valid, acting Board; and
- d. Order such other relief as the Court determines to be just and proper.

Date: July 20, 2020

Respectfully submitted,

KARL A. RACINE  
Attorney General for the District of Columbia

KATHLEEN KONOPKA  
Deputy Attorney General  
Public Advocacy Division

/s/ Jimmy R. Rock  
JIMMY R. ROCK (#493521)  
Assistant Deputy Attorney General  
Public Advocacy Division

/s/ Catherine Jackson  
CATHERINE JACKSON (#1005415)  
Chief, Public Integrity Section

/s/ Nicole S. Hill  
JENNIFER JONES (# 4673125)\*  
Senior Trial Counsel  
NICOLE HILL (#888324938)  
Assistant Attorney General  
Office of the Attorney General  
441 Fourth St., N.W., Suite 600-South  
Washington, D.C. 20001  
(202) 727-4171 (phone)  
(202) 730-1868 (fax)  
nicole.hill@dc.gov

**Attorneys for the District of Columbia**

\* Admitted to practice only in New York. Practicing in the District of Columbia under the direct supervision of Kathleen Konopka, a member of the D.C. Bar, pursuant to D.C. Court of Appeals Rule 49(c).



**Superior Court of the District of Columbia**  
**CIVIL DIVISION**  
**Civil Actions Branch**  
**500 Indiana Avenue, N.W., Suite 5000 Washington, D.C. 20001**  
**Telephone: (202) 879-1133 Website: www.dccourts.gov**

District of Columbia, a government corporation

Plaintiff

vs.

Case Number 2020 CA 003158 B

Open Technology Fund, a non-profit organization  
 SERVE: Lauren Turner, Registered Agent/General Counsel  
 2101 L Street, N.W., Suite 300  
 Washington, D.C. 20037

Defendant

**SUMMONS**

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty one (21) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within seven (7) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

**Nicole Hill**

Name of Plaintiff's Attorney

**D.C. Office of the Attorney General**

Address  
 441 4th Street N.W., Suite 600S Washington D.C. 20001

(202) 727-4171

Telephone

如需翻译,请打电话 (202) 879-4828

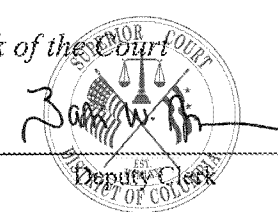
Veillez appeler au (202) 879-4828 pour une traduction

Đề có một bài dịch, hãy gọi (202) 879-4828

법원을 문의하세요, (202) 879-4828

የአግርኛ ትርጉም ለማግኘት (202) 879-4828 ይደውሉ

Clerk of the Court



By

07/20/2020

Date

**IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.**

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation  
 Veá al dorso la traducción al español



TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA

DIVISIÓN CIVIL

Sección de Acciones Civiles

500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001

Teléfono: (202) 879-1133 Sitio web: www.dccourts.gov

Demandante

contra

Número de Caso:

Demandado

CITATORIO

Al susodicho Demandado:

Por la presente se le cita a comparecer y se le requiere entregar una Contestación a la Demanda adjunta, sea en persona o por medio de un abogado, en el plazo de veintiún (21) días contados después que usted haya recibido este citatorio, excluyendo el día mismo de la entrega del citatorio. Si usted está siendo demandado en calidad de oficial o agente del Gobierno de los Estados Unidos de Norteamérica o del Gobierno del Distrito de Columbia, tiene usted sesenta (60) días, contados después que usted haya recibido este citatorio, para entregar su Contestación. Tiene que enviarle por correo una copia de su Contestación al abogado de la parte demandante. El nombre y dirección del abogado aparecen al final de este documento. Si el demandado no tiene abogado, tiene que enviarle al demandante una copia de la Contestación por correo a la dirección que aparece en este Citatorio.

A usted también se le requiere presentar la Contestación original al Tribunal en la Oficina 5000, sito en 500 Indiana Avenue, N.W., entre las 8:30 a.m. y 5:00 p.m., de lunes a viernes o entre las 9:00 a.m. y las 12:00 del mediodía los sábados. Usted puede presentar la Contestación original ante el Juez ya sea antes que usted le entregue al demandante una copia de la Contestación o en el plazo de siete (7) días de haberle hecho la entrega al demandante. Si usted incumple con presentar una Contestación, podría dictarse un fallo en rebeldía contra usted para que se haga efectivo el desagravio que se busca en la demanda.

