

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Karl H. Kraai

Plaintiff,

v.

Milwaukee County Circuit Court
Case No. 20CV002908

City of Milwaukee

Defendant.

PETITION FOR REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF WISCONSIN:

The petition of defendant City of Milwaukee respectfully shows as follows:

1. On May 8, 2020, an action was commenced against the petitioner in the Circuit Court for Milwaukee, Wisconsin entitled *Karl H. Kraai vs. City of Milwaukee*, Case No. 2020CV002908, by the filing with the court of a summons and complaint. True copies of the summons and complaint are annexed hereto. No further proceedings have been had therein.

2. The above-described action is a civil action of which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1331 and 29 U.S.C. §§207(e) and 216(b), and is one which may be removed to this Court by the petitioner, defendant herein, pursuant to the provisions of 28 U.S.C. § 1441(a), in that, as appears from the complaint, this is a civil action asserting a claim arising under a law of the United States, viz., 29 U.S.C. §§207(e) and 216(b).

3. That the summons and complaint in the above-captioned matter were served upon defendant City of Milwaukee within thirty days of making this petition, on May 20, 2020.

WHEREFORE, the petitioner prays that the above-described action, now pending against the City of Milwaukee in the Circuit Court for Milwaukee County, Wisconsin, be removed therefrom to this court.

Dated and signed at Milwaukee, Wisconsin 17th day of June, 2020.

TEARMAN SPENCER
City Attorney

s/ Benjamin J. Roovers
Assistant City Attorney
State Bar No. 1092395
Attorneys for Defendant
Milwaukee City Attorney's Office
200 East Wells Street, Room 800
Milwaukee, WI 53202
Telephone: (414) 286-2601
Fax: (414) 286-8550
Email: broove@milwaukee.gov

s/ Robin Pederson
Assistant City Attorney
State Bar No. 1045759
Attorneys for Defendant
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1061-2020-735/268767

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE

Karl H. Kraai vs. City of Milwaukee

**Electronic Filing
Notice**

Case No. 2020CV002908

Class Code: Declaratory Judgment

FILED

05-08-2020

John Barrett

Clerk of Circuit Court

2020CV002908

Honorable William S.

Pocan-26

Branch 26

CITY OF MILWAUKEE
200 E. WELLS STREET
MILWAUKEE WI 53202OFFICE OF CITY ATTORNEY
26 MAY 20 AM 11:55

Case number 2020CV002908 was electronically filed with/converted by the Milwaukee County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a \$20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: a37523

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 414-278-4120.

Milwaukee County Circuit Court
Date: May 11, 2020CITY OF MILWAUKEE
2020 MAY 20 A 5:12
CITY CLERK'S OFFICE

FILED

05-08-2020

John Barrett

Clerk of Circuit Court

2020CV002908

Honorable William S.
Pocan-26

Branch 26

STATE OF WISCONSIN
MILWAUKEE COUNTYCIRCUIT COURT
CIVIL COURT DIVISION

KARL H. KRAAI
on behalf of himself and all
others similarly situated,
c/o MacGillis Wiemer, LLC
11040 W. Bluemound Road, Suite 100
Milwaukee, WI 53226

Plaintiff,

v.

Case Number:

Case Code: 30703, 30701

Case Type: Unclassified, Declaratory
Judgment

CITY OF MILWAUKEE
200 East Wells Street
Milwaukee, WI 53202

Defendant.

5-19-20
11:50 AM
[Signature]

CITY OF MILWAUKEE
2020 MAY 20 A 5:12
CITY CLERK'S OFFICE

SUMMONS

THE STATE OF WISCONSIN:

To the Defendant named above:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written statement, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of Wisconsin Statutes.

OFFICE OF CITY ATTORNEY
26 MAY '20 AM 11:56

The Answer must be sent or delivered to the Court, whose address is:

Clerk of Courts
Milwaukee County Courthouse
901 N. 9th Street, Room 104
Milwaukee, WI 53233

and to MacGillis Wiemer, LLC, for the Plaintiff, at:

Attorney Christopher J. MacGillis
MacGillis Wiemer, LLC
11040 W. Bluemound Road, Suite 100
Milwaukee, WI 53226

You may have an attorney help or represent you.

If you do not provide a proper Answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated at Milwaukee, Wisconsin this 8th day of May, 2020.

MacGILLIS WIEMER, LLC

Attorneys for Plaintiff, Karl H. Kraai, on behalf of
himself and all others similarly situated



Christopher J. MacGillis
State Bar No. 1068944
Kevin P. Todt
State Bar No. 1097341

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FILED
05-08-2020
John Barrett
Clerk of Circuit Court
2020CV002908
Honorable William S.
Pocan-26
Branch 26

STATE OF WISCONSIN
MILWAUKEE COUNTY

CIRCUIT COURT
CIVIL COURT DIVISION

KARL H. KRAAI
on behalf of himself and all
others similarly situated,
c/o MacGillis Wiemer, LLC
11040 W. Bluemound Road, Suite 100
Milwaukee, WI 53226

Plaintiff,

v.

Case Number:

Case Code: 30703, 30701

Case Type: Unclassified, Declaratory
Judgment

CITY OF MILWAUKEE
200 East Wells Street
Milwaukee, WI 53202

Defendant.

CITY OF MILWAUKEE
2020 MAY 20 A 5:12
CITY CLERK'S OFFICE

COMPLAINT

NOW COMES Plaintiff, Karl H. Kraai ("Kraai"), on behalf of himself and all others similarly situated, by their attorneys, MacGillis Wiemer, LLC, by Christopher J. MacGillis and Kevin P. Todt, show and allege to the Court as follows:

PRELIMINARY STATEMENT

1. This is a collective and class action brought pursuant to the Fair Labor Standards Act of 1938, as amended, ("FLSA") and Wisconsin's Wage Payment and Collection Laws, Wis. Stat. § 109.01 *et seq.*, Wis. Stat. § 104.01 *et seq.*, Wis. Stat. § 103.001 *et seq.*, Wis. Admin. Code § DWD 274.01 *et seq.*, and Wis. Admin. Code § DWD 272.001 *et seq.* ("WWPCL"), by Plaintiff Kraai, on behalf of himself and all others similarly situated current and former non-exempt employees of the Defendant City of Milwaukee, for the purposes of obtaining relief under the FLSA and WWPCL for unpaid overtime compensation, unpaid agreed upon wages, liquidated

damages, costs, attorneys' fees, declaratory and/or injunctive relief, and/or any such other relief the Court may deem appropriate.

2. Defendant, City of Milwaukee ("City of Milwaukee"), is a municipal agency that is engaged in governmental activities.

3. Defendant, City of Milwaukee ("City of Milwaukee"), organized and established the City of Milwaukee Fire Department ("Fire Department" or "Department").

4. Defendant, City of Milwaukee, controls and manages the Fire Department, and by extension, the employees of the Department.

5. Defendant operated an unlawful compensation system that deprived current and former non-exempt Fire Department employees of their wages earned for all compensable work time, including the requisite overtime pay premium for each hour worked over two hundred four (204) hours in a twenty-seven (27) day work period. Specifically, Defendant's unlawful policies include failing to calculate the regular rate properly for overtime purposes. As a result, every hour worked by Plaintiff exceeding two hundred four (204) hours per twenty-seven (27) day work period for every work period was paid based on the employee's base hourly rate, rather than the overtime premium rate of one and one-half times that employee's regular hourly rate, as required by the FLSA.

6. Defendant's deliberate and intentional failure to properly compensate its employees for these hours worked violates federal law as set forth in the FLSA and state law as set forth in the WWPCL.

JURISDICTION AND VENUE

7. This Court has jurisdiction over Defendant in that Defendant is a governmental agency conducting operations throughout the City of Milwaukee, which is a part of Milwaukee County.

8. Defendant conducts substantial business in Milwaukee County, and Kraai resides in Milwaukee County.

PARTIES

9. Defendant is a governmental agency with a principal place of business of 200 East Wells Street, Milwaukee, Wisconsin 53202.

10. For purposes of the FLSA, Defendant is an “employer” of an “employee,” Plaintiff, as those terms are used in 29 U.S.C. §§ 203(d) and (e).

