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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

David Johnson, an individual,

Plaintiff,

vs.

City of Phoenix Fire Dept., a Municipality, Chief
Frank Bayless, Chief Ray Ochoa, Michael
Duran III, Chief Kara Kalkbrenner, Chief
Michael Molitor, Individuals,

Defendant.

No.

COMPLAINT

JURY TRIAL REQUESTED

Plaintiff **David Johnson**, (“**Plaintiff**” or “**Johnson**”), by and through undersigned counsel, hereby alleges as follows:

NATURE OF ACTION

1. This is an action under the Fair Labor and Standard Act, and Arizona Revised Statutes (“ARS”) against The City of Phoenix and its entities, specifically the

1 Phoenix Fire Department (“PFD”) or (“Defendant”) and other individuals for their
2 unlawful employment practices of retaliation, and failure to pay proper overtime wages.
3

4 **JURISDICTION AND VENUE**

5 2. This Court has jurisdiction over the subject matter and the parties pursuant
6 to 28 U.S.C. § 1331.
7

8 3. The unlawful employment actions alleged herein were committed in whole
9 or in part within the jurisdiction of the United States District Court for the District of
10 Arizona.
11

12 4. Venue is proper in this District under 28 U.S.C. § § 1391 (b) and (c) because
13 all or a substantial part of the acts or omissions giving rise to the claims occurred in the
14 state of Arizona. Plaintiff is employed by Defendant in this District.
15

16 **PROCEDURE**

17 5. Plaintiff has satisfied all procedural requirements for commencing this
18 action.
19

20 6. On November 18, 2021, Plaintiff filed his initial grievance contesting non-
21 payment of Overtime wages (“OT”) for hours worked.
22

23 7. Plaintiff did not achieve a favorable outcome in this grievance and filed his
24 second grievance on December 21, 2021, concerning unpaid standby hours. Plaintiff did
25 not achieve a favorable outcome in this grievance and filed an appeal of this decision
26 which also failed to provide him relief.
27
28

1 **8.** On February 18, 2022, Plaintiff was notified that he was being removed as
2 captain of C959 and placed in a roving pool, which limited his opportunities for additional
3 overtime pay.
4

5 **9.** The official removal was schedule to occur on March 7, 2022. However,
6 after notification of upcoming removal, Plaintiff filed a grievance regarding the
7 retaliation and transfer, and received a notice of determination on July 20, 2022.
8

9 **10.** In August of 2022, Plaintiff filed a charge of retaliation with the Department
10 of Labor (“DOL”) alleging unlawful employment practices due to his unlawful removal
11 as captain of C959 and placement in a roving pool.
12

13 **11.** On April 4, 2023, The DOL issued its findings that PFD was in violation of
14 section 215 and that without cause, Johnson was removed from his position on C959 in
15 retaliation and violation of section 215(a)(3).
16

17 **12.** On January 12, 2023, Plaintiff filed a grievance in relation to wrongful
18 disciplined implemented by Chief Molitor.
19

20 **13.** Grievance Committee issued its determination on July 19, 2023.
21

22 **14.** On November 21, 2023, The PERB board issued its determination on
23 Plaintiff’s second grievance concerning retaliation by wrongful formal discipline.
24

PARTIES

25 **15.** Plaintiff is a United States Citizen who resides in Maricopa County, Arizona.
26

27 **16.** Defendant, City of Phoenix Fire Department (“PFD” or the “City”), is a
28 Governmental Entity. It employs approximately 2,053 people (1,750 sworn firefighters),
and is a covered ER under FLSA section 203(s)(1)(C) - public agency.

1 **17.** At all times material hereto, PFD was acting through its employees and
2 agencies, including but not limited to the Phoenix Fire Department.

3
4 **18.** Defendant PFD is liable for damages caused by the events alleged herein.
5 Specifically, all of Defendant's unlawful employment practices alleged by Plaintiff
6 occurred in Arizona.

7
8 **19.** At all relevant times, Plaintiff was an "employee" of Defendant as defined
9 in the FLSA provisions.

10 **20.** At all relevant times, Defendant was the "employer" of Plaintiff as defined
11 in the FLSA provisions.

12
13 **21.** The City has coverage under Section 203(s)(1)(C) of the FLSA. The City's
14 fiscal year is January 1, December 31. Additionally, employees regularly handle goods
15 and services that have moved in inter-state commerce. Individual Coverage only applies
16 to hourly employees that engage in commerce (i.e. process credit card payments; drive
17 across state lines; or maintain, repair, and improve existing instrumentalities of
18 commerce) or that manufacture/produce goods for commerce.

19
20
21 **STATEMENT OF FACTS**

22 **22.** Plaintiff David Johnson has worked for the Phoenix Fire Department for
23 over 27 years.

24
25 **23.** As a captain, Plaintiff was assigned to C959 for approximately 3 years and
26 received three stellar PMG's (Performance Evaluations) from July 14, 2018, to March 7,
27

1 2022, during such time there were no other documented complaints or disciplinary actions
2 against Plaintiff.

3
4 **24.** As part of C959 Plaintiff would liaison with local Hospital Pre-Hospital
5 Coordinators to mitigate potential issues between Hospital ERs, after hours infