

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

JOSHUA WENDORF
231 11th Avenue North
Wisconsin Rapids, Wisconsin 54494

Plaintiff,

Case No.: 19-cv-251

v.

JURY TRIAL DEMANDED

VILLAGE OF PLOVER
P.O. Box 37
Plover, Wisconsin 54467

Defendant

COMPLAINT

COMES NOW Plaintiff, Joshua Wendorf, by his counsel, WALCHESKE & LUZI, LLC, as and for a claim against Defendant, alleges and shows to the Court as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because this case involves a federal question under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (“FLSA”).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) because Plaintiff resides in the Western District of Wisconsin, Defendant is a municipality located in the Western District of Wisconsin, and the unlawful employment practices of which Plaintiff complains occurred within the Western District of Wisconsin.

PARTIES AND COVERAGE

3. Plaintiff, Joshua Wendorf, is an adult male resident of the State of Wisconsin with a post office address of 231 11th Avenue North, Wisconsin Rapids, Wisconsin 54494.

4. Defendant, Village of Plover, was, at all material times herein, a municipality located in the State of Wisconsin with a principal address of P.O. Box 37, Plover, Wisconsin 54467.

5. During the relevant time periods as stated herein, Defendant was engaged in “commerce” and/or its employees were engaged in “commerce,” as that term is defined under the FLSA.

6. During the relevant time periods as stated herein, Defendant was an “employer” as that term is defined under the FLSA.

7. During the relevant time periods as stated herein, Defendant employed more than two (2) employees.

8. During the relevant time periods as stated herein, Defendant’s annual dollar volume of sales or business exceeded \$500,000.

9. During the relevant time periods as stated herein, Plaintiff was “employed” by and/or an “employee” of Defendant, as these terms are defined under the FLSA.

10. During the relevant time periods as stated herein, Plaintiff was engaged in commerce or in the production of goods for commerce.

GENERAL ALLEGATIONS

11. On or about March 21, 2018, Defendant hired Plaintiff as a Paramedic.

12. As of the date of this Complaint, Plaintiff is still currently employed by Defendant.

13. During Plaintiff’s employment with Defendant, Plaintiff’s primary job duty and job responsibility was to complete emergency medical transports to local hospitals.

14. During Plaintiff's employment with Defendant, Plaintiff performed compensable work as a Paramedic on behalf of Defendant, for Defendant's benefit, at the direction of Defendant, and/or with Defendant's knowledge.

15. During Plaintiff's employment with Defendant, Plaintiff was not employed by a fire department.

16. During Plaintiff's employment with Defendant and in Plaintiff's position as Paramedic, Plaintiff did not engage in fire protection activities.

17. During Plaintiff's employment with Defendant and in Plaintiff's position as Paramedic, Plaintiff was not trained in fire suppression.

18. During Plaintiff's employment with Defendant and in Plaintiff's position as Paramedic, Plaintiff did not have the legal authority to fight fires.

19. During Plaintiff's employment with Defendant and in Plaintiff's position as Paramedic, Plaintiff did not have the responsibility to fight fires.

20. During Plaintiff's employment with Defendant and in Plaintiff's position as Paramedic, Plaintiff did not engage in fire suppression work.

21. During Plaintiff's employment with Defendant and in Plaintiff's position as Paramedic, Plaintiff did not engage in the prevention, control, and extinguishment of fires.

22. During Plaintiff's employment with Defendant and in Plaintiff's position as Paramedic, Plaintiff did not engage in law enforcement activities.

23. During Plaintiff's employment with Defendant, Defendant compensated Plaintiff on an hourly basis and/or with an hourly rate of pay.

24. During Plaintiff's employment with Defendant, Plaintiff was a non-exempt employee for FLSA purposes.

25. During Plaintiff's employment with Defendant, Defendant's established workweek for FLSA purposes was Sunday through Saturday.

26. During Plaintiff's employment with Defendant, Defendant compensated Plaintiff for hours worked and work performed on a bi-weekly basis via check.

27. During Plaintiff's employment with Defendant, Plaintiff frequently and regularly worked in excess of forty (40) hours per workweek.

28. During Plaintiff's employment with Defendant, Plaintiff frequently and regularly worked in excess of forty (40) hours per workweek on behalf of Defendant, for Defendant's benefit, at the direction of Defendant, and/or with Defendant's knowledge.

29. During Plaintiff's employment with Defendant and on a daily basis, Plaintiff's customary practice was to perform work in twelve (12) hour shifts.

30. During Plaintiff's employment with Defendant and on a daily basis, Defendant's customary practice was to compensate Plaintiff for hours worked and/or work performed in only Plaintiff's twelve (12) hour scheduled shifts.

31. During Plaintiff's employment with Defendant and on a daily basis, Defendant did not keep or maintain accurate records of Plaintiff's actual hours worked and/or work performed.

32. During Plaintiff's employment with Defendant and on a daily basis, Defendant did not compensate Plaintiff for any pre-shift hours worked and/or work performed, such as: receiving reports or updates from the shift that he relieved; prepping and/or restocking Defendant's vehicle(s) on which Plaintiff was working; performing routine maintenance, cleaning, and/or inspection of the vehicle(s) on which Plaintiff was working; and/or performing or conducting other related preparatory tasks so that Plaintiff was ready to work as soon as his scheduled shift started.

33. During Plaintiff's employment with Defendant and on a weekly basis, Defendant's customary practice was to compensate Plaintiff at a regular rate of pay for hours worked and/or work performed in excess of forty (40) in a workweek.

