

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO.
v.	)	
	)	COMPLAINT
CHAMPION WINDOW MANUFACTURING &	)	
SUPPLY CO., LLC, d/b/a CHAMPION	)	
WINDOW MFG., INC. and/or d/b/a	)	
CHAMPION WINDOW OF PITTSBURGH,	)	JURY TRIAL DEMAND
	)	
Defendant.	)	
_____	)	

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of race and retaliation, and to provide appropriate relief to Martell Waite, an African American, who was adversely affected by such practices. As articulated with greater particularity in paragraphs 7 and 8 below, the Commission alleges that Mr. Waite, a Lead Installer for Defendant Employer, was subjected to disparate terms and conditions of employment, on the basis of his race. The Commission alleges that although Mr. Waite complained to Defendant's management about the discrimination, Defendant failed to address the inequitable treatment.

The Commission further alleges that Defendant Employer retaliated against Mr. Waite after he complained about racially discriminatory treatment, when it demoted him from Lead Installer to Installer Helper and then discharged him, for pretextual reasons. As a result of the

disparate treatment and retaliation, Mr. Waite suffered mental and emotional distress, and has lost significant earnings.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for Western District of Pennsylvania.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant Champion Window Manufacturing & Supply Co., LLC d/b/a Champion Window Mfg., Inc. and/or d/b/a Champion Window of Pittsburgh (the "Employer"), a Delaware corporation headquartered in Cincinnati, Ohio, has continuously been doing business in the State of Pennsylvania and the City of Pittsburgh, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Employer has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Charging Party Martell Waite filed a charge of discrimination with the Commission alleging violations of Title VII by Defendant Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least June 2006, Defendant Employer has engaged in unlawful employment practices at its Pittsburgh, Pennsylvania facility, in violation of Section 703(a)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(a)(1). These unlawful practices include, but are not limited to, the following:

a. Defendant Employer is a nationwide corporation that provides home improvement services and other consumer services;

b. Commencing on or about June 1, 2006, and continuing until December 14, 2006, Defendant discriminated against Mr. Waite in the terms and conditions of his employment as a Lead Installer, because of his race. For example, Mr. Waite was not assigned a Helper, as were the Caucasian Lead Installers; he was not given the same tools, as required by corporate policy as were given to the Caucasian Lead Installers; Mr. Waite was not given a corporate cell phone or a Home Depot credit card as were given to the Caucasian Lead Installers; and, Mr. Waite was not paid at the same rate as were the Caucasian Lead Installers. Finally, Mr. Waite was given a inoperable truck, which had not been inspected, for his use, while Caucasian Lead Installers were given newer and better trucks and/or new Dodge Ram trucks for their business use.

c. Mr. Waite repeatedly asked the Installation Manager and/or the General Manager to provide him with the tools, a helper, commensurate pay, and a vehicle as were afforded to the Caucasian Lead Installers, but his requests were not met.

8. Since at least December 14, 2006, Defendant Employer has engaged in unlawful retaliatory employment practices at its Pittsburgh, Pennsylvania facility, in violation of Section 704(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-3(a). These unlawful practices include, but are not limited to, the following:

a. In or about August, 2005 and again in or about September, 2006, Mr. Waite complained to the Installation Manager, his immediate supervisor, about racially offensive language that was being used by his coworkers in his presence;

b. In addition, Mr. Waite repeatedly complained to the Installation Manager about the disparate terms and conditions of employment to which he was being subjected as a Lead Installer;

c. In or about September 2006, Mr. Waite verbally complained to Defendant's local human resources representative that he was not being afforded the same terms and conditions of employment as were given to the Caucasian Lead Installers. Mr. Waite stated his belief that this disparate treatment was based on his race;

d. In or about September 2006, Mr. Waite sent a written letter of complaint to Defendant's corporate human resources officer. Therein, he complained about unfair treatment perpetrated by management personnel in Pittsburgh;

e. On or about December 14, 2006, Mr. Waite was demoted from Lead Installer to a Helper position.

f. Shortly thereafter, Mr. Waite submitted a second letter to the corporate human resources representative. Therein, he again complained of the disparate terms and conditions of employment he suffered as Lead Installer and the unfair demotion, and complained that the demotion was motivated by his "color."

g. Defendant Employer discharged Mr. Waite on January 27, 2007, effective January 19, 2007, for pretextual reasons.

9. The effect of the practices complained of in paragraphs 7 and 8 above has been to deprive Mr. Waite of equal employment opportunities and otherwise adversely affect his status as an employee, because of his race and in retaliation for his complaints about racially derogatory language in the work place, and about disparate treatment on the basis of race.

10. The unlawful employment practices complained of in paragraphs 7 and 8 above were intentional.

11. The unlawful employment practices complained of in paragraphs 7 and 8 above were done with malice or with reckless indifference to the federally protected rights of Martell Waite.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant Employer, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in disparate treatment and retaliation, and any other employment practice which discriminates on the basis of race.

B. Order Defendant Employer to institute and carry out policies, practices, and programs which provide equal employment opportunities for African Americans, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant Employer to institute and carry out anti-discrimination and anti-retaliation policies and complaint procedures.

D. Order Defendant Employer to institute and carry out complaint procedures which encourage employees to come forward with complaints regarding violations of its policies against discrimination and retaliation.

E. Order Defendant Employer to institute and carry out a training program which shall promote supervisor accountability imposing on all managers and supervisory personnel a duty to actively monitor their work areas to ensure compliance with policies on non-discrimination and anti-retaliation; and requiring all managers and supervisors to report any incidents and/or complaints of discrimination and/or retaliation of which they become aware to the department charged with handling such complaints.

F. Order Defendant Employer to make whole Mr. Waite, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to, back pay and front pay for Mr. Waite.

G. Order Defendant Employer to reinstate Mr. Waite, in lieu of front pay, to the position of Lead Installer, together with all benefits incident thereto, including but not limited to wages, benefits, training, seniority, and other terms and conditions of employment as are afforded other Lead Installers.

H. Order Defendant Employer to make whole Mr. Waite, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 7 and 8 above, including expenses he has incurred in searching for another job and medical expenses he has incurred, in amounts to be determined at trial.

I. Order Defendant Employer to make whole Mr. Waite by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in

paragraphs 7 and 8 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

J. Order Defendant Employer to pay Mr. Waite punitive damages for its malicious and reckless conduct described in paragraphs 7 and 8 above, in amounts to be determined at trial.

K. Grant such further relief as the Court deems necessary and proper in the public interest.

L. Award the Commission its costs of this action.

JURY TRIAL DEMAND

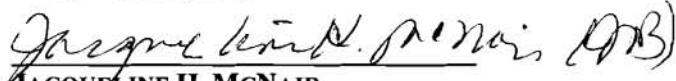
The Commission requests a jury trial on all questions of fact raised by its complaint.

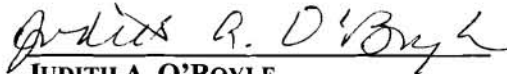
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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DEPUTY GENERAL COUNSEL

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ASSOCIATE GENERAL COUNSEL
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REGIONAL ATTORNEY


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SUPERVISORY TRIAL ATTORNEY


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OJS 44 (Rev. 11/04)

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS <u>EQUAL EMPLOYMENT OPPORTUNITY COMMISSION</u>	DEFENDANTS <u>CHAMPION WINDOW MANUFACTURING</u>
(b) County of Residence of First Listed _____ (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant <u>ALLEGHENY COUNTY</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorneys <u>M. JEAN CLICKNER, ESQ. (412) 644-6439 EEOC, PITTSBURGH</u> <u>AREA OFFICE, 1001 LIBERTY AVENUE, SUITE 300, PITTSBURGH, PA 15222</u> (Firm Name, Address, and Telephone Number)	Attorneys _____ Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
☒ 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)	<table style="width: 100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td>☒ 1</td> <td>☐ 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td>☐ 4</td> <td>☐ 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>☐ 2</td> <td>☐ 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td>☐ 5</td> <td>☐ 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>☐ 3</td> <td>☐ 3</td> <td>Foreign Nation</td> <td>☐ 6</td> <td>☐ 6</td> </tr> </table>		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
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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)				
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 (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	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	PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 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	FORFEITURE/PENALTY ☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations & Disclosure Act ☐ 730 Labor/Mgmt Reporting ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act	BANKRUPTCY ☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIW C/DIWW (405(g)) ☐ 864 SSD Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS-Third Party 26 USC 7609
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☒ 442 Employment ☐ 443 Housing/ Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition	OTHER STATUTES ☐ 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 ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 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 ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>Title VII CRA 1964, Title I CRA 1991</u> Brief description of cause: <u>To correct unlawful employment practices based on race & retaliation, and provide appropriate relief to Martell Waite</u>
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VII. REQUESTED IN COMPLAINT:	☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE <u>Schwab</u> DOCKET NUMBER <u>07-01291</u>
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DATE <u>11/15/07</u>	SIGNATURE OF ATTORNEY OF RECORD <u>M. Jean Clickner</u>
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FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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JS 44AREVISED OCTOBER, 1993

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the ☐ Erie ☐ Johnstown ☒ Pittsburgh) calendar.1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang
or Warren, OR any plaintiff or defendant resides in one of said counties.2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or
Somerset OR any plaintiff or defendant resides in one of said counties.3. Complete if on ERIE CALENDAR: I certify that the cause of action arose in _____ County and
that the _____ resides in _____ County.4. Complete if on JOHNSTOWN CALENDAR: I certify that the cause of action arose in _____ County
and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. ☒ This case is related to Number 07-01291 Judge Schwab
2. ☒ This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

1. CIVIL CATEGORY (Place x in only applicable category).

1. ☐ Antitrust and Securities Act Cases
2. ☐ Labor-Management Relations
3. ☐ Habeas Corpus
4. ☒ Civil Rights
5. ☐ Patent, Copyright, and Trademark
6. ☐ Eminent Domain
7. ☐ All other federal question cases
8. ☐ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ☐ Insurance indemnity, contract and other diversity cases.
10. ☐ Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.B.A. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

DATE

11/8/07

ATTORNEY AT LAW

Justin R. O'Byrne

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

UNITED STATES DISTRICT COURT

WESTERN

District of

PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

SUMMONS IN A CIVIL CASE

V.

CHAMPION WINDOW MANUFACTURING
& SUPPLY CO., LLC, d/b/a CHAMPION
WINDOW MFG., INC. and/or d/b/a
CHAMPION WINDOW OF PITTSBURGH,

CASE NUMBER:

Defendant.

TO: (Name and address of Defendant)

**CORPORATE REPRESENTATIVE OF
CHAMPION WINDOWS OF PITTSBURGH, INC.
JAY HYMAN, PRESIDENT
514 PARKWAY VIEW DR
PITTSBURGH, PA 15205-1410**

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and

**M. JEAN CLICKNER, ESQUIRE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
PITTSBURGH AREA OFFICE
LIBERTY CENTER, SUITE 300
1001 LIBERTY AVENUE
PITTSBURGH, PA 15222**

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK

AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and complaint was made by me ⁽¹⁾	DATE
NAME OF SERVER (<i>PRINT</i>)	TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the third-party defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.