

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SAMUEL & STEIN

David Stein (DS 2119)
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New York, New York 10001
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Attorneys for Plaintiff, Individually
and on behalf of all others similarly
situated

David Zuniga, on behalf of
himself and all other persons
similarly situated,

Plaintiff,

- vs. -

Feed & Grain of Northport,
Inc. and Robert Tyler,

Defendants.

DOCKET NO. 18-cv-3771

COMPLAINT

Plaintiff David Zuniga, by and through his undersigned attorneys, for his complaint against defendants Feed & Grain of Northport, Inc. and Robert Tyler, alleges as follows, on behalf of himself and on behalf of all other persons similarly situated:

NATURE OF THE ACTION

1. Plaintiff David Zuniga alleges on behalf of himself and on behalf of other similarly situated current and former employees of defendants Feed & Grain of Northport, Inc. and

Robert Tyler, who elect to opt into this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), that they are entitled to: (i) unpaid wages from defendants for overtime work for which they did not receive overtime premium pay as required by law, and (ii) liquidated damages pursuant to the FLSA, 29 U.S.C. §§ 201 et seq., because defendants' violations lacked a good faith basis.

2. Mr. Zuniga further complains that he is entitled to (i) back wages for overtime work for which defendants willfully failed to pay overtime premium pay as required by the New York Labor Law §§ 650 et seq. and the supporting New York State Department of Labor regulations; (ii) compensation for defendants' violations of the "spread of hours" requirements of New York Labor Law; (iii) liquidated damages pursuant to New York Labor Law for these violations; and (iv) statutory damages for defendants' violation of the Wage Theft Prevention Act.

THE PARTIES

3. Plaintiff Mr. Zuniga is an adult individual residing in Huntington Station, New York.

4. Mr. Zuniga consents in writing to be a party to this action pursuant to 29 U.S.C. § 216(b); his written consent is attached hereto and incorporated by reference.

5. Upon information and belief, defendant Feed & Grain of Northport, Inc. ("Feed & Grain") is a New York corporation with a principal place of business at 73 Main Street, Northport, New York.

6. At all relevant times, defendant Feed & Grain has been, and continues to be, an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 207(a).

7. Upon information and belief, at all relevant times, defendant Feed & Grain has had gross revenues in excess of \$500,000.00.

8. Upon information and belief, at all relevant times herein, defendant Feed & Grain has used goods and materials produced in interstate commerce, and has employed at least two individuals who handled such goods and materials.

9. Upon information and belief, at all relevant times, defendant Feed & Grain has constituted an "enterprise" as defined in the FLSA.

10. Upon information and belief, defendant Robert Tyler is an owner or part owner and principal of Feed & Grain, who has the power to hire and fire employees, set wages and schedules, and maintain their records.

11. Defendant Robert Tyler was involved in the day-to-day operations of Feed & Grain and played an active role in managing the business.

12. For example, Robert Tyler set Mr. Zuniga's wages and schedule, paid him his wages, and later fired Mr. Zuniga.

13. Defendants constituted "employers" of Mr. Zuniga as that term is used in the Fair Labor Standards Act and New York Labor Law.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over Mr. Zuniga's state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Mr. Zuniga's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because defendants' business is located in this district.

COLLECTIVE ACTION ALLEGATIONS

16. Pursuant to 29 U.S.C. § 207, Mr. Zuniga seeks to prosecute his FLSA claims as a collective action on behalf of a collective group of persons defined as follows:

All persons who are or were formerly employed by defendants in the United States at any time since June 22, 2015, to the entry of judgment in this

case (the "Collective Action Period"), who were restaurant employees, and who were not paid overtime compensation at rates at least one-and-one-half times the regular rate of pay for hours worked in excess of forty hours per workweek (the "Collective Action Members").

17. The Collective Action Members are similarly situated to Mr. Zuniga in that they were employed by defendants as non-exempt restaurant employees, and were denied premium overtime pay for hours worked beyond forty hours in a week.

18. They are further similarly situated in that defendants had a policy and practice of knowingly and willfully refusing to pay them overtime.

19. Mr. Zuniga and the Collective Action Members perform or performed the same or similar primary duties, and were subjected to the same policies and practices by defendants.

20. The exact number of such individuals is presently unknown, but is known by defendants and can be ascertained through appropriate discovery.

FACTS

21. At all relevant times herein, defendants owned and operated a restaurant in Northport, New York.

22. Mr. Zuniga was employed at Feed & Grain from approximately May 2009 through May 2018.

23. Mr. Zuniga was originally employed as a dishwasher; however, since roughly 2011 he has been employed as a food preparer and chef.

24. Mr. Zuniga's work was performed in the normal course of defendants' business and was integrated into the business of defendants, and did not involve executive or administrative responsibilities.

25. At all relevant times herein, Mr. Zuniga was an employee engaged in commerce and/or in the production of goods for commerce, as defined in the FLSA and its implementing regulations.

26. Mr. Zuniga worked a regular schedule throughout his employment, but it changed based on the season.

27. In the summers - from roughly June through September - Mr. Zuniga worked six days per week from 10:00 a.m. to 11:00 p.m., for a total of approximately 78 hours per week.

28. From approximately October through December, Mr. Zuniga worked six days per week - from 1:00 p.m. to 10:00 p.m. four days per week and 1:00 p.m. to 11:00 p.m. on Fridays and Saturdays - for a total of about 56 hours per week.

29. From roughly January through May, Mr. Zuna worked five days per week, days of 10, 8, 9, 13, and 11 hours, for a total of around 51 hours per week.

30. Mr. Zuniga was paid at an hourly rate; he started his employment at \$9.00 per hour, but received several raises. By 2012 he was being paid \$12.00 per hour, and in 2014 he received a raise to \$13.00 per hour.

31. However, defendants actually rounded Mr. Zuniga's pay rather than paying him the amounts that those figures added up to. For example, when his pay rate was supposedly \$13.00 per hour, he was paid \$650, \$700, or \$1,000 per week (depending on the time of year), rather than \$663, \$702, or \$1,014, respectively, that his hourly rate should have added up to.

32. As a result, Mr. Zuniga was not paid all the wages he was owed.

33. Mr. Zuniga received these approximate rates of pay for all hours he worked, regardless of the number of hours he worked each day, week, or month.

34. Mr. Zuniga was paid in cash throughout his employment, and he received no paystubs or wage statements of any sort with his pay.

35. In addition, defendants failed to pay Mr. Zuniga any overtime "bonus" for hours worked beyond 40 hours in a workweek, in violation of the FLSA, the New York Labor Law, and the supporting New York State Department of Labor regulations.

36. Defendants' failure to pay Mr. Zuniga the overtime bonus for overtime hours worked was willful, and lacked a good faith basis.

37. At times, Mr. Zuniga worked either two or six shifts per week that lasted in excess of ten hours from start to finish, and yet defendants willfully failed to pay him one additional hour's pay at the minimum wage for each such day, in violation of the New York Labor Law and the supporting New York State Department of Labor regulations.

38. Defendants failed to provide Mr. Zuniga with a written notice providing the information required by the Wage Theft Prevention Act - including, *inter alia*, defendants' contact information, his regular and overtime rates, and intended allowances claimed - and failed to obtain his signature acknowledging the same, upon his hiring or at any time thereafter, in violation of the Wage Theft Prevention Act in effect at the time.

39. Defendants failed to provide Mr. Zuniga with weekly records of his compensation and hours worked, in violation of the Wage Theft Prevention Act.

40. Upon information and belief, throughout the period of Mr. Zuniga's employment, both before that time (throughout the Collective Action Period) and continuing until today, defendants have likewise employed other individuals like Mr.

Zuniga (the Collective Action Members) in positions at defendants' restaurant that required little skill, no capital investment, and with duties and responsibilities that did not include any managerial responsibilities or the exercise of independent judgment.

41. Defendants applied the same employment policies, practices, and procedures to all Collective Action Members, including policies, practices, and procedures with respect to the payment of overtime.

42. Upon information and belief, these other individuals have worked in excess of forty hours per week, yet defendants have likewise failed to pay them overtime compensation of one-and-one-half times their regular hourly rate in violation of the FLSA and the New York Labor Law.

43. Upon information and belief, these other individuals were not paid a "spread of hours" premium on days when they worked shifts lasting in excess of ten hours from start to finish.

44. Upon information and belief, these other individuals were not provided with required wage notices or weekly wage statements as specified in New York Labor Law §§ 195.1, 195.3, and the Wage Theft Prevention Act.

45. Upon information and belief, while defendants employed Mr. Zuniga and the Collective Action members, and

through all relevant time periods, defendants failed to maintain accurate and sufficient time records or provide accurate records to employees.

COUNT I

(Fair Labor Standards Act - Overtime)

46. Mr. Zuniga, on behalf of himself and all Collective Action Members, repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

47. At all relevant times, defendants employed Mr. Zuniga and each of the Collective Action Members within the meaning of the FLSA.

48. At all relevant times, defendants had a policy and practice of refusing to pay overtime compensation to their employees for hours they worked in excess of forty hours per workweek.

49. As a result of defendants' willful failure to compensate their employees, including Mr. Zuniga and the Collective Action Members, at a rate at least one-and-one-half times the regular rate of pay for work performed in excess of forty hours per workweek, defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 et seq., including 29 U.S.C. §§ 207(a)(1) and 215(a).

50. The foregoing conduct, as alleged, constituted a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a), and lacked a good faith basis within the meaning of 29 U.S.C. § 260.

51. Due to defendants' FLSA violations, Mr. Zuniga and the Collective Action Members are entitled to recover from defendants their unpaid overtime compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

COUNT II

(New York Labor Law - Overtime)

52. Mr. Zuniga repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

53. At all relevant times, Mr. Zuniga was employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

54. Defendants willfully violated Mr. Zuniga's rights by failing to pay him overtime compensation at rates at least one-and-one-half times the regular rate of pay for each hour worked in excess of forty hours per workweek in violation of the New York Labor Law §§ 650 et seq. and its supporting regulations in 12 N.Y.C.R.R. § 146.

55. Defendants' failure to pay overtime was willful, and lacked a good faith basis, within the meaning of New York Labor Law § 198, § 663 and supporting regulations.

56. Due to defendants' New York Labor Law violations, Mr. Zuniga is entitled to recover from defendants his unpaid overtime compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 198, and § 663(1).

COUNT III

(New York Labor Law - Spread of Hours)

57. Mr. Zuniga repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

58. At all relevant times, Mr. Zuniga was employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

59. Defendants willfully violated Mr. Zuniga's rights by failing to pay him an additional hour's pay at the minimum wage for each day he worked shifts lasting in excess of ten hours from start to finish, in violation of the New York Labor Law §§ 650 *et seq.* and its regulations in 12 N.Y.C.R.R. § 146-1.6.

60. Defendants' failure to pay the "spread of hours" premium was willful, and lacked a good faith basis, within the meaning of New York Labor Law § 198, § 663 and supporting regulations.

61. Due to defendants' New York Labor Law violations, Mr. Zuniga is entitled to recover from defendants his unpaid compensation, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 198, and § 663(1).

COUNT IV

(New York Labor Law - Failure to Pay Wages)

62. Mr. Zuniga repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

63. At all relevant times, Mr. Zuniga was employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

64. Defendants willfully violated the rights of Mr. Zuniga by failing to pay him his full wages earned, in violation of, *inter alia*, New York Labor Law § 191.

65. Defendants' failure to pay all wages owed was willful, and lacked a good faith basis, within the meaning of New York Labor Law § 198, § 663 and supporting regulations.

66. Due to defendants' New York Labor Law violations, Mr. Zuniga is entitled to recover from defendants damages for unpaid wages, liquidated damages, interest, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to New York Labor Law § 198, and § 663(1).

COUNT V

(New York Labor Law - Wage Theft Prevention Act)

67. Mr. Zuniga repeats, realleges, and incorporates by reference the foregoing allegations as if set forth fully and again herein.

68. At all relevant times, Mr. Zuniga was employed by defendants within the meaning of the New York Labor Law, §§ 2 and 651.

69. Defendants willfully violated Mr. Zuniga's rights by failing to provide him with the wage notice required by the Wage Theft Prevention Act when he was hired, or at any time thereafter.

70. Defendants willfully violated Mr. Zuniga's rights by failing to provide him with weekly wage statements required by the Wage Theft Prevention Act at any time during his employment.

71. Due to defendants' New York Labor Law violations relating to the failure to provide paystubs, plaintiff is entitled to recover from the defendants statutory damages of

\$100 per week through February 26, 2015, and \$250 per day from February 27, 2015 through the end of his employment, up to the maximum statutory damages.

72. Due to defendants' New York Labor Law violations relating to the failure to provide wage notices, plaintiff is entitled to recover from the defendants statutory damages of \$50 per week through February 26, 2015, and \$50 per day from February 27, 2015 to the termination of his employment, up to the maximum statutory damages.

PRAYER FOR RELIEF

WHEREFORE, Mr. Zuniga respectfully requests that this Court grant the following relief:

- a. Designation of this action as a collective action on behalf of the Collective Action Members and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of an FLSA Opt-In Class, 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 appointing Mr. Zuniga and his counsel to represent the Collective Action members;

- b. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and the New York Labor Law;
- c. An injunction against defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with them, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
- d. A compensatory award of unpaid compensation, at the statutory overtime rate, due under the FLSA and the New York Labor Law;
- e. An award of liquidated damages as a result of defendants' willful failure to pay overtime compensation pursuant to 29 U.S.C. § 216;
- f. Compensatory damages for failure to pay the "spread of hours" premiums required by New York Labor Law;
- g. Compensation for defendants' failure to pay all wages owed, in violation of the New York Labor Law;
- h. Liquidated damages for defendants' New York Labor Law violations;

- i. Statutory damages for defendants' violation of the New York Wage Theft Prevention Act;
- j. Back pay;
- k. Punitive damages;
- l. An award of prejudgment and postjudgment interest;
- m. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- n. Such other, further, and different relief as this Court deems just and proper.

Dated: June 24, 2018



David Stein
SAMUEL & STEIN
38 West 32nd Street
Suite 1110
New York, New York 10001
(212) 563-9884
Attorneys for Plaintiff,
*Individually and on behalf of an
FLSA collective action*

EXHIBIT A

CONSENT TO SUE

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf to contest the failure of Feed & Grain of Northport and its owners and affiliates to pay me, *inter alia*, minimum wage and overtime wages as required under state and/or federal law and also authorize the filing of this consent in the lawsuit challenging such conduct, and consent to being named as a representative plaintiff in this action to make decisions on behalf of all other plaintiffs concerning all aspects of this lawsuit. I have been provided with a copy of a retainer agreement with the law firm of Samuel & Stein, and I agree to be bound by its terms.

Con mi firma abajo, autorizo la presentación y tramitación de reclamaciones en mi nombre y de mi parte para impugnar el fallo de Feed & Grain of Northport y sus propietarios y afiliados a me pagan, entre otras cosas, el salario mínimo y pago de horas extras, requerida en el estado y / o la ley federal y también autorizan la presentación de este consentimiento en la demanda contra ese tipo de conducta, y el consentimiento para ser nombrado como demandante representante en esta acción para tomar decisiones en nombre de todos los demás demandantes en relación con todos aspectos de esta demanda. Se me ha proporcionado una copia de un acuerdo de retención con la firma de abogados de Samuel y Stein, y estoy de acuerdo en estar obligado por sus términos..


David Zuniga

Date: June 21, 2018

JS 44 (Rev. 01/29/2018)

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

David Zuniga, on behalf of himself and all other persons similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Samuel & Stein / 38 West 32nd Street, Suite 1110 / New York, NY 10001 / (212) 563-9884

DEFENDANTS

Feed & Grain of Northport, Inc. and Robert Tyler

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

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

Attorneys (If Known)

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

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

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

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

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

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

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): 29 U.S.C. § 201, et seq. Brief description of cause: Failure to pay overtime

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 06/26/2018 SIGNATURE OF ATTORNEY OF RECORD David Stein

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, David Stein, counsel for plaintiff, 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 of 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? Yes 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? Yes 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 No
 - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

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? Yes No

(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: David Stein

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

David Zuniga, on behalf of himself and all other persons similarly situated

Plaintiff(s)

v.

Feed & Grain of Northport, Inc. and Robert Tyler

Defendant(s)

Civil Action No. 18-cv-3771

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Feed & Grain of Northport, Inc. 73 Main Street Northport, New York 11768

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:

David Stein, Esq. Samuel & Stein 38 West 32nd Street, Suite 1110 New York, NY 10001

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. 18-cv-3771

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 _____ .

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

David Zuniga, on behalf of himself and all other persons similarly situated

Plaintiff(s)

v.

Feed & Grain of Northport, Inc. and Robert Tyler

Defendant(s)

Civil Action No. 18-cv-3771

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Robert Tyler
179 Woodbine Ave.
Northport, NY 11768

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:

David Stein, Esq.
Samuel & Stein
38 West 32nd Street, Suite 1110
New York, NY 10001

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. 18-cv-3771

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 _____ .

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:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Feed & Grain of Northport Denies Employees Proper Pay](#)
