

Signature of Clerk or Deputy Clerk

Civil Action No. 17-cv-04471 (DRH)(AKT)

**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:

Print

Save As...

Reset

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
MARC JEAN,

**DOCKET NO.: CV-17-4471**

*Plaintiff,*

-against-

GARDEN CITY JEEP CHRYSLER DODGE and  
MICHAEL VOLONAKIS (in his professional  
and individual capacities),

**COMPLAINT**

*Defendants.*

***Jury trial demanded***

-----X

Plaintiff MARC JEAN (hereinafter, “JEAN” or “Plaintiff”), by and through his attorneys, the LAW OFFICES OF FREDERICK K. BREWINGTON, as and for his Complaint against the Defendants, states and alleges as follows:

**PRELIMINARY STATEMENT**

1. This is civil action seeking monetary relief (including past and ongoing economic loss), compensatory, special damages and punitive damages, disbursements, costs and fees for violations of the Plaintiff’s rights, brought pursuant to 42 U.S.C. § 1981 (Section 1981), as amended; Article 15 of the Executive Law of the State of New York § 296 (New York Human Rights Law); Nassau County Local Law Title C-2 § 21-9.8(1) (Nassau County Human Rights Law); Assault; and Intentional & Negligent Infliction of Emotional Distress at this time.

2. Specifically, the Plaintiff alleges that, together, Defendants GARDEN CITY JEEP CHRYSLER DODGE (hereinafter, “GARDEN CITY JEEP”) and MICHAEL VOLONAKIS (hereinafter, “VOLONAKIS”) directly acted and/or allowed its agent, employee, representative and/or officers to act maliciously, in violation of both Plaintiff’s rights and existing law, which

caused Plaintiff to suffer the following injuries:

Violations of his various statutory rights, including those protected by Section 1981, Nassau County Human Rights Law, Article 15 of the Executive Law of the State of New York (Human Rights Law) §§ 290 and 296; Workplace violence; Psychic injury including anxiety; Physiological injury resulting from above mentioned psychic injury, including chest pains; Loss of income; Fear; Constructive discharge; Complete, temporary, or partial loss of reputation;

3. The aforementioned acts were done expressly or implicitly with the consent, knowledge, and condonation of Defendant GARDEN CITY JEEP, to the detriment of Plaintiff JEAN, as further described below.

#### **JURISDICTION AND VENUE**

4. The jurisdiction of this Court is invoked under 28 U.S.C. §§ 1331 and 1343.

5. This Court is requested to exercise supplemental jurisdiction with respect to Plaintiff's State law claims pursuant to 28 U.S.C. § 1367.

6. Venue herein is proper under 28 U.S.C. § 1391 (b); the cause of action arose in the Eastern District of New York, and all of the Parties are employed and/or are located in Nassau County, New York State.

7. On January 19, 2017, Plaintiff filed his original Charge of Discrimination, Charge No. 10186774, with the New York State Division of Human Rights (hereinafter, "NYSDHR"), alleging unlawful discrimination on the basis of Plaintiff's race/color. Therein, Plaintiff requested that the charge be cross-filed with the United States Equal Employment Opportunity Commission (hereinafter, "EEOC").

8. On July 24, 2017, the NYSDHR made a determination finding Probable Cause as against the Defendants.

9. Plaintiff is seeking a Right to Sue Letter. It is anticipated same will be issued by the United States Department of Justice in the future, at which time Plaintiff will amend this complaint to add a violation of Title VII as a cause of action.

10. Plaintiff has not engaged in any hearings before the EEOC or the New York State Division of Human Rights and has not waived any rights to commence actions under the laws of the State of New York or under Federal Law.

### **PARTIES**

11. Plaintiff JEAN was, at all times relevant to this Complaint, an employee of Defendant GARDEN CITY JEEP, and a resident of Nassau County, State of New York.

12. During all times relevant to this complaint, Defendant GARDEN CITY JEEP was, and is, a private corporation, organized and operating under, and by virtue of, the laws of the State of New York. Defendant GARDEN CITY JEEP maintains a business office at 283 North Franklin Street, Hempstead, NY 11550, which is in Nassau County. Defendant GARDEN CITY JEEP employees more than 15 people.

13. During all times relevant to this complaint, Defendant VOLONAKIS was employed by Defendant GARDEN CITY JEEP as a general sales manager. Defendant VOLONAKIS acted on behalf of GARDEN CITY JEEP and was a supervisor, policy maker and exercised direct supervisory authority over Plaintiff.

### **FACTUAL ALLEGATIONS**

14. Plaintiff worked as a Sales Associate at GARDEN CITY JEEP CHRYSLER DODGE for one year prior to his forced separation from his job. At all times during his employment Plaintiff performed his duties with excellence and in an exemplary fashion. In fact, Plaintiff loved his job and the people he got to serve as a salesman.

15. On or about July 29, 2016, Plaintiff MARC JEAN arrived at the car dealership of Defendant GARDEN CITY JEEP CHRYSLER DODGE, where he was employed as a salesman, at around 8:20 AM, for a shift starting at 8:30 AM.

16. Plaintiff JEAN worked until 11:30 AM, when it was time for the staff meeting held every morning at Defendant GARDEN CITY JEEP's dealership.

17. This meeting included salesmen Anthony Dash and Matt (last name unknown), manager Ken Skeen, and general sales manager and Defendant VOLONAKIS.

18. During this meeting, monthly sales and client interactions were discussed, among other things. According to the sales report, Plaintiff JEAN had been performing well.

19. Mr. Skeen removed two guns from a bag he had in the meeting with him. Mr. Skeen told the rest of the group that he was going to the shooting range later in the day. Mr. Skeen informed the group that he owned the guns legally.

20. Plaintiff JEAN was shocked when Mr. Skeen removed the guns from his bag. Plaintiff JEAN did not know anything about guns, and was not used to being around them.

21. Defendant VOLONAKIS, the general sales manager who supervises Mr. Skeen as well as Plaintiff JEAN, entered the meeting while Mr. Skeen had one of the guns in his hand.

22. Defendant VOLONAKIS took the gun out of Mr. Skeen's hands and pointed it at Plaintiff JEAN's head and asked Plaintiff JEAN if the gun "look[ed] familiar."

23. While continuing to hold the gun in Plaintiff JEAN's face, Defendant VOLONAKIS told the other employees in the meeting that "[Plaintiff JEAN] knows I don't like him, that's why I am not doing this to Matt." Upon information and belief, Matt (last name unknown) is a white man.

24. During the assault, Plaintiff JEAN was made to fear for his life, as he did not know whether or not the gun was loaded. Defendant VOLONAKIS took possession of a gun in the workplace and pointed in Mr. Jean's face while making race based comments.

25. Upon information and belief, Defendant VOLONAKIS asked Plaintiff JEAN if the gun "look[ed] familiar" out of racial enmity Defendant VOLONAKIS holds towards black people.

26. By brandishing the gun, upon information and belief, Defendant VOLONAKIS intended to violate, intimidate, threaten, harass, assault, and injure Plaintiff JEAN.

27. With Defendant VOLONAKIS continuing to hold him at gunpoint, Plaintiff was shaken and disturbed as he deliberated his next move. Mr. Skeen finally disarmed Defendant VOLONAKIS. Afterwards, Mr. Skeen told Plaintiff JEAN that "Mike was wrong!"

28. Plaintiff then exited the building and called his mother from his car. His mother advised him to call the police, since no one at Defendant GARDEN CITY JEEP did so, although they were notified about the assault perpetrated by Defendant VOLONAKIS, Defendant GARDEN CITY JEEP's general sales manager.

29. The Hempstead Police arrived at Defendant GARDEN CITY JEEP's dealership, and took a statement from Plaintiff JEAN.

30. Upon information and belief, Defendant VOLONAKIS and Mr. Skeen were arrested.

31. As Plaintiff JEAN waited in a police car for the police to finish their investigation, Defendant GARDEN CITY JEEP's owner, Michael Villani, approached the car and told Plaintiff JEAN that both Defendant VOLONAKIS and Mr. Skeen had been fired.

32. After the assault, Plaintiff JEAN began feeling increasingly anxious and fearful. He also began to suffer from chest pains. Plaintiff subsequently sought treatment at Mercy Medical Center.

33. The July 29, 2016 incident was the most egregious in a list of racially hostile acts perpetrated by Defendant VOLONAKIS against Plaintiff JEAN, due to his race and/or color. These acts took place in Defendant GARDEN CITY JEEP's dealership, during regular work hours.

34. One such act involved racist jokes Defendant VOLONAKIS made in Plaintiff JEAN's presence.

35. A second incident occurred one month prior to the July 29, 2016 incident. In response to hearing a famous black hip-hop artist on the radio, Defendant VOLONAKIS told Plaintiff JEAN that he "hate[s] that nigger."

36. Yet another incident involved Defendant VOLONAKIS asking Plaintiff JEAN to sign a Code of Conduct form. After Plaintiff JEAN told Defendant VOLONAKIS that he wanted to review the document before signing it, Defendant VOLONAKIS said, "you're black, you've got to do what we say."

37. Another time, Defendant VOLONAKIS was reprimanding another African American employee when he made eye contact with Plaintiff JEAN. When Defendant VOLONAKIS saw Plaintiff JEAN look at him, he glared back at Plaintiff JEAN, stating "that's the first time I had to



yell at a black man today,” implying that it may not be the last.

38. These instances each materially altered Plaintiff JEAN’s employment, creating, on aggregate, a hostile work environment and created working conditions so intolerable that a reasonable person would have felt compelled to resign, which led to Plaintiff JEAN’s resignation, which constitutes a constructive discharge.

39. Defendant VOLONAKIS was charged with criminal possession of a firearm in connection to the July 29, 2016 assault, and is being prosecuted by the District Attorney of Nassau County.

40. Defendants cannot deny the actions of either Ken Skeen or Mike Volonakis on the day of the incident or shortly thereafter. Ken Skeen had a telephone conversation with Mr. Jean's mother shortly after Mr. Jean was threatened with the gun in his face. In that conversation, Mr. Skeen admitted that Mr. Volonakis did point the gun in Mr. Jean's face.

**AS AND FOR COUNT I**  
**42 U.S.C. § 1981**

41. The Plaintiff repeats, reiterates, and re-alleges each allegation contained in paragraphs 1 through 40 of this Complaint with the same force and effect as though fully set forth herein. Defendant GARDEN CITY JEEP, through its agent/employee, Defendant VOLONAKIS, discriminated against the Plaintiff in his employment based on Plaintiff's race/color, and was discharged constructively, in violation of, *inter alia*, Section 1981.

42. As a direct result of aforementioned acts, Plaintiff has been deprived of his right to contract, deprived of his freedoms, mentally harmed, and physically injured. Plaintiff JEAN has

been forced to seek redress in the courts rather than capitulating to the previously mentioned abuse, ridicule, and discrimination.

43. Defendant VOLONAKIS subjected Plaintiff JEAN to assault, harassment, humiliation, a hostile work environment, and embarrassment due to his status as an African American/black man. Defendant VOLONAKIS took possession of a gun in the workplace and pointed in Mr. Jean's face while making race based comments. As a result, Plaintiff has experienced a diminution in his quality of life and other injuries and fear.

44. Specifically, Defendant VOLONAKIS, with the approval, implicit or otherwise, of Defendant GARDEN CITY JEEP, subjected Plaintiff JEAN to racial enmity, which constitutes a hostile work environment when considered in the aggregate, in violation of Section 1981. This hostile work environment induced Plaintiff's resignation, which constitutes a constructive discharge, also in violation of Section 1981.

45. Defendant VOLONAKIS, who had immediate authority over Plaintiff JEAN, was permitted by consent, explicit or otherwise, of Defendant GARDEN CITY JEEP to create a hostile work environment by harassing, threatening, intentionally inflicting emotional distress, and otherwise subjecting Plaintiff JEAN to discriminatory treatment. This hostile work environment forced Plaintiff JEAN to resign, which constitutes a constructive discharge.

46. Plaintiff has incurred incidental fees/damages, loss of pay, loss of benefits, and other damages/ injuries due to Defendant GARDEN CITY JEEP's unlawful discrimination.

47. As a direct result of said acts, Plaintiff has suffered, and continues to suffer, psychological trauma, physiological detriment, loss of status, loss of opportunities, loss of title, distress, humiliation, embarrassment, and damage to his reputation as alleged in the preceding

paragraphs of the within Complaint.

48. That by reason of the foregoing, Plaintiff JEAN has been subjected to irreparable psychic injury, physiological injury, assault, intentional infliction of emotional distress, pain, suffering, loss of self-esteem, self-doubt, disgrace, public humiliation, embarrassment, inconvenience, anxiety and frustration, and, thus, has been damaged in excess of three million (\$3,000,000.00) dollars, as well as punitive damages, costs, and attorney's fees.

**AS AND FOR COUNT II**  
**ARTICLE 15 OF THE EXECUTIVE LAW OF THE STATE OF NEW YORK § 296**  
**(NEW YORK HUMAN RIGHTS LAW)**

49. The Plaintiff repeats, reiterates, and re-alleges each allegation contained in paragraphs 1 through 48 of this Complaint with the same force and effect as though fully set forth herein. Defendant GARDEN CITY JEEP, through its agent/employee, Defendant VOLONAKIS, discriminated against the Plaintiff in his employment based on Plaintiff's race/color, and was discharged constructively, in violation of, *inter alia*, the New York Human Rights Law.

50. As a direct result of aforementioned acts, Plaintiff has been deprived of his rights, deprived of his freedoms, mentally harmed, and physically injured. Plaintiff JEAN has been forced to seek redress in the courts rather than capitulating to the previously mentioned abuse, ridicule, and discrimination.

51. Defendant VOLONAKIS subjected Plaintiff JEAN to assault, harassment, humiliation, a hostile work environment, and embarrassment due to his status as an African American/black man. As a result, Plaintiff has experienced a diminution in his quality of life.

52. Specifically, Defendant VOLONAKIS, with the approval, implicit or otherwise, of Defendant GARDEN CITY JEEP, subjected Plaintiff JEAN to racial enmity, which constitutes a hostile work environment when considered in the aggregate, in violation of the New York Human Rights Law. This hostile work environment induced Plaintiff's resignation, which constitutes a constructive discharge, also in violation of the New York Human Rights Law.

53. Defendant VOLONAKIS, who had immediate authority over Plaintiff JEAN, was permitted by consent, explicit or otherwise, of Defendant GARDEN CITY JEEP to create a hostile work environment by harassing, threatening, intentionally inflicting emotional distress, and otherwise subjecting Plaintiff JEAN to discriminatory treatment. This hostile work environment forced Plaintiff JEAN to resign, which constitutes a constructive discharge.

54. Plaintiff has incurred incidental fees/damages, loss of pay, loss of benefits, and other damages/ injuries due to Defendant GARDEN CITY JEEP's unlawful discrimination.

55. As a direct result of said acts, Plaintiff has suffered, and continues to suffer, psychological trauma, physiological detriment, loss of status, loss of opportunities, loss of title, distress, humiliation, embarrassment, and damage to his reputation as alleged in the preceding paragraphs of the within Complaint.

56. That by reason of the foregoing, Plaintiff JEAN has been subjected to irreparable psychic injury, physiological injury, assault, intentional infliction of emotional distress, pain, suffering, loss of self-esteem, self-doubt, disgrace, public humiliation, embarrassment, inconvenience, anxiety and frustration, and, thus, has been damaged in excess of three million (\$3,000,000.00) dollars, as well as punitive damages, costs, and attorney's fees.

**AS AND FOR COUNT III**  
**TITLE C-2 § 21-9.8(1) OF THE NASSAU COUNTY LOCAL LAWS**  
**(NASSAU COUNTY HUMAN RIGHTS LAW)**

57. The Plaintiff repeats, reiterates, and re-alleges each allegation contained in paragraphs 1 through 56 of this Complaint with the same force and effect as though fully set forth herein. Defendant GARDEN CITY JEEP, through its agent/employee, Defendant VOLONAKIS, discriminated against the Plaintiff in his employment based on Plaintiff's race/color, and was discharged constructively, in violation of, *inter alia*, the Nassau County Human Rights Law.

58. As a direct result of aforementioned acts, Plaintiff has been deprived of his rights, deprived of his freedoms, mentally harmed, and physically injured. Plaintiff JEAN has been forced to seek redress in the courts rather than capitulating to the previously mentioned abuse, ridicule, and discrimination.

59. Defendant VOLONAKIS subjected Plaintiff JEAN to assault, harassment, humiliation, a hostile work environment, and embarrassment due to his status as an African American/black man. As a result, Plaintiff has experienced a diminution in his quality of life.

60. Specifically, Defendant VOLONAKIS, with the approval, implicit or otherwise, of Defendant GARDEN CITY JEEP, subjected Plaintiff JEAN to racial enmity, which constitutes a hostile work environment when considered in the aggregate, in violation of the New York Human Rights Law. This hostile work environment induced Plaintiff's resignation, which constitutes a constructive discharge, also in violation of the Nassau County Human Rights Law.

61. Defendant VOLONAKIS, who had immediate authority over Plaintiff JEAN, was permitted by consent, explicit or otherwise, of Defendant GARDEN CITY JEEP to create a hostile

work environment by harassing, threatening, intentionally inflicting emotional distress, and otherwise subjecting Plaintiff JEAN to discriminatory treatment. This hostile work environment forced Plaintiff JEAN to resign, which constitutes a constructive discharge.

62. Plaintiff has incurred incidental fees/damages, loss of pay, loss of benefits, and other damages/ injuries due to Defendant GARDEN CITY JEEP's unlawful discrimination.

63. As a direct result of said acts, Plaintiff has suffered, and continues to suffer, psychological trauma, physiological detriment, loss of status, loss of opportunities, loss of title, distress, humiliation, embarrassment, and damage to his reputation as alleged in the preceding paragraphs of the within Complaint.

64. That by reason of the foregoing, Plaintiff JEAN has been subjected to irreparable psychic injury, physiological injury, assault, intentional infliction of emotional distress, pain, suffering, loss of self-esteem, self-doubt, disgrace, public humiliation, embarrassment, inconvenience, anxiety and frustration, and, thus, has been damaged in excess of three million (\$3,000,000.00) dollars, as well as punitive damages, costs, and attorney's fees.

**AND AS FOR COUNT IV**  
**ASSAULT AND BATTERY**

65. Plaintiffs repeat and reiterate and re-allege each and every allegation contained in paragraphs 1 through 64 of this Complaint, with the same force and effect as though fully set forth herein.

66. Defendant VOLONAKIS, acting as a decision maker for GARDEN CITY JEEP and employer of Plaintiff lacked any legal or lawful basis, probable cause, or justification to place a firearm in the face of Plaintiff or point a firearm at Plaintiff in any fashion.

67. Defendant VOLONAKIS, lacked any legal or lawful basis, probable cause, or justification to threaten, simulate touching, menace or otherwise place Plaintiff in fear of being shot, harmed or touched.

68. Defendant VOLONAKIS wrongfully, unlawfully and without privilege, consent, emergency, necessity, license or justification, forced Plaintiff to endure horror, fear, anxiety, anguish and belief that he was going to die and be subjected to pain and physical harm, and injury. Plaintiff, at no time consented to such abuse, threat, menacing, simulated touching or abuse of his person or property by Defendant VOLONAKIS. Said actions by Defendant VOLONAKIS were intentional and aimed at injuring and causing Plaintiff to suffer harm, discomfort, pain and humiliation and other injuries.

69. Plaintiff was placed into shocked and fear, held against his will, threatened, and intimidated, and was caused to suffer the intense dread of bodily harm, to the extent that an objective person in Plaintiff's position would be left in fear of such bodily harm. Plaintiff committed no violations or crimes and was not charged with any violations or crimes.

70. Defendant VOLONAKIS did intentionally, threaten, simulate touching, menace, and intimidate Plaintiff, while placing him in fear of imminent danger and or bodily harm prior to and during said pointing of a firearm at Plaintiff.

71.. Defendant VOLONAKIS did intentionally physically placed Plaintiff in fear of imminent physical danger.

72. As a result of said assault, Plaintiffs suffered, physical harm, great emotional and psychological harm, anxiety, fear, terror, humiliation and degradation all as a direct result of Defendant VOLONAKIS', wrongful, unjustified and illegal conduct.

73. That by reason of the foregoing, Plaintiff JEAN has been subjected to irreparable psychic injury, physiological injury, assault, intentional infliction of emotional distress, pain, suffering, loss of self-esteem, self-doubt, disgrace, public humiliation, embarrassment, inconvenience, anxiety and frustration, and, thus, has been damaged in excess of three million (\$3,000,000.00) dollars, as well as punitive damages and costs.

**AND AS FOR COUNT V**  
**INTENTIONAL & NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS**

74. Plaintiff repeats and reiterates and re-alleges each and every allegation contained in paragraphs 1 through 73 of this Complaint, with the same force and effect as though fully set forth herein.

75. Defendant VOLONAKIS as a decision maker and supervisor at GARDEN CITY JEEP , through his conduct, acts and omissions as set forth in the above pleaded allegations, acted outrageously and beyond the bounds of decency, for his above-stated role in taking the gun out of Mr. Skeen's hands and pointed it at Plaintiff JEAN's head and asked Plaintiff JEAN if the gun "look[ed] familiar."; and while continuing to hold the gun in Plaintiff JEAN's face, Defendant VOLONAKIS told the other employees in the meeting that "[Plaintiff JEAN] knows I don't like him, that's why I am not doing this to Matt." .

76. Defendant VOLONAKIS as a decision maker and supervisor at GARDEN CITY JEEP, committed the above stated reprehensible, extreme and outrageous actions against Plaintiffs, with full knowledge that his conduct could cause severe and extreme emotional harm to Plaintiff.

77. Said extreme emotional harm, with psychological and physical symptoms manifesting



therefrom, did in fact occur in this case, in that the Plaintiff was debilitated, terrified, humiliated, and caused to suffer fear for his life.

78. Said extreme emotional harm, with psychological and physical symptoms manifesting therefrom, did in fact occur in this case, in that the Plaintiff personally suffered and continue to suffer from emotional exhaustion, physical manifestation of symptoms of anxiety, depression, headaches, sleep disturbances, and grief.

79. That by reason of the foregoing, Plaintiff JEAN has been subjected to irreparable psychic injury, physiological injury, assault, intentional infliction of emotional distress, pain, suffering, loss of self-esteem, self-doubt, disgrace, public humiliation, embarrassment, inconvenience, anxiety and frustration, and, thus, has been damaged in excess of three million (\$3,000,000.00) dollars, as well as punitive damages and costs.

#### **PRAYER FOR RELIEF**

Plaintiff requests judgment as follows:

- a. First Cause of Action: in excess of three million (\$3,000,000.00) dollars as well as punitive damages, costs, and attorney's fees;
- b. Second Cause of Action: in excess of three million (\$3,000,000.00) dollars as well as punitive damages, costs, and attorney's fees;
- c. Third Cause of Action: in excess of three million (\$3,000,000.00) dollars as well as punitive damages, costs, and attorney's fees;
- d. Fourth Cause of Action: in excess of three million (\$3,000,000.00) dollars as well as punitive damages, costs, and attorney's fees;
- e. Fifth Cause of Action: in excess of three million (\$3,000,000.00) dollars as well as punitive damages, costs, and attorney's fees;



## 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**

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

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

**DEFENDANTS**

County of Residence of First Listed Defendant \_\_\_\_\_  
(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)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**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):

Brief description of cause:

**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

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, \_\_\_\_\_, counsel for \_\_\_\_\_, 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:

**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? \_\_\_\_\_
- 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? \_\_\_\_\_
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? \_\_\_\_\_

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

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UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

\_\_\_\_\_  
*Plaintiff(s)*

v.

\_\_\_\_\_  
*Defendant(s)*

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Civil Action No. \_\_\_\_\_

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

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 \$ \_\_\_\_\_.

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: