

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>GARY M. PERRY, individually</b>	)
<b>and on behalf of those similarly</b>	)
<b>situated,</b>	)
	) <b><u>JURY DEMAND</u></b>
<b>Plaintiffs,</b>	)
	)
<b>v.</b>	) <b>CASE NO: 3:19-mc-9999</b>
	)
<b>MONTGOMERY COUNTY,</b>	) <b>Judge:</b>
<b>TENNESSEE,</b>	)
	) <b>Magistrate Judge:</b>
<b>Defendant.</b>	)

**COMPLAINT AND REQUEST FOR JURY TRIAL**

**I. NATURE OF THE CASE**

1. Plaintiff, Gary M. Perry (“Plaintiff” or “Perry”), individually and on behalf of those similarly situated, by counsel, brings this action against Defendant, Montgomery County, Tennessee. (“Defendant”), alleging failure to pay overtime compensation in violation of the Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. § 201 *et seq.* and Tennessee state law.

**II. PARTIES**

2. Perry is a resident of Clarksville, Montgomery County, Tennessee and has resided within the geographic boundaries of the Middle District of Tennessee at all relevant times.

3. Defendant, Montgomery County, Tennessee, is a municipal corporation organized and existing under the laws of the State of Tennessee. The Defendant is, and at all relevant times have been, then employer of Plaintiff. The Montgomery

County Emergency Medical Service (“Montgomery County EMS”) is the operating emergency medical service of Montgomery County, Tennessee.

### **III. JURISDICTION AND VENUE**

4. This Court has jurisdiction over the subject matter of this complaint pursuant to 28 U.S.C. §1331, 28 U.S.C. § 1367, and 29 U.S.C. § 216(b).

5. Defendant is an “employer” as that term is defined by 29 U.S.C. § 203(d).

6. Plaintiff is an “employee” as that term is defined by 29 U.S.C. §203(e)(1).

7. Defendant is subject to the FLSA because it is an enterprise engaged in an activity of a public agency.

8. This Court has supplemental jurisdiction over Perry’s Tennessee state law claim pursuant to 28 U.S.C. § 1367.

9. All events, transactions, and occurrences relevant to this lawsuit arose within the geographical environs of the Middle District of Tennessee; thus, venue is proper in this Court.

### **IV. FACTUAL ALLEGATIONS**

10. Defendant’s Montgomery County EMS is the sole 911 provider for Clarksville-Montgomery County, providing 24-hour emergency medical transportation, rope rescue, dive rescue/recovery, trench rescue, tactical medics and many other specialized rescue operations.

11. Defendant staffs one-hundred and sixteen (116) Paramedics, Critical Care Paramedics, Registered Nurses and Advanced Emergency Medical Technicians (“EMTs”).

12. Defendant hired Perry in 1990. Most recently, Perry served as the Captain District Chief Paramedic for the Montgomery County EMS.

13. At all relevant times, Perry was a non-exempt employee who was entitled to be paid time and a half for hours over forty (40) worked in any workweek.

14. In total, Defendant employed approximately three captains and nine lieutenants who worked for the Montgomery County EMS at any given time.

15. Perry and the Collective Class either work or have worked within the past three years for the Montgomery County EMS as non-exempt FLSA employees.

16. In his role as the Captain District Chief Paramedic, Perry scheduled people for work and helped with the paramedics. Perry was not involved in the budgeting, hiring, firing, establishing rates of pay, hours worked, or conducting training sessions.

17. In his role as the Captain District Chief Paramedic, Perry was required to work 120 hours for two weeks, 120 hours for the next two weeks, and then 96 hours for the final two-week period. This work cycle repeated every six weeks for Perry and the Collective Class.

18. Plaintiff was paid \$38.61 per hour for all worked performed, regardless if the work exceeded forty (40) hours per week.

19. Perry is similarly-situated to Defendant's other Paramedics, EMTs, Captains, and Lieutenants, who work for Montgomery County EMS, in that a common practice and policy of refusing to pay overtime at a rate of not less than one

and one-half times their regular rate of pay affected all current and former Paramedics, EMTs, Captains, and Lieutenants (“Members of the Class”).

20. Perry is similarly situated to the Members of the Class because they all were Paramedics, EMTs, Lieutenants, or Captains that performed the same job duties, as all of them responded to the perceived need for immediate medical care in order to prevent loss of life or aggravation of illness or injury; they were all paid hourly rates of pay; and they were all subject to Defendant’s unlawful policy and practice of refusing to properly pay overtime wages for work performed in excess of forty hours.

21. Defendant’s failure to pay overtime compensation as required by the FLSA results from a policy or practice applicable to Perry and the Members of the Class. Application of this policy or practice does not depend on the personal circumstances of Perry or those joining this lawsuit. Rather, the same policy or practice that resulted in the non-payment of overtime to Perry applied to all Members of the Class. Accordingly, the class is properly defined as: *All current and Former Paramedics, EMTs, Lieutenants, and Captains (or their functional equivalents) who have performed work for Defendant with Montgomery County EMS, but who were not paid overtime for work performed that exceeded forty (40) hours per week.*

22. Defendant knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to properly pay overtime compensation with respect to Perry and the Members of the Class.

