

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

In re Herald, Primeo, and Thema Funds Sec. Litig.

Plaintiff

v.

Defendant

Civil Action No. 09 Civ. 289 (RMB) (HBP)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) James E. O'Neill
54 Breezy Point Rd.
Wading River, NY 11792-1902

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:

S. Douglas Bunch
Cohen Milstein Sellers & Toll PLLC
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, DC 20005

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.

J. MICHAEL McMAHON

CLERK OF COURT

Catherine Lapsley
Signature of Clerk or Deputy Clerk

Date: 11 FEB 2010

Civil Action No. 09 Civ. 289 (RMB) (HBP)

**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)* James E. O'Neill  
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:



COUNTY OF  
UNITED STATES DISTRICT COURT  
DISTRICT: SOUTHERN DISTRICT OF NEW YORK

ATTORNEY(S): PH:  
ADDRESS: File No.:

IN RE HERALD, PRIMEO, AND THEMA FUNDS SEC. LITIG.

vs

Plaintiff(s)/Petitioner(s)

*James E. O'Neill*

Defendant(s)/Respondent(s)

STATE OF NEW YORK, COUNTY OF NASSAU, SS.:

**AFFIDAVIT OF SERVICE**

KEVIN ZUCKER, being duly sworn deposes and says: Deponent is not a party herein, is over 18 years of age and resides in New York State. On Monday, March 22, 2010 at 4:55 PM, at 54 BREEZY POINT RD, Wading River, NY 11792, deponent served the within Summons in a Civil Action & Consolidated Amended Complaint

on: JAMES E. O'NEILL, Defendant therein named.

#1 INDIVIDUAL  By delivering a true copy of each to said recipient personally; deponent knew the person served to be the person described as said person therein.

#2 CORP.  By delivering thereat a true copy of each to \_\_\_\_\_ personally, deponent knew said \_\_\_\_\_ so served to be the \_\_\_\_\_ described in same as said recipient and knew said individual to be the managing/authorized agent of the \_\_\_\_\_, and said person stated that he/she was authorized to accept service on behalf of the \_\_\_\_\_.

#3 SUITABLE AGE PERSON/PARTNERSHIP  By delivering a true copy of each to MR. O'NEILL, resident/relative, a person of suitable age and discretion. Said premises is recipient's: [ ] actual place of business [X] dwelling house (usual place of abode) within the state.

#4 AFFIXING TO DOOR  By affixing a true copy of each to the door of said premises, which is recipient's: [ ] actual place of business [ ] dwelling house (place of abode) within the state.

Deponent was unable, with due diligence to find recipient or a person of suitable age and discretion, having called thereat

on \_\_\_\_\_ at \_\_\_\_\_  
on \_\_\_\_\_ at \_\_\_\_\_  
on \_\_\_\_\_ at \_\_\_\_\_  
on \_\_\_\_\_ at \_\_\_\_\_

Address confirmed by \_\_\_\_\_

#5 MAIL COPY  On March 25, 2010, deponent completed service by depositing a true copy of each document to the above address in a 1st Class postpaid properly addressed envelope not indicating that mailing was from an attorney or concerned legal action and marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York.

#6 DESC.  A description of the person Defendant, or other person served, or spoken to on behalf of the Defendant is as follows:  
Sex: Male Color of skin: White Color of hair: Brown Age: 51-65 Yrs Height: 5' 9 - 6' 0"  
(use with #1, 2 or 3) Weight: 161 - 200 Lbs Other Features: BALDING

#7 WIT. FEES  the authorized witness fee and / or traveling expenses were paid (tendered) to the recipient.

#8 MIL. SRVC  Your deponent asked the person spoken to whether defendant was in the active military service of the United States or N. Y. State; and received a negative reply. Upon information and belief I have; being based on the conversations & observations above narrated, defendant is not in the military service.

#9 OTHER

Sworn to before me on March 25, 2010

*[Signature]*  
VANESSA JOHNSON  
NOTARY PUBLIC, State of New York  
No. 01J06160083, Qualified in Kings County  
Term Expires May 14, 2011

*[Signature]*  
KEVIN ZUCKER  
Server's Lic #  
Invoice-Work Order # 0200483