

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ERIC ZACK, JOSHUA TRICE,)	
ALLISON HANCOCK and)	
LLOYD RUSSELL WOLLERT,)	
on behalf of himself and all other)	
plaintiffs similarly situated,)	
)	
Plaintiffs,)	Case No.
)	
v.)	
)	
VILLAGE OF WINTHROP HARBOR,)	
)	
Defendant.)	

CLASS ACTION COMPLAINT

Plaintiffs, ERIC ZACK, JOSHUA TRICE, ALLISON HANCOCK and LLOYD RUSSELL WOLLERT ("Plaintiffs"), individually and on behalf of all class members, by and through their attorneys of The Miller Law Firm, P.C., bring their claims as a class action against the VILLAGE OF WINTHROP HARBOR ("Defendant") in accordance with Federal and Illinois state wage and hour laws, alleges as follows:

NATURE OF THE SUIT

1. This lawsuit arises under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 201, *et seq.*, the Illinois Minimum Wage Law ("IMWL"), 820 JLCS § 105/1, *et seq.*, for Defendants' failure to pay Plaintiffs statutory minimum wages and overtime compensation for hours worked over fifty-three (53) in a work period pursuant to Section 7(k) of the FLSA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiffs FLSA claims pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiffs state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b), because the facts and events giving rise to Plaintiffs claims occurred in this judicial district.

THE PARTIES

4. Plaintiffs are current or former employees of the Defendant, working as non-exempt firefighters at Defendant's fire station, located at 830 Sheridan Road, Winthrop Harbor, Illinois.

5. All Plaintiffs reside in and are domiciled in this judicial district.

6. Defendant, Village of Winthrop Harbor, is an Illinois municipality located in Lake County, Illinois.

7. At all relevant times, Defendant earned more than \$500,000.00 in annual gross revenue during.

COMMON ALLEGATIONS

8. Plaintiffs are paid hourly and were assigned to work one of six different shifts during the course of a 7-day work period.

9. In addition to the assigned schedule, 5 firefighters are required to work overnight from 8:00 p.m. to 5:00 a.m. on every 6th day of the of the work period.

10. During the overnight shift from 8:00 p.m. to 5:00 a.m., Plaintiffs are not paid their hourly wage, but rather Defendant only pays Plaintiffs a Fifty Dollar (\$50) stipend for this nine hour period.

11. Defendant paid Plaintiffs below the federal and state wage rates when required to work from 8:00 to 5:00 a.m. on every 6th day of the day of the work period.

12. Additionally, Defendant did not compensate Plaintiffs at one and one-half times their regular hourly rate of pay for hours worked in excess of fifty-three (53) in individual work periods when required to work from 8:00 to 5:00 a.m. on every 6th day of the day of the work period.

COUNT I

Violation of the Fair Labor Standards Act — Overtime Wages

13. Plaintiffs hereby incorporate paragraphs 1 through 12 as though stated herein.

14. Throughout their employment with Defendant, Plaintiffs were an "employee" of the Defendant as defined in the FLSA, 29 U.S.C. § 203(e)(1).

15. Plaintiffs were not exempt from the overtime wage provisions of the FLSA, 29 U.S.C. § 207.

16. Throughout Plaintiffs employment, Defendant was an "employer" as defined in the FLSA, 29 U.S.C. § 203(d).

17. Defendant is an "enterprise" within the meaning of the FLSA, 29 U.S.C. § 203(a)(1), and operated as an enterprise engaged in commerce within the meaning of the FLSA, U.S.C. 29 § 203(s)(1)(a).

18. Pursuant to 29 U.S.C. § 207, for all weeks during which Plaintiffs worked more than fifty-three (53) hours, Defendant was obligated to pay them at a rate of one and one-half times their regular hourly rate of pay for all hours worked over fifty-three (53) in a work period.

19. Defendant's failure and refusal to pay overtime wages for hours worked in excess of fifty-three (53) hours per work period was a violation of the Fair Labor Standards Act, 29 U.S.C. § 207.

20. Defendant's violation of the Fair Labor Standards Act by refusing to pay Plaintiffs overtime wages was willful and not in good faith. Defendant at all times failed to pay overtime compensation even though Plaintiffs were scheduled to work and did work more than fifty-three (53) hours in a work period.

WHEREFORE, Plaintiffs pray for a judgment against Defendant as follows:

- A. Judgment in the amount of unpaid overtime compensation found due at the rate of one and one-half Plaintiffs' regular hourly rate of pay for all hours which Plaintiffs worked in excess of fifty-three (53) hours per period;
- B. Liquidated damages in an amount equal to the amount of unpaid overtime compensation found due;
- C. Reasonable attorneys' fees and costs incurred in filing and prosecuting this action; and
- D. Such other and further relief as this Court deems appropriate and just.

COUNT II

Violation of the Fair Labor Standards Act — Minimum Wages

21. Plaintiffs hereby incorporate paragraphs 1 through 12 as though stated herein.

22. Throughout their employment with Defendant, Plaintiffs were an "employee" of the Defendant as defined in the FLSA, 29 U.S.C. § 203(e)(1).

23. Plaintiffs were not exempt from the minimum wage provisions of the FLSA, 29 U.S.C. § 206.

24. During the last three years before the filing of this suit, Defendant was an "employer" as defined in the FLSA, 29 U.S.C. § 203(d).

25. Defendant is an "enterprise" within the meaning of the FLSA, 29 U.S.C. § 203(a)(1), and operated as an enterprise engaged in commerce within the meaning of the FLSA, U.S.C. 29 § 203(s)(1)(a).

26. Pursuant to 29 U.S.C. § 206, Plaintiffs were entitled to be compensated according to the applicable minimum wage rate.

27. Defendant's violation of the Fair Labor Standards Act by refusing to pay Plaintiffs minimum wages was willful and not in good faith.

WHEREFORE, Plaintiffs pray for a judgment against Defendant as follows:

- A. Judgment in the amount of unpaid minimum wages found due;
- B. Liquidated damages in an amount equal to the amount of unpaid wages found due;
- C. Reasonable attorneys' fees and costs incurred in filing and prosecuting this action; and
- D. Such other and further relief as this Court deems appropriate and just.

COUNT III

Violation of the Illinois Minimum Wage Law — Minimum Wages

28. Plaintiffs hereby incorporate paragraphs 1 through 12 as though stated herein.

29. Throughout their employment with Defendant, Plaintiffs were an "employee" under the IMWL, 820 ILCS § 105/3(d).

30. Plaintiffs were not exempt from the minimum wage provisions of the IMWL, 820 ILCS § 105/4.

31. During the last three years before the filing of this suit, Defendant was an "employer" as defined in the IMWL, 820 ILCS § 105/3(c).

32. Pursuant to 820 ILCS § 105/4, Plaintiffs were entitled to be compensated according to the applicable minimum wage rate under the IMWL.

WHEREFORE, Plaintiffs pray for a judgment against Defendant as follows:

- A. Judgment in the amount of unpaid minimum wages found due;
- B. Statutory interest damages in the amount of two percent (2%) per month of the amount of the amount of underpayments;
- C. Reasonable attorneys' fees and costs incurred in filing and prosecuting this action; and
- D. Such other and further relief as this Court deems appropriate and just.

Respectfully submitted,

Dated: August 12, 2021

By: s/ Richard J. Miller

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One of the Attorneys For Plaintiffs

The ILND 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

Eric Zack, Joshua Trice, Allison Hancock and Lloyd Russell Wollert, et al.

(b) County of Residence of First Listed Plaintiff

(Except in U.S. plaintiff cases)

(c) Attorneys (firm name, address, and telephone number)

The Miller Law Firm, P.C.
1051 Perimeter Drive, Ste 400
Schaumburg, IL 60173 (847) 995-1205

DEFENDANTS

Village of Winthrop Harbor

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)

N/A

II. BASIS OF JURISDICTION (Check 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 (For Diversity Cases Only.)(Check one box, only 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 (Check one box, only.)

CONTRACT	TORTS	PRISONER PETITIONS	LABOR	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 Loan (Excludes Veterans) <input type="checkbox"/> 153 Recovery 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"/> 530 General <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"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Habeas Corpus: <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 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 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyright <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)	<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"/> 485 Telephone Consumer Protection Act (TCPA) <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 Arts <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 <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	CIVIL RIGHTS <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	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	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 TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Check 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 (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

29 U.S.C. 201 et seq.

VII. PREVIOUS BANKRUPTCY MATTERS (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)**VIII. REQUESTED IN COMPLAINT:**

- ☐ Check if this is a class action under Rule 23, F.R.C.V.P.

Demand \$ 500,000

CHECK Yes only if demanded in complaint:

Jury Demand: ☐ Yes ☒ No**IX. RELATED CASE(S) IF ANY** (See instructions):

Judge

Case Number

X. Is this a previously dismissed or remanded case?

- ☐ Yes ☒ No If yes, Case #

Name of Judge

Date:

August 12, 2021

Signature of Attorney of Record Richard J. Miller