11. For purposes of the FLSA, Defendant is an “employer” of Plaintiff, and Plaintiff is “employed” by Defendant, as those terms or variations thereof are used in Wis. Stat. §§ 109.01 *et seq.*, 104.01 *et seq.*, and Wis. Admin. Code § DWD 272.01.

12. Plaintiff Kraai is an adult male resident of the State of Wisconsin who resides in Milwaukee County, Wisconsin. Plaintiff’s Notice of Consent to Join this collective action pursuant to 29 U.S.C. § 216(b) has been contemporaneously filed with the filing of this Complaint.

13. Plaintiff has worked as a non-exempt, hourly employee with the City of Milwaukee Fire Department within the last three (3) years from the date of filing of this Complaint, and was a member of the Milwaukee Professional Fire Fighters’ Association Local 215, IAFF, AFL-CIO (“Local 215”) at all relevant times.

14. Plaintiff brings this action on behalf of himself and all others similarly situated employees of Defendant. Plaintiff performed similar job duties as other non-exempt City of Milwaukee Fire Department employees employed by Defendant and who were subject to Defendant's same unlawful policies as enumerated herein.

15. Plaintiff, and all other similarly situated employees on whose behalf he brings this Complaint, performed compensable work within and for the City of Milwaukee.

16. Defendant supervises Plaintiff's and all other similarly situated employees' day-to-day activities.

17. Defendant has the ability and authority to hire, terminate, promote, demote, and suspend Plaintiff and all other similarly situated employees.

18. Defendant has the ability and authority to review Plaintiff's work performance and the work performance of all other similarly situated employees.

19. Defendant establishes the work rules, policies, and procedures by which Plaintiff and all other similarly situated employees abide in the workplace.

20. Defendant controls the terms and conditions of Plaintiff's and all other similarly situated employees' employment.

21. Defendant establishes Plaintiff's and all other similarly situated employees' work schedules and provides Plaintiff and all other similarly situated employees with work assignments and hours of work.

22. Plaintiff's hours of work and the hours of work of all other similarly situated employees are tracked and recorded by Defendant.

GENERAL ALLEGATIONS

23. Plaintiff presently works and has worked for Defendant as a non-exempt, hourly-paid City of Milwaukee employee within the three (3) years preceding the filing of this Complaint, and is a member of Local 215.

24. Non-exempt City of Milwaukee Fire Department employees of Defendant are employed in various related positions, including but not limited to Milwaukee Firefighter, as a part of Defendant's emergency services activities.

25. The City of Milwaukee established, pursuant to 29 U.S.C. § 207(k), a twenty-seven (27) day, two hundred four (204) hour work period for the purposes of computing overtime compensation for non-exempt Fire Department employees engaged in fire protection activities.

26. On a daily basis, Plaintiff, works alongside other non-exempt City of Milwaukee Fire Department employees of Defendant, and engage in fire prevention and suppression activities, as well as emergency medical services.

27. Defendant's collective bargaining agreement with Local 215, of which Plaintiff and other similarly situated employees of the Defendant are members, contains the terms and conditions of employment for Defendant's non-exempt Local 215 member employees.

28. Pursuant to the collective bargaining agreement, federal and Wisconsin state law, all hours worked by Plaintiff and all other similarly situated employees in excess of two hundred four (204) hours in a twenty-seven (27) day work period will be compensated at the rate of one and one-half times the employee's regular rate.

29. During the three (3) years preceding the filing of this Complaint, Plaintiff Kraai and similarly situated Fire Department employees routinely worked over two hundred four (204) hours in the twenty-seven (27) day work period.

30. During the three (3) years preceding the filing of this Complaint, Plaintiff Kraai and similarly situated Fire Department employees received additional remuneration for employment, including but not limited to, longevity bonuses, EMT-II certification bonuses, temporary assignment bonuses, temporary promotion bonuses, educational program bonuses, and special unit bonuses.

31. Additional remuneration for employment, including the types of remuneration specifically referenced in the preceding paragraph, was not included by Defendant when it calculated the regular rate for Plaintiff Kraai and similarly situated Fire Department employees.

32. During the three (3) years preceding the filing of this Complaint, Plaintiff Kraai and similarly situated Fire Department employees were paid an overtime premium based on their base hourly rate, rather than their regular rate as defined in 29 U.S.C. § 207(e).

33. Defendant's practice of paying an overtime premium based on the base rate of pay, rather than the regular rate of pay, operated to deprive Plaintiff and other similarly situated employees of overtime compensation due to them under applicable federal and state laws.

34. Defendant was or should have been aware that Plaintiff's overtime premium must be computed based on Plaintiff's regular rate of pay, rather his base rate of pay.

35. Defendant was or should have been aware that similarly situated Fire Department employees' overtime premium should be based upon their regular rate of pay, rather than their base rate of pay.

36. Defendant's policy operated to deprive Plaintiff and all other similarly situated employees of overtime compensation due to them.

37. Defendant was or should have been aware of its failure to pay an overtime premium rate of one and one-half times the employee's regular hourly rate failed to adequately compensate Plaintiff and similarly situated employees for overtime hours worked.

38. As a result of Defendant's policy and practice described above, Plaintiff did not receive the full amount of overtime compensation due to him for the three (3) year period preceding the filing of this Complaint.

39. As a result of Defendant's policy and practice described above, similarly situated employees did not receive the full amount of overtime compensation due to them for the three (3) year period preceding the filing of this Complaint.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on behalf of himself and all other similarly situated employees as authorized under the FLSA, 29 U.S.C. § 216(b) and Wis. Stat. § 803.08. The similarly situated employees include:

Proposed Class: All persons who are or have been employed by Defendant as non-exempt employees of the Fire Department who were engaged in fire protection activities, within three (3) years prior to this action's filing date and have not been compensated for all hours worked in excess of two hundred four (204) hours in a twenty-seven (27) day work period as a result of the Defendant failing to calculate the overtime premium based upon the employee's regular rate.

41. Defendant, as a matter of policy and practice, did not compensate its employees for all hours of compensable overtime worked performed by the proposed class during a work period.

42. These practices resulted in Plaintiff and the proposed class being denied overtime compensation by Defendant at the rate of one and one-half times their regularly hourly rate of pay for hours worked in excess of two hundred four (204) in a given twenty-seven (27) day work period.

43. The effect of such a practice was for Defendant to deny the proposed class their wage, including overtime compensation at one and one-half times the regular rate, for hours worked in excess of two hundred four (204) hours within a twenty-seven (27) day period.

44. The First Claim for Relief is brought under and maintained as an opt-in Collective Action pursuant to 29 U.S.C. § 216(b) and Wis. Stat. § 803.08, by Plaintiff on behalf of the proposed class.

45. The proposed class claims may be pursued by those who affirmatively opt in to this case, pursuant to 29 U.S.C. § 216(b) and Wis. Stat. § 803.08.

46. Upon information and belief, Plaintiff and the proposed class are and have been similarly situated, have and have had substantially similar job requirements and pay provisions, and are and have been subject to Defendant's decisions, policies, plans and programs, practices, procedures, protocols, routines, and rules willfully failing and refusing to compensate them for each hour worked including overtime compensation. The claims of Plaintiff stated herein are the same as those of the proposed class.

47. Plaintiff and the proposed class seek relief on FLSA and state wage claim violations, Defendant's practice of failing to properly and lawfully compensate employees for all hours worked including overtime compensation.

48. The proposed class is readily ascertainable. For purpose of notice and other purposes related to this action, the names, phone numbers, and addresses are readily available

from Defendant. Notice can be provided to the proposed class via first class mail to the last address known by Defendant and through posting at Defendant's facility in areas where postings are normally made.

49. Defendant's conduct, as set forth in this Complaint, was willful and in bad faith, and has caused significant damages to Plaintiff and the proposed class.

50. Plaintiff Kraai also seeks to represent himself and the other persons who are similarly situated to him because the relatively low dollar amount of failure to properly pay overtime wages by the Defendant make it an appropriate situation for a class to be certified under federal and state law, including Wis. Stat. § 803.08.

51. Whether or not the Defendant failed to properly pay overtime based upon the regular rate, as required by federal and state law, is a common issue for the Plaintiff and similarly situated Department employees who worked overtime and received additional remuneration beyond his/her base wages.

52. Plaintiff's claims are typical because he has not been paid the full amount of overtime premium, based upon the regular rate, due under federal and state law.

53. The number of persons are affected by the Defendant's failure to properly compute overtime compensation are so numerous that joinder of all in a single action is impractical. The disposition of their claims as a class will benefit the parties and the Court. Although the precise number of such persons is unknown, upon information and belief, there are approximately six hundred (600) to seven hundred (700) members of the proposed class.

54. The Plaintiff is an adequate representative of the proposed class.

55. Plaintiff's counsel are adequate and best suited to represent Plaintiff and the class in this matter based on their knowledge of the legal issues involved and their experience in representing members of the proposed class in numerous other actions.

56. The members of the class are easily ascertained from the Defendant's own records. The Defendant possesses payroll information for each of the persons included in the proposed class. These records are admissible in any proceeding as they are statements made by the Defendant.

57. The common issue identified for the Plaintiff and the class is also the predominant issue.

58. A class action is superior to requiring many repetitive individual actions that will raise the same issue and ask for the same relief against the Defendant. The amount of actual damages make individual actions unlikely and Plaintiff is unaware of any individual actions that have been pursued by other non-exempt City of Milwaukee Fire Department employees. In the absence of a class, the state's limit on fees that may be charged will not be enforced and the Defendant will retain an illegal windfall.

FIRST CLAIM FOR RELIEF
Violation of the Fair Labor Standards Act of 1938, as Amended
(Plaintiff on behalf of himself and the proposed class)

59. Plaintiff, on behalf of himself and the proposed class, reasserts and incorporates by reference all paragraphs set forth above as if restated herein.

60. At all times material herein, Plaintiff and the proposed class have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. § 201 *et seq.*

61. At all times material herein, Defendant was an employer of Plaintiff and the proposed class as provided under the FLSA.

62. At all times material herein, Plaintiff and the proposed class were employees of Defendant as provided under the FLSA.

63. Plaintiff and the proposed class are victims of uniform and Department-wide compensation policy and practice in violation of the FLSA.

64. Defendant violated the FLSA by failing to account for and compensate Plaintiff and the proposed class for overtime premium pay based on the regular hourly rate, for each hour he/she worked in excess of two hundred four (204) hours each twenty-seven (27) day work period.

65. Defendant suffered or permitted Plaintiff and the proposed class to perform work without being properly or lawfully compensated for each hour worked. The effect of such a practice was for Defendant to deny Plaintiff and the proposed class their agreed upon wage, including overtime compensation at one and one-half times the regular rate.

66. The FLSA regulates, among other things, the payment of an overtime premium by public employers.

67. Defendant was and is subject to the overtime pay requirements of the FLSA.

68. Defendant's failure to properly compensate Plaintiff and the proposed class was willfully perpetrated. Defendant has not acted in good faith nor with reasonable grounds to believe its actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiff and the proposed class are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime premium pay described above pursuant to Section 216(b) of the FLSA, 29 U.S.C. § 216(b). Alternatively, should the Court find that Defendant did not act willfully in failing to pay overtime premium pay based upon the employee's regular rate, Plaintiff and the proposed class are entitled to an award of pre-judgment

interest at the applicable legal rate.

69. As a result of the aforesaid willful violations of the FLSA's provisions, overtime compensation has been unlawfully withheld by Defendant from Plaintiff and the proposed class for which Defendant is liable pursuant to 29 U.S.C. § 216(b).

70. Plaintiff and the proposed class are entitled to damages equal to the overtime premium pay based upon the regular rate within the three (3) years preceding the date of filing of this Complaint, plus periods of equitable tolling because Defendant acted willfully and knew or showed reckless disregard of whether its conduct was prohibited by the FLSA.

71. Pursuant to FLSA, 29 U.S.C. § 216(b), successful plaintiffs are entitled to reimbursement of the costs and attorneys' fees expended in successfully prosecuting an action for unpaid wages and overtime wages.

SECOND CLAIM FOR RELIEF
Violation of WWPCL – Unpaid Overtime
(Plaintiff on behalf of himself and the proposed class)

72. Plaintiff, on behalf of himself and the proposed class, re-alleges and incorporates all previous paragraphs as if they were set forth herein.

73. At all relevant times, Plaintiff and the proposed class were employees of within the meaning of Wis. Stat. § 109.01(1r).

74. At all relevant times, Plaintiff and the proposed class were employees of within the meaning of Wis. Stat. § 103.001(5).

75. At all relevant times, Plaintiff and the proposed class were employees of within the meaning of Wis. Stat. § 104.01(2)(a).

76. At all relevant times, Defendant was an employer of Plaintiff and the proposed class within the meaning of Wis. Stat. § 109.01(2).

77. At all relevant times, Defendant was an employer of Plaintiff and the proposed class within the meaning of Wis. Stat. § 103.001(6).

78. At all relevant times, Defendant was an employer of Plaintiff and the proposed class within the meaning of Wis. Stat. § 104.01(3)(b).

79. At all relevant times, Defendant was an employer of Plaintiff and the proposed class within the meaning of Wis. Admin. Code § DWD 274.015.

80. At all relevant times, Defendant has employed, and continues to employ, Plaintiff and the proposed class within the meaning of Wis. Stat. §§ 109.01 *et seq.*, 103.01 *et seq.*, 104.01 *et seq.*, and Wis. Admin. Code § DWD 274.01 *et seq.*

81. Throughout the relevant time period, Plaintiff and the proposed class regularly performed activities that were an integral and indispensable part of his or her principal activities without receiving compensation for these activities.

82. At all relevant times, Defendant had common policies, programs, practices, procedures, protocols, routines, and rules of willfully failing to properly pay Plaintiff and the proposed class overtime compensation.

83. The foregoing conduct, as alleged above, constitutes continuing, willful violations of the Wisconsin Wage Payment and Collection Laws.

84. Defendant willfully failed to pay Plaintiff and the proposed class overtime premium compensation for all hours worked in excess of two hundred four (204) hours a twenty-seven (27) day work period, in violation of Wisconsin Wage Payment Laws.

85. As set forth above, Plaintiff and the proposed class members have sustained losses in their compensation as a proximate result of Defendant's violations. Accordingly, Plaintiff and the proposed class seek damages in the amount of their respective unpaid

compensation, injunctive relief requiring Defendant to cease and desist from its violations of the Wisconsin laws described herein and to comply with them, and such other legal and equitable relief as the Court deems just and proper. Under Wis. Stat. § 109.11, Plaintiff and the proposed class may be entitled to liquidated damages equal and up to fifty percent (50%) of the unpaid wages.

86. Plaintiff and the proposed class seek recovery of attorneys' fees and the costs of this action to be paid by Defendant pursuant to the WWPCL.

THIRD CLAIM FOR RELIEF
WWPCL - Failure To Pay Agreed Upon Wage
(Plaintiff on behalf of himself and the proposed class)

87. Plaintiff, on behalf of himself and the proposed class, re-alleges and incorporates all previous paragraphs as if they were set forth herein.

88. Plaintiff and the proposed class have been entitled payment from Defendant at the agreed upon wage, as defined in Wis. Stat. § 109.01(3), for each hour worked by Plaintiff and the proposed class pursuant to Wis. Stat. § 109.03.

89. Defendant violated the WWPCL by failing to properly compensate Plaintiff and the proposed class for each hour worked by Plaintiff and the proposed class through the failure to pay the overtime premium as described above.

90. As set forth above, Plaintiff and the proposed class members have sustained losses in their compensation as a proximate result of Defendant's violations. Accordingly, Plaintiff, on behalf of himself and the proposed class, seeks damages in the amount of Plaintiff and the proposed class members' respective unpaid compensation, injunctive relief requiring Defendant to cease and desist from their violations of the Wisconsin laws described herein and to comply with them, and such other legal and equitable relief as the Court deems just and proper.

Under Wis. Stat. § 109.11, Plaintiff and the proposed class may be entitled to liquidated damages equal and up to fifty percent (50%) of the unpaid wages.

91. Plaintiff, on behalf of himself and the proposed class, seeks recovery of attorneys' fees and the costs of this action to be paid by Defendant pursuant to Wisconsin Wage Payment Laws.

DEMAND FOR RELIEF

WHEREFORE, it is respectfully requested that this Court grant the following relief:

- a) At the earliest possible time, issue an Order allowing Notice, or issue such Court supervised Notice, to all similarly-situated current and former Department employees informing them of this action and their rights to participate in this action and including such future employees who may commence employment during the pendency of this action. Such Notice shall inform all similarly-situated current and qualified former Department employees of the pendency of this action, the nature of this action, and of their right to "opt in" to this action. Additionally, such notice will include a statement informing the similarly-situated current, future, and qualified former Department employees that it is illegal for Defendant to take any actions in retaliation of their consent to join this action;
- b) At the earliest possible time, issue an Order certifying this action as a class action pursuant to Wis. Stat. § 803.08;
- c) At the earliest possible time, issue an Order appointing MacGillis Wiemer, LLC as class counsel pursuant to Wis. Stat. § 803.08;
- d) Issue an Order declaring Defendant's actions as described in the Complaint as unlawful and in violation of the FLSA and Wisconsin Law and applicable regulations and as willful as defined in the FLSA and Wisconsin Law;
- e) Issue an Order directing and requiring Defendant to pay Plaintiff and all other similarly-situated employees damages in the form of reimbursement for unpaid overtime wages for all time spent performing compensable work for which they were not paid pursuant to the regular rate, as provided by the FLSA and WWPCL;
- f) Issue an Order directing and requiring Defendant to pay Plaintiff and all other similarly-situated employees damages in the form of reimbursement for unpaid agreed upon wages for all time spent performing compensable overtime work for which they were not paid pursuant to the regular rate, as provided by the FLSA and WWPCL;
- g) Issue an Order directing and requiring Defendant to pay Plaintiff and all other similarly-

situated Department employees liquidated damages pursuant to the FLSA and WWPCCL in an amount equal to, and in addition to the amount of wages and overtime wages owed to them;

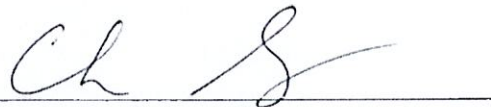
- h) Issue an Order directing Defendant to reimburse Plaintiff and all other similarly-situated employees for the costs and attorneys' fees expended in the course of litigating this action, pre-judgment and post-judgment interest;
- i) For benefits for the full amount of the Plaintiff's damages to be determined by a jury; and
- j) Provide Plaintiff and all other similarly situated employees with such other and further relief, as the Court deems just and equitable.

**PLEASE TAKE NOTICE THAT THE PLAINTIFF DEMANDS A TRIAL BY A
TWELVE (12) PERSON JURY IN THE ABOVE MATTER.**

Dated at Milwaukee, Wisconsin, this 8th day of May, 2020.

MacGILLIS WIEMER, LLC

Attorneys for Plaintiff, Karl H. Kraai, on behalf of
himself and all others similarly situated



Christopher J. MacGillis

State Bar No. 1068944

Kevin P. Todt

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kevin@macgilliswiemer.com

**CITY OF MILWAUKEE – FIRE DEPARTMENT
CONSENT TO JOIN FORM**

Pursuant to 29 U.S.C. § 216(b), I hereby consent to make a claim against the City of Milwaukee (the "City") for overtime, agreed-upon wages, and/or any other claim for wages brought in this action against the City. If this case does not proceed collectively, I also consent to join any subsequent action to assert these claims against the City. I hereby authorize the filing and prosecution of this Fair Labor Standards Act action in my name and on my behalf as designate Karl H. Kraai as class representative to make decisions on my behalf concerning this litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiffs' counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit. During the past three years there were times that I worked for the City without being compensated for each hour I worked including overtime premium compensation based on my regular rate.

NAME:

Karl Kraai
Please Print Name

SIGNATURE:

[Signature]
Please Sign Name

DATE:

5-4-20
Date

Please Mail to:

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MacGillis Wiemer, LLC
11040 W. Bluemound Road, Suite 100
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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.)

Place an "X" in the appropriate box (required): ☐ Green Bay Division ☐ Milwaukee Division

I. (a) PLAINTIFFS

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

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

DEFENDANTS

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 type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 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):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING FOR

PAGE

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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
- (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
- (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" 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 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
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
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.
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.