UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EDEN PINO, LESTER MONCADA, and WALTER ULLOA, on behalf of themselves and all others similarly situated,

Plaintiffs,

– against –

HARRIS WATER MAIN & SEWER CONTRACTORS, INC., STEVEN KOGEL, individually, and BRETT KOGEL, individually,

Defendants.

CLASS AND COLLECTIVE ACTION COMPLAINT

Case No.

Jury Trial Demanded

Plaintiffs LESTER MONCADA ("Moncada"), EDEN PINO ("Pino"), and WALTER ULLOA ("Ulloa") (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated, by and through their attorneys, Tarter Krinsky & Drogin LLP, as and for their Complaint against defendants HARRIS WATER MAIN & SEWER CONTRACTORS, INC. ("Harris"), STEVEN KOGEL, individually ("Steven Kogel"), and BRETT KOGEL, individually ("Brett Kogel") (collectively, "Defendants"), allege as follows:

NATURE OF THE ACTION

1. This is a civil action for damages and equitable relief based upon Defendants' willful violations of the Fair Labor Standards Act ("FLSA"), the New York Labor Law ("NYLL"), and the N.Y. Comp. Codes R. & Regs. ("NYCCRR") tit. 12 §142-2.2, by failing to pay earned wages, failing to pay earned overtime wages, making unlawful deductions from wages, failure to reimburse the costs of required uniforms, failure to launder or maintain required uniforms, failure to compensate employees for the laundering and maintenance of required uniforms, failure to pay earned wages when due, retaliation for complaining about the failure to

pay earned wages, failure to furnish employees with required pay rate notices and wage statements, and for Defendants' unjust enrichment from their foregoing unlawful acts.

PARTIES

2. Upon information and belief, Defendant Harris is a domestic business corporation in the County of Kings, State of New York, authorized to do business pursuant to the laws of the State of New York, with its principal place of business located at 2600 Atlantic Avenue, Brooklyn, New York 11207.

3. Defendant Harris' business includes, but is not limited to, the construction, installation, maintenance, repair, and/or replacement of residential and commercial water mains and sewer lines in the City of New York, State of New York.

4. Upon information and belief, Defendant Steven Kogel is an owner, an operator, the President, and the Chief Executive Officer of Defendant Harris.

5. Upon information and belief, Defendant Brett Kogel is an owner, an operator, and the Vice President of Defendant Harris.

6. Plaintiffs were employed by Defendant Harris as non-exempt crew members/field employees performing manual labor including, but not limited to, the construction, installation, maintenance, repair, and/or replacement of residential and commercial water mains and sewer lines in the City of New York, State of New York.

7. Plaintiff Moncada is a resident of the County of Queens, State of New York.

8. Plaintiff Pino is a resident of the County of Queens, State of New York.

9. Plaintiff Ulloa is a resident of the County of Suffolk, State of New York

JURISDICTION AND VENUE

10. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331, as this action is brought under the federal FLSA, 29 U.S.C. §§ 201, *et seq*.

11. This Court has supplemental jurisdiction over all state law claims brought in this action pursuant to 28 U.S.C. § 1367.

12. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391 because the Eastern District of New York has personal jurisdiction over Defendants and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the Eastern District of New York.

TOLLING AGREEMENT

13. The Parties entered into a Third Amended Tolling Agreement ("Tolling Agreement") dated August 29, 2017, by which the running of any statute(s) of limitations with respect to the allegations herein (and other time-related defenses) that had not, by law, statute or otherwise expired as of February 22, 2017, was tolled from February 22, 2017 until September 30, 2017 (approximately 31 weeks) (the "Tolling Period").

ALLEGATIONS COMMON TO ALL CLAIMS

14. Plaintiffs and the putative class and collective members were or are employed by Defendants as non-exempt crew members/field employees performing manual labor including, but not limited to, the construction, installation, maintenance, repair, and/or replacement of residential and commercial water mains and sewer lines in and throughout the City of New York, State of New York.

15. Defendants Steven Kogel and Brett Kogel were each an "employer" within the meaning of the FLSA, 29 U.S.C. § 203(d), and NYLL § 190(3) based on the level of control they

each had and/or exercised over the terms and conditions of Plaintiffs' employment.

16. Defendants each had the authority to and did make personnel decisions including, but not limited to, directing, permitting, authorizing, and supervising the work of Plaintiffs and the putative class and collective members, their work duties, their assigned jobs and work locations, their work hours and any increase or decrease in those work hours, and hiring and firing decisions, and whether required pay rate notices would be provided and, if so, what information would be included or omitted from such notices and in what language(s) such notices would be provided.

17. Defendants each also had the authority to and did make payroll decisions including, but not limited to, setting and modifying the compensation, regular rates and overtime rates of pay for Plaintiffs and the putative class and collective members, determining what hours of work would actually be paid, what deductions would be made from their wages, and what information would be included on their wages statements.

18. Plaintiffs and the putative class and collective members have been victims of Defendants' unlawful common and uniform policy, pattern and practice of failing to pay earned wages and earned overtime wages for hours they worked over 40 hours in a week.

19. Defendants instructed, directed, and/or permitted Plaintiffs and the putative class and collective members to work "off-the-clock" and did not pay them for those hours worked.

20. Defendants deducted one (1) hour a day from the wages, of Plaintiffs and the putative class and collective members, for a meal period, even though they were instructed, directed, and/or permitted to work through such meal period.

21. Plaintiffs and putative class and collective members have been victims of Defendants' unlawful common and uniform policy, pattern and practice of making unlawful

deductions from their wages.

22. Plaintiffs and putative class and collective members have been victims of Defendants' unlawful common and uniform policy, pattern and practice of failing to reimburse the costs of required uniforms, failing to launder or maintain required uniforms, and failing to compensate employees for the laundering and maintenance of required uniforms.

23. Plaintiffs and putative class and collective members have been victims of Defendants' unlawful common and uniform policy, pattern and practice of failing to pay earned wages when due.

24. Plaintiffs and putative class and collective members have been victims of Defendants' unlawful common and uniform policy, pattern and practice of failing to furnish employees with pay rate notices and wage statements as required by the NYLL.

25. At all times relevant, Defendants' aforementioned unlawful common and uniform policy, pattern and practice of violating the FLSA and the NYLL has been willful.

ADDITIONAL ALLEGATIONS SPECIFIC TO MONCADA

26. Plaintiff Moncada worked for Defendants from approximately 2005 until June 29, 2015.

27. However, Moncada's relevant employment period is from approximately February 22, 2011 to June 29, 2015.

28. During that time period, Moncada worked approximately 45 weeks in 2011, 52 weeks in 2012, 52 weeks in 2013, 50 weeks in 2014, and 26 weeks in 2015.

29. During those weeks, Moncada worked an average of 70 hours each week, 5 days a week. Approximately 55 of those work hours each week were "on-the-clock" and generally recorded in Defendants' log prior to 2013 and, thereafter, through Defendants' time clocks.

Moncada worked approximately 1.5-2.5 of hours prior to and/or after his scheduled shift each day which were "off-the-clock" hours not recorded in Defendants' logs and/or through the time clocks, for an average of approximately 10 hours per week. Defendants also automatically deducted 1 hour each work day for a meal period, although Moncada was required regularly to work through his meal period each day, totaling an additional 5 hours of unpaid work time each week.

30. Defendants only paid Moncada for approximately 40-45 hours for each week.

31. As such, Defendants failed to pay Moncada for approximately 25 hours of work each week. As such work was performed over 40 hours a week, Defendants were required to pay Moncada for the approximately 25 hours of unpaid worktime each week at 1.5 times his regular rate of pay.

32. Moncada's regular rate of pay was $16 per hour from 2011-2012, $17 per hour from 2013 through June 3, 2015, and $18 per hour thereafter through the end of his employment. As such, Moncada's overtime rate was $24 per hour from 2011-2012, $25.50 from 2013 through June 3, 2015, and $27 per hour thereafter through the end of his employment.

ADDITIONAL ALLEGATIONS SPECIFIC TO PINO

33. Plaintiff Pino worked for Defendants from approximately April 2010 through 2016.

34. However, Pino's relevant employment period is from approximately February 22, 2011 through December 2016.

35. During that time period, Pino worked approximately 45 weeks in 2011, 52 weeks in 2012, 13 weeks in 2013, and 52 weeks a year from 2014-2016.

36. During those weeks, Pino worked an average of 57.5-62 hours per week, 5 days a

week. Approximately 50-55 of those work hours each week were "on-the-clock" and generally recorded in Defendants' logs prior to 2013 and, thereafter, through Defendants' time clocks. Pino worked approximately 30 minutes prior to and/or after his scheduled shift each day which were "off-the-clock" hours not recorded in Defendants' logs and/or through the time clocks, for an average of approximately 2.5 hours per week. Defendants also automatically deducted 1 hour each work day for a meal period, although Pino was required regularly to work through his meal period each day, totaling an additional 5 hours of unpaid work time each week

37. Defendants only paid Pino for approximately 40-48 hours for each of those weeks.

38. As such, Defendants failed to pay Pino for approximately 15.5 hours of work each week. As such work was performed over 40 hours a week, Defendants were required to pay Pino for the approximately 15.5 hours of unpaid worktime each week at 1.5 times his regular rate of pay.

39. Defendants also failed to pay Pino for his last week of work covering approximately 50 additional hours of unpaid working time owed to Pino.

40. Pino's regular rate of pay was $14 per hour in 2011, $16 per hour from 2012-2013, $17 per hour in 2014, $21 per hour in 2015, and $25 per hour in 2016. As such, Pino's overtime rate was $21 per hour in 2011, $24 per hour from 2012-2013, $25.50 per hour in 2014, $31.50 per hour in 2015, and $37.50 per hour in 2016.

ADDITIONAL ALLEGATIONS SPECIFIC TO ULLOA

41. Plaintiff Ulloa worked for Defendants from approximately September 2010 through 2015.

42. However, Ulloa's relevant employment period is from approximately February

22, 2011 through December 2015.

43. During that time period, Ulloa worked approximately 45 weeks in 2011, and 50 weeks a year from 2012-2015.

44. During those weeks, with an exception of 17 weeks in 2014 and 2015 (during the relevant statute of limitations period as tolled by the Tolling Agreement) when Defendants reduced Ulloa's working hours in retaliation for his complaints to Defendants about their improper payment of wages, Ulloa worked an average of 60-65 hours per week, 5 days a week. Approximately 50-55 of those work hours each week were "on-the-clock" and generally recorded in Defendants' logs prior to 2013 and, thereafter, through Defendants' time clocks. Ulloa worked approximately 1 hour prior to and/or after his scheduled shift each day which were "off-the-clock" hours not recorded in Defendants' logs and/or through the time clocks, for an average of approximately 5 hours per week. Defendants also automatically deducted 1 hour each work day for a meal period, although Ulloa was required regularly to work through his meal period each day, totaling an additional 5 hours of unpaid work time each week.

45. Defendants only paid Ulloa for approximately 40-43 hours for each of those weeks.

46. As such, Defendants failed to pay Ulloa for approximately 20 hours of work each week. As such work was performed over 40 hours a week, Defendants were required to pay Ulloa for the approximately 20 hours of unpaid worktime each week at 1.5 times his regular rate of pay.

47. Ulloa's regular rate of pay was $17 per hour from 2011 through May 22, 2013, $18 per hour thereafter through the end of his employment. As such, Ulloa's overtime rate was $25.50 per hour from 2011 through May 22, 2013, and $27 per hour thereafter through the end of

of his employment.

48. Plaintiff Ulloa orally complained multiple times to Defendants, in 2014 and 2015, regarding Defendants' failure to properly pay overtime compensation. After each time Ulloa complained to Defendants, Defendants reduced his hours of work, in or about February 2014, May 2014, June 2014, September 2014, October 2014, November 2014, December 2014, January 2015, and February 2015, to an average of 30 hours a week each time he complained for a total of approximately 17 weeks (during the relevant statute of limitations period as tolled by the Tolling Agreement). As a result of Defendants' retaliation, Ulloa suffered lost wages for the difference between the average of the 30 hours he was restricted to work and the approximately 60-65 hours he would have otherwise worked each of those approximately 17 weeks.

ADDITIONAL ALLEGATIONS SPECIFIC TO THE FLSA COLLECTIVE

49. Plaintiffs bring the First and Second Causes of Action herein on behalf of themselves and all other similarly situated individuals, pursuant to 29 U.S.C. § 216(b), including: all persons who are or have been employed by Defendants as non-exempt crew members/field employees, at any time in the 3 years and approximately 31 weeks preceding the filing of the Complaint through the date of the final disposition of this action (together with Plaintiffs, referred to herein as the "FLSA Collective").

50. At all times relevant to the Complaint, members of the FLSA Collective were or are each an "employee" employed by Defendants within the meaning of the FLSA, 29 U.S.C. 28 § 203(e).

51. At all times relevant, Defendants have each been an "employer" within the meaning of the FLSA, 29 U.S.C. § 203(d).

52. At all times relevant, Steven Kogel and Brett Kogel were acting directly or

indirectly in the interest of Defendant Harris.

53. At all times relevant, Defendants, upon information and belief, have had an annual gross volume of sales made or business done that is not less than $500,000 and have been engaged in commerce or in the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203.