## V. LEGAL ALLEGATIONS

**Count I: FLSA - Failure to Pay Overtime Wages**

23. Perry hereby incorporates paragraphs one (1) through twenty-two (22) of his Complaint as if the same were set forth at length herein.

24. Perry and Members of the Class are non-exempt employees of Defendant who engaged in an activity of a public agency.

25. Defendant intentionally and willfully failed to compensate Perry and Members of the Class at least one and one-half times their hourly rate of pay for time they spend performing work-related duties in excess of a workweek of forty hours.

26. Perry and Members of the Class are entitled to recover from Defendant all compensation which they earned, as well as liquidated damages pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*

27. Defendant's actions in denying Perry and Members of the Class compensation are intentional, willful, and/or done with reckless disregard for their statutory rights.

**Count II: Unjust Enrichment**

28. Perry hereby incorporates paragraphs one (1) through twenty-seven (27) of his Complaint as if the same were set forth at length herein.

29. The Defendant has failed and/or refused to pay wages due to Perry and Members of the Class for their labor and services rendered during their tenure as an employee of the Defendant.

30. The Defendant has been unjustly enriched by keeping funds which are the property of the Plaintiff and Members of the Class.

**Count III: Conversion**

31. Perry hereby incorporates paragraphs one (1) through thirty (30) of his Complaint as if the same were set forth at length herein;

32. Defendant knowingly or intentionally exerted unauthorized control over Perry and Members of the Class' wages when it unlawfully failed to pay overtime compensation due to Perry and Members of the Class.

33. Perry and Members of the Class have suffered damages as a result of Defendant's actions.

**VI. REQUESTED RELIEF**

WHEREFORE, Plaintiff, Gary Perry, and all employees similarly situated who join this action, respectfully requests that this Court enter judgment in their favor and award the following relief:

1. Payment to Plaintiff (and those who have joined the suit) of all unpaid wages and overtime compensation;
2. Payment to Plaintiff (and those who have joined the suit) of liquidated damages for all unpaid wages and overtime compensation;
3. Payment to Plaintiff (and those who have joined the suit) of punitive damages for Defendant's failures and/or malice and willful actions;
4. Payment to Plaintiff (and those who have joined the suit) of compensation for any and all other damages suffered as a consequence of Defendant's unlawful actions;

5. Order injunctive relief sufficient to insure that Defendant ceases and desists from further unlawful employment practices in violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*;
6. Order Defendant to pay pre-judgment and post-judgment interest to Plaintiffs (and those who join the suit);
7. Order Defendant to pay Plaintiff's (and those who join the suit) costs and attorney fees; and
8. Order all other relief this Court deems just and proper.

Respectfully submitted,

BIESECKER DUTKANYCH & MACER, LLC

By: /s/ Kyle Biesecker  
Kyle F. Biesecker, Attorney No. 28872  
3200 West End Avenue, Suite 500  
Nashville, Tennessee 37203  
Telephone: (615) 783-2171  
Facsimile: (812) 424-1005  
E-Mail: [kfb@bdlegal.com](mailto:kfb@bdlegal.com)

Attorneys for Plaintiff, Gary Perry

**DEMAND FOR JURY TRIAL**

Plaintiff, Gary Perry, individually and on behalf of those similarly-situated, by counsel, requests a trial by jury on all issues deemed so triable.

Respectfully submitted,

BIESECKER DUTKANYCH & MACER, LLC

By: /s/ Kyle Biesecker  
Kyle F. Biesecker, Attorney No. 28872  
3200 West End Avenue, Suite 500  
Nashville, Tennessee 37203  
Telephone: (615) 783-2171  
Facsimile: (812) 424-1005  
E-Mail: [kfb@bdlegal.com](mailto:kfb@bdlegal.com)

Attorneys for Plaintiff, Gary Perry



# 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

Gary M. Perry, individually and on behalf of those similarly situated

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

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

Kyle Biesecker, Biesecker Dutkanych & Macer, LLC, 3200 West End Ave., Suite 500, Nashville, TN 37203, (615) 783-2171, kfb@bdlegal.com

### DEFENDANTS

Montgomery County, Tennessee

County of Residence of First Listed Defendant Montgomery  
(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	<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)

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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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  <b>LABOR</b> <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  <b>IMMIGRATION</b> <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  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <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))	<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	FEDERAL TAX SUITS		
<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	<b>Habeas Corpus:</b> <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 <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

### 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. 201 et seq.

Brief description of cause:  
Plaintiff alleges Defendant violated the Fair Labor Standards Act.

### 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: 10/28/2019 SIGNATURE OF ATTORNEY OF RECORD: s/ Kyle F. Biesecker

FOR OFFICE USE ONLY

## 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- 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.