SECRETARIO DEL TRIBUNAL

Nombre del abogado del Demandante

Por:

Dirección

Subsecretario

Fecha

Teléfono

如需翻译,请打电话 (202) 879-4828

Veillez appeler au (202) 879-4828 pour une traduction

Đề có một bài dịch, hãy gọi (202) 879-4828

如需翻译,请打电话 (202) 879-4828

如需翻译,请打电话 (202) 879-4828

IMPORTANTE: SI USTED INCUMPLE CON PRESENTAR UNA CONTESTACIÓN EN EL PLAZO ANTES MENCIONADO O, SI LUEGO DE CONTESTAR, USTED NO COMPARECE CUANDO LE AVISE EL JUZGADO, PODRÍA DICTARSE UN FALLO EN REBELDÍA CONTRA USTED PARA QUE SE LE COBRE LOS DAÑOS Y PERJUICIOS U OTRO DESAGRAVIO QUE SE BUSQUE EN LA DEMANDA. SI ESTO OCURRE, PODRÍA RETENÉRSELE SUS INGRESOS, O PODRÍA TOMÁRSELE SUS BIENES PERSONALES O BIENES RAÍCES Y SER VENDIDOS PARA PAGAR EL FALLO. SI USTED PRETENDE OPONERSE A ESTA ACCIÓN, NO DEJE DE CONTESTAR LA DEMANDA DENTRO DEL PLAZO EXIGIDO.

Si desea conversar con un abogado y le parece que no puede pagarle a uno, llame pronto a una de nuestras oficinas del Legal Aid Society (202-628-1161) o el Neighborhood Legal Services (202-279-5100) para pedir ayuda o venga a la Oficina 5000 del 500 Indiana Avenue, N.W., para informarse sobre otros lugares donde puede pedirayuda al respecto.

Ve al dorso el original en inglés
See reverse side for English original

# Superior Court of the District of Columbia

## CIVIL DIVISION- CIVIL ACTIONS BRANCH INFORMATION SHEET

District of Columbia \_\_\_\_\_ Case Number: 2020 CA 003158 B

vs Date: July 20, 2020

Open Technology Fund

One of the defendants is being sued  
in their official capacity.

Name: <i>(Please Print)</i> <b>Nicole Hill</b>	Relationship to Lawsuit
Firm Name: <b>DC Office of the Attorney General</b>	<input checked="" type="checkbox"/> Attorney for Plaintiff
Telephone No.: <b>(202) 727-4171</b> Six digit Unified Bar No.: <b>888324938</b>	<input type="checkbox"/> Self (Pro Se)
	<input type="checkbox"/> Other: _____

TYPE OF CASE:  Non-Jury  6 Person Jury  12 Person Jury  
Demand: \$ \_\_\_\_\_ Other: Declaration to recognize original Board members

### PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: \_\_\_\_\_ Judge: \_\_\_\_\_ Calendar #: \_\_\_\_\_

Case No.: \_\_\_\_\_ Judge: \_\_\_\_\_ Calendar#: \_\_\_\_\_

### NATURE OF SUIT: *(Check One Box Only)*

#### A. CONTRACTS

#### COLLECTION CASES

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> 01 Breach of Contract        | <input type="checkbox"/> 14 Under \$25,000 Pltf. Grants Consent | <input type="checkbox"/> 16 Under \$25,000 Consent Denied |
| <input type="checkbox"/> 02 Breach of Warranty        | <input type="checkbox"/> 17 OVER \$25,000 Pltf. Grants Consent  | <input type="checkbox"/> 18 OVER \$25,000 Consent Denied  |
| <input type="checkbox"/> 06 Negotiable Instrument     | <input type="checkbox"/> 27 Insurance/Subrogation               | <input type="checkbox"/> 26 Insurance/Subrogation         |
| <input type="checkbox"/> 07 Personal Property         | Over \$25,000 Pltf. Grants Consent                              | Over \$25,000 Consent Denied                              |
| <input type="checkbox"/> 13 Employment Discrimination | <input type="checkbox"/> 07 Insurance/Subrogation               | <input type="checkbox"/> 34 Insurance/Subrogation         |
| <input type="checkbox"/> 15 Special Education Fees    | Under \$25,000 Pltf. Grants Consent                             | Under \$25,000 Consent Denied                             |
|   | <input type="checkbox"/> 28 Motion to Confirm Arbitration       |   |
|   | Award (Collection Cases Only)                                   |   |

#### B. PROPERTY TORTS

- |   |   |                                      |
|---|---|--------------------------------------|
| <input type="checkbox"/> 01 Automobile                          | <input type="checkbox"/> 03 Destruction of Private Property | <input type="checkbox"/> 05 Trespass |
| <input type="checkbox"/> 02 Conversion                          | <input type="checkbox"/> 04 Property Damage                 |                                      |
| <input type="checkbox"/> 07 Shoplifting, D.C. Code § 27-102 (a) |   |                                      |

#### C. PERSONAL TORTS

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> 01 Abuse of Process            | <input type="checkbox"/> 10 Invasion of Privacy                            | <input type="checkbox"/> 17 Personal Injury- (Not Automobile, Not Malpractice) |
| <input type="checkbox"/> 02 Alienation of Affection     | <input type="checkbox"/> 11 Libel and Slander                              | <input type="checkbox"/> 18 Wrongful Death (Not Malpractice)                   |
| <input type="checkbox"/> 03 Assault and Battery         | <input type="checkbox"/> 12 Malicious Interference                         | <input type="checkbox"/> 19 Wrongful Eviction                                  |
| <input type="checkbox"/> 04 Automobile- Personal Injury | <input type="checkbox"/> 13 Malicious Prosecution                          | <input type="checkbox"/> 20 Friendly Suit                                      |
| <input type="checkbox"/> 05 Deceit (Misrepresentation)  | <input type="checkbox"/> 14 Malpractice Legal                              | <input type="checkbox"/> 21 Asbestos   |
| <input type="checkbox"/> 06 False Accusation            | <input type="checkbox"/> 15 Malpractice Medical (Including Wrongful Death) | <input type="checkbox"/> 22 Toxic/Mass Torts                                   |
| <input type="checkbox"/> 07 False Arrest                | <input type="checkbox"/> 16 Negligence- (Not Automobile, Not Malpractice)  | <input type="checkbox"/> 23 Tobacco  |
| <input type="checkbox"/> 08 Fraud                       |  | <input type="checkbox"/> 24 Lead Paint   |

SEE REVERSE SIDE AND CHECK HERE  IF USED

# Information Sheet, Continued

## C. OTHERS

- |   |   |
|---|---|
| <input type="checkbox"/> 01 Accounting                                  | <input type="checkbox"/> 17 Merit Personnel Act (OEA)   |
| <input type="checkbox"/> 02 Att. Before Judgment                        | (D.C. Code Title 1, Chapter 6)  |
| <input type="checkbox"/> 05 Ejectment                                   | <input type="checkbox"/> 18 Product Liability   |
| <input type="checkbox"/> 09 Special Writ/Warrants<br>(DC Code § 11-941) | <input type="checkbox"/> 24 Application to Confirm, Modify,<br>Vacate Arbitration Award (DC Code § 16-4401) |
| <input type="checkbox"/> 10 Traffic Adjudication                        | <input type="checkbox"/> 29 Merit Personnel Act (OHR)   |
| <input type="checkbox"/> 11 Writ of Replevin                            | <input type="checkbox"/> 31 Housing Code Regulations  |
| <input type="checkbox"/> 12 Enforce Mechanics Lien                      | <input type="checkbox"/> 32 Qui Tam   |
| <input checked="" type="checkbox"/> 16 Declaratory Judgment             | <input type="checkbox"/> 33 Whistleblower   |

## II.

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> 03 Change of Name                                 | <input type="checkbox"/> 15 Libel of Information                                    | <input type="checkbox"/> 21 Petition for Subpoena<br>[Rule 28-I (b)] |
| <input type="checkbox"/> 06 Foreign Judgment/Domestic                      | <input type="checkbox"/> 19 Enter Administrative Order as<br>Judgment [ D.C. Code § | <input type="checkbox"/> 22 Release Mechanics Lien                   |
| <input type="checkbox"/> 08 Foreign Judgment/International                 | 2-1802.03 (h) or 32-151 9 (a)]  | <input type="checkbox"/> 23 Rule 27(a)(1)<br>(Perpetuate Testimony)  |
| <input type="checkbox"/> 13 Correction of Birth Certificate                | <input type="checkbox"/> 20 Master Meter (D.C. Code §                               | <input type="checkbox"/> 24 Petition for Structured Settlement       |
| <input type="checkbox"/> 14 Correction of Marriage<br>Certificate          | 42-3301, et seq.)   | <input type="checkbox"/> 25 Petition for Liquidation                 |
| <input type="checkbox"/> 26 Petition for Civil Asset Forfeiture (Vehicle)  |   |  |
| <input type="checkbox"/> 27 Petition for Civil Asset Forfeiture (Currency) |   |  |
| <input type="checkbox"/> 28 Petition for Civil Asset Forfeiture (Other)    |   |  |

## D. REAL PROPERTY

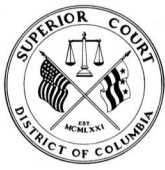
- |  |  |
|--|--|
| <input type="checkbox"/> 09 Real Property-Real Estate                | <input type="checkbox"/> 08 Quiet Title                                  |
| <input type="checkbox"/> 12 Specific Performance                     | <input type="checkbox"/> 25 Liens: Tax / Water Consent Granted           |
| <input type="checkbox"/> 04 Condemnation (Eminent Domain)            | <input type="checkbox"/> 30 Liens: Tax / Water Consent Denied            |
| <input type="checkbox"/> 10 Mortgage Foreclosure/Judicial Sale       | <input type="checkbox"/> 31 Tax Lien Bid Off Certificate Consent Granted |
| <input type="checkbox"/> 11 Petition for Civil Asset Forfeiture (RP) |  |

/s/ Nicole S. Hill

Attorney's Signature

July 20, 2020

Date



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION  
Civil Actions Branch  
500 Indiana Avenue, N.W., Suite 5000, Washington, D.C. 20001  
Telephone: (202) 879-1133 • Website: [www.dccourts.gov](http://www.dccourts.gov)

DISTRICT OF COLUMBIA  
Vs.  
OPEN TECHNOLOGY FUND

C.A. No. 2020 CA 003185 B

**INITIAL ORDER AND ADDENDUM**

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure (“Super. Ct. Civ. R.”) 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge’s name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the summons, the complaint, and this Initial Order and Addendum. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in Super. Ct. Civ. R. 4(m).

(3) Within 21 days of service as described above, except as otherwise noted in Super. Ct. Civ. R. 12, each defendant must respond to the complaint by filing an answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in Super. Ct. Civ. R. 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an initial scheduling and settlement conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than seven business days before the scheduling conference date.

No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge’s Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court’s website <http://www.dccourts.gov/>.

Chief Judge Robert E. Morin

Case Assigned to: Judge SHANA FROST MATINI  
Date: July 20, 2020  
Initial Conference: 9:30 am, Friday, October 23, 2020  
Location: Courtroom 517  
500 Indiana Avenue N.W.  
WASHINGTON, DC 20001

## **ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES**

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at <https://www.dccourts.gov/pa/>. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. D.C. Code § 16-2825 Two separate Early Mediation Forms are available. Both forms may be obtained at [www.dccourts.gov/medmalmediation](http://www.dccourts.gov/medmalmediation). One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 2900, 410 E Street, N.W. Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to [earlymedmal@dcsc.gov](mailto:earlymedmal@dcsc.gov). *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at [www.dccourts.gov/medmalmediation/mediatorprofiles](http://www.dccourts.gov/medmalmediation/mediatorprofiles). All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Actions Branch. The forms to be used for early mediation reports are available at [www.dccourts.gov/medmalmediation](http://www.dccourts.gov/medmalmediation).

Chief Judge Robert E. Morin