

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ANTHONY KELLY, GREGORY COOK,)	
GERALD FAIR, JACK HOFFMAN,)	
CHRISTOPHER KUNKLE, CHAD)	
LALLIER, DAVID PLUNKETT, SAMUEL)	Civil Action No.
REYES, FREDERICK RUFF, and)	
MICHAEL SHARPE,)	
)	
<i>Plaintiffs,</i>)	JURY TRIAL DEMANDED
)	
v.)	
)	
THE CITY OF ALEXANDRIA,)	
)	
<i>Defendant.</i>)	

COMPLAINT

Plaintiffs Anthony Kelly, Gregory Cook, Gerald Fair, Jack Hoffman, Christopher Kunkle, Chad Lallier, David Plunkett, Samuel Reyes, Frederick Ruff, and Michael Sharpe (collectively “Plaintiffs”) bring this action against Defendant City of Alexandria, (“the City” or “Defendant”) to redress violations of the Fair Labor Standards Act (“FLSA”) 29 U.S.C. §§ 201, *et seq.*, the Virginia Wage Payment Act (“VWPA”) Virginia Code §§ 40.1-29 *et seq.*, and the Virginia Overtime Wage Act (“VOWA”) Virginia Code §§ 40.1-29.2 *et seq.*

JURISDICTION AND VENUE

1. This Court has original subject matter jurisdiction over this action pursuant to 29 U.S.C. § 1331 and 29 U.S.C. § 216(b).
2. Additionally, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over the pendent state law claims under the VWPA and VOWA because those state law claims

arise out of the same nucleus of operative fact as the FLSA claims.

3. This Court has personal jurisdiction over Defendant because Defendant has sufficient minimum contacts within this District to be held liable for illegal conduct here.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendant conducts business within the Eastern District of Virginia, and a substantial part of the events or omissions giving rise to these claims occurred in this District.

COVERAGE

5. At all relevant times, Defendant is a “public agency” and an “employer” within the meaning of the FLSA, 29 U.S.C. § 203(d), the VWPA, and the VOWA.

6. At all relevant times, Plaintiffs were employees of a public agency and employed to perform activities of a public agency. 29 U.S.C. 203(s)(1)(c).

7. At all times material to this action, Defendant was 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), in that Defendant is a public agency.

8. The FLSA applies to state and local governments. *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985).

PARTIES

9. Plaintiff Gregory Cook (“Cook”) is over the age of eighteen (18) and a Maryland resident. Defendant hired Cook as a firefighter on January 21, 2001. Defendant promoted Cook to Battalion Chief on December 16, 2017.¹

¹ Consent forms signed by each Plaintiff are attached to this pleading as Exhibit A.

10. Plaintiff Gerald Fair (“Fair”) is over the age of eighteen (18) and a Virginia resident. Defendant hired Fair as a firefighter on February 4, 1986. Defendant promoted Fair to Lieutenant in May 2000, to Captain in December 2004, and to Battalion Chief in July 2015.

11. Plaintiff Jack Hoffman (“Hoffman”) is over the age of eighteen (18) and a Virginia resident. Defendant hired Hoffman as a firefighter on September 28, 2002. Defendant promoted Hoffman to Lieutenant in February 2012, Captain in July 2014, and Battalion Chief on March 1, 2017.

12. Plaintiff Anthony Kelly (“Kelly”) is over the age of eighteen (18) and a Maryland resident. Defendant hired Kelly as a firefighter in September 2002. Defendant promoted Kelly to Battalion Chief in July 2015.

13. Plaintiff Christopher Kunkle (“Kunkle”) is over the age of eighteen (18) and a Maryland resident. Defendant hired Kunkle as a firefighter in September 1991. Defendant promoted Kunkle to Battalion Chief on January 4, 2013.

14. Plaintiff Chad Lallier (“Lallier”) is over the age of eighteen (18) and a Maryland resident. Defendant hired Lallier as a firefighter on December 12, 1998. Defendant promoted Lallier to Lieutenant in February 2013, to Captain in March 2016, and to Battalion Chief on March 9, 2019.

15. Plaintiff David Plunkett (“Plunkett”) is over the age of eighteen (18) and a Virginia resident. Defendant hired Plunkett as a firefighter on January 20, 2001. Defendant promoted Plunkett to Acting Battalion Chief in January 2018 and Battalion Chief on June 1, 2018.

16. Plaintiff Samuel Reyes (“Reyes”) is over the age of eighteen (18) and a Virginia resident. Defendant hired Reyes as a firefighter on January 20, 2021. Defendant promoted Reyes

to Lieutenant in June 2012, to Captain on March 14, 2015, and to Battalion Chief on April 15, 2021.

17. Plaintiff Frederick Ruff (“Ruff”) is over the age of eighteen (18) and a Maryland resident. Defendant hired Ruff as a firefighter in January 1989. Defendant promoted Ruff to Lieutenant in February 2012, Captain in July 2014, and Battalion Chief in April 2019.

18. Plaintiff Michael Sharpe (“Sharpe”) is over the age of eighteen (18) and a Maryland resident. Defendant hired Sharpe as a firefighter on December 12, 1998. Defendant promoted Sharpe to Lieutenant in December 2004, Captain in July 2006, and Battalion Chief on February 2, 2012.

19. Defendant The City of Alexandria is a municipality located in the Commonwealth of Virginia.

20. Defendant operates the Alexandria Fire Department (“Fire Department”) with ten (10) fire stations throughout the City of Alexandria.

FACTUAL ALLEGATIONS

21. Plaintiffs are Battalion Chiefs employed by the City of Alexandria.

22. The City of Alexandria Fire Department employs ten (10) Battalion Chiefs. Battalion Chiefs are either assigned to one of the six (6) Operational Battalion Chief positions or one of the four (4) Administrative Battalion Chief positions.

23. The City of Alexandria Fire Department, including the Fire Chief, the Assistant Chiefs, and the Deputy Chiefs, decides which Battalion Chief should work in which role. Battalion Chiefs may rotate between any of the ten (10) Battalion Chief positions and may be transferred to and from the positions.

24. The City of Alexandria Fire Department maintains one job listing/job classification for Battalion Chiefs. Regardless of whether a Battalion Chief is operational or administrative, they work under the same job description/job classification.

25. The City of Alexandria Fire Department operates ten (10) fire stations throughout the City and divides the stations into two (2) battalions: East and West Battalion (consisting of five (5) fire stations each).

26. Each of the East and West Battalions are assigned three (3) Operational Battalion Chiefs who rotate working in three (3) shifts and are responsible for the day-to-day operations for the stations within their Battalion.

27. The West Battalion Operational Battalion Chiefs are: Frederick Ruff (Shift A), Jack Hoffman (Shift B), and Anthony Kelly (Shift C).

28. The East Battalion Operational Battalion Chiefs are: Gregory Cook (Shift A), Samuel Reyes (Shift B), and Christopher Kunkle (Shift C).

29. Defendant designates Operational Battalion Chiefs “on duty” for twenty-four (24) hour shifts. Operational Chiefs are scheduled to work 24 hours on duty, 24 hours off duty, 24 hours on duty, 24 hours off duty, 24 hours on duty, and 96 hours off duty.

30. Operational Battalion Chiefs work pursuant to a 28-day “work period,” but are not paid proper overtime for hours worked over 212 hours per “work period,” as required under the FLSA, VWPA, and VOWA.

31. Operational Battalion Chiefs routinely work more than 212 hours per 28-day “work period.”

32. While on duty, Operational Battalion Chiefs are scheduled for anywhere between forty-eight (48) and sixty-eight (68) hours per week, during which they respond to emergencies

and perform other “on the ground” work. Operational Battalion Chiefs may also ride ladder trucks or rescue engines while responding to emergencies.

33. Operational Battalion Chiefs work alongside the Captains, Lieutenants, Firefighters, and other ancillary or administrative staff employed by the Fire Department and report to the Fire Chief, Assistant Chiefs, and Deputy Chiefs.

34. Operational Battalion Chiefs are automatically dispatched to respond to emergency fire, rescue, and Emergency Medical Services (EMS) calls. Operational Battalion Chiefs provide on-the-ground, direct services to citizens and residents of Alexandria, including firefighting and EMS services.

35. Operational Battalion Chiefs help manage and direct staff and resources during firefighting, rescue, and EMS incidents. Battalion Chiefs regularly work in a forward position where they enter burning structures or provide direct care to sick or injured patients.

36. Operational Battalion Chiefs work alongside Captains, Lieutenants, and Firefighters who are non-exempt employees and who are paid overtime.

37. The majority of Operational Battalion Chiefs’ job duties are identical to those of their non-exempt coworkers, including fighting fires, responding to EMS and rescue calls, and regularly interacting with members of the public.

38. Like their Captain, Lieutenant, and Firefighter coworkers, Operational Battalion Chiefs received hazard pay during the COVID-19 pandemic.

39. Operational Battalion Chiefs are not able to set their own work schedule or adjust their working hours.

40. The work schedules for Operational Battalion Chiefs (and the Lieutenants, Captains, and Firefighters) are pre-determined by the Fire Department Executive Team and

electronically communicated to all employees in a “Personnel Action Bulletin”. This bulletin includes an “approved” line which requires the approval of an Assistant Chief.

41. Administrative Battalion Chiefs are not assigned to a specific fire station or geographic area, but perform duties for the entire fire department.

42. The Administrative Battalion Chiefs are Gerald Fair (Chief of Logistics); Michael Sharpe (Chief of Community Risk Reduction); Chad Lallier (Chief of Training/Professional Development); and David Plunkett (Chief of Special Operations).

43. As Battalion Chief of Logistics, Fair works with the Fire Department’s facilities, supply, and maintenance teams. Fair works with the City of Alexandria on Capital Improvement projects and works with facilities employees who manage the repair and preventative maintenance of Fire Department facilities. Fair works with supply employees who help ensure the Fire Department has all necessary supplies (including equipment, uniforms, and personal protective equipment) and with the maintenance employees and mechanics who maintain the Fire Department’s vehicle fleet.

44. Fair generally works forty (40) hours per week. If Fair works less than forty (40) hours in any workweek, he is required to use sick or personal leave for hours under forty not worked.

45. As Battalion Chief of Community Risk Reduction, Sharpe works with Fire Inspectors, Fire Marshals, and the Community Outreach Coordinator. Sharpe also engages with other City staff to represent the fire department on various projects. Sharpe receives direction on these projects from the executive team or is given a department-approved position to advance.

46. Sharpe generally works forty (40) hours per week. If Sharpe works less than forty (40) hours in any workweek, he is required to use sick or personal leave for hours under forty not worked.

47. As Battalion Chief of Training/Professional Development, Lallier works with the Field Training Offices which are composed of two (2) Captains and four (4) Lieutenants. Lallier helps implement the Fire Department's training protocols, including training scheduling and procurement. Lallier works with the recruit school instructors and fire department recruits. Lallier also conducts trainings as needed and works hand-in-hand with the Captains and Lieutenants to schedule and conduct department wide training.

48. As the Battalion Chief of Training/Professional Development, Lallier cannot choose departmental training topics; instead, training topics are handed down by the Fire Department. Lallier cannot procure new training topics without approval from the Fire Department.

49. If employees do not perform training in a satisfactory manner, Lallier does not have the authority to require the training to be repeated or corrected.

50. Lallier generally works forty (40) hours per week. If Lallier works less than forty (40) hours in any workweek, he is required to use sick or personal leave for hours under forty not worked.

51. Lallier works overtime when completing special projects and assignments. Lallier manages the fire department respiratory protection program. Lallier also managed this program as a Lieutenant. When Lallier was a Lieutenant, he was paid overtime for all time worked in the respiratory protection program. After being promoted to a Battalion Chief, Lallier's pay reverted

to straight time (and not time and a half) although he continued to work the same hours and perform the same work managing the program.

52. As Battalion Chief of Special Operations, Plunkett works with the Hazardous Materials Team, Technical Rescue Team, Marine Operations Team, and Water Rescue Team. Plunkett also serves as the Department's Intelligence Liaison Officer and performs grant writing and management of Special Operations Programs. Plunkett also oversees the department's High Threat Response Program.

53. Plunkett also responds to special operations incidents with his team when they occur.

54. Plunkett generally works forty (40) hours per week. If Plunkett works less than forty (40) hours in any workweek, he is required to use sick or personal leave for hours under forty not worked.

55. Administrative Battalion Chiefs do not work in 24 hour shifts or on "work periods," but work during normal business hours and workweeks. Administrative Battalion Chiefs may work more than 40 hours each workweek depending on staffing and scheduling constraints and availability.

56. If Administrative Battalion Chiefs work less than forty (40) hours per week, Defendant docks their pay to only reflect hours worked or are required to take leave or sick time to cover those hours not worked.

57. Some Administrative Battalion Chiefs have previously worked as Operational Battalion Chiefs within the relevant time period, or vice versa. These individuals have been affected by Defendant's failure to pay proper overtime in both capacities.

58. Defendant pays all Battalion Chiefs (both Operational and Administrative) an hourly wage between \$40.41 to \$71.59 per hour.

59. Defendant pays Cook \$46.68 per hour.

60. Defendant pays Fair \$72.66 per hour.

61. Defendant pays Hoffman \$45.28 per hour.

62. Defendant pays Kelly \$45.28 per hour.

63. Defendant pays Kunkle \$46.69 per hour.

64. Defendant pays Lallier \$67.87 per hour.

65. Defendant pays Plunkett \$66.34 per hour.

66. Defendant pays Reyes \$46.68 per hour.

67. Defendant pays Ruff \$51.13 per hour.

68. Defendant pays Sharpe \$67.87 per hour.

69. Defendant pays Plaintiffs bi-weekly.

70. To calculate Plaintiffs' bi-weekly pay, Defendant multiplies Plaintiffs' hours worked by their hourly rate.

71. The amount Plaintiffs are paid during each pay period varies based on the number of hours worked during that pay period.

72. If Operational Battalion Chiefs work less than two-hundred and twelve (212) hours per 28-day "work period," Defendant pays Operational Battalion Chiefs for only their hours worked or require them to take leave or sick time to cover those hours not worked.

73. If Administrative Battalion Chiefs work less than forty (40) hours per week, Defendant pays Administrative Battalion Chiefs for only their hours worked or require them to take leave or sick time to cover those hours not worked.

74. Defendant classifies both Operational and Administrative Battalion Chiefs as “salaried” employees exempt from the FLSA’s overtime requirements.

75. Defendant pays Plaintiffs based on their hourly rate for all hours worked, even hours worked over 212 each 28-day work period (Operational), or hours worked over forty (40) per week (Administrative).

76. Defendant does not pay Plaintiffs their proper overtime rate of one and one-half times their regular rate for hours worked over 212 each 28-day work period (Operational), or hours worked over forty (40) per week (Administrative).

77. Battalion Chiefs do not have independent authority to review or approve/deny employee leave requests. Battalion Chiefs can only approve or deny leave requests as directed by the Executive Team (the Fire Chief, Deputy Fire Chiefs, and Assistant Fire Chiefs).

78. Battalion Chiefs do not have the authority to hire or fire employees.

79. Battalion Chiefs do not have the authority to issue major disciplinary action to employees. Battalion Chiefs (along with Captains and Lieutenants) can issue Oral Reprimands. Any other disciplinary actions assessed to employees must be approved through the City of Alexandria’s Human Resources department. Battalion Chiefs cannot decide the appropriate level of discipline or the contents of disciplinary documents.

80. The City of Alexandria Fire Department does not accept Battalion Chiefs’ recommendations about discipline, hiring, and firing without question. Defendant does not always accept Battalion Chiefs’ suggestions about discipline, hiring, and firing.

81. Battalion Chiefs work “on the ground” alongside the Captains, Lieutenants, and Firefighter, unlike the Fire Department’s Deputy Chiefs and Assistant Chiefs. Deputy Chiefs and

Assistant Chiefs are exempt from overtime pay and are paid a salary which does not vary from week to week based on hours worked.

82. Deputy Chiefs and Assistant Chiefs are considered part of the Executive Team and they supervise and direct Battalion Chiefs.

83. Deputy and Assistant Chiefs can negotiate their salaries (unlike Battalion Chiefs) and do not receive hazard pay (unlike Battalion Chiefs).

84. Deputy Chiefs and Administrative Battalion Chiefs rotate as the “Duty Chief.” When serving as the Duty Chief, Administrative Battalion Chiefs receive standby pay (for additional hours worked) but Deputy Chiefs do not (because they are paid a salary).

85. Operational Battalion Chiefs are fire protection employees as that term is defined in Virginia Code § 9.1-700.

86. Operational Battalion Chiefs are employees in fire protection activities as that phrase is defined in 29 U.S.C. § 203(y) and described in 29 C.F.R. § 541.3.

87. Under the FLSA, VWPA, and VOWA, Operational Battalion Chiefs are entitled to overtime compensation for all hours worked in excess of 212 in a 28-day work cycle.

88. Operational Battalion Chiefs are regularly scheduled to work more than 212 hours in every 28-day work cycle.

89. Under the FLSA, VWPA, and VOWA, Administrative Battalion Chiefs are entitled to overtime compensation for all hours worked in excess of 40 each workweek.

90. Administrative Battalion Chiefs are sometimes scheduled to work more than 40 hours each workweek.

91. Defendant had knowledge of the hours Plaintiffs were working through their supervision of Plaintiffs.

92. Despite failing to pay Plaintiffs on a salary basis and the non-exempt nature of Plaintiffs' duties, Defendant classified Plaintiffs as exempt from the overtime provisions of the FLSA, VWPA, and VOWA. Defendant did so based on Plaintiffs' job title and level of compensation, ignoring the actual pay structure and duties of Plaintiffs' employment of which Defendant was well aware.

93. Defendant knew that the FLSA, VWPA, and VOWA was applicable to its employees and did so for the three years preceding the filing of this Complaint. Defendant paid overtime wages to its employees who worked more than 212 hours per 28-day work cycle, or more than 40 hours per workweek, and whom they had not misclassified as overtime exempt.

94. Defendant knew or showed reckless disregard as to whether they were violating the FLSA, VWPA, and VOWA in their classification of Plaintiffs. Defendant knew that Fourth Circuit case law required overtime pay for first responders with duties similar to Plaintiffs. Furthermore, Defendant undertook a review of Plaintiffs' duties but disregarded the factual results and maintained the erroneous classification of Plaintiffs as exempt.

COUNT ONE
Failure to Pay Overtime in Violation of the Fair Labor Standards Act
29 U.S.C. § 201, *et seq.*

95. Plaintiffs incorporate by reference paragraphs 21 to 94 above.

96. Defendant is an "employer" and "public agency" within the meaning of the FLSA, 29 U.S.C. § 203.

97. The FLSA, pursuant to §§ 206 and 207, requires covered employers, including Defendant, to compensate all employees at a rate of not less than one and one-half (1.5) times the regular rate of pay for work performed in excess of 212 hours per 28-day work cycle (for

Operational Battalion Chiefs), or in excess of forty (40) hours in a single workweek (for Administrative Battalion Chiefs).

98. Employees are exempt from the FLSA's overtime pay requirements if they are compensated on a salary basis of not less than \$455 per week. 29 C.F.R. § 541.100.

99. Defendant did not compensate Plaintiffs on a "salary basis" because Plaintiffs' pay varied based on the number of hours worked each day.

100. Defendant did not compensate Plaintiffs on a "salary basis" because Defendant calculated Plaintiffs' bi-weekly pay by multiplying hours worked by the Plaintiffs' hourly rate.

101. Because Plaintiffs were not paid on a "salary basis" under the FLSA, Defendant failed to pay Plaintiffs proper overtime compensation for all overtime hours worked..

102. The FLSA overtime pay requirement does not apply to exempt executive employees. Exempt executives are employees whose primary duties are management; who customarily and regularly direct the work of two or more other employees; and who have the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight. 29 C.F.R. § 541.100.

103. Administrative Battalion Chiefs (including Plaintiffs Fair, Sharpe, Lallier, and Plunkett) are not exempt executives because they do not customarily and regularly direct the work of two or more employees.

104. Administrative Battalion Chiefs relay direction that they receive from the Fire Department and the Fire Chief to Captains, Lieutenants, Firefighters, Fire Marshals, and assigned civilian employees.

105. Administrative Battalion Chiefs (including Plaintiffs Fair, Sharpe, Lallier, and Plunkett) are not exempt executives because they do not have the authority to hire and fire employees and their recommendations regarding hiring and firing are not given particular weight.

106. Operational Battalion Chiefs (including Plaintiffs Cook, Hoffman, Kelly, Kunkle, Reyes, and Ruff) are not exempt executives because they do not have the authority to hire and fire employees and their recommendations regarding hiring and firing are not given particular weight.

107. Operational Battalion Chiefs work alongside Captains, Lieutenants, and Firefighters (all of whom are non-exempt executives and paid overtime). Operational Battalion Chiefs perform manual labor for much of their scheduled shifts, including fighting fires and responding to rescue and EMS calls.

108. Battalion Chiefs are not exempt executives because they do not have the authority to independently review and approve/deny employee leave requests and cannot set their own schedule or the schedules of other fire department employees.

109. Battalion Chiefs do not have the authority to issue major disciplinary action to employees. Battalion Chiefs (along with Captains and Lieutenants) can issue Oral Reprimands. Any other disciplinary actions assessed to employees must be approved through the Fire Department and the City of Alexandria's Human Resources department. Battalion Chiefs cannot decide the appropriate level of discipline or the contents of disciplinary documents.

110. Like their Captain, Lieutenant, and Firefighter coworkers, Battalion Chiefs received hazard pay during COVID-19 because they perform the same or similar duties and face the same or similar on-the-job risks.

111. As members of a para-military organization, all employees of the City of Alexandria Fire Department have some managerial duties. The fact that the Operational Battalion

Chiefs relay direction and instruction as provided by the executive team to lower ranking employees does not preclude them from non-exempt status.

112. Captains and Lieutenants with the City of Alexandria Fire Department direct the work of other employees at the Fire Station and they are still non-exempt employees entitled to overtime pay.

113. Because Plaintiffs were not exempt executives paid on a “salary basis” under the FLSA, Defendant failed to pay them overtime compensation for all work performed in excess of 212 hours per 28-day work cycle (for Operational Battalion Chiefs), or in excess of forty (40) hours in a single workweek (for Administrative Battalion Chiefs).

114. In violation of the FLSA, Defendant has knowingly and willfully refused to perform their obligations to compensate Plaintiffs at one and a half (1½) times their hourly rate for all work performed in excess of 212 hours per 28-day work cycle (for Operational Battalion Chiefs), or in excess of forty (40) hours in a single workweek (for Administrative Battalion Chiefs).

115. Defendant’s failure to pay Plaintiffs the unpaid balance of overtime compensation violates the FLSA, and is therefore unlawful.

116. Pursuant to the FLSA, Plaintiffs are entitled to recover their unpaid overtime as well as an additional equal amount as liquidated damages, interest, costs, expenses, attorneys’ fees, and any other and further relief this Court deems appropriate.

COUNT TWO
Violation of the Virginia Wage Payment Act
For Failure to Pay Proper Wages
Virginia Code § 40.1-29 *et seq.*

117. Plaintiffs incorporate by reference paragraphs 21 to 94 above.

118. Plaintiffs are Defendant’s “employees” and Defendant is Plaintiffs’ “employer” within the meaning of the VWPA.

119. Defendant employs Plaintiffs within the meaning of the VWPA.

120. Defendant employs Plaintiffs within the Commonwealth of Virginia.

121. Virginia Code § 40.1-29 provides that “[n]o employer shall withhold any part of the wages or salaries of any employee except for payroll, wage or withholding taxes or in accordance with law, without the written and signed authorization of the employee.”

122. Virginia Code § 40.1-29 also provides that an employee shall be timely “paid all wages or salaries due him for work performed”

123. Virginia Code § 40.1-29 also provides that “if an employer fails to pay wages to an employee in accordance with this section, the employee may bring an action, individually, jointly, with other aggrieved employees . . . against the employer in a court of competent jurisdiction to recover payment of the wages, and the court shall award the wages owed, an additional equal amount as liquidated damages, plus prejudgment interest . . . and reasonable attorney fees and costs.”

124. Virginia Code § 40.1-29 also provides that “[i]f the court finds that the employer knowingly failed to pay wages to an employee in accordance with this section, the court shall award the employee an amount equal to triple the amount of wages due and reasonable attorney fees and costs.”

125. Plaintiffs are not paid on a salary basis and are non-exempt employees entitled to the protections of the VWPA.

126. Defendant does not pay Plaintiffs overtime for all hours worked in excess of 212 hours per 28-day work cycle (for Operational Battalion Chiefs), or in excess of forty (40) hours in a single workweek (for Administrative Battalion Chiefs).

127. Administrative Battalion Chiefs (including Plaintiffs Fair, Sharpe, Lallier, and Plunkett) are not exempt executives because they primarily relay information from the Fire Department executives (rather than direct staff independently).

128. Administrative Battalion Chiefs (including Plaintiffs Fair, Sharpe, Lallier, and Plunkett) are not exempt executives because they do not have the authority to hire and fire employees and their recommendations regarding hiring and firing are not given particular weight.

129. Operational Battalion Chiefs (including Plaintiffs Cook, Hoffman, Kelly, Kunkle, Reyes, and Ruff) are not exempt executives because they do not have the authority to hire and fire employees and their recommendations regarding hiring and firing are not given particular weight.

130. Operational Battalion Chiefs work alongside Captains, Lieutenants, and Firefighters (all of whom are non-exempt executives and paid overtime). Operational Battalion Chiefs perform manual labor for the much of their scheduled shifts, including fighting fires and responding to rescue and EMS calls.

131. Battalion Chiefs are not exempt executives because they do not have the authority to independently review and approve/deny employee leave requests and cannot set their own schedule or the schedules of other fire department employees.

132. Battalion Chiefs do not have the authority to issue major disciplinary action to employees. Battalion Chiefs (along with Captains and Lieutenants) can issue Oral Reprimands. Any other disciplinary actions assessed to employees must be approved through the Fire Department and the City of Alexandria's Human Resources department. Battalion Chiefs cannot decide the appropriate level of discipline or the contents of disciplinary documents.

133. Like their Captain, Lieutenant, and Firefighter coworkers, Battalion Chiefs received hazard pay during COVID-19 because they perform the same or similar duties and face the same or similar on-the-job risks.

134. As members of a para-military organization, all employees of the City of Alexandria Fire Department have some managerial duties. The fact that the Operational Battalion Chiefs relay direction and instruction as provided by the executive team to lower ranking employees does not preclude them from exemption status.

135. Captains and Lieutenants with the City of Alexandria Fire Department direct the work of other employees at the Fire Station and they are still non-exempt employees entitled to overtime pay.

136. Defendant violated Virginia law by knowingly failing to pay Plaintiffs all wages due and owing, including proper overtime compensation.

137. In violation of the VWPA, Defendant has knowingly and willfully refused to perform their obligations to compensate Plaintiffs at one and a half (1½) times their hourly rate for all work performed in excess of 212 hours per 28-day work cycle (for Operational Battalion Chiefs), or in excess of forty (40) hours in a single workweek (for Administrative Battalion Chiefs).

138. Defendant's failure to pay Plaintiffs the unpaid balance of overtime compensation, as required by Virginia law, violates the provisions of the VWPA, and is therefore unlawful.

139. Pursuant to the VWPA, Plaintiffs are entitled to recover their unpaid overtime as well as an additional equal amount as liquidated damages, interest, costs, and attorneys' fees. Additionally, because Defendant knowingly failed to pay wages to Plaintiffs in accordance with the VWPA, Plaintiffs are entitled to an amount equal to triple the amount of wages due.

COUNT THREE
Violation of the Virginia Overtime Wage Act
For Failure to Pay Overtime Wages
Virginia Code § 40.1-29.2 *et seq.*

140. Plaintiffs incorporate by reference paragraphs 21 to 94 above.

141. Plaintiffs are Defendant's "employees" and Defendant is Plaintiffs' "employer" within the meaning of the VOWA.

142. Defendant employs Plaintiffs within the meaning of the VOWA.

143. Defendant employs Plaintiffs within the Commonwealth of Virginia.

144. Virginia Code § 40.1-29.2 provides "[f]or any hours worked by an employee in excess of 40 hours in any one workweek, an employer shall pay such employee an overtime premium at a rate not less than one and one-half times the employee's regular rate, pursuant to 29 U.S.C. § 207."

145. Virginia Code § 40.1-29.2 further provides "[f]or fire protection or law-enforcement employees of any public sector employer for whom 29 U.S.C. § 207(k) applies, such employer shall pay an overtime premium as set forth in this section for (i) all hours worked in excess of the threshold set forth in 20 U.S.C. § 207(k) and (ii) any additional hours such employee worked or received as paid leave as set forth in subsection A of § 9.1-701."

146. Lastly, Virginia Code § 40.1-29.2 provides "[a]ny employer that violates the overtime wage requirements of this section shall be liable to the employee for all remedies, damages, or other relief available in an action brought under subsection J of § 40.1-29."

147. Employees are exempt from the VOWA's overtime pay requirements if they are compensated on a salary basis.

148. Defendant did not compensate Plaintiffs on a "salary basis" because Plaintiffs' pay varied based on the number of hours worked each day.

149. Defendant did not compensate Plaintiffs on a “salary basis” because Defendant calculated Plaintiffs’ bi-weekly pay by multiplying hours worked by the Plaintiffs’ hourly rate.

150. Because Plaintiffs were not paid on a “salary basis,” Defendant failed to pay Plaintiffs proper overtime compensation for all overtime hours worked.

151. The VOWA overtime pay requirement does not apply to exempt executive employees, as defined by the FLSA. Exempt executives are employees whose primary duties are management; who customarily and regularly direct the work of two or more other employees; and who have the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight. 29 C.F.R. § 541.100.

152. Administrative Battalion Chiefs (including Plaintiffs Fair, Sharpe, Lallier, and Plunkett) are not exempt executives because they do not customarily and regularly direct the work of two or more employees.

153. Administrative Battalion Chiefs relay direction that they receive from the Fire Department and the Fire Chief to Captains, Lieutenants, Firefighters, Fire Marshals, and assigned civilian employees.

154. Administrative Battalion Chiefs (including Plaintiffs Fair, Sharpe, Lallier, and Plunkett) are not exempt executives because they do not have the authority to hire and fire employees and their recommendations regarding hiring and firing are not given particular weight.

155. Operational Battalion Chiefs (including Plaintiffs Cook, Hoffman, Kelly, Kunkle, Reyes, and Ruff) are not exempt executives because they do not have the authority to hire and fire employees and their recommendations regarding hiring and firing are not given particular weight.

156. Operational Battalion Chiefs work alongside Captains, Lieutenants, and

Firefighters (all of whom are non-exempt executives and paid overtime). Operational Battalion Chiefs perform manual labor for much of their scheduled shifts, including fighting fires and responding to rescue and EMS calls.

157. Battalion Chiefs are not exempt executives because they do not have the authority to independently review and approve/deny employee leave requests and cannot set their own schedule or the schedules of other fire department employees.

158. Battalion Chiefs do not have the authority to issue major disciplinary action to employees. Battalion Chiefs (along with Captains and Lieutenants) can issue Oral Reprimands. Any other disciplinary actions assessed to employees must be approved through the Fire Department and the City of Alexandria's Human Resources department. Battalion Chiefs cannot decide the appropriate level of discipline or the contents of disciplinary documents.

159. Like their Captain, Lieutenant, and Firefighter coworkers, Battalion Chiefs received hazard pay during COVID-19 because they perform the same or similar duties and face the same or similar on-the-job risks.

160. As members of a para-military organization, all employees of the City of Alexandria Fire Department have some managerial duties. The fact that the Operational Battalion Chiefs relay direction and instruction as provided by the executive team to lower ranking employees does not preclude them from non-exempt status.

161. Captains and Lieutenants with the City of Alexandria Fire Department direct the work of other employees at the Fire Station and they are still non-exempt employees entitled to overtime pay.

162. Because Plaintiffs were not exempt executives paid on a "salary basis" under the VOWA, Defendant failed to pay them overtime compensation for all work performed in excess of

212 hours per 28-day work cycle (for Operational Battalion Chiefs), or in excess of forty (40) hours in a single workweek (for Administrative Battalion Chiefs).

163. In violation of the VOWA, Defendant has knowingly and willfully refused to perform their obligations to compensate Plaintiffs at one and a half (1½) times their hourly rate for all work performed in excess of 212 hours per 28-day work cycle (for Operational Battalion Chiefs), or in excess of forty (40) hours in a single workweek (for Administrative Battalion Chiefs).

164. Defendant's failure to pay Plaintiffs the unpaid balance of overtime compensation violates the VOWA, and is therefore unlawful.

165. Pursuant to the VOWA, Plaintiffs are entitled to recover their unpaid overtime as well as an additional equal amount as liquidated damages, interest, costs, and attorneys' fees. Additionally, because Defendant knowingly failed to pay wages to Plaintiffs in accordance with the VWPA, Plaintiffs are entitled to an amount equal to triple the amount of wages due.

PRAYER FOR RELIEF

Plaintiffs pray for relief and judgment against Defendant, as follows:

1. Award Plaintiffs actual damages in the amount of all wages found due to Plaintiffs and an award of liquidated damages as provided by the FLSA, VWPA, and VOWA, including an award of treble damages if the Court deems so appropriate;
2. Award Plaintiffs pre- and post-judgment interest at the statutory rate;
3. Award Plaintiffs attorneys' fees, costs, and interest pursuant to the FLSA, U.S.C. § 216(b), VWPA, Virginia Code § 40.1-29 *et seq.*, and VOWA, Virginia Code § 40.1-29.2 *et seq.*; and

4. Award Plaintiffs further legal and/or equitable relief as this Court deems necessary, just and proper.

DEMAND FOR TRIAL BY JURY

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

Respectfully Submitted,

/s/ Francisco Mundaca

Francisco Mundaca

Virginia State Bar No. 96073

Robert W.T. Tucci

pro hac vice admission pending

North Carolina State Bar No. 55014

Ivey Best

pro hac vice admission pending

Alabama State Bar No. 3844N48S

THE SPIGGLE LAW FIRM, PLLC

3601 Eisenhower Ave, Suite 425

Alexandria, Virginia 22304

Telephone: (202) 449-8527

Facsimile: (202) 517-9179

E-Mail: fmundaca@spigglelaw.com

rtucci@spigglelaw.com

ibest@spigglelaw.com

Counsel for Plaintiffs

EXHIBIT “A”

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

ANTHONY KELLY, GREGORY COOK,
GERALD FAIR, JACK HOFFMAN, CHAD
LALLIER, DAVID PLUNKETT, SAMUEL
REYES, FREDERICK RUFF, and MICHAEL
SHARPE,

Plaintiffs.

v.

THE ALEXANDRIA FIRE DEPARTMENT,
and THE CITY OF ALEXANDRIA,

Defendants.

Case No.

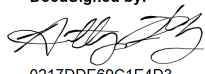
FLSA CONSENT FORM

I consent to join the above captioned lawsuit seeking unpaid regular and overtime wages and damages against the above-captioned Defendants under the Fair Labor Standards Act and will submit to the court's jurisdiction.

I understand that I will be bound by the judgment of the Court as to all issues in the above-captioned litigation.

Anthony Kelly

Full Legal Name (please print clearly)

DocuSigned by:

0217DDE69C1E4D3...
Signature

2/18/2022

Date

United States District Court, Eastern District of Virginia
Kelly et al. v. The Alexandria Fire Department, et al., No.:

CONSENT TO JOIN FAIR LABOR STANDARDS ACT ACTION

Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b)

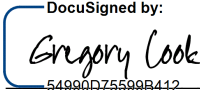
1. I consent and agree to pursue my claims arising out of my employment as a battalion chief in connection with the above-referenced lawsuit.

2. I was employed by The Alexandria Fire Department and the City of Alexandria, as a battalion chief. I worked at the fire station located in Alexandria, Virginia from approximately 01/21/2001 (month, year) to on or about Present (month, year).

3. I understand that this lawsuit is brought under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* I hereby consent, agree, and “opt in” to become a plaintiff herein and to be bound by any judgment by the Court or any settlement of this action.

4. I hereby designate The Spiggle Law Firm, PLLC to represent me for all purposes in this action, and other lawyers they may choose to associate with.

5. I also designate Named Plaintiff Anthony Kelly in this action as my representative and as my agent to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation and entering into settlement agreements.

Signature:  54990D75599B412...

Date: 2/18/2022

Name: Gregory Cook

Address: [REDACTED]

Telephone: [REDACTED]

E-Mail: [REDACTED]

United States District Court, Eastern District of Virginia
Kelly et al. v. The Alexandria Fire Department, et al., No.:

CONSENT TO JOIN FAIR LABOR STANDARDS ACT ACTION

Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b)

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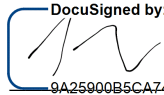
2. I was employed by The Alexandria Fire Department and the City of Alexandria, as a battalion chief. I worked at the fire station located in Alexandria, Virginia from approximately July 19, 2015 (month, year) to on or about Present (month, year).

3. I understand that this lawsuit is brought under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* I hereby consent, agree, and “opt in” to become a plaintiff herein and to be bound by any judgment by the Court or any settlement of this action.

4. I hereby designate The Spiggle Law Firm, PLLC to represent me for all purposes in this action, and other lawyers they may choose to associate with.

5. I also designate Named Plaintiff Anthony Kelly in this action as my representative and as my agent to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation and entering into settlement agreements.

Signature:

DocuSigned by:

9A25900B5CA74B4...

Date:

2/18/2022

Name:

GERALD LEE FAIR JR

Address:

[REDACTED]

Telephone:

[REDACTED]

E-Mail:

[REDACTED]

United States District Court, Eastern District of Virginia
Kelly et al. v. The Alexandria Fire Department, et al., No.:

CONSENT TO JOIN FAIR LABOR STANDARDS ACT ACTION

Pursuant to the Fair labor Standards Act, 29 U.S.C. § 216(b)

1. I consent and agree to pursue my claims arising out of my employment as a battalion chief in connection with the above-referenced lawsuit.

2. I was employed by The Alexandria Fire Department and the City of Alexandria, as a battalion chief. I worked at the fire station located in Alexandria, Virginia from approximately February 11, 2017 (month, year) to on or about Present (month, year).

3. I understand that this lawsuit is brought under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* I hereby consent, agree, and “opt in” to become a plaintiff herein and to be bound by any judgment by the Court or any settlement of this action.

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5. I also designate Named Plaintiff Anthony Kelly in this action as my representative and as my agent to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation and entering into settlement agreements.

Signature:

DocuSigned by:

C827160621294F8...

Date:

2/21/2022

Name:

Jack Hoffman

Address:

[REDACTED]

Telephone:

[REDACTED]

E-Mail:

[REDACTED]

United States District Court, Eastern District of Virginia
Kelly et al. v. The Alexandria Fire Department, et al., No.:

CONSENT TO JOIN FAIR LABOR STANDARDS ACT ACTION

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3. I understand that this lawsuit is brought under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* I hereby consent, agree, and “opt in” to become a plaintiff herein and to be bound by any judgment by the Court or any settlement of this action.

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5. I also designate Named Plaintiff Anthony Kelly in this action as my representative and as my agent to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation and entering into settlement agreements.

Signature:  DC4317F0568A430...

Date: 2/22/2022

Name: christopher kunkle

Address: [REDACTED]

Telephone: [REDACTED]

E-Mail: [REDACTED]

United States District Court, Eastern District of Virginia
Kelly et al. v. The Alexandria Fire Department, et al., No.:

CONSENT TO JOIN FAIR LABOR STANDARDS ACT ACTION

Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b)

1. I consent and agree to pursue my claims arising out of my employment as a battalion chief in connection with the above-referenced lawsuit.

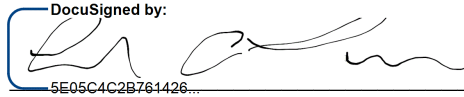
2. I was employed by The Alexandria Fire Department and the City of Alexandria, as a battalion chief. I worked at the fire station located in Alexandria, Virginia from approximately 3/2019 (month, year) to on or about Present (month, year).

3. I understand that this lawsuit is brought under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* I hereby consent, agree, and “opt in” to become a plaintiff herein and to be bound by any judgment by the Court or any settlement of this action.

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5. I also designate Named Plaintiff Anthony Kelly in this action as my representative and as my agent to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation and entering into settlement agreements.

Signature:

DocuSigned by:

5E05C4C2B761426...

Date:

2/18/2022

Name:

Chad A Lallier

Address:

[REDACTED]

Telephone:

[REDACTED]

E-Mail:

[REDACTED]

United States District Court, Eastern District of Virginia
Kelly et al. v. The Alexandria Fire Department, et al., No.:

CONSENT TO JOIN FAIR LABOR STANDARDS ACT ACTION

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1. I consent and agree to pursue my claims arising out of my employment as a battalion chief in connection with the above-referenced lawsuit.

2. I was employed by The Alexandria Fire Department and the City of Alexandria, as a battalion chief. I worked at the fire station located in Alexandria, Virginia from approximately January 2018 (month, year) to on or about Current (month, year).

3. I understand that this lawsuit is brought under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* I hereby consent, agree, and “opt in” to become a plaintiff herein and to be bound by any judgment by the Court or any settlement of this action.

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5. I also designate Named Plaintiff Anthony Kelly in this action as my representative and as my agent to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation and entering into settlement agreements.

Signature:

DocuSigned by:

David Plunkett

9735414B4A2946A...

Date:

2/22/2022

Name:

David Plunkett

Address:

Telephone:

E-Mail:

United States District Court, Eastern District of Virginia
Kelly et al. v. The Alexandria Fire Department, et al., No.:

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Signature:  7EC90CF838AD400...

Date: 2/19/2022

Name: Samuel Reyes

Address: [REDACTED]

Telephone: [REDACTED]

E-Mail: [REDACTED]

United States District Court, Eastern District of Virginia
Kelly et al. v. The Alexandria Fire Department, et al., No.:

CONSENT TO JOIN FAIR LABOR STANDARDS ACT ACTION

Pursuant to the Fair labor Standards Act, 29 U.S.C. § 216(b)

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2. I was employed by The Alexandria Fire Department and the City of Alexandria, as a battalion chief. I worked at the fire station located in Alexandria, Virginia from approximately April 2019 (month, year) to on or about February 2022 (month, year).

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5. I also designate Named Plaintiff Anthony Kelly in this action as my representative and as my agent to make decisions on my behalf concerning the litigation, including the method and manner of conducting this litigation and entering into settlement agreements.

Signature:

DocuSigned by:

B06875459B3044F...

Date:

2/18/2022

Name:

Frederick Ruff

Address:

[REDACTED]

Telephone:

[REDACTED]

E-Mail:

[REDACTED]

United States District Court, Eastern District of Virginia
Kelly et al. v. The Alexandria Fire Department, et al., No.:

CONSENT TO JOIN FAIR LABOR STANDARDS ACT ACTION

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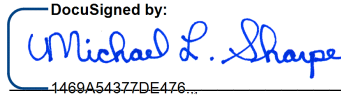
2. I was employed by The Alexandria Fire Department and the City of Alexandria, as a battalion chief. I worked at the fire station located in Alexandria, Virginia from approximately December, 1998 (month, year) to on or about Present (month, year).

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Signature:

DocuSigned by:

1469A54377DE476...

Date:

2/18/2022

Name:

Michael Sharpe

Address:

[REDACTED]

Telephone:

[REDACTED]

E-Mail:

[REDACTED]

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

Anthony Kelly, Gregory Cook, Gerald Fair, Jack Hoffman,
Chad Lallier, David Plunkett, Samuel Reyes, Frederick
Ruff, and Michael Sharpe, +

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

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

Francisco Mundaca, Esq.
3601 Eisenhower Ave, Ste. 425, Alexandria, VA 22304
(703) 215-1123 ext 2 +

DEFENDANTS

The City of Alexandria,

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 ☒ 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)

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 INTELLECTUAL 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 <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 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 (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <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 <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 PRISONER PETITIONS 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 U.S.C. §§ 201, et seq.

Brief description of cause:

Defendant has maintained a policy of failing to compensate Plaintiffs for all overtime hours at appropriate rate of time and one-half.

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

Feb 23, 2022

SIGNATURE OF ATTORNEY OF RECORD

/s/ Francisco Mundaca

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE