

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

RYAN LANG, on behalf of himself and all)
others similarly situated,)

Plaintiff,)

v.)

DUPLIN COUNTY EMERGENCY MEDICAL)
SERVICES,)

Defendant.)

Case No.: 7:18-cv-77

Collective and Class Action
COMPLAINT

COMES NOW, Ryan Lang (“Named Plaintiff”), on behalf of himself and all others similarly situated (collectively “Named and Putative Plaintiffs”), by and through undersigned counsel, hereby sets forth this collective/class action against Defendant Duplin County Emergency Medical Services (“Defendant”), and alleges as follows:

PRELIMINARY STATEMENT

1. This action is brought individually and as a collective action for unpaid overtime compensation, liquidated damages, and all related penalties and damages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* Defendant had a systemic company-wide policy, pattern, or practice of misclassifying their employees as exempt from the FLSA, willfully failing to compensate employees for all hours worked, willfully failing to compensate employees at the appropriate overtime rate for overtime hours worked, and violating statutory recordkeeping provisions.

2. This action is also brought individually and as a class action against Defendant for

failing to compensate Named and Putative Plaintiffs all owed, earned, and/or promised wages, on their regular pay date, in direct contravention of the North Carolina Wage and Hour Act (“NCWHA”), N.C. Gen. Stat. § 95-25.1, *et seq.*

3. Defendant’s pay practices and policies were in direct violation of the FLSA and the NCWHA. Accordingly, Named and Putative Plaintiffs seek unpaid overtime compensation and unpaid owed, earned, and/or promised wages, in addition to liquidated damages, attorneys’ fees and costs, prejudgment interest, and other damages permitted by applicable law.

JURISDICTION AND VENUE

4. This Court has federal question jurisdiction under 28 U.S.C. § 1331 for the claims brought under the FLSA, 29 U.S.C. § 201, *et seq.*

5. The United States District Court for the Eastern District of North Carolina has jurisdiction because Defendant conducts business in Duplin County, North Carolina which is located within this District.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), inasmuch as Defendant conducted business within the Eastern District of North Carolina, and the substantial part of the events or omissions giving rise to these claims occurred in this District.

7. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367 for the pendent state claims because they arise out of the same nucleus of operative facts as the FLSA claim.

8. All of the alleged causes of action can be determined in this judicial proceeding and will provide judicial economy, fairness, and convenience for the parties.

9. The evidence establishing liability for both causes of action will be similar, and neither issue will predominate nor create confusion for a jury.

PARTIES

10. Named Plaintiff is an adult resident of the State of North Carolina, residing at 5069 Western Boulevard, Apt. 3H, Jacksonville, NC 28546.

11. Named Plaintiff is presently employed by Defendant as an hourly-paid paramedic and has held that position since approximately March 2015.

12. The FLSA collective action Putative Plaintiffs consist of individuals who were, are, or will be employed by Defendant as hourly-paid workers, at any time within the three (3) year period prior to joining this lawsuit under 29 U.S.C. § 216(b), who were misclassified as exempt from overtime pay requirements, including, but not limited to, paramedics, Emergency Medical Technicians (EMTs), and Intermediates.

13. The NCWHA Rule 23 proposed class action Putative Plaintiffs consist of individuals who were, are, or will be employed by Defendant as hourly-paid workers, at any time within the two (2) year period prior to the filing of this lawsuit, who were not paid all wages due and owing, including, but not limited to, paramedics, Emergency Medical Technicians (EMTs), and Intermediates.

14. Defendant Duplin County Emergency Medical Services is a Duplin County governmental entity with a principal location of 209 Seminary Street, Kenansville, NC 28349.

15. Upon information and belief, during the time period relevant to this action, Defendant was an employer, joint employer, or member of an integrated, common enterprise, that employed Named and Putative Plaintiffs, pursuant to the FLSA and NCWHA, in that Defendant, or its agents, held or implemented the power, *inter alia*, to control the work performance of Named and Putative Plaintiffs, and Defendant received the benefit of Named and Putative Plaintiffs' labor.

COVERAGE

16. At all times material to this action, Defendant has acted, directly or indirectly, in

the interest of an employer or joint employer with respect to Named and Putative Plaintiffs.

17. At all times material to this action, Defendant has been an employer within the defined scope of the FLSA, 29 U.S.C. § 203(d).

18. At all times material to this action, Defendant has been an employer within the meaning of the NCWHA, N.C. Gen. Stat. § 95-25.2(5).

19. At all times material to this action, Named and Putative Plaintiffs have been individual employees within the scope of the FLSA, 29 U.S.C. § 207.

20. At all times material to this action, Named and Putative Plaintiffs have been employees within the meaning of the NCWHA, N.C. Gen. Stat. § 95-25.2(4).

21. At all times material to this action, Defendant has been a public agency within the meaning of the FLSA, 29 U.S.C. § 203(x).

22. At all times material to this action, Defendant has been an enterprise engaged in commerce or the production of goods for commerce as defined by the FLSA, 29 U.S.C. §§ 203(s), 203(r), since Defendant acts as a public agency, and such activities “shall be deemed to be activities performed for a business purpose” under § 203(r)(2)(C).

FACTUAL ALLEGATIONS

23. Defendant is responsible for providing emergency medical treatment and transportation throughout Duplin County, North Carolina.

24. Defendant employs paramedics, EMTs, and Intermediates who are responsible for administering medical care and for the transportation of sick or injured persons in response to emergency and non-emergency calls.

25. Named Plaintiff worked for Defendant from approximately March 2015 through the present.

26. Named Plaintiff's job duties include, but are not limited to: (1) responding to emergency calls as a driver or attendant; (2) performing necessary rescue work in accordance with established protocols for Advanced Life Support; (3) administering necessary emergency medical care; (4) performing pulmonary ventilation by means of an endotracheal tube and administering epinephrine; (5) oxygen administration; (6) hemorrhage control; (7) treatment for shock; (8) bandaging and dressing soft tissue injuries; (9) splinting fractures and dislocations; (10) treatment of injuries to body parts; (11) assisting in normal and abnormal childbirth; (12) lifting and moving patients for transfer to a medical facility; and (13) extraction of patients from confined areas.

27. Named Plaintiff may also be required to perform "marginal functions," including answering the telephone, teaching first aid, inspecting and testing ambulance and equipment, cleaning and sanitizing ambulance and equipment, and performing routine maintenance.

28. At no time were Named and Putative Plaintiffs responsible for performing fire protection or law enforcement activities.

29. At no time were Named and Putative Plaintiffs trained in fire suppression.

30. At no time did Named and Putative Plaintiffs have the power to arrest.

31. At no time were Named and Putative Plaintiffs trained in firearm proficiency.

32. At no time were Named and Putative Plaintiffs trained in criminal or civil law principles.

33. At no time were Named and Putative Plaintiffs trained in investigative or law enforcement techniques.

34. Named and Putative Plaintiffs typically work a standard schedule of twenty-four (24) hours on, and seventy-two (72) hours off.

35. Named and Putative Plaintiffs typically work two (2) twenty-four (24) hour shifts

per week, totaling forty-eight (48) hours worked per week.

36. During weeks when Named and Putative Plaintiffs work forty-eight (48) hours per week, Defendant pays half-time for the eight (8) overtime hours worked by dividing Named and Putative Plaintiffs' weekly salary by forty-eight (48), and multiplying one-half of that rate for the eight (8) hours of overtime.

37. Approximately one (1) week per month, Named and Putative Plaintiffs typically work only one twenty-four (24) hour shift, since their other shifts fall after the end of the pay period.

38. When Named and Putative Plaintiffs are called to work a shift beyond their regularly-scheduled twenty-four (24) or forty-eight (48) hours, they are paid "Call Back Pay," which is derived by dividing the weekly salary by forty (40), not by the actual number of hours worked in the week, to arrive at the Call Back Pay Rate. The Call Back Pay Rate is the same in overtime and non-overtime workweeks. Defendant also only pays straight time for hours worked over forty-eight (48) in a single workweek.

39. Further, Defendant often shifts Named and Putative Plaintiffs' pay for overtime hours worked during the standard-schedule workweeks, to hours worked during shorter twenty-four (24) hour workweeks, enabling Defendant to avoid several hours of premium overtime pay.

40. Named and Putative Plaintiffs regularly complained to Defendant about its unlawful pay practices, and Defendant's practices have been the subject of at least one investigation by the United States Department of Labor ("USDOL").

41. The USDOL's investigative period was from January 23, 2015 to January 20, 2017. During the USDOL's investigation, Defendant expressly conceded that Named and Putative Plaintiffs were misclassified as exempt under the FLSA. The USDOL's findings revealed that

Defendant did not comply with the overtime pay provisions or recordkeeping requirements of the FLSA.

42. When the USDOL requested that Defendant pay any and all back wages owed, and change its pay practices prospectively, Defendant refused to do so.

43. Defendant continues to operate in violation of the law, despite the USDOL's investigation, findings, and recommendations to Defendant, to comply with the FLSA. See Ex. B, USDOL's investigative findings.

44. As described herein, Defendant willfully violated Named and Putative Plaintiffs' rights by failing to pay them the wages they were owed.

45. Upon information and belief, at all times material to this complaint, Defendant's uniform approach throughout their operations in compensating Named and Putative Plaintiffs was intentionally done to evade their obligations under the FLSA and NCWHA.

FLSA COLLECTIVE ACTION ALLEGATIONS

46. Named Plaintiff brings the First Count of the instant Complaint as a collective action pursuant to 29 U.S.C. § 216(b), on behalf of himself and all similarly situated employees.

47. Similarly situated employees, for purposes of the FLSA collective action claims, include individuals who were, are, or will be employed by Defendant as hourly-paid workers, at any time within the three (3) year period prior to joining this lawsuit under 29 U.S.C. § 216(b), who were misclassified as exempt from overtime pay requirements, including, but not limited to, paramedics, Emergency Medical Technicians (EMTs), and Intermediates.

48. The members of the proposed collective action, like Named Plaintiff, were employed as emergency personnel, and were subject to the same or similar pay practices.

49. The members of the proposed collective action are known to Defendant, are readily

identifiable, and may be located through Defendant's records.

50. Pursuit of this action collectively will provide the most efficient mechanism for adjudicating the claims of Named and Putative Plaintiffs.

51. Named Plaintiff requests that he be permitted to serve as representative of those who consent to participate in this action, and that this action be conditionally certified as a collective action pursuant to 29 U.S.C. § 216(b).

52. Pursuant to 29 U.S.C. § 216(b), attached to and filed with the instant Complaint as Exhibit A, is a Consent to File Suit as Plaintiff executed by Named Plaintiff.

NCWHA CLASS ACTION ALLEGATIONS

53. Named Plaintiff brings the Second Count of the instant Complaint as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of himself and all similarly situated employees, for relief to redress and remedy Defendant's violations of the NCWHA, N.C. Gen. Stat. § 95-25.1, *et seq.*

54. Pursuit of this action as a class will provide the most efficient mechanism for adjudicating the claims of Named and Putative Plaintiffs.

55. The Proposed Class: Individuals who were, are, or will be employed by Defendant as hourly-paid workers, at any time within the two (2) year period prior to the filing of this lawsuit, who were not paid all wages due and owing, including, but not limited to, paramedics, Emergency Medical Technicians (EMTs), and Intermediates.

56. Numerosity: The proposed class is so numerous that the joinder of all such persons is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. While the exact number of class members is unknown to Plaintiff at this time, upon information and belief, the class comprises of at least fifty (50) persons.

57. Common Questions Predominate: There is a well-defined commonality of interest in the questions of law and fact involving and affecting the proposed class, and these common questions of law and fact predominate over any questions affecting members of the proposed class individually, in that all Named and Putative Plaintiffs have been harmed by Defendant's failure to pay all owed, earned, and/or promised wages. The common questions of law and fact include, but are not limited to, the following:

- a. Whether Named and Putative Plaintiffs were misclassified pursuant to the NCWHA;
- b. Whether Defendant failed to pay Named and Putative Plaintiffs all owed, earned, and/or promised wages, on their regular pay date, in violation of N.C. Gen. Stat. §§ 95-25.6, 95-25.7, and 95-25.13; and
- c. Whether Defendant lawfully compensated Named and Putative Plaintiffs for all of their hours worked.

58. Typicality: The claims of Named Plaintiff are typical of the claims of each proposed class member, and the relief sought is typical of the relief which would be sought by each member of the class in separate actions. All putative class members were subject to the same compensation practices of Defendant, as alleged herein, including failing to pay employees all of their owed, earned, and/or promised wages pursuant to N.C. Gen. Stat. § 95-25.6. Defendant's compensation policies and practices affected all putative class members similarly. Named Plaintiff and members of the proposed class sustained similar losses, injuries, and damages arising from the same unlawful policies, practices, and procedures.

59. Adequacy of Representation: Named Plaintiff is able to fairly and adequately protect the interests of all members of the class, and there are no known conflicts of interest

between Named Plaintiff and members of the proposed class. Named Plaintiff has retained counsel who are experienced and competent in both wage and hour law and complex class action litigation.

60. Superiority: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions engender. Because the losses, injuries and damages suffered by each of the individual class members may be small for some in the sense pertinent to the class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual class members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for the adjudication of individual litigation and claims would be substantially greater than if the claims are treated as a class action. Prosecution of separate actions by individual members of the proposed class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the class, establishing incompatible standards of conduct for Defendants, and resulting in the impairment of class members' rights and the disposition of their interests through actions to which they are not parties. The issue in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to fashion methods to efficiently manage this action as a class action.

61. Public Policy Considerations: Defendant violated the NCWHA. Just as current employees are often afraid to assert their rights out of fear of direct or indirect retaliation, former employees may also be fearful of bringing claims because doing so can harm their employment,

future employment, and future efforts to secure employment. Class action lawsuits provide class members who are not named in the Complaint a degree of anonymity, which allows for vindication of their rights while eliminating or reducing these risks.

COUNT ONE
Violation of the Fair Labor Standards Act
29 U.S.C. § 207
(Failure to Pay Proper Overtime Wages)
(On Behalf of Named and Putative Plaintiffs)

62. Named Plaintiff incorporates by reference all preceding paragraphs as if the same were set forth again fully at this point.

63. The FLSA defines “employee” as “any individual employed by an employer,” 29 U.S.C. § 203(e)(1), and “employer” as “any person acting directly or indirectly in the interest of an employer in relation to an employee,” 29 U.S.C. § 203(d). The FLSA defines “employ” broadly, to cover anyone who is “suffer[ed] or permit[ed] to work.” 29 U.S.C. § 203(g).

64. Pursuant to the FLSA, 29 U.S.C. § 207, employers must pay non-exempt employees at a rate of one and one-half (1.5) times their regular rate of pay, for all hours worked over forty (40) in a single workweek.

65. At all relevant times, Named and Putative Plaintiffs were non-exempt, covered employees pursuant to the FLSA.

66. In addition to Defendant explicitly conceding to the USDOL that it had misclassified Named and Putative Plaintiffs as exempt from the FLSA, no exemption under the FLSA applies to Named and Putative Plaintiffs. Named and Putative Plaintiffs do not qualify as exempt under § 207(k) since they were not trained in fire suppression, did not have the legal authority or responsibility to engage in fire suppression, were not employed by a fire department of a municipality, were not engaged in the prevention, control, and extinguishment of

fires, were not empowered to enforce laws designed to maintain public peace and order, did not have the power to arrest, and did not receive training as to self-defense, firearm proficiency, criminal and civil principles, or law enforcement techniques. Named and Putative Plaintiffs' duties were exclusively paramedical in nature.

67. As a result of misclassifying Named and Putative Plaintiffs as exempt from the FLSA, Defendant failed to compensate Named and Putative Plaintiffs the rate of one and one-half (1.5) times their regular hourly rate each workweek, for hours worked over forty (40) in a workweek, in violation of 29 U.S.C. § 207.

68. Named and Putative Plaintiffs are entitled to back wages at a rate of at least one and one-half (1.5) times their regular rate of pay.

69. Defendant's misclassification of Named and Putative Plaintiffs is in direct contrast to the express language of the FLSA, and Defendant refused to correct its practices even upon the USDOL's findings and recommendations, and Defendant's concession, that Named and Putative Plaintiffs were misclassified. Accordingly, Defendant is unable to defend their failure to pay overtime wages as having been done in good faith, entitling Named and Putative Plaintiffs to liquidated damages under 29 U.S.C. § 216(b).

70. The foregoing conduct, as alleged above, constitutes willful violations of the FLSA within the meaning of 29 U.S.C. § 255(a), permitting the recovery of unpaid minimum wages for up to three (3) years, rather than two (2) years.

71. As such, Named and Putative Plaintiffs seek to recover from Defendant the following damages:

- a. Overtime wages due;
- b. Liquidated damages in an equal amount;

- c. Reasonable attorneys' fees and costs; and
- d. All other legal and equitable relief as the Court deems just and proper.

COUNT TWO

**Violation of the North Carolina Wage and Hour Act
N.C. Gen. Stat. § 95-25.6
(Failure to Pay All Owed, Earned, and/or Promised Wages)
(On Behalf of Named and Putative Plaintiffs)**

72. Named Plaintiff incorporates by reference all preceding paragraphs as if the same were set forth again fully at this point.

73. At all relevant times, Defendant has employed Named and Putative Plaintiffs within the meaning of the NCWHA.

74. Defendant employed Named and Putative Plaintiffs within the State of North Carolina.

75. Pursuant to the NCWHA, N.C. Gen. Stat. § 95-25.6, employers must pay all owed, earned, and/or promised wages accruing to their employees, for all hours of work, at their regular hourly rate.

76. As set forth above, Defendant, pursuant to its policies and practices, knowingly failed to pay wages to Named and Putative Plaintiffs for all hours worked.

77. As set forth above, Named and Putative Plaintiffs have sustained losses and lost compensation as a proximate result of all Defendant's violations.

78. For the reasons stated above, including, but not limited to, conceding that it misclassified its employees, Defendant cannot affirmatively defend its NCWHA violations as having been done in good faith, entitling Named and Putative Plaintiffs to liquidated damages in an amount equal to the amount of unpaid wages under N.C. Gen. Stat. § 95-25.22(a1).

79. Accordingly, Named and Putative Plaintiffs seek to recover from Defendant the

following damages:

- a. Earned, owed, and/or promised wages due;
- b. Liquidated damages in an equal amount;
- c. Reasonable attorneys' fees and costs;
- d. Pre-judgment interest; and
- e. All other legal and equitable relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Named Plaintiff, on behalf of himself and all those similarly situated, prays that this Honorable Court:

1. Issue an Order certifying this action as a collective action under the FLSA, and designate Named Plaintiff as a representative of all those similarly situated under the FLSA collective action;
2. Issue an Order certifying this action as a class action under the NCWHA, and designate Named as a representative on behalf of all those similarly situated under the NCWHA class;
3. Award Named Plaintiff and all those similarly situated actual damages for all unpaid wages found due to Named Plaintiff and those similarly situated, and liquidated damages equal in amount, as provided by the NCWHA, N.C. Gen. Stat. § 95-25.22(a1), and pursuant to the FLSA, 29 U.S.C. § 216(b);
4. Award Named Plaintiff and all those similarly situated pre- and post-judgment interest at the statutory rate, as provided by the NCWHA, N.C. Gen. Stat. § 95-25.22(a), and pursuant to the FLSA, 29 U.S.C. § 216(b);

5. Award Named Plaintiff and all those similarly situated attorneys' fees, costs, and disbursements as provided by the NCWHA, N.C. Gen. Stat. § 95-25.22(d), and pursuant to the FLSA, 29 U.S.C. § 216(b); and

6. Award Named Plaintiff and all those similarly situated further legal equitable relief as this Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Named Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted, May 11, 2018.

/s/ Gilda A. Hernandez

Gilda A. Hernandez, NCSB #36812

**THE LAW OFFICES OF GILDA A.
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Attorney for Plaintiff

STATE 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

RYAN LANG

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

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

GILDA A. HERNANDEZ, The Law Offices of Gilda A. Hernandez, PLLC 1020 Southhill Drive, Suite 130, Cary, NC 27513, (919) 741-8693

DEFENDANTS

DUPLIN COUNTY EMERGENCY MEDICAL SERVICES

County of Residence of First Listed Defendant DUPLIN (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

WENDY SIVORI, DUPLIN COUNTY ATTORNEY

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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. Section 201 et seq.; 28 U.S.C. Section 1331

Brief description of cause:

Defendant failed to pay Plaintiff, and others similarly situated, wages in accordance with the FLSA and NCSWA.

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 05/11/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Gilda A. Hernandez

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT: 7.18 cv 00077 BY: [unclear] Document 1-1 Filed 05/11/18 Page 1 of 1

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
for the
Eastern District of North Carolina

RYAN LANG, on behalf of himself and all others
similarly situated

Plaintiff(s)

v.

DUPLIN COUNTY EMERGENCY MEDICAL
SERVICES

Defendant(s)

Civil Action No. 7:18-cv-77

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) DUPLIN COUNTY EMERGENCY MEDICAL SERVICES
209 SEMINARY STREET
KENANSVILLE, NC 28349

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:

GILDA A. HERNANDEZ
The Law Offices of Gilda A. Hernandez, PLLC
1020 Southhill Drive, Suite 130
Cary, NC 27513

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: _____

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 \$ 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:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

RYAN LANG, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

DUPLIN COUNTY EMERGENCY
MEDICAL SERVICES

Defendant.

Case No.: 7:18-cv-77

**NOTICE OF FILING OF CONSENT TO
SUE AS NAMED PLAINTIFF**

Plaintiff hereby files a Consent to Sue as Named Plaintiff in the above-captioned action.

Date: May 11, 2018

/s/ Gilda A. Hernandez

Gilda A. Hernandez (NCSB #36812)
**THE LAW OFFICES OF GILDA A.
HERNANDEZ, PLLC**
1020 Southhill Drive, Ste. 130
Cary, NC 27513
Tel: (919) 741-8693
Fax: (919) 869-1853
g Hernandez@gildahernandezlaw.com

CONSENT TO FILE SUIT AS PLAINTIFF

TO: CLERK OF THE COURT AND COUNSEL OF RECORD

I, Ryan Lang, state the following:

1. I am over 18 years of age and competent to give the following consent in this matter.
2. I am employed by Duplin County Emergency Medical Services located in Duplin County, North Carolina. I am employed as a paramedic. I worked in this position from approximately March of 2015 until Present.
3. I believe I have not been paid for all compensable time which I have worked, including overtime.
4. I hereby consent and agree to be Named Plaintiff in this wage and hour action against Duplin County Emergency Medical Services under the Fair Labor Standards Act for failure to pay for all hours worked, including overtime compensation and to be bound by any settlement of the case or adjudication by the Court where the suit is brought.
5. I understand that a lawsuit is being brought to recover from my employer compensation for unpaid wages and unpaid overtime. I understand that the suit will be brought pursuant to federal law and/or state law.
6. I choose to be represented by The Law Offices of Gilda A. Hernandez, PLLC, and other lawyers they may choose to associate with.
7. I authorize my attorney to take any steps necessary to pursue my claims, including filing the lawsuit.

I swear or affirm that the foregoing statements are true to the best of my knowledge, information, and belief.

Date: 1-12-2018

Signature: 

Print Name: Ryan Lang

Address (Street, City/Town, State, Zip Code):

5069 Western Blvd Apt 34, Jacksonville, NC, 28546

Telephone: (910)-358-3039

County of Duplin EIN: 56-6000296
i.b.a. Duplin County
PO Box 950 Whisard Case ID: 1805507
Kenansville, NC 28349
(910) 296-2104

Case Assignment Information:

EX 7D & 7E

(Exhibits B3, D27 – D31)

Scope of Investigation:

This was a limited investigation. After a Regulation 553 was provided to the employer, The County Attorney reviewed it and later responded via e-mail that the County had historically incorrectly classified Emergency Management Services (EMS) personnel as exempt under 207(k); however, upon additional consideration, came to the concluding that the EMS would not qualify under 207(k) due to the fact that they are not trained in fire suppression. (Exhibit D6) This investigation was limited to overtime for EMS personnel.

Period of Investigation:

1/23/15 to 1/2017.

Coverage:

Subject employer is a County Government, Duplin County, of North Carolina. The employer has provided a list of rotating commissioners though out the investigative period. This is a 553.2(a)(3) public sector employer and is covered under 3(s)(1)(C) as a public agency. (Exhibit C1)

Exemptions/Exceptions:

The employer claimed the 207(k) overtime exemption on all Fire, EMS and Law Enforcement personnel. The exemption was found not to be applicable to EMS personnel. The County Attorney sent an e-mail shortly after the in-person initial conference where she stated that the EMS personnel would not be eligible for the 7(k) exemption of the FLSA because they were not trained in fire suppression and consequently were inadvertently previously classified as 207(k) exempt. (Exhibit D6) The 207(k) was not fully examined for Fire and Law Enforcement as this investigation was limited to EMS personnel.

No other exemptions were examined in this limited investigation. Two interviews, one face to face and the other by phone, were done with two Law Enforcement personnel, a Detention Officer in the county jail who came after the initial conference for a face to face interview and a phone interview with a Police Sergeant, who both stated that they received overtime or comp time after 86 hours in a two week pay period. (Exhibits B1 and B5) The employer stated that all Law Enforcement personnel, including detention officers in the local jail, have the power of arrest. However, the 207(k) exemption was not fully examined for law enforcement in this limited investigation.

MODO:

A request for a new MODO control record was made to the Raleigh DO MODO Manager ADD Mills. MODO 70352 was established. (Exhibit D1) MODO instructions were to determine facts locally and provide the name and number for ER's main office contact. That person would be County Attorney Wendy Sivori at phone number (910) 372-9330 and e-mail to Wendy.Sivori@duplincountync.com Finally instructions were to contact MODO prior to FC if large or corporate wide violations. Finally recommend CMPs for repeat violations, which would not be applicable as this was a first investigation. Per JRC and ADD Liang instructions file was submitted for a second level since the ER RTC RTP.

Status of Compliance:

Investigative History:

No history per WHISARD search.

Pay Practice:

The EMS employees are paid on a salary basis. Written time sheets are maintained. The workweek is Friday to Saturday and the pay period is biweekly. The EMS employees are scheduled to work a rotating 24 and then 48 hour work week. The employer states that additional half time is paid for the eight hours in the long week by dividing the employees' weekly salary by 48 and multiplying one half of that rate for the 8 hours of overtime. However, when an employee is called back for a shift beyond their regular scheduled 24 or 48 hours they are paid "Call Back Pay". (Exhibit D8c D8, D9c – D9d and D15) The Call Back Pay is derived by dividing the weekly salary by 40, not by the actual number of hours worked in the week, to arrive at the Call Back rate. (Exhibit D12) The employer explained that they divide the salary by 40 hour to come up with the Call Back Pay Rate because it is more convenient and the rate would always be higher than the additional half time derived by taking all straight time pay divided by all hours worked into the salary and paying additional half time on that rate. The employer notes that by doing this it makes it more advantageous for the employees. The employees are paid the same Call Back Rate for all hours they are called back beyond their regular rotating schedule of 24 hours one week and 48 the other. (Exhibit D8 – D12 and D14 – D15) The Call Back Rate is the same in overtime and a non-overtime workweek.

Section 206:

No violations found. (Exhibits A1 – A87)

Section 207:

The employer was found to be in violation of Section 207 of the Act. The employer provided two letters detailing the County's pay structure as it related to Call Back Pay and training time. (Exhibit D-8b through D-8g, D14) These two letters were forward to ADD Liang for review on 3/9/17 and according to Whisard case diary a lengthy discussion between ADD and WHI took place on 3/30/17, while reviewing the two letters and spreadsheets provided by the employer regarding the pay structure to EMS workers. WHI was instructed to compute back wages in the following manner. (Exhibit D9) The back wage computations would be the ST pay added to the Call Back ST Pay received, to arrive at all straight time earnings; then those total straight time earnings should be divided by all hours worked in the week to obtain the regular rate for overtime. Then 0.5x this rate should be multiplied by all call-back hours worked over 40. The violation resulted in 87 employees due \$226,363.30 in overtime back wages. (Exhibits A1 – A87).

Computation Example:

Total HW = reg hrs (column B) + call-back hrs (column P)

Total ST pay = ST pay (column M) + call-back hrs at ST pay (column Q)

RR = Total ST pay/Total HW

OT due = RR x 0.5 x OT call-back HW

With regard to the training time: WHI was instructed not to count the training time hours towards hours worked as they were hours spent for the benefit of the employee to continue their certification as an EMS, even though the employer's handbook stated that "mandatory quarterly training and required supplemental re-certification courses are considered scheduled hours and will be paid if the total number of hours exceed 40 hours in that pay week". (Exhibit D22a)

Section 211:

The employer was found to be in violation of Section 211 of the Act and Regulation 516. The employer did not maintain an accurate record of all overtime that was due to EMS employees. (Exhibits A1 – A87).

Section 212:

The employer was found to have employed employees who were at least 17 years of age during the two year investigative period. There were no HOs applicable. The minors were employed as **EX 7D** to assist the election judges during the voting process. The minors were paid **EX 4** per hour.(Exhibit D20)

Section 216(c):

This case was sent to the RO for a discussion on LDs. The regional office decided that no LDs would be assessed at this time, but if the employer refused to comply, refused to pay; that additional discussions regarding LDs and/or possible litigation would be required. (Exhibit D35)

Section 216(e):

This is the first investigation of this employer. The decision was made not to compute CMPs at this time, however, if the employer refused to comply, refused to pay; that additional discussions regarding CMPs could be made along with any LD assessment or possible litigation at a later date.

FMLA:

This is a Public Sector employer and FMLA is applicable. In addition, the employer employs for than 50 employees in all workweeks. The employer did have a FMLA policy. Fact Sheets 28 and 28(d) along with Regulation 825 and a web link to Wage and Hour's FMLA homepage which has all general guidance, fact sheets, e-tools, posters, forms, interpretative guidance and Regulations related to FMLA was provided to the employer. A copy of the employer's FMLA policy was placed in the file for MODO retention. (Exhibit D22e – D22f)

Disposition:

EX 7D Data:

EX 7D & 7E alleging the he was not paid proper overtime. (Exhibit D31) Based on the aforementioned computations; his **EX 7D** was substantiated and he was found to be due \$5,497.06 in overtime back wages. He was notified on 5/26/17 that the file would be sent to the Raleigh District Office with a request for a second level and further resolution.

An initial telephone contact was made with the employer on 1/24/17. WHI **EX 6 & 7C** spoke to Mike Aldridge, County Manager. An appointment letter was sent to the employer that same day. (Exhibit D3) An onsite initial conference was scheduled and held with the employer on 2/1/17. Present at the initial conference were the following individuals for the employer: Wendy Sivori, County Attorney, **EX 6 & 7C** and Mike Aldridge, County Manager and WHI **EX 6 & 7C** for Wage Hour. (Exhibit D25)

We started out by discussing coverage. Coverage was not contested. We discussed the County's pay practice as it related to salaried nonexempt and hourly paid employee, with the emphasis on Fire, EMS. The employer explained that if a regular salaried nonexempt or hourly paid employee, minus the other two positions and Law Enforcement, worked over 40 hours in a seven day workweek they were paid either overtime or comp time. The comp time was always given one hour and a half for each hour worked over 40.

Next, the topic of the Fire, EMS and Law Enforcement employees was discussed. The employer stated that they had historically claimed the 207(k) overtime exemption on these employees. Law Enforcement was paid overtime, or

appropriate comp time given, for hours over 86 in a 14 day biweekly pay period. The pay structure for the Fire and EMS was not so straight forward and had several different structures for pay. The Fire and EMS employees worked an alternating 24/48 hour a week shift every other week. They were paid a set salary base for all hours in both weeks. (Exhibit D15) The employer paid additional half time for the 8 hours in the traditional long week by dividing the weekly salary by 48 and paying one half the regular rate for each of the 8 hours over 40 in that long week. When a Fire or EMS employee worked more than their regularly scheduled shift or if they were Called Back, they were paid a Call Back Pay that was based on a regular rate derived by dividing their weekly salary by 40 hours and paying that rate for all Call Back Hours whether it was an overtime workweek or not. (Exhibit D9c – D9d) When the employer was provided a Regulation 553, specifically Section 553.210, the County Attorney wrote back that the EMS staff employed by the County would not qualify for the 207(k) exemption as they were not trained in fire suppression as required in the definition of Fire Protection Activities as detailed in 553.201(a). (Exhibit D6)

WHI called the County Attorney back on 3/30/17, as instructed after conference call with ADD. WHI was instructed to explain how back wages should be computed and accordingly the County Attorney was informed of the methodology based on the conference call earlier that day of how the back wages should to be computed on the EMS employees who did not qualify for the 207(k) exemption. (Exhibit D2 and D9) The County Attorney disagreed with the method of back wage computation and requested the contact information for the WHI's supervisor. The attorney sent an e-mail and carbon copied the WHI. (Exhibit D10) WHI was instructed to proceed with the final conference as normal and if the employer disagreed or refused to pay the back wages, to submit the file and note that the employer requested a second level conference. (Exhibit D2)

A final conference was held on May 17, 2017 with the employer at the same administrative offices where the initial conference had been held and the same individuals were present, minus **EX 6 & 7C** (Exhibit D25) We started out by briefly discussing coverage; coverage was not contested. WHI then reminded the employer that this was a limited investigation that only looked at the EMS personnel. The employer acknowledged that they understood the limits of the investigation.

We next began the discussion of the EMS. WHI explained that if the employees did not meet the criteria to be exempt under 207(k), which the County Attorney had already acknowledged via written e-mail, that those employees would have to be treated like the other County employees and provided appropriate overtime or comp time, at time and one half for each comp time hour over 40 hours in the week like the employer was already doing with other County employees. If comp time was not used, then hourly paid employees needed to be paid time and one half their regular rate of pay for each overtime hour and nonexempt salaried employees paid an additional half time. The employer stated that they understood.

WHI next addressed how the employer must change their computational method for the EMS employees, especially as it related to Call Back pay/hours and Training/pay hours pursuant to the JRC discussion and conference call on 3/30/17. WHI explained that the training that the EMS employees did at the local community college, or recently since then the ER had brought the training in-house, was deemed to be not compensable as they could take and utilize the training to work at as an EMS elsewhere in the state. Reg 785 was shared with the employer including 785.31 The employer stated that given that the training time did not have to be compensated; that the County would discontinue paying EMS and Fire employees that were required to take the training.

The County Attorney stated that they still did not believe that their compensation method was incorrect. They pointed to the fact that all Call Back Pay that they pay was derived from taking the weekly salary divided by 40 hours and using that rate to pay all Call Back hours in both overtime and non-overtime workweeks. The employer pointed out that by paying the employees utilizing this method actually paid the employees more money and it was easier for the employer to do the computation and for the employees to understand. WHI stated that the rationale for the employer's compensation method and the several illusive examples that they had provided were shared with management and regional office staff; and consequently the WHI had was instructed to let the employer know of Wage and Hour's position regarding Call Back Pay at the final conference as well as notifying the employer that in the current method of computations the Call Back pay was paid at straight time. WHI spend a considerable amount of time, especially with the **EX 6 & 7C** at the final conference so that they knew exactly how back wages were computed. WHI worked with the **EX 6 & 7C** on the computer explaining the computations that were made to

come up with the total back wage amount and until each formula in the spreadsheet was understood and the ER could apply the computations over the entire spreadsheet.

The County Attorney then wanted to know what the grand total of back wage due was. WHI told the employer that he could not discuss back wage amount due at that time because the employer had not provided an agreement to comply. WHI instructed the employer that he could not discuss back wages due without having first a commitment to comply and in this case the employer was under the impression that they were not out of compliance and was not going to change their back wage computation method for EMS. WHI reminded the Attorney that the computations methods had just been shared with the **EX 6 & 7C**. The County Attorney then asked if Liquidated Damages would be assessed. WHI told the employer that the discussion whether or not to assess Liquidated Damages because of the outstanding back wages and the employer's refusal to comply and refuse to pay case; would be submitted up through channels to management for final consideration.

After the final conference the County Attorney stated that she need at least 48 hours to call an emergency Council meeting before they could give a definitive answer regarding payment. The County Attorney called back a couple of days later and said that the county was not prepared to change employment practice or pay the computed back wages. WHI explained that the file would be submitted as a RTC and RTP. The County Attorney had already asked about what the next step would be if the County disagreed with the findings. (Exhibit D10) On a similar note the WHI had even before the final conference mentioned to the ADD of the County's request to speak to a supervisor; and WHI was advised to hold the final conference and submit case with the employer's request for a second level. (Exhibit D2) The County Attorney requested, if possible, for the second level to be in the Wilmington FO since it was closer than Raleigh and there might be several people from administration that would be coming to the second level and it was more convenient for them to come to the Wilmington Field office. The Wilmington FO also has access to several medium and large size conference rooms.

Recommendation:

ER has requested second level to be held in the Wilmington, FO if possible. ER, RTC and RTP. Recommend second level be scheduled, at the Wilmington FO if possible, to resolve before contacting again the RO and/or RSOL for further guidance.

Pubs Provided:

FLSA Act, HRG, FLSA Poster, Regulation 516, 541, 580, 778, 785, 825, FMLA Poster, CL 101, Fact Sheets 17(a), 21,22,23,28, 28(d) and a web link to both our FMLA page which has all general FLMA guidance, fact sheets, e-tools, posters, forms, interpretative guidance and regulations related to FMLA, as well as a web link to the top Wage and Hour homepages listing all [Laws & Regulations](#), [Field Handbook](#), [Administrator Interpretations](#), [Opinion and Ruling Letters](#), [Field Bulletins](#) as well as e-laws and power points.

All future correspondence should go to:

Wendy Sivori, County Attorney

PO Box/201 Simmi St

Kenansville, NC 28349

(910) 372-9330 Voice (910) 296-2107 Fax

Wendy.sovori@duplincountync.com e-mail

ADD Addendum 06/22/2017

A 2nd level conference was held over the phone on 06/21/17. Present were Ms. Wendy Sivori, County Attorney for ER, **EX 6 & 7C** and ADD Liang for WHD. ADD Liang attempted to explain the OT violation, but ER refused to try to listen or understand the reasoning behind the BW comps. ER insisted that all HW were paid correctly, including all OT hrs worked. ER RTC, RTP. A copy of the comps were provided to ER, as well as a tolling agreement. Ms. Sivori informed WHD that she won't be able to discuss the tolling agreement with her client till 06/30/17. As of today, the tolling agreement has not been signed by ER.