

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

JOSEPH ELIAS,
and all others similarly situated,

Plaintiffs,

v.

CITY OF AURORA,

Defendant.

COMPLAINT

Plaintiff Joseph Elias (“Elias”), and all others similarly situated (collectively, “Plaintiffs”), by and through their attorneys, Matt Pierce, Alex Behn, and Margaret Angelucci, of Asher, Gittler & D’Alba, Ltd., hereby complain of Defendant, the City of Aurora (“Defendant” or “the City”), for violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”). In support of their Complaint, Plaintiffs state and allege as follows:

NATURE OF THIS ACTION

1. This is an action to recover unpaid overtime compensation and other relief under the FLSA, 29 U.S.C. §§ 207, 216.

2. Since at least January 2022, and continuing through the present, Elias and all other similarly situated current and former employees of the City have not been paid any overtime compensation for hours worked over forty in a seven-day workweek while training at the Aurora Fire Academy. Plaintiffs seek relief in the form of compensation at one and one-half times their regular rate(s) of pay for all hours worked at the Fire Academy in excess of forty in each seven-day workweek that fall within the applicable statute of limitations period, liquidated damages

under the FLSA, interest, injunctive and declaratory relief, and all reasonable attorney’s fees and costs incurred in bringing this action.

JURISDICTION AND VENUE

3. Jurisdiction for this action is conferred upon this Court by 28 U.S.C. § 1331, arising under 29 U.S.C. § 216(b).

4. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and (c) because the unlawful employment practices occurred in this judicial district, and Defendant has its principal place of business in this judicial district.

PARTIES

5. At all relevant times, Plaintiffs are or were “employees,” as that term is defined within the meaning of Section 203(e) of the FLSA, 29 U.S.C. § 203(e), of Defendant City of Aurora.

6. Plaintiff Elias brings this action on his own behalf and on behalf of all other current and former employees of the City similarly situated to him pursuant to 29 U.S.C. § 216(b). A copy of the named Plaintiff’s consent form is attached hereto and contemporaneously filed herewith.

7. Defendant City of Aurora is a city and public employer located in Colorado, in this judicial district. Defendant City of Aurora is a “public agency” as that term is defined in Section 203(x) of the FLSA, 29 U.S.C. § 203(x).

8. At all relevant times, Defendant City of Aurora was considered an “enterprise engaged in commerce or in the production of goods for commerce” for purposes of Section 203(s) of the FLSA, 29 U.S.C. § 203(s)(1)(C).

9. At all relevant times, Defendant City of Aurora was an “employer” of Plaintiffs as that term is defined in Section 203(d) of the FLSA, 29 U.S.C. § 203(d), and, as such, was and is subject to the provisions of Section 7 of the FLSA, 29 U.S.C. § 207.

FACTS

10. In order to become certified firefighters, newly hired members of Aurora Fire Rescue must attend and graduate from a training program at the City’s Fire Academy.

11. The Fire Academy is a full-time training program that takes approximately 25 weeks to complete. Prior to February 2024, the Fire Academy took approximately 20 weeks to complete.

12. Training at the Fire Academy is conducted primarily at the City of Aurora Public Safety Training Center, and it includes classroom education and testing, intensive skills training, physical training and exercise, and various other tasks intended to train and prepare newly hired firefighter recruits to become certified members of Aurora Fire Rescue capable of responding to emergency calls and engaging in fire suppression.

13. Each Plaintiff commenced their employment with Aurora Fire Rescue as a firefighter recruit and attended the Fire Academy.

14. While attending the Fire Academy, each Plaintiff was classified as a Firefighter IV (8-hour).

15. Each Plaintiff’s official date of employment with the City and date of original appointment to Aurora Fire Rescue coincided with their first date of attending the Fire Academy.

16. While Plaintiffs were attending the Fire Academy, Defendant paid Plaintiffs an established salary for their straight-time hours of work.

17. Since at least January 2022, and continuing through the present, Defendant has maintained a policy of not compensating employees attending the Fire Academy any overtime compensation for hours of work performed over 40 in a workweek. Each of those employees was paid only their established salary for straight-time hours of work while attending the Academy, with no consideration for the hours of overtime work performed each week.

18. Prior to completing their training at the Fire Academy and graduating from that training program, Plaintiffs were not “employee[s] in fire protection activities” as defined under Section 3(y) the FLSA, 29 U.S.C. § 203(y).

19. Plaintiffs were not trained in fire suppression prior to attending and graduating from the Fire Academy.

20. Plaintiffs’ job responsibilities at the Fire Academy did not include fire suppression.

21. While they were attending training at the Fire Academy, Plaintiffs had no legal authority or responsibility to engage in fire suppression.

22. While they were attending training at the Fire Academy, Plaintiffs were not engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment was at risk.

23. Plaintiff Joseph Elias was employed as a firefighter recruit and attended the Fire Academy during the period of July 17, 2023, through August 30, 2023.

24. Plaintiff Elias suffered an injury on August 15, 2023, which required him to cease physical training, but he continued performing other work assignments at the Fire Academy through August 30, 2023.

25. Plaintiffs were paid their regular salary representing 40 hours of work per week for their work performed at the Fire Academy.

26. Plaintiffs were never paid any compensation in addition to their regular salary for weeks in which they performed more than 40 hours of work.

27. Plaintiffs worked five days per week at the Fire Academy, and Defendant required Plaintiffs to report to work at 5:30 a.m. each workday.

28. Plaintiffs started each workday at 5:30 a.m. by performing various mandatory chores, including but not limited to inspecting personal protective equipment, inventorying equipment and apparatus, and having their vital signs checked, followed by a mandatory workout from 6:00 a.m. to 7:00 a.m.

29. Following their daily mandatory workout, Plaintiffs were given approximately 10 minutes each morning to use the bathroom and change clothes.

30. Plaintiffs' training at the Fire Academy generally ended between 5:30 and 6:30 p.m. each workday.

31. After training each workday at the Fire Academy, Plaintiffs were required to perform additional mandatory chores.

32. If Plaintiffs failed to complete all of their mandatory pre- and post-training chores, Plaintiffs were subjected to disciplinary action by the City and/or forced to complete physically taxing exercises as a form of discipline.

33. Due to the schedule described above, Plaintiffs worked over 40 hours per week at the Fire Academy.

34. Plaintiffs were required to pass various written examinations while attending the Fire Academy. In order to prepare for these examinations, Plaintiffs were required to study the material while away from the Academy.

35. Plaintiffs were also required to study independently, outside of regular working hours, to prepare for various PowerPoint presentations administered by Defendant at the Fire Academy. During each of these PowerPoint presentations, Defendant orally quizzed Plaintiffs on the day's topics to ensure that Plaintiffs had studied the information prior to the presentation.

36. If Plaintiffs were not prepared for each of Defendant's PowerPoint presentations, including studying the relevant material independently prior to each such presentation, Plaintiffs were subject to discipline, chastised by Defendant, and/or forced to perform physically taxing exercises as a form of discipline.

37. Defendant did not track, or compensate Plaintiffs for, any time spent studying independently, and Defendant did not place a limit on the amount of time Plaintiffs were permitted to spend studying independently. All time spent studying was in addition to the hours worked on-site by Plaintiffs each workday.

38. In addition to any time spent by Plaintiffs studying for the various mandatory written examinations and oral quizzes at the Fire Academy, Defendant required Plaintiffs to watch a series of mandatory training videos outside of regular working hours. The duration of these videos, as well as the date and time that Plaintiffs completed each video, were tracked via Defendant's learning management software. However, Defendant did not compensate Plaintiffs for any time spent watching these mandatory training videos.

39. Plaintiffs were also required to complete various written assignments outside of regular working hours at the Fire Academy, including but not limited to weekly written Captain's Evaluations and the drafting of a line of duty death letter. Defendant did not track, or compensate Plaintiffs for, any time spent working on these mandatory written assignments, and Defendant did not place a limit on the amount of time Plaintiffs were permitted to spend on these assignments.

40. Each Plaintiff was required to spend approximately 12 to 16 hours per week to complete their mandatory studying and written assignments and to watch all required training videos.

41. While Plaintiffs were attending the Fire Academy, Defendant did not compensate Plaintiffs for the time Plaintiffs spent eating breakfast or lunch on-site each workday.

42. While Plaintiffs were attending the Fire Academy, during breakfast and lunch each workday, Defendant prohibited Plaintiffs from using electronic devices, such as cellphones, and often required Plaintiffs to complete various mandatory chores, receive supplemental instruction, perform drills, and take written tests.

43. While attending the Fire Academy, some or all Plaintiffs were ordered to perform mandatory work referred to by the City as “volunteering,” such as staffing the annual IAFF Fire Fighter Memorial. Defendant did not compensate Plaintiffs for their time spent performing this so-called “volunteer” work.

44. During Plaintiff Elias’s induction week at the Fire Academy, from July 17, 2023, through July 21, 2023, Defendant made repeated statements which explicitly discouraged Plaintiff Elias and his classmates from contacting Human Resources or otherwise lodging complaints against their supervisors. These included claims that whistleblowing violates Aurora Fire Rescue’s chain of command, that if Human Resources did not side with an employee who had lodged a complaint, that employee would be “done,” and that Defendant would obstruct any such employee’s employment prospects throughout the Denver Metropolitan Area.

45. The City has previously acknowledged that recruits attending the Academy would be entitled to overtime if they worked a full schedule each weekday at the Academy. For example, during Plaintiff Elias’ Fire Academy orientation on July 14, 2023, and throughout his induction

week at the Fire Academy from July 17 through July 21, 2023, Defendant repeatedly claimed that recruits would be given Wednesdays off at the Academy to prevent them from working overtime. In practice, the City required Plaintiff Elias and his classmates to work regular schedules each weekday at the Academy, despite acknowledging that this would result in the recruits earning overtime pay.

46. On information and belief, the City has intentionally altered or falsified its timekeeping records for firefighter recruits attending training at the Fire Academy by entering incorrect start times for each day of work and not accurately tracking the actual hours worked by each employee. The City took these actions in order to evade its obligations under the FLSA.

