

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

KEITH BABIN, KEVIN BURGE,)	
JOSHUA DISMUKES, and)	
BARBARA TATE;)	
)	
Plaintiffs)	Civil Action No. _____
)	
v.)	COMPLAINT AND
)	JURY TRIAL DEMAND
THE PARISH OF PLAQUEMINES;)	
)	
)	COLLECTIVE ACTION
Defendant.)	

Plaintiffs Keith Babin, Kevin Burge, Joshua Dismukes, and Barbara Tate, through undersigned counsel, hereby allege as follows:

INTRODUCTION

1. This is a lawsuit for unpaid overtime. The four named Plaintiffs, along with several co-workers, are paramedics or emergency medical technicians for the Parish of Plaquemines. They work seven-day shifts, during which they are on-call 24 hours a day, 7 days a week – 168 hours. Despite this fact, they are only paid for 132 hours of work a week. Moreover, Plaintiffs are never paid any time-and-a-half overtime premium as required by federal law. The Parish’s failure to pay mandatory overtime premium violates the Fair Labor Standards Act, and Plaintiffs seek certification of a collective action and recovery of their unpaid wages, statutory penalties, and attorneys’ fees and costs.

THE PARTIES

2. Keith Babin is an individual of the full age of majority and a citizen of the state of Louisiana.

3. Kevin Burge is an individual of the full age of majority and a citizen of the state of Louisiana.

4. Joshua Dismukes is an individual of the full age of majority and a citizen of the state of Louisiana.

5. Barbara Tate is an individual of the full age of majority and a citizen of the state of Louisiana.

6. Defendant is the Parish of Plaquemines which, at all relevant times, employed the four Plaintiffs in this action as set forth below.

JURISDICTION AND VENUE

7. This Complaint is brought pursuant to the Fair Labor Standards Act (“FLSA”). This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

8. Defendant is a Parish within this District. 28 U.S.C. § 98(a). A substantial part of the events or omissions giving rise to this claim occurred within this District. Venue is therefore proper in this Court. 28 U.S.C. § 1391.

9. Defendant is a political subdivision of the state of Louisiana, and is therefore an employer covered by the FLSA. 29 U.S.C. §§ 203(d) and 203(e)(2)(C).

FACTUAL ALLEGATIONS

10. Plaintiffs all work for the Parish of Plaquemines as paramedics or emergency medical technicians (“EMT”).

11. Because Plaquemines is a rural parish, it has difficulty staffing its paramedic force using solely residents of the Parish. Each of the four Plaintiffs maintains a primary residence outside Plaquemines Parish, and travels to Plaquemines Parish only to work.

12. Each Plaintiff works seven days on, seven days off.

13. During their seven-day work shifts, each Plaintiff remains on-call, twenty-four

hours a day, seven days a week, and must be ready to respond to an emergency call on short notice.

14. Because the Plaintiffs do not regularly reside within Plaquemines Parish, they are required to stay in Parish-provided housing while they are on call.

15. Babin, Burge, and Dismukes reside in a FEMA trailer, provided by the Parish, during their seven-day work shifts.

16. Tate resides at the Plaquemines Parish fire house during her seven-day work shift.

17. The Plaintiffs are required to remain on premises for the vast majority of their seven-day work shift. They are not permitted to leave the premises other than to take short trips to a nearby grocery store approximately twice a week, and occasional trips to a nearby marina for food. Even so, they are subject to respond to a call at any time.

18. Upon receiving a call for assistance, Plaintiffs are expected to be in their ambulance and on the road within no more than six minutes.

19. The Plaintiffs are not allowed to bring overnight guests, including family members, to their Parish-provided housing.

20. Plaintiffs' time is not their own, and their freedom of activity is heavily restricted during their seven-day work shifts.

21. Plaintiffs do not perform any work related to fire suppression, and are not trained in fire suppression. They are solely trained to work, and do work, as paramedics or emergency medical technicians.

22. When Plaintiffs are called to respond to an emergency during their normal sleeping hours, they receive an additional payment, which the Parish calls "straight overtime." However, this "straight overtime" is paid at the Plaintiffs' normal hourly cash pay rate, and no

overtime premium is paid.

23. Section 6.1 of the Plaquemines Parish Civil Service Commission Rules for Classified Service states as follows, with respect to overtime payment:

Overtime compensation shall be paid at a rate of one-and-one-half (1 1/2) times the regular hourly compensation for actual hours worked in excess of forty (40) hours in any one work week. There shall be no pyramiding of overtime hours in computing overtime pay.