34. During Plaintiff's employment with Defendant and on a weekly basis, Defendant's customary practice was to not compensate Plaintiff at an overtime rate of pay for hours worked and/or work performed in excess of forty (40) in a workweek.

35. At times during Plaintiff's employment with Defendant, Defendant compensated Plaintiff with compensatory time.

36. During Plaintiff's employment with Defendant and when Defendant compensated Plaintiff with compensatory time, Defendant did so at Plaintiff's regular rate of pay.

37. During Plaintiff's employment with Defendant and when Defendant compensated Plaintiff with compensatory time, Defendant did not do so at an overtime rate of pay.

38. During Plaintiff's employment with Defendant, Plaintiff's paychecks did not properly or legally compensate him for all hours worked and/or work performed, including those hours worked in excess forty (40) in a workweek.

39. During Plaintiff's employment with Defendant, Defendant suffered or permitted Plaintiff to work without appropriately and lawfully compensating him at an overtime rate of pay for all hours worked and/or work performed beyond forty (40) hours in a workweek, in violation of the FLSA.

40. Defendant knew or should have known that, in accordance with the FLSA, it must compensate Plaintiff at an overtime rate of pay for all hours worked and/or work performed during workweeks when he performed compensable work in excess of forty (40) hours.

41. During Plaintiff's employment with Defendant, Defendant suffered or permitted Plaintiff to work without appropriately and lawfully compensating him at an overtime rate of pay for all compensatory time it provided to Plaintiff, in violation of the FLSA.

42. Defendant had a statutory duty to comply with the FLSA and to remedy FLSA violations of which it was aware and/or of which it should have been aware.

43. As a result of Defendant's unlawful failure to compensate Plaintiff with overtime pay for any and all hours worked beyond forty (40) hours in a workweek, Defendant owes Plaintiff a total monetary amount that remains to be determined, in addition to liquidated damages and attorneys' fees and costs.

CAUSES OF ACTION – FLSA VIOLATIONS (OVERTIME PAY)

44. Plaintiff reasserts and incorporates by reference all paragraphs set forth above as if restated herein.

45. Section 207(a)(1) of the FLSA regulates, among other things, the payment of an overtime premium by employers whose employees are engaged in commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce.

46. At all times material herein, Plaintiff was entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. § 201 *et seq.*

47. Defendant intentionally violated the FLSA by not compensating Plaintiff with an overtime rate of pay for each hour worked beyond forty (40) during a workweek.

48. Defendant intentionally violated the FLSA by not compensating Plaintiff with an overtime rate of pay for all pre-shift hours worked beyond forty (40) during a workweek.

49. Defendant intentionally violated Section 207(o) of the FLSA by not compensating Plaintiff at an overtime rate of pay for the compensatory time it provided to Plaintiff during Plaintiff's employment with Defendant.

50. Defendant's failure to properly and legally compensate Plaintiff with an overtime rate of pay for each hour worked beyond forty (40) in a workweek and for compensatory time provided was willfully perpetrated. Defendant has neither acted in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiff is entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime wages as described above. Alternatively, should the Court find that Defendant acted reasonably and with good faith in failing to pay overtime wages, Plaintiff is entitled to an award of pre-judgment interest at the applicable legal rate.

51. Plaintiff is entitled to damages within the three (3) years immediately preceding the filing of this Complaint (ECF No. 1), plus periods of equitable tolling because Defendant acted willfully and knew or showed reckless disregard of whether its conduct was prohibited by the FLSA and otherwise engaged in wrongful conduct that prevented Plaintiff from asserting his claims against Defendant.

52. Pursuant to the 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.

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Order Defendant to make Plaintiff whole by providing reimbursement for overtime wages, and pre-judgment and post-judgment interest, and for all times spent performing

compensable work for which Plaintiff was not properly paid as provided under the FLSA;

2. Grant to Plaintiff attorneys' fees, costs, and disbursements as provided by statute;
3. Grant to Plaintiff liquidated damages against Defendant; and
4. Grant to Plaintiff whatever other relief this Court deems necessary and proper.

PLAINTIFF DEMANDS A JURY AS TO ALL TRIABLE ISSUES.

Dated this 2nd day of April, 2019

WALCHESKE & LUZI, LLC
Counsel for Plaintiff

s/ James A. Walcheske

James A. Walcheske, State Bar No. 1065635
Scott S. Luzi, State Bar No. 1067405

WALCHESKE & LUZI, LLC
15850 W. Bluemound Road, Suite 304
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Fax: (262) 565-6469
jwalcheske@walcheskeluzi.com
sluzi@walcheskeluzi.com

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

Joshua Wendorf

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Walcheske & Luzi, LLC 15850 W. Bluemound Rd., Suite 304 Brookfield, WI 53005 -- Phone: (262) 780-1953

DEFENDANTS

Village of Plover

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Labor, and Tax Suits.

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, 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. (FLSA) Brief description of cause: FLSA causes of action for unpaid overtime wages

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: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/02/2019 SIGNATURE OF ATTORNEY OF RECORD s/ James A. Walcheske

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

Joshua Wendorf

Plaintiff(s)

v.

Village of Plover

Defendant(s)

Civil Action No. 19-cv-251

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Tom Davies
President, Board of Directors
Village of Plover
1600 Post Road
Plover, Wisconsin 54467

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Walcheske & Luzi, LLC
15850 W. Bluemound Road, Suite 304
Brookfield, Wisconsin 53005

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 19-cv-251

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: