

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEPHEN FLANAGAN, as a Trustee of the GENERAL
BUILDING LABORERS' LOCAL 66 VACATION FUND;
STEPHEN FLANAGAN, as a Trustee of the GENERAL
BUILDING LABORERS' LOCAL 66 PENSION FUND;
STEPHEN FLANAGAN, as a Trustee of the GENERAL
BUILDING LABORERS' LOCAL 66 WELFARE FUND;
STEPHEN FLANAGAN, as Trustee of the GENERAL
BUILDING LABORERS' LOCAL 66 ANNUITY FUND;
STEPHEN FLANAGAN, as a Trustee of the GENERAL
BUILDING LABORERS' LOCAL 66 LABORERS'
EMPLOYER COOPERATIVE AND EDUCATIONAL TRUST
FUND; STEPHEN FLANAGAN, as a Trustee of the
GENERAL BUILDING LABORERS' LOCAL 66 GREATER
NY LABORERS' EMPLOYER COOPERATIVE AND
EDUCATIONAL TRUST FUND; STEPHEN FLANAGAN,
as a Trustee of the GENERAL BUILDING LABORERS'
LOCAL 66 TRAINING PROGRAM; STEPHEN FLANAGAN,
as a Trustee of the GENERAL BUILDING LABORERS'
LOCAL 66 NEW YORK STATE HEALTH AND SAFETY
FUND; STEPHEN FLANAGAN, as Business Manager of
GENERAL BUILDING LABORERS' LOCAL UNION NO. 66
of the LABORERS' INTERNATIONAL UNION OF NORTH
AMERICA, AFL-CIO,

VERIFIED COMPLAINT

Plaintiffs,

-against-

THE SAWCUTTER ASSOCIATES, INC., THE SAWCUTTERS
ASSOCIATES NY CORP., THE SAWCUTTER CORP.,
CONCRETE PENETRATION CORP, CRUSH CONTRACTING,
INC., GERARD BARSCH, BRIDGET BARSCH, ELIZABETH
BYRNES, ADONAI CHICA-GUEVARA,

Defendants.

-----x
Plaintiffs, complaining of the defendants, by their attorney, LAVELLE LAW & ASSOCIATES,

P.C., allege as follows:

1. This is an action by a fiduciary of 8 employee benefit plans to enforce the obligations of defendants to make contributions to these plans and permanently enjoin their failure to make such contributions in the future and for interest, additional interest, reasonable attorney's fees and costs of action. Additionally, this is an action by a fiduciary of eight employee benefit plans under Section 301 of the LMRA, 20 U.S.C., Section 185 and Section 502 of E.R.I.S.A., 29 U.S.C., Section 1132 to enforce the provisions of a collective bargaining agreement; to enjoin acts or practices which violate provisions of E.R.I.S.A.; to obtain other appropriate equitable relief, to wit, an accounting; to redress such violations; to enforce the provisions of E.R.I.S.A.; to enforce the terms of the employee benefit plans. More specifically, to compel the defendants to furnish to the Funds by audit, such books and records that will enable the Funds to determine the amount of contributions owed to said Funds on behalf of Fund participants employed by defendants, pursuant to Section 502(a)(3)(B) of E.R.I.S.A., 29 U.S.C., 1132(a)(3)(B); to permanently enjoin the defendants' failure to submit to audits plus reasonable attorney's fees and costs of this action. This is also an action by the chief executive officer of a labor organization to obtain damages from the defendants resulting from their breach of the collective bargaining agreement between the labor organization and the defendants.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked under the following statutes:

(a) § 502(a), (e), (f) and (g) and 4301(a), (b) and (c) of the Employee

Retirement Income Security Act of 1974 (ERISA), (29 U.S.C. § 1132(a), (e), (f) and (g);

(b) § 301 of the Taft-Hartley Act (29 U.S.C. § 185);

(c) 28 U.S.C. § 1331 (federal question); and

(d) 28 U.S.C. 1337 (civil actions arising under Act of Congress regulating commerce).

3. Venue properly lies in this district under §§ 502(e)(2) of ERISA and § 301 of the Taft-Hartley Act (29 U.S.C. § 185).

PARTIES

4. Plaintiff, STEPHEN FLANAGAN, as a Trustee of the General Building Laborers' Local 66 Vacation Fund (Vacation Fund) and as a Trustee of the General Building Laborers' Local 66 Pension Fund (Pension Fund) and as a Trustee of the General Building Laborers' Local 66 Welfare Fund (Welfare Fund) and as a Trustee of the General Building Laborers' Local 66 Annuity Fund (Annuity Fund) and as a Trustee of the General Building Laborers' Local 66 Laborers' employer Cooperative and Educational Trust Fund

(LECET Fund) and as a Trustee of the General Building Laborers' Local 66 Greater NY Laborers' employer Cooperative and Educational Trust Fund (Greater NY LECET Fund) and as a Trustee of the General Building Laborer's Local 66 Training Program (Training Fund) and as a Trustee of the General Building Laborers' Local 66 New York State Health and Safety Fund (NYS Health and Safety Fund), is and was a fiduciary within the meaning of § 3(21) and 502 of ERISA (29 U.S.C. §§ 1002(21) and 1132)) and brings this action in his fiduciary capacity. The Vacation Fund and the Pension Fund and the Welfare Fund and the Annuity Fund and the LECET Fund and the Greater NY LECET Fund and the Training Fund and the NYS Health and Safety Fund are employee benefit plans within the meaning of §§ 3(1), 3(2), 3(3) and § 502(d)(1) of ERISA (29 U.S.C. §§ 1002(1), 1002(2), 1002(3) and 1132(d)(1)), and multi-employer plans within the meaning of §§ 3(37) and 515 of ERISA (29 U.S.C. §§ 1002(37) and 1145).

5. The Funds maintain their offices and are administered at 1600 Walt Whitman Road, Melville, New York 11747 and, as such, are and were at all times relevant hereto administered within this district within the meaning of § 502(e)(2) of ERISA (29 U.S.C. § 1132(e)(2)).

6. Upon information and belief, at all times relevant hereto, the corporate defendants, THE SAWCUTTER ASSOCIATES, INC., THE SAWCUTTER ASSOCIATES NY CORP., CONCRETE PENETRATION CORP., and THE SAWCUTTER CORP. have been a for-

profit domestic corporation, doing business in New York, having their principal places of business at **302 Great River Road in Great River**, and incorporated under the laws of the State of New York, have been an employer within the meaning of §§ 3(5) and 5154 of ERISA (29 U.S.C. §§ 1002(5) and 1145) and have been an employer in an industry affecting commerce within the meaning of § 301 of the Taft-Hartley Act (29 U.S.C. § 185).

7. Upon information and belief, at all times relevant hereto, the corporate defendant, CRUSH CONTRACTING, INC. has been a for-profit domestic corporation, doing business in New York, having their principal places of business at **541 Falmouth Road in West Babylon**, and incorporated under the laws of the State of New York, have been an employer within the meaning of §§ 3(5) and 5154 of ERISA (29 U.S.C. §§ 1002(5) and 1145) and have been an employer in an industry affecting commerce within the meaning of § 301 of the Taft-Hartley Act (29 U.S.C. § 185).

8. Upon information and belief, the individual defendants are and were an officer and/or director and/or shareholder and/or agent of the corporate defendants and therefore are and were an employer within the meaning of §§ 3(5) and 5154 of ERISA (29 U.S.C. §§ 1002(5) and 1145).

9. Upon information and belief, at all times relevant hereto, defendants have been engaged in the building and construction industry as a contractor, within the

judicial district, to wit, Nassau and Suffolk Counties, State of New York and are and have been doing business in this district within the meaning of 28 U.S.C. § 1391.

10. Defendants executed the collective bargaining agreement and as such, are bound to the collective bargaining agreement with General Building Laborers' Local Union No. 66 with respect to which plaintiffs Funds are third-party beneficiaries. Said Agreement incorporates by reference the terms of the Agreements and Declarations of Trust of the Fringe Benefit Funds. Defendants thereby agreed to comply with and be bound by all of the provisions of the collective bargaining agreement and Agreements and Declarations of Trusts (hereinafter collectively "Agreements"). Said Agreements, *inter alia*, provided for contributions by said defendants to the Fringe Benefit Funds for each hour worked by participants employed by said defendants. Said Agreements also provided for Dues Check-Off payable to the General Building Laborers' Local Union No. 66 for each hour worked by participants employed by said defendants. At all times material hereto said contract was in full force and effect.

11. Pursuant to said Agreements, defendants employed persons who were participants in the Fringe Benefit Funds within the meaning of § 3(7) of ERISA (29 U.S.C. § 1002(7)), and therefore are obligated to pay contributions to each of the Fringe Benefit Funds for each hour worked by participants in its employ during the time said contract was in full force and effect.

12. Upon information and belief, the defendants received funds which were intended to be held in trust for fringe benefit funds for labor on the job site pursuant to New York State Lien Law § 71, said funds were wrongfully and fraudulently diverted, and, as such, the individual defendant is liable therefore.

13. Upon information and belief, the defendants knowingly participated in a fiduciary breach of ERISA trust obligations and, as such, the individual defendants are liable therefore.

14. Upon information and belief, the defendants conspired to divert ERISA funds for personal benefit and, as such, the individual defendants are liable therefore.

15. Upon information and belief, the defendants intermingled personal and corporate assets.

16. Upon information and belief, "GERARD BARSCH" is a successor in interest to THE SAWCUTTER ASSOCIATES, INC., THE SAWCUTTER ASSOCIATES NY CORP., and THE SAWCUTTER CORP.

17. Upon information and belief, "BRIDGET BARSCH" is a successor in interest to CONCRETE PENETRATION CORP., and THE SAWCUTTER CORP.

18. Upon information and belief, "ADONAI CHICA-GUEVARA" is a successor in interest to CRUSHING CONTRACTING, INC.

19. Upon information and belief, corporate Defendants engaged in a "double

breasting operation" where THE SAWCUTTER ASSOCIATES, INC., THE SAWCUTTER ASSOCIATES NY CORP., THE SAWCUTTER CORP., CONCRETE PENETRATION CORP, and CRUSH CONTRACTING all operate using the same address(es) and P.O. Box 668, Great River, NY 11739.

20. Additionally, pursuant to said contract, the Fringe Benefit Funds have the power to require any employer of Local 66 represented employees, to furnish to said Fringe Benefit Funds such information and reports and to make available by audit such books and records as they may require in the performance of their duties and to collect contributions owed to the Fringe Benefit Funds.

21. The Fringe Benefit Funds demanded that defendants furnish to said Funds such information and reports, and to make available by audit such books and records in order to determine the amount of contributions owed to the Fringe Benefit Funds on behalf of its participants for the period of July 1, 2016 to the present.

22. Notwithstanding such demands defendants have failed and refused to furnish to the plaintiffs said information and reports and to make available by audit all books and records of all defendants "trades and businesses (whether or not incorporated) which are under common control" of the defendants, within the meaning of Section 3(37)(B) of E.R.I.S.A., 29 U.S.C., Section 1002(37)(B).

23. Plaintiffs are wholly ignorant of the amounts of money held by defendants

except that defendants have failed and refused to account to plaintiffs therefore in breach of the terms of the contract between defendants and Local 66, and in breach of the Agreements and Declarations of Trust of the Fringe Benefit Funds.

24. Plaintiffs have no adequate remedy at law. This claim for relief seeks an accounting under the courts equitable powers pursuant to Section 502(a)(3)(B) of E.R.I.S.A., 29 U.S.C., 1132(a)(3)(B).

THE AGREEMENTS AND TRUSTS

25. Pursuant to the terms of the Agreements and Trusts, defendants, THE SAWCUTTER ASSOCIATES, INC., THE SAWCUTTERSASSOCIATES NY CORP., THE SAWCUTTER CORP., CONCRETE PENETRATION CORP, CRUSH CONTRACTING, INC., GERARD BARSCH, BRIDGET BARSCH, ELIZABETH BYRNES, ADONAI CHICA-GUEVARA are required *inter alia* to:

- (a) pay contributions to the Funds on behalf of its employees, at the rates and times set forth in the Agreements;
- (b) submit contribution reports to the Funds;
- (c) permit and cooperate with the Funds in the conducting of audits of its books and records; and
- (d) in the event the contractor fails to timely pay required

contributions, it is obligated to pay

- i. interest from the date such delinquent contributions were due until the date of payment;
- ii. liquidated damages in an amount equal to the interest on the delinquent contributions; and
- iii. all costs and attorneys' fees incurred by the Funds.

REMEDIES FOR BREACH OF OBLIGATION TO THE FUNDS

26. Pursuant to the terms of the Agreements and § 515 of ERISA (29 U.S.C. § 1145), employers are required to pay contributions to the Funds in accordance with the terms and conditions of the Agreements.

27. Failure to make such payment or timely payment constitutes a violation of the Agreements and § 515 of ERISA (29 U.S.C. § 1145).

28. The Agreements and § 502 of ERISA (29 U.S.C. § 1132) all provide that upon a finding of an employer violation as set forth above, the Funds shall be awarded the unpaid contributions, plus interest on unpaid contributions, liquidated damages, reasonable attorney's fees and costs of the action, and such other and legal or equitable relief as the court deems appropriate.

CLAIM FOR RELIEF

29. Plaintiff, STEPHEN FLANAGAN, as a Trustee of each of the Fringe Benefits

Funds, repeats and realleges each and every allegation set forth in paragraphs 1 through 28.

30. This claim for relief seeks a permanent injunction against defendants pursuant to §§ 502(a)(3) and 502(g)(2)(E) of ERISA (29 U.S.C. §§ 1132(a)(3) and 1132(g)(2)(E)).

31. Defendants have no meritorious defense to the claims for relief set forth in the Complaint, either in fact or in law and has simply sought to avoid payment of the contributions owed by them to the fringe benefit funds or to delay payment thereof.

32. The fringe benefit funds have and will incur considerable nonrecoverable expenses in pursuing unpaid contributions such as increased administrative overhead, lost investment income, attorney's fees, audit costs and other legal costs.

33. The nonrecoverable expenses are ultimately borne by the participants, pensioners and beneficiaries of the fringe benefit funds by way of reduced benefits and this is inequitable.

34. Accordingly, defendants should be permanently enjoined from failing or refusing to pay contributions and submit to corporation audit of all related "double breasting" corporate entities to the fringe benefit funds in accordance with the terms and conditions of Agreements, all in violation of § 515 of ERISA (29 U.S.C. § 1145).

WHEREFORE, plaintiffs demand judgment in accordance with § 502(g)(2) of ERISA

(29 U.S.C. § 1132(g)):

1. Judgment in favor of plaintiffs that defendants furnish to said plaintiffs by audit all books and records of all defendants' trades and businesses (whether or not incorporated) which are under each defendant's control, that will enable the plaintiff Fringe Benefit Funds to determine the amount of contributions owed to Fringe Benefit Funds on behalf of said participants employed by the defendant;
2. Judgment in favor of plaintiffs and against defendants permanently enjoining said defendants from failing or refusing to submit to audits in accordance with the terms and conditions of the plans of the Fringe Benefit Funds and the contract to which defendants are parties;
3. The attorney's fees, audit costs and costs incurred in the action as required by § 502 (g)(2) of ERISA (29 U.S.C. § 1132(g)(2));
4. Holding individual corporate officers in contempt of court for failure to supply books, records, and various documents necessary to perform an audit of the various corporate defendants.

Dated: Patchogue, New York
February 24, 2021

LAVELLE LAW & ASSOCIATES P.C.



By: WILLIAM T. LAVELLE

Attorney for Plaintiffs

LaVelle Law & Associates, P.C.

57 East Main Street

Patchogue, New York 11772

(631) 475-0001

To: Defendants (F.R.C.P. 4)

United States District Court (F.R.C.P. 3)

Secretary of Labor – by Certified Mail (29 U.S.C. § 1132(h))

Secretary of Treasury – by Certified Mail (29 U.S.C. § 1132(h))

JS 44 (Rev. 10/20)

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

SEE ATTACHED RIDER

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

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

William T. LaVelle, LaVelle Law & Associates, P.C.
57 East Main St., Patchogue, NY 11772; (631)475-0001

DEFENDANTS

SEE ATTACHED RIDER

County of Residence of First Listed Defendant Suffolk
(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
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 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 | ☐ 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)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	☐ 310 Airplane	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 315 Airplane Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 320 Assault, Libel & Slander			☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 330 Federal Employers' Liability			☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 340 Marine			☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 345 Marine Product Liability			☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 350 Motor Vehicle			☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 355 Motor Vehicle Product Liability			☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 360 Other Personal Injury			☐ 480 Consumer Credit (15 USC 1681 or 1692)
☐ 190 Other Contract	☐ 362 Personal Injury - Medical Malpractice			☐ 485 Telephone Consumer Protection Act
☐ 195 Contract Product Liability				☐ 490 Cable/Sat TV
☐ 196 Franchise				☐ 850 Securities/Commodities/Exchange
				☐ 890 Other Statutory Actions
				☐ 891 Agricultural Acts
				☐ 893 Environmental Matters
				☐ 895 Freedom of Information Act
				☐ 896 Arbitration
				☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				☐ 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):
29 U.S.C. 132 (g)

Brief description of cause:
Collection of Fringe Benefit Contributions

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
25,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

NONE
(See instructions)

JUDGE

DOCKET NUMBER

DATE 3/17/2021 SIGNATURE OF ATTORNEY OF RECORD William T. LaVelle

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 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.

Case is Eligible for Arbitration ☐

I, William T. LaVelle, counsel for Plaintiffs, 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:
Relief other than monetary damages is sought

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? ☐ 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: William T. LaVelle

Plaintiffs:

STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 VACATION FUND;

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STEPHEN FLANAGAN, as Business Manager of GENERAL BUILDING LABORERS' LOCAL UNION NO. 66 of the LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO.

Defendants

THE SAWCUTTER ASSOCIATES, INC. (302 Great River Road, Great Neck, NY 11739);

THE SAWCUTTERS ASSOCIATES NY CORP. (302 Great River Road, Great Neck, NY 11739);

THE SAWCUTTER CORP. (302 Great River Road, Great Neck, NY 11739);

CONCRETE PENETRATION CORP. (302 Great River Road, Great Neck, NY 11739);

CRUSH CONTRACTING INC. (541 Falmouth Road West Babylon, NY 11704);

GERARD BARSCH (302 Great River Road, Great Neck, NY 11739);

BRIDGET BARSCH (302 Great River Road, Great Neck, NY 11739);

ELIZABETH BYRNES (302 Great River Road, Great Neck, NY 11739);

ADONAI CHICA-GUEVARA (541 Falmouth Road West Babylon, NY 11704).

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

William T. LaVelle, LaVelle Law & Associates, P.C.
57 East Main St., Patchogue, NY 11772; (631)475-0001

DEFENDANTS

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(IN U.S. PLAINTIFF CASES ONLY)

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Attorneys (If Known)

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| 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)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
☐ 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 (Excludes 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 ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical 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	☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act ☐ 790 Other Labor Litigation ☒ 791 Employee Retirement Income Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark ☐ 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 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):
29 U.S.C. 132 (g)

Brief description of cause:

Collection of Fringe Benefit Contributions

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
25,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

NONE
(See instructions)

JUDGE

DOCKET NUMBER

DATE
3/17/2021

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.7 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.

Case is Eligible for Arbitration ☐

I, William T. LaVelle, counsel for Plaintiffs, 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:
Relief other than monetary damages is sought

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? ☐ 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: William T. LaVelle

Plaintiffs:

STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 VACATION FUND;

STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 PENSION FUND;

STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 WELFARE FUND;

STEPHEN FLANAGAN, as Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 ANNUITY FUND;

STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 LABORERS' EMPLOYER COOPERATIVE AND EDUCATIONAL TRUST FUND;

STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 GREATER NY LABORERS' EMPLOYER COOPERATIVE AND EDUCATIONAL TRUST FUND;

STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 TRAINING PROGRAM;

STEPHEN FLANAGAN, as a Trustee of the GENERAL BUILDING LABORERS' LOCAL 66 NEW YORK STATE HEALTH AND SAFETY FUND;

STEPHEN FLANAGAN, as Business Manager of GENERAL BUILDING LABORERS' LOCAL UNION NO. 66 of the LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO.

Defendants

THE SAWCUTTER ASSOCIATES, INC. (302 Great River Road, Great Neck, NY 11739);

THE SAWCUTTERS ASSOCIATES NY CORP. (302 Great River Road, Great Neck, NY 11739);

THE SAWCUTTER CORP. (302 Great River Road, Great Neck, NY 11739);

CONCRETE PENETRATION CORP. (302 Great River Road, Great Neck, NY 11739);

CRUSH CONTRACTING INC. (541 Falmouth Road West Babylon, NY 11704);

GERARD BARSCH (302 Great River Road, Great Neck, NY 11739);

BRIDGET BARSCH (302 Great River Road, Great Neck, NY 11739);

ELIZABETH BYRNES (302 Great River Road, Great Neck, NY 11739);

ADONAI CHICA-GUEVARA (541 Falmouth Road West Babylon, NY 11704).