24. Section 6.6 of the Plaquemines Parish Civil Service Commission Rules for Classified Service further states, specifically regarding paramedics/EMTs:

EMT classifications are considered on-call twenty-four (24) hours per day for regular on-duty days and are paid for eighteen (18) hours per on-duty day with six (6) hours down time for sleeping and meals. On shift change days, the pay is for all hours on-duty.

COLLECTIVE ACTION CLAIMS

26. Plaintiffs bring this complaint as a collective action pursuant to 29 U.S.C. § 216(b), on behalf of all other current and former similarly situated employees who worked for Defendant within three years prior to the date of filing this lawsuit.

27. Other paramedic or EMTs working for the Parish are likewise expected to, and do, work more than 40 hours per week without payment of time-and-a-half overtime premium.

28. The FLSA collective is defined as:

All individuals employed by Plaquemines Parish as paramedics or emergency medical technicians at any time between August 3, 2015 to the date of judgment in this action, and who were not compensated at one and one-half times their regular hourly rate for work performed in excess of forty (40) hours a workweek.

29. Defendant's failure to pay statutorily mandated overtime pay to the members of

the collective constitutes a common practice, policy, or plan to deny overtime in violation of the FLSA.

30. Plaintiffs and the remaining members of the collective are similarly situated, as they are all paid under the same pay plan whereby no overtime premiums are paid, no matter how many hours are worked in a workweek.

31. Plaintiffs request that, at the soonest practicable time, the Court order that notice be given to the remaining members of the collective so that they may exercise their right to opt in to this action.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME (29 U.S.C. § 207)

32. Plaintiffs hereby reallege and reincorporates paragraphs 1-31.

33. The FLSA requires that employers pay nonexempt employees an overtime premium, at a rate of at least one and one-half times their statutory regular rate, for all hours over forty in a workweek.

34. Defendant has never paid Plaintiffs, or the members of the collective, overtime premiums for hours worked over forty in a workweek. Instead, all overtime hours are paid at what Defendant calls the “straight time” rate.

35. Plaintiffs are entitled to payment of overtime premium for all hours over forty in a workweek, including both on-call time and so-called “straight overtime” hours.

36. It is Defendant’s stated policy not to pay overtime premiums to members of the collective, and instead to pay them at the same rate for all hours worked during the workweek.

37. Defendant had actual and constructive knowledge that Plaintiffs and the remaining members of the collective were regularly working more than 40 hours in a week.

38. Defendant's nonpayment of overtime was willful and not based in a good faith belief that this conduct was in accordance with the law.

39. Plaintiffs hereby request a trial by jury.

WHEREFORE, Plaintiffs and the members of the collective respectfully pray for judgment as follows:

- a. That this case be allowed to proceed as a collective action;
- b. For an award of all unpaid wages and overtime according to proof;
- c. For an award of liquidated damages pursuant to 29 U.S.C. § 216(b);
- d. For an award of reasonable attorney's fees;
- e. For costs of suit;
- f. For injunctive and equitable relief as provided by law;
- g. For pre and post-judgment interest; and
- h. For such other and further relief as may be just and proper.

Respectfully Submitted,

/s/ Charles J. Stiegler
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*Attorneys for Plaintiffs and the
Members of the Collective*

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

Keith Babin; Kevin Burge, Joshua Dismukes, and Barbara Tate

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Charles Stiegler, Stiegler Law Firm, 318 Harrison Ave., New Orleans LA
Tel: (504) 267-0777. Joseph Kopfler, Kopfler & Hermann, 7910 Main St.,
Suite 400 Houma, LA. Tel: (985) 805-8089

DEFENDANTS

Parish of Plaquemines

County of Residence of First Listed Defendant _____
(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
 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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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 USC 207

Brief description of cause:
Unpaid overtime and wage claims

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

SIGNATURE OF ATTORNEY OF RECORD

08/03/2018

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

UNITED STATES DISTRICT COURT
for the
Eastern District of Louisiana

Keith Babin, Kevin Burge, Joshua Dismukes, and
Barbara Tate

Plaintiff(s)

v.

The Parish of Plaquemines

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Parish of Plaquemines
c/o its Parish Attorney
Peter Barbee
8056 Highway 23, Suite 200
Belle Chasse, LA

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:

Charles Stiegler
Stiegler Law Firm LLC
318 Harrison Ave., #104
New Orleans, LA 70124

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: