

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

SETH STAFFORD, on behalf of)	
himself and All Others Similarly)	
Situated,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.:
)	
CITY OF MT. JULIET,)	
TENNESSEE)	
)	
Defendant.)	

COLLECTIVE ACTION COMPLAINT
INTRODUCTION

1. Seth Stafford, on behalf of himself and all others similarly situated (collectively “Plaintiff”) brings this lawsuit against Defendant City of Mt. Juliet (hereinafter “Defendant”), seeking to recover unpaid wages owed to them under federal and state law.

2. In violation of federal and state law, Defendant has failed to pay its employee firefighters for all time worked, including failing to pay such employees the overtime wages they are owed under the law.

3. Plaintiff brings this action for violations of the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, as amended by the Portal-to-Portal Act of 1947, 29 U.S.C. §§ 251, *et seq.*, for the purpose of obtaining relief for, *inter alia*, unpaid wages, unpaid overtime wages, liquidated damages, costs, attorney’s fees, and declaratory and injunctive relief. Plaintiff also seeks relief under the common law of Tennessee for Defendant’s unjust enrichment at Plaintiff’s expense. Pursuant to 29

U.S.C. § 216(b), Plaintiff also seeks to represent all other similarly situated past and present employees, as described herein, who have not been paid for all compensable time worked, and to have this action certified as a collective action with Court-supervised notice.

JURISDICTION AND VENUE

4. This Court has jurisdiction over Plaintiff's claims because they are brought pursuant to the FLSA, 29 U.S.C. § 216(b), 29 U.S.C. § 207(k) and because they raise a federal question pursuant to 28 U.S.C. § 1331. This Court also has supplemental jurisdiction over Plaintiffs' state law unjust enrichment claims pursuant to 28 U.S.C. § 1367 because the state law claims are so related to the FLSA claims that they form part of the same case or controversy.

5. Venue is proper in this federal jurisdiction pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions giving rise to these claims occurred within this judicial district, and because the city of Mt. Juliet is located in this judicial district and regularly conducts business within this judicial district and thus is subject to personal jurisdiction within this judicial district.

PARTIES

A. Plaintiff

6. Plaintiff Seth Stafford is over the age of nineteen (19) and worked for Defendant as a firefighter for approximately two years before resigning his position effective September 9, 2016. He is a resident of Wilson County, Tennessee.

B. Defendant

7. Defendant City of Mt. Juliet, Tennessee is a Governmental entity headquartered at 2425 N. Mt. Juliet Rd, Mt. Juliet, TN 37122.

8. At all relevant times, Defendant was and is an employer within the meaning of the FLSA, 29 U.S.C. §§ 206-07.

9. At all relevant times, Defendant was and is an enterprise within the meaning of § 3(r) and § 3(s)(1) of the FLSA.

FACTS

10. The Defendant is a governmental entity.

11. The Defendant is responsible for the employment and management of the Mt. Juliet Fire Department.

12. Plaintiff and those he seeks to represent have all been employed by Defendant as firefighters.

13. At all relevant times, (or just from 2015????) the Defendant has operated on a 28 day work period and has claimed and used the 207(k) exemption under 29 U.S.C. §207(k).

14. As a matter of policy, prior to March of 2016, the Defendant paid its firefighters, who worked a 21 day swing shift, pursuant to a salary type arrangement where Plaintiff received essentially the same pay regardless of the number of hours worked.

15. Plaintiff worked approximately 240 hours a month each month that he was employed by the Defendant.

16. However, prior to March, 2016, Plaintiff and others similarly situated did not receive time and a half for overtime hours.

17. When Plaintiff was originally hired in 2014, a received a salary type payment without any distinction or reference to overtime hours. During his employment in 2015, Plaintiff understood that he would be receiving overtime pay for hours worked over 212 hours a month. However, until March of 2016, Plaintiff was not paid for all hours worked over 212 hours a month but rather was paid a figure based upon an average of all hours worked by the firefighters in the team.

18. Prior to March of 2016, Plaintiff was never paid time and a half for all hours worked over 212 in a 28 day work period.

19. Prior to March of 2016, The Defendant regularly required the Plaintiff and similarly situated employees to work in excess of 212 hours a month without being paid overtime wages of one and a half times the hourly rate.

20. After March, 2016, Plaintiff was advised that he would start receiving time and a half pay for hours worked over 212 in a 28 day period and he did start receiving overtime payment details on his check.

21. At all times, Defendant required Plaintiff and similarly situated firefighters to submit documentation to Defendant purporting to record the hours they have worked.

22. Prior to March 2016, the Defendant paid the Plaintiff and all other similarly situated firefighters based on an averaged their hours worked instead of their individual actual hours worked.

23. As a result of this common policy or practice, Defendant failed to pay Plaintiff and similarly situated firefighters the appropriate overtime pay. This common policy or practice of averaging hours worked violates the FLSA, as well as the Tennessee common law claims asserted here.

ALLEGATIONS

24. Plaintiff Seth Stafford is a former employee of Defendant, who worked for Defendant as a firefighter from September 29, 2014 until he resigned effective September 9, 2016.

25. As a firefighter, Plaintiff Stafford was required to work a 21 day swing shift which regularly resulted in him working in excess of 212 hours per 28 day work period.

26. Prior to March of 2016, the Plaintiff was either paid a straight salary or paid based on an average of his hours worked not for his actual hours worked.

27. Plaintiff Stafford is owed back overtime pay from the time his employment began on September 24, 2014 until the Defendant corrected their policy and began paying the Plaintiff based on his hours worked in March of 2016.

COLLECTIVE ACTION ALLEGATIONS

28. Plaintiff asserts his FLSA claim pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of the following potential opt-in litigants:

All individuals employed by City of Mt. Juliet at any time between September 22, 2013 and the present, working as firefighters.

29. Plaintiff is representative of the class he seeks to represent.

30. All, or virtually all of the legal and factual issues that will arise in litigating the class claims are common to the class members and Plaintiff. These include:

a. Whether Defendant, as a matter of company policy or practice, regularly required their firefighters to work in excess of 212 hours per month without being paid time and a half for those hours worked.

b. Whether Defendant, as a matter of company policy or practice, regularly paid their firefighters based on an average of their hours worked instead of their actual hours worked prior to March of 2016.

31. Plaintiff and class members are similarly situated as that term is defined under 29 U.S.C. § 216(b) and the associated case law, *see, e.g., O'Brien v. Ed Donnelly Enterprises, Inc.*, 575 F.3d 567 (6th Cir. 2009), because, *inter alia*, they were all subjected to Defendant's common practices of averaging work hours instead of paying them based on actual hours worked.

CAUSES OF ACTION

COUNT I

(Alleging Violation of the FLSA for Unpaid Overtime, Brought on Behalf of Plaintiff and All Similarly Situated Individuals)

32. All previous paragraphs are incorporated as though fully set forth herein.

33. The FLSA requires that Defendant pay employees overtime compensation "not less than one and one-half times" their regular rate of pay. 29 U.S.C. § 207(a).

34. Because Plaintiff and class members were employees engaged in fire protection as defined under the 207(k) exemption, the FLSA requires the Defendant to pay them one and one half times the regular rate at which he/she is employed for time exceeding 212 actual hours worked in a 28 day period. 29 U.S.C. § 207(k).

35. Pursuant to Defendant's common business policies and/or practices prior to March of 2016, Defendant has violated the FLSA by consistently requiring, suffering, or permitting Plaintiff and similarly situated firefighters to work more than 212 hours per

month by failing to pay Plaintiffs and similarly situated firefighters overtime compensation based on their actual time worked in excess of 212 hours per month.

36. In violation of the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions.

COUNT II

(Alleging, in the Alternative to Count II, Damages Due for Unjust Enrichment and Brought on Behalf of Plaintiffs and all Similarly Situated Individuals)

37. All previous paragraphs are incorporated as though fully set forth herein.

38. Under Tennessee law, a defendant is liable for unjust enrichment when a plaintiff confers a benefit upon the defendant; the defendant appreciates such benefit; and acceptance of such benefit under the circumstances renders it inequitable for the defendant to retain the benefit without paying for it.

39. Here, Plaintiff Stafford, as well as all similarly situated employees of Defendant, conferred benefits on Defendant in the form of uncompensated and/or undercompensated labor.

40. Defendant was clearly aware of and appreciated the benefit that Plaintiffs and similarly situated laborers conferred on it as evidenced by their change in policy in March of 2016.

41. Accordingly, Defendant is and has been unjustly enriched by not paying Plaintiff and similarly situated employees for all hours actually worked.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seek the following relief on behalf of themselves and other similarly situated employees who opt in to this action:

- A. An order permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. § 216(b);
- B. Prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation provided to all potential members of the collective action;
- C. A declaration that Defendant has violated the FLSA;
- D. A declaration that Defendant's violation of the FLSA was willful and knowing;
- E. Unpaid wages (including overtime wages) and prejudgment interest to the fullest extent permitted under the law;
- F. An injunction prohibiting Defendant from violating the FLSA;
- G. Liquidated damages to the fullest extent permitted under the FLSA;
- H. Litigation costs, expenses, and Plaintiffs' attorney's fees to be paid by Defendants to the fullest extent permitted under the law, including under 29 U.S.C. § 216(b);
- I. Such other and further relief as this Court deems just and proper.

Dated: September 22, 2016

Respectfully submitted,

s/Nina H. Parsley
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