COUNT I

(Failure to pay overtime in violation of the Fair Labor Standards Act, 29 U.S.C. § 207(a))

47. Plaintiffs re-allege and incorporate all previous paragraphs of this Complaint as though set forth fully herein.

48. Count I is brought against Defendant by Plaintiff Elias on behalf of himself and on behalf of all other similarly situated current or former employees of Defendant.

49. During their time enrolled in training at the Fire Academy, Plaintiffs were not “employee[s] in fire protection activities” as defined under the FLSA, 29 U.S.C. § 203(y). As such, Plaintiffs were not eligible to be placed on a work period of, or equivalent to, 53 hours per week under Section 7(k) of the FLSA, 29 U.S.C. § 207(k), or on any other work week greater than seven days authorized under Section 7(k). Plaintiffs were therefore working a 7-day, 40-hour workweek during their training at the Fire Academy, and Defendant was required to pay them at least one and one-half times their regular rate of pay for all hours worked in excess of 40 per workweek.

50. During their training at the Fire Academy, Plaintiffs worked in excess of 40 hours during various workweeks, but Defendant did not pay them any compensation for those hours worked in excess of 40.

51. By failing and refusing to pay Plaintiffs one and one-half times their regular rates of pay for all hours worked in excess of 40 hours during multiple workweeks occurring within the three years preceding the date on which this Complaint was filed, as alleged in detail above, Defendant has violated Sections 207 and 215(a)(2) of the FLSA, 29 U.S.C. §§ 207, 215(a)(2).

52. Defendant's violations of the FLSA were willful in that Defendant's failure to pay the proper overtime compensation was done knowingly and intentionally in violation of the FLSA or with reckless disregard for Defendant's obligations under the FLSA. Defendant made repeated statements to Plaintiff Elias and his Fire Academy classmates that whistleblowing or complaining about perceived violations of Plaintiffs' legal rights by the City would be treated as a violation of the chain of command, and that complaints to Human Resources were strongly discouraged and could harm an employee's career. Additionally, Defendant was aware that Plaintiffs would accrue overtime if they were required to work 5 days per week, as reflected in statements to that effect made by Defendant to firefighter recruits at the Fire Academy. Thus, the City's policy against paying overtime compensation to firefighter recruits at the Fire Academy constitutes a willful violation of the FLSA.

WHEREFORE, Plaintiff Joseph Elias, and all others similarly situated, pray that judgment be entered against Defendant as follows:

- A. A declaratory judgment finding that Defendant willfully violated Sections 207 and 215(a)(2) of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2).

- B. A money judgment against Defendant for all sums which may be found to be due to Plaintiffs, as compensatory damages, interest, liquidated damages, attorneys' fees and costs.
- C. Injunctive relief requiring Defendant to rescind its unlawful overtime policy and requiring Defendant to adopt a policy that properly compensates firefighter recruits attending the Fire Academy for all overtime hours worked.
- D. All other and additional relief deemed just and proper by the Court.

JURY TRIAL DEMANDED

Plaintiffs request a jury trial on all questions of fact raised by the Complaint.

Respectfully submitted,

/s/Matt Pierce

/s/Alex Behn

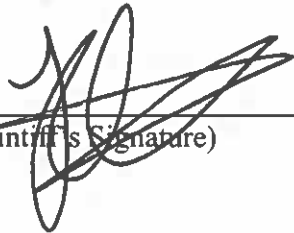
/s/Margaret Angelucci

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Attorneys for Plaintiffs

PLAINTIFF'S CONSENT FORM

I, Joseph Elias, hereby consent to sue my former employer, the City of Aurora, as well as any necessary agent or representative of that entity, pursuant to Section 216(b) of the Fair Labor Standards Act ("FLSA"), for the purpose of asserting any and all claims for overtime compensation and unpaid wages, and any related claims for benefits, interest payments/penalties, and damages – including, but not limited to, any liquidated damages – under the FLSA and any similar federal or state law. I agree to allow this consent to apply to all of the overtime and wage claims referred to in this consent form, whether such claims are asserted in an initial or any amended complaint. I authorize the law firm of Asher, Gittler & D'Alba, Ltd. to represent me in said lawsuit. I understand the nature of the suit and execute this consent voluntarily and freely.



(Plaintiff's Signature)

Date: 9/19/24

JS 44 (Rev. 08/18)

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
Joseph Elias,
and all others similarly situated,
(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm, Name, Address and Telephone Number)
Margaret Angelucci, Matthew Pierce, Alex Behn
Asher, Gittler & D'Alba, Ltd.
200 W. Jackson Blvd., Suite 720, Chicago, IL 60606 312-263-1500

DEFENDANTS
City of Aurora
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)
(For Diversity Cases Only)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
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)
Click here for: Nature of Suit Code Descriptions.
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

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. §§ 207, 216
Brief description of cause:
This is an action to recover unpaid overtime compensation under the FLSA

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 01/21/2025 SIGNATURE OF ATTORNEY OF RECORD /s/ Alex Behn

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 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. 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.