

HONORABLE _____

Alex Skalbania, WSBA # 15412
EMMAL SKALBANIA & VINNEDGE
3600 15th Avenue W., Suite 201
Seattle, WA 98119
Telephone: (206) 281-1770
Email: askalbania@aol.com

Diane J. Nobile
Matthew D. Purushotham
To be admitted pro hac vice
WOODLEY & MCGILLIVARY LLP
1101 Vermont Avenue, N.W., Suite 1000
Washington, D.C. 20005
djn@wmlaborlaw.com
mdp@wmlaborlaw.com
Phone: (202) 833-8855

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
Division 4**

Kevin Cunningham,

Jena Gerken,

Eric Mattox,

Kevin Miller,

Tom Perkins,

Devon Reese,

Chad Riley,

Don Robert,

NO. _____

CIVIL ACTION COMPLAINT

JURY TRIAL DEMAND

1 **Kelvin Schuman,**

2 **Scott Simard,**

3 **Richard Stiles,**

4 **Sean Strege,**

5 **Plaintiffs,**

6 **v.**

7 **Mission Support Alliance, LLC,**

8 **Defendant.**

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10
11
12 **Preliminary Statement**

13 1. The Plaintiffs are current and former employees of the Defendant
14 Mission Support Alliance, LLC, and they bring this action on behalf of themselves
15 and other employees similarly situated. This is an action for a declaratory judgment
16 under 28 U.S.C. §§ 2201 and 2202 and for compensation and other relief under the
17 Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq.*

18
19 **Jurisdiction and Venue**

20 2. Jurisdiction of this action is conferred upon this Court by 29 U.S.C. §
21 216(b), 28 U.S.C. § 1331, and 28 U.S.C. § 1337.
22

1 **Facts**

2 8. Plaintiffs were, at all times material herein, employed in an enterprise
3 engaged in commerce or in the production of goods for commerce, as defined by 29
4 U.S.C. § 203(s). More specifically, each Plaintiff is, or was, employed by Mission
5 Support Alliance LLC as a Fire Captain at the Department of Energy’s Hanford
6 nuclear clean-up site during the last three years.
7

8 9. Each of the Plaintiffs in this action, while employed by Defendant, has
9 been an “employee” within the meaning of the Fair Labor Standards Act (“FLSA”),
10 29 U.S.C. § 203(e)(1).
11

12 10. Defendant is an “employer” as defined by 29 U.S.C. § 203(d). Upon
13 information and belief, Defendant at all relevant times has been aware of the
14 provisions of the FLSA.

15 11. Defendant is an enterprise, as defined by 29 U.S.C. § 203(r).

16 12. The Defendant assigned all Plaintiffs to work 24-hour shifts on one of
17 three platoons (*i.e.*, platoon A, B, or C).
18

19 13. Prior to January 1, 2016, all Plaintiffs worked a “modified Detroit”
20 schedule that required them to work one 24-hour shift on, one shift off, one shift on,
21 one shift off, one shift on, four shifts off. This means that during any calendar week,
22 from Sunday to Saturday, Plaintiffs were regularly scheduled to work, and on a regular

1 basis actually worked, either 48 hours or 72 hours. As such, this schedule routinely
2 caused the Plaintiffs to work more than 40 hours in a workweek.

3 14. Since January 1, 2016, and continuing to date, Plaintiffs on each shift
4 have worked a rotating schedule of two consecutive 24-hour shifts on, followed by
5 four days off. This means that during any calendar week. from Sunday to Saturday.
6 Plaintiffs are regularly scheduled to work, and actually work, and on a regular basis
7 actually work, either 48 hours or 72 hours. As such, this schedule routinely causes
8 Plaintiffs to work more than 40 hours in a workweek.
9

10 15. At all times material herein, Defendant has failed to provide Plaintiffs
11 with all overtime compensation owed to them for time worked above 40 hours in a
12 workweek, thereby violating 29 U.S.C. § 207 of the FLSA.
13

14 16. Specifically, Defendant pays Plaintiffs straight time for all hours over 40
15 in a workweek, as opposed to time and one-half their regular rates of pay. As such,
16 Defendant fails to compensate Plaintiffs with additional half-time pay for scheduled
17 and unscheduled hours they work above the 207(a) threshold of 40 hours in a
18 workweek.
19

20 17. At all times material herein, Plaintiffs have been regularly scheduled to
21 work, and on a regular basis in fact have worked, in excess of 40 hours per workweek.
22

1 18. On information and belief, the failure by Defendant to properly pay time-
2 and-one-half overtime compensation to each plaintiff is a knowing, willful and
3 reckless violation of 29 U.S.C. § 207 within the meaning of 29 U.S.C. § 255(a).

4 **Failure to Pay Overtime for All Hours Plaintiffs Work Above 40 Hours in a**
5 **Workweek in Violation of Section 7(a) of the FLSA, 29 U.S.C. § 207(a)**

6 19. Plaintiffs hereby incorporate by reference paragraphs one (1) through
7 twenty (20) in their entirety and restate them herein.

8 20. The FLSA requires employers to pay employees overtime compensation
9 at the rate of one and one-half times their regular rate of pay for all hours worked in
10 excess of the maximum hours described in 29 U.S.C. § 207.

11 21. At all times material herein, Plaintiffs have worked hours in excess of the
12 hourly levels specified in the FLSA, 29 U.S.C. § 207(a). As a result, at all times
13 material herein, Plaintiffs were entitled to overtime compensation at a rate of not less
14 than one and one-half times their regular rate of pay for the hours they have worked
15 in excess of 40 hours per workweek. 29 U.S.C. § 207(a).

16 22. At all times material herein, Defendant has failed and refused to provide
17 Plaintiffs with overtime compensation at a rate of one and one-half times their regular
18 rate of pay for all the hours they have worked in excess of the hourly levels specified
19 in the FLSA, 29 U.S.C. § 207(a), in a workweek, thereby violating 29 U.S.C. § 207(a).
20
21
22

1 23. Defendant's refusal to provide overtime pay at the proper rate to
2 Plaintiffs for the hours they have worked in excess of 40 hours in a workweek, as
3 specified in the FLSA, 29 U.S.C. § 207(a), wrongly deprived them of the overtime
4 compensation that has been due to them at times material herein.

5
6 24. As a result of the aforesaid willful violations of the FLSA, overtime
7 compensation has been unlawfully withheld by Defendant from Plaintiffs for which
8 Defendant is liable pursuant to 29 U.S.C. §§ 216(b) and 255, together with an
9 additional equal amount as liquidated damages, interest, reasonable attorneys' fees,
10 and the costs of this action.

11
12 25. As a result of Defendant's willful and purposeful violations of the FLSA,
13 there have become due and owing to Plaintiffs an amount that has not yet been
14 precisely determined. The employment and work records for Plaintiffs are in the
15 exclusive possession, custody and control of Defendant and Plaintiffs are unable to
16 state at this time the exact amount owing to them. Defendant is under a duty imposed
17 by the FLSA, 29 U.S.C. § 211(c), and the regulations of the United States Department
18 of Labor, to maintain and preserve payroll and other employment records with respect
19 to Plaintiffs and other employees similarly situated from which the amount of
20 Defendant's liability can be ascertained.
21
22

1 **Prayer for Relief**

2 WHEREFORE, each plaintiff requests from the Court the following relief:

3 A. A declaratory judgment declaring that the Defendant has willfully,
4 recklessly and wrongfully violated its statutory and legal obligations, and deprived
5 each plaintiff of his/her rights, protections and entitlements under federal law, as
6 alleged herein;
7

8 B. An order for a complete and accurate accounting of all the compensation
9 to which each plaintiff is entitled;

10 C. Judgment against the Defendant awarding each plaintiff monetary
11 damages in the form of backpay compensation, liquidated damages equal to his/her
12 unpaid compensation, plus pre-judgment and post-judgment interest;
13

14 D. Reasonable attorneys' fees; and

15 E. The costs and disbursement of this action together with such other and
16 further relief as the Court deems proper.
17

18 **Demand for a Jury Trial**

19 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs hereby
20 respectfully request a trial by jury on all claims presented in this Complaint.
21

22 Dated this 5th day of April, 2018.

1 Respectfully submitted,

2 

3 Alex Skalbania, WA Bar #15412
4 EMMAL SKALBANIA & VINNEDGE
5 3600 15th Avenue W Suite 201
6 Seattle, WA 98119
7 askalbania@aol.com
8 Phone: (206) 799-6937
9 Fax: (206) 281-1772

10 s/ Diana J. Nobile

11 Diana J. Nobile
12 Matthew D. Purushotham
13 To be admitted pro hac vice
14 WOODLEY & MCGILLIVARY LLP
15 1101 Vermont Avenue N.W., Suite 1000
16 Washington, D.C. 20005
17 djn@wmlaborlaw.com
18 mdp@wmlaborlaw.com
19 Phone: (202) 833-8855
20 Fax: (202) 452-1090
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EXHIBIT A

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Kevin Cunningham
Print Name Clearly

6611 Fenway DR.
Address

<u>Pasco</u>	<u>WA</u>	<u>99301</u>
City,	State	Zip Code

Dated 12-24-2017

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Chad Riley
Print Name Clearly

P.O. Box 5251
Address

<u>Benton City</u>	<u>WA</u>	<u>99320</u>
City,	State	Zip Code

Dated 12-24-2017

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Devon Reese
Print Name Clearly

6004 S. Coulee Vista Dr
Address

<u>Kennewick</u>	<u>WA</u>	<u>99338</u>
City,	State	Zip Code

Dated 12-24-2017

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Jena Gerken

Print Name Clearly

12319 Ricky Court

Address

<u>Pasco</u>	<u>WA</u>	<u>99301</u>
City,	State	Zip Code

Dated 12-24-2017

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Thomas Perkins

Print Name Clearly

432 Columbia Park Trail

Address

<u>Richland</u>	<u>WA</u>	<u>99352</u>
City,	State	Zip Code

Dated 12-24-2017

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Richard K Stiles
Print Name Clearly

208 S. 58th St.
Address

<u>Yakima</u>	<u>WA</u>	<u>98901-1613</u>
City,	State	Zip Code

Dated 1-11-2018

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Eric Mattox
Print Name Clearly

1450 Auburn RD.
Address

<u>Pasco</u>	<u>WA</u>	<u>99301</u>
City,	State	Zip Code

Dated 1-13-2018

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Scott Simard
Print Name Clearly

P.O. Box 156
Address

Grandview	WA	98930
City,	State	Zip Code

Dated _____ 1-7-2018 _____

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Kelvin Schuman

Print Name Clearly

57711 West Old Inland Empire Hwy

Address

Benton City WA 99320

City, State Zip Code

Dated 1/7/2018

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Sean Strege

Print Name Clearly

3704 W 21st AVE

Address

<u>Kennewick</u>	<u>WA</u>	<u>99338</u>
City,	State	Zip Code

Dated 12-31-2017

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Kevin Miller

Print Name Clearly

8804 W 7th Place

Address

Kennewick	WA	99336
City,	State	Zip Code

Dated 1-9-2018

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Don Robert

Print Name Clearly

22804 E Apple Dr

Address

<u>Benton City</u>	<u>WA</u>	<u>99320</u>
City,	State	Zip Code

Dated 1-09-2018

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.)

<p>I. (a) PLAINTIFFS Kevin Cunningham, et al.</p> <p>(b) County of Residence of First Listed Plaintiff Franklin County <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> See Attachment A</p>	<p>DEFENDANTS Mission Support Alliance LLC</p> <p>County of Residence of First Listed Defendant Benton County <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		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
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATES
<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	PERSONAL INJURY <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	PERSONAL INJURY <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 PERSONAL PROPERTY <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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
REAL PROPERTY	CIVIL RIGHTS	LABOR	PROPERTY RIGHTS	SOCIAL SECURITY
<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	<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	<input checked="" 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	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<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))
	PRISONER PETITIONS	IMMIGRATION	FEDERAL TAX SUITS	
	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Other: <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	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<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

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(Specify)* 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

Brief description of cause:
FLSA action for unpaid 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 **April 2, 2018** SIGNATURE OF ATTORNEY OF RECORD **Alexander J. Spallone**

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Civil Cover Sheet – Attachment A

Attorneys for Plaintiffs

Diana J. Nobile
Matthew D. Purushotham
To be admitted pro hac vice
WOODLEY & MCGILLIVARY LLP
1101 Vermont Avenue N.W., Suite 1000
Washington, D.C. 20005
djn@wmlaborlaw.com
mdp@wmlaborlaw.com
Phone: (202) 833-8855
Fax: (202) 452-1090

Alex Skalbania, WA Bar #15412
EMMAL SKALBANIA & VINNEDGE
3600 15th Avenue W Suite 201
Seattle, WA 98119
askalbania@aol.com
Phone: (206) 799-6937
Fax: (206) 281-1772

UNITED STATES DISTRICT COURT
for the
Eastern District of Washington

KEVIN CUNNINGHAM, et al.,

Plaintiff(s)

v.

MISSION SUPPORT ALLICANCE, LLC,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Mission Support Alliance LLC
Registered Agent:
CORPORATION SERVICE COMPANY
300 DESCHUTES WAY SW STE 304
TUMWATER, WA 98501

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:

Alex Skalbania
EMMAL SKALBANIA & VINNEDGE
3600 15th Avenue W., Suite 201
Seattle, WA 98119-1330

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.

CLERK OF COURT

Date

SEAN F. McAVOY, Clerk