54. Defendants failed to pay the FLSA Collective for all hours worked and failed to pay the FLSA Collective an overtime premium of 1 ½ times their regular rate of pay for all work-hours in excess of 40 hours per workweek as required.

55. On information and belief, Defendants have further violated the FLSA recordkeeping regulations, 29 CFR 516, by failing to accurately record, report, and/or preserve records for the FLSA Collective including, but not limited to, hours worked each day, total hours worked each workweek, the basis on which their wages were paid, regularly hourly pay rates, total daily or weekly straight-time earnings, total overtime earnings for the workweek, all deductions from their wages, total wages paid each pay period, and date of payment and pay period covered by the payment.

56. Unless the Court promptly issues such a notice, the FLSA Collective, who have been unlawfully deprived of wages including overtime pay in violation of the FLSA, may be denied the opportunity to secure compensation to which they are entitled, and which has been unlawfully withheld from them by Defendants.

57. The FLSA Collective is readily identifiable and locatable through use of the Defendants' records. However, upon information and belief, the FLSA Collective potentially includes more than 80 current and former employees.

58. The FLSA Collective should be notified of and allowed to opt-in to this action

pursuant to 29 U.S.C. § 216(b).

ADDITIONAL ALLEGATIONS SPECIFIC TO THE RULE 23 CLASS

59. Plaintiffs bring the Third through Eighth Causes of Action herein on behalf of themselves and all other similarly situated individuals, pursuant to Fed. R. Civ. P. 23(a) and (b), including: all persons who are or have been employed by Defendants as non-exempt crew members/field employees, at any time during the 6 years and approximately 31 weeks prior to the filing of this Complaint through the date of the final disposition of this action (together with Plaintiffs, referred to herein as the "Rule 23 Class").

60. At all times relevant to the Complaint, Plaintiffs and the putative class and collective members were or are each an "employee" within the meaning of NYLL § 190(2).

61. At all times relevant, Defendants have each been an "employer" within the meaning of NYLL § 190(3).

62. The persons in the Rule 23 Class are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and facts on which the calculation of that number can be based are presently within the sole control of Defendants, upon information and belief, there more than 80 putative Rule 23 Class members.

63. In accordance with Fed. R. Civ. P. 23(b)(3), there are questions of law and fact common to the Rule 23 Class, including:

a. Whether Defendants failed to properly pay earned wages;

b. Whether Defendants failed to properly pay earned overtime wages;

c. Whether Defendants made unlawful deductions from wages;

d. Whether Defendants failed to reimburse the costs of purchasing required uniforms;

e. Whether Defendants failed to launder or maintain required uniforms;

f. Whether Defendants failed to compensate for the laundering and maintenance of required uniforms;

g. Whether Defendants failed to pay all earned wages when due;

h. Whether Defendants provided pay rate notices meeting the requirements outlined in NYLL § 195(1)(a) upon hire and upon any change in the rate of their pay or payday in the employees' primary language;

i. Whether Defendants provided wage statements meeting the requirements outlined in NYLL § 195(3) with each payment of wages, and;

j. Whether Defendants' actions were willful.

64. Plaintiffs' claims are typical of the claims of the Rule 23 Class, as they were, among other things, all employed in the same or similar capacities and subject to the same aforementioned unlawful common and uniform policy, pattern and practice of Defendants.

65. Plaintiffs will fairly and adequately protect the interests of the Rule 23 Class and have retained the undersigned counsel experienced in FLSA and NYLL class and collective action litigation.

66. Prosecuting separate actions by the individual Rule 23 Class members would create a risk of inconsistent and varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the Defendants.

67. Prosecuting separate actions by the individual Rule 23 Class members would also create a risk of adjudication with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impeded their ability to protect their interests.

68. The questions of law or fact common to the Rule 23 Class members predominates over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy, particularly in the context of this wage and hour litigation, where over 80 persons lack the individual resources to vigorously prosecute their claims and seek relief based on the Defendants' aforementioned unlawful common and uniform policy, pattern and practice which, upon information and belief, remain ongoing.

69. Defendants further violated the NYLL § 195 and its implementing regulations, 12 NYCRR 142-2.6, by failing to establish, maintain, and preserve for not less than six years contemporaneous, true, and accurate records for the Rule 23 Class including, but not limited to, pay notices and payroll records showing regularly hourly rate or rates of pay; the overtime rate or rates of pay; the amount of gross wages, itemized deductions from gross wages, and net wages paid, and contemporaneous, true, and accurate records, for each week worked, the hours worked (including the number of hours worked daily and weekly and the number of regular hours worked and the number of overtime hours worked).

70. Plaintiffs are entitled to and are claiming liquidated damages on their NYLL claims, unless and until the Rule 23 Class is certified, at which point Plaintiffs will waive their claim for liquidated damages under the NYLL.

AS AND FOR A FIRST CAUSE OF ACTION
(Defendants' unlawful failure to pay wages and overtime wages)
AN FLSA VIOLATION

71. Plaintiffs, on behalf of themselves and the FLSA Collective, repeat and reallege each of the foregoing allegations as if fully set forth herein.

72. Defendants employed Plaintiffs and the FLSA Collective for workweeks longer

than 40 hours and willfully failed to compensate Plaintiffs and the FLSA Collective for the time worked in excess of 40 hours per week at a rate of at least one and one-half times their respective regular rate of pay for each hour worked in excess of 40 per week, in violation of the requirement of Section 7 of the FLSA, 29 U.S.C. § 207(a)(1).

73. Defendants also failed to pay Plaintiffs and, upon information and belief, the FLSA Collective their respective hourly wage for time spent working through their meal periods, for which an hour was automatically deducted each day. To the extent the time spent working through their meal periods caused Plaintiffs and the FLSA Collective to work more than 40 hours in a week, Plaintiffs and the FLSA Collective are require to be compensated at one and one-half times their respective regular rate of pay.

74. Defendants also failed to pay Plaintiff Pino for his last week of work and owe him wages and overtime wages for approximately 50 additional hours of unpaid time. Upon information and belief, Defendants also failed to pay other FLSA Collective Members for their final week of work.

75. Defendants' violations of the FLSA, as described in this Collective Action Complaint, have been willful and intentional.

76. Defendants did not make a good faith effort to comply with the FLSA with respect to their compensation to Plaintiffs and the FLSA Collective.

77. Because Defendants' violations of the FLSA were willful, a 3 year statute of limitations applies pursuant to 29 U.S.C. § 255 in addition to the approximately 31 weeks during which Plaintiffs' claims were tolled pursuant to the Tolling Agreement.

78. As a consequence of Defendants' violations, Defendants are liable to Plaintiffs and the FLSA Collective in the amount of their unpaid overtime compensation, an additional

equal amount as liquidated damages, reasonable attorneys' fees, and costs of the action.

AS AND FOR A SECOND CAUSE OF ACTION
(Defendants' unlawful retaliation and discrimination)
AN FLSA VIOLATION

79. Plaintiffs, on behalf of themselves and the FLSA Collective, repeat and reallege each of the foregoing allegations as if fully set forth herein.

80. Defendants discriminated against Plaintiff Ulloa in violation of Section 215(a)(3) of the FLSA when they penalized him, by reducing his hours of work and corresponding wages, in retaliation for his complaints regarding Defendants' failure to properly pay overtime compensation.

81. As a result of Defendants' unlawful discrimination, Ulloa suffered lost wages for the difference between the average of the 30 hours he was restricted to work and the approximately 60-65 hours he would have otherwise worked each of those approximately 17 weeks.

82. Upon information and belief, Defendants also unlawfully discriminated against members of the FLSA Collective, because they complained to Defendants regarding Defendants' failure to properly pay overtime wages, in violation of violation of Section 215(a)(3) of the FLSA.

83. As a consequence of Defendants' violations, Defendants are liable to Plaintiff Ulloa and members of the FLSA Collective for legal and equitable relief, including without limitation, the payment of wages lost and an additional equal amount as liquidated damages, reasonable attorneys' fees, and costs of the action.

AS AND FOR A THIRD CAUSE OF ACTION
(Defendants' unlawful failure to pay wages and overtime wages)
A NYLL VIOLATION

84. Plaintiffs, on behalf of themselves and the Class, repeat and reallege each of the foregoing allegations as if fully set forth herein.

85. Defendants employed Plaintiffs and the Class for workweeks longer than 40 hours and willfully failed to compensate Plaintiffs and the Class for the time worked in excess of 40 hours per week at a rate of one and half times their regular hourly rate in violation of the requirements of the NYLL.

86. By the course of conduct set forth above, Defendants have violated NYLL § 650, *et seq*., and 12 N.Y.C.R.R. 142.

87. Defendants also failed to pay Plaintiffs and the Class their "off-the-clock" work that Defendants suffered or permitted them to work. To the extent the time spent performing "off-the-clock" work caused Plaintiffs and the Class to work more than 40 hours in a workweek, Plaintiffs and the Class are required to be compensated at one and one-half times their regular rate of pay.

88. Defendants' failure to pay earned wages and overtime wages to Plaintiffs and the Class was willful within the meaning of NYLL § 663.

89. As a consequence of the willful underpayment of wages, alleged above, Plaintiffs and the Class have incurred damages thereby and Defendants are indebted to them in the amount of the unpaid wages and overtime wages and such other legal and equitable relief due to Defendants' unlawful and willful conduct as the Court deems just and proper.

90. Plaintiffs, on behalf of themselves and the Class, seek recovery of attorneys' fees, interest, and costs to be paid by Defendants as provided by the NYLL.

AS AND FOR A FOURTH CAUSE OF ACTION
(Defendants' failure to pay wages when due)
A NYLL VIOLATION

91. Plaintiffs, on behalf of themselves and the Rule 23 Class, repeat and reallege each of the foregoing allegations as if fully set forth herein.

92. Defendants have failed to pay Plaintiffs and the Class all wages and overtime wages for the hours they worked for Defendants. The NYLL requires that wages be paid on the employee's regular payday for all hours worked.

93. Due to Defendants' violations of the NYLL, Plaintiffs and the Class are entitled to recover from Defendants their unpaid wages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

AS AND FOR A FIFTH CAUSE OF ACTION
(Defendants' failure to pay for purchasing, laundering and maintaining required uniforms)
A NYLL VIOLATION

94. Plaintiffs, on behalf of themselves and the Class, repeat and reallege each of the foregoing allegations as if fully set forth herein.

95. The NYLL and the regulations promulgated thereunder, 12 NYCRR §142-2.5(c), provide that where an employee purchases a required uniform, the employee shall be reimbursed by the employer for the cost thereof not later than the time of the next payment of wages, and where an employer fails to launder or maintain required uniforms for any employee, the employer shall pay such employee, in addition to the minimum wage, the following amount for employees who work more than 30 hours per week: $9.00 per week on and after July 24, 2009; $9.95 per week on and after December 31, 2013; $10.90 per week on and after December 31, 2014; $11.20 per week on and after December 31, 2015; $13.70 on and after December 31, 2016, and; $16.20 on and after December 31, 2017.

96. Defendants required Plaintiffs and the Rule 23 Class to wear a uniform during the performance of their employment duties.

97. Defendants required Plaintiffs and, upon information and belief, the Rule 23 Class, to purchase required uniforms.

98. Defendants unlawfully failed to reimburse Plaintiffs and, upon information and belief, the Rule 23 Class for the costs of purchasing required uniforms.

99. Defendants failed to launder or maintain required uniforms, and unlawfully failed to pay Plaintiffs and, upon information and belief, the Rule 23 Class for the laundering and maintenance of required uniforms.

100. In failing to reimburse Plaintiffs and the Rule 23 Class for the costs of purchasing required uniforms and the laundering and maintenance of required uniforms and in failing to pay Plaintiffs and the Class the additional required laundry and maintenance costs incurred by Plaintiffs and the Rule Class, Defendants have violated the NYLL and 12 NYCRR §142-2.5.

101. Due to Defendants' violations of the NYLL, Plaintiffs and the Rule 23 Class are entitled to recover from Defendants the costs of purchasing required uniforms, additional sums due them for the laundering and maintenance of required uniforms, reasonable attorneys' fees, costs, and pre-judgement and post-judgment interest.

AS AND FOR A SIXTH CAUSE OF ACTION
(Defendants' unlawful deductions from wages)
A NYLL VIOLATION

102. Plaintiffs, on behalf of themselves and the Rule 23 Class, repeat and reallege each of the foregoing allegations as if fully set forth herein.

103. The NYLL and the regulations promulgated thereunder, 12 NYCRR §142-2.10, prohibits an employer's unlawful deductions from wages.

104. However, Defendants unlawfully deducted the costs of purchasing required uniforms from the wages of Plaintiffs and, upon information and belief, the Rule 23 Class.

105. Defendants also unlawfully fined Plaintiff Moncada and, upon information and belief, other members of the Rule 23 Class for not wearing their uniforms, and deducted the amount of such fines from their wages.

106. In making unlawful deductions, Defendants violated the NYLL and the regulations promulgated thereunder, 12 NYCRR §142-2.10.

107. Plaintiffs and the Rule 23 Class are, therefore, entitled to recover from Defendants amounts equal to the unlawful deductions, reasonable attorneys' fees, costs, and pre-judgement and post-judgment interest.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Defendants' violation of the their notice and wage statement requirements)
A NYLL VIOLATION

108. Plaintiffs, on behalf of themselves and the Class, repeat and reallege each of the foregoing allegations as if fully set forth herein.

109. Defendants failed to supply Plaintiffs and the Rule 23 Class with written notice of, among other things, how they are paid, and their rates of pay and overtime rate, both in English and in their respective primary language, as required by NYLL § 195.

110. Defendants failed to supply Plaintiffs and the Rule 23 Class with accurate wage statements each payday listing, among other things, payroll data including, but not limited to, accurate regular and overtime hours worked and regular and overtime rates of pay as required by NYLL § 195.

111. Due to Defendants' violations of NYLL § 195, Plaintiffs and the Rule 23 Class are entitled to statutory damages pursuant to NYLL § 198, reasonable attorneys' fees, costs, and

injunctive and declaratory relief.

AS AND FOR AN EIGHTH CAUSE OF ACTION
(Defendants' unjust enrichment from Defendants' failure to pay wages)
A COMMON LAW VIOLATION

112. Plaintiffs, on behalf of themselves and the Class, repeat and reallege each of the foregoing allegations as if fully set forth herein.

113. At all times material to this Complaint, Defendants, by their policies and actions, benefited from, and increased their profits and personal compensation by failing to pay Plaintiffs and the Class all wages due for work performed including but not limited to all overtime hours worked in excess of 40 hours in a workweek.

114. Defendants accepted and received the benefits of the work performed by Plaintiffs and the Class at the expense of Plaintiffs and the Class. Defendant Steven Kogel was unjustly enriched as he is and was, upon information and belief, an owner, and the President and CEO of Harris. Defendant Brett Kogel was unjustly enriched as he is and was, upon information and belief, an owner and the Vice President of Harris.

115. It is inequitable and unjust for Defendants to reap the benefits of Plaintiffs' and the Class' labor, which includes unpaid wages including overtime.

116. Plaintiffs and the Class are entitled to relief for this unjust enrichment in an amount equal to the benefits unjustly retained by Defendants plus interest on these amounts.

DEMAND FOR TRIAL BY JURY

117. Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs, on behalf of themselves, the FLSA Collective, and the Rule 23 Class, demand a trial by jury in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,

respectfully request the following relief:

A. Designation of the claims brought in this action under the FLSA as a collective action on behalf of Plaintiffs and the FLSA Collective and prompt issuance of a notice pursuant to 29 U.S.C. § 216(b) to the FLSA Collective, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b), and tolling the statute of limitations;

B. Certification of the claims brought in this case under the NYLL as a class action pursuant to Fed. R. Civ. P. 23;

C. Designation of Plaintiffs as class representatives, and appointing the undersigned counsel of record as Class Counsel;

D. That Defendants are found to have violated the provisions of the FLSA and the NYLL;

E. That Defendants violations of the FLSA and the NYLL are found to be willful violations;

F. All damages that Plaintiffs, the FLSA Collective, and the Rule 23 Class have sustained as a result of Defendants' conduct, including all unpaid wages and any short fall between wages paid and those due under the law that Plaintiffs, the FLSA Collective, and the Rule 23 Class would have received but for Defendants' unlawful common and uniform policy, pattern and practice;

G. An additional and equal amount in unpaid wages as liquidated damages pursuant to 29 U.S.C. § 216;

H. An additional and equal amount in unpaid wages as liquidated damages pursuant

to NYLL § 215, unless and until the Rule 23 Class is certified, at which time Plaintiffs will waive their claims for liquidated damages under the NYLL;

I. Statutory damages pursuant to NYLL §§ 198 and 663;

J. Awarding Plaintiffs, the FLSA Collective, and the Rule 23 Class their reasonable attorneys' fees, costs of the action, and service awards for Plaintiffs for services they provide to the FLSA Collective and Rule 23 Class;

K. Pre-judgment and post-judgment interest, as provided by law;

L. Granting Plaintiffs, the FLSA Collective, and the Rule 23 Class other and further relief as this Court finds necessary and proper.

Dated: New York, New York
October 10, 2017

TARTER KRINSKY & DROGIN LLP
Attorneys for Plaintiffs, on behalf of themselves, the FLSA Collective, and the Rule 23 Class

By: s/Laurent S. Drogin

Laurent S. Drogin
Tara Toevs Carolan
1350 Broadway, 11th Floor
New York, New York 10018
(212) 216-8000
ldrogin@tarterkrinsky.com
tcarolan@tarterkrinsky.com

TRANSLATOR'S

CERTIFICATE OF

ACCURACY

ANNABELLE CASTILLO COHEN does hereby affirm as follows:

That I am fluent in both the English and Spanish languages.

That I am competent to translate from English to Spanish.

That I have made translations from a copy of the original documents in the English language and hereby certify that the following documents are true and complete translation to the best of my knowledge, ability, and belief.

- Class and Collective Action Complaint;
- Consent to Sue for each; Eden Pino, Lester Moncada, and Walter Ulloa

ANNABELLE CASTILLO COHEN

Sworn before me this 10th day of October, 2017.

Elizabeth Ellen Zaikowski
Notary Public

ELIZABETH ELLEN ZAIKOWSKI
Notary Public, State of New York
No. 01ZA6181277
Qualified in Suffolk County
Commission Expires 01/28/2020

JS 44 (Rev. 06/17)

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

EDEN PINO, LESTER MONCADA, and WALTER ULLOA, on behalf of themselves and all others similarly situated,

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Laurent S. Drogin
TARTER KRINSKY & DROGIN LLP
1350 Broadway- 11th Floor- New York, NY 10018

DEFENDANTS

HARRIS WATER MAIN & SEWER CONTRACTORS, INC., STEVEN KOGEL, individually, and BRETT KOGEL, individually

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

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

Attorneys *(If Known)*
Daniel S. Moretti, Esq.
Landman Corsi Ballaine & Ford, P.C.
120 Broadway, 27th Floor New York, NY 10271

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

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

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

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ☒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 835 Patent - Abbreviated New Drug Application
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State 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 Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
Fair Labor Standards Act & New York Labor Law

Brief description of cause:
Failure to pay earned wages

VII. REQUESTED IN COMPLAINT:

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

DEMAND $

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
10/10/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of $150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Laurent S. Drogin, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☒ monetary damages sought are in excess of $150,000, exclusive of interest and costs,

☐ the complaint seeks injunctive relief,

☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:

None.

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: No.

2.) If you answered "no" above:
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No.

b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes.

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?_____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature:_____

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

EDEN PINO, LESTER MONCADA, and WALTER ULLOA, on behalf of themselves and all others similarly situated, *Plaintiff(s)* v. HARRIS WATER MAIN & SEWER CONTRACTORS, INC., STEVEN KOGEL, individually, and BRETT KOGEL, individually *Defendant(s)*	)	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Harris Water Main & Sewer Contractors, Inc.
c/o Daniel S. Moretti, Esq.
Landman Corsi Ballaine & Ford, P.C.
120 Broadway, 27th Floor
New York, NY 10271

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)*

was received by me on *(date)* .

❒ I personally served the summons on the individual at *(place)*

on *(date)* ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* ; or

❒ I returned the summons unexecuted because ; or

❒ Other *(specify):*

My fees are $ for travel and $ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

EDEN PINO, LESTER MONCADA, and WALTER ULLOA, on behalf of themselves and all others similarly situated, *Plaintiff(s)* v. HARRIS WATER MAIN & SEWER CONTRACTORS, INC., STEVEN KOGEL, individually, and BRETT KOGEL, individually *Defendant(s)*	)	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Steven Kogel
c/o Daniel S. Moretti, Esq.
Landman Corsi Ballaine & Ford, P.C.
120 Broadway, 27th Floor
New York, NY 10271

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

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on *(date)* ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)*

, a person of suitable age and discretion who resides there,

on *(date)* , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* , who is

designated by law to accept service of process on behalf of *(name of organization)*

on *(date)* ; or

❒ I returned the summons unexecuted because ; or

❒ Other *(specify):*

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I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

EDEN PINO, LESTER MONCADA, and WALTER ULLOA, on behalf of themselves and all others similarly situated, *Plaintiff(s)* v. HARRIS WATER MAIN & SEWER CONTRACTORS, INC., STEVEN KOGEL, individually, and BRETT KOGEL, individually *Defendant(s)*	)	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Brett Kogel
c/o Daniel S. Moretti, Esq.
Landman Corsi Ballaine & Ford, P.C.
120 Broadway, 27th Floor
New York, NY 10271

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

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on *(date)* ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)*
, a person of suitable age and discretion who resides there,
on *(date)* , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* , who is
designated by law to accept service of process on behalf of *(name of organization)*
on *(date)* ; or

❒ I returned the summons unexecuted because ; or

❒ Other *(specify):*

My fees are $ for travel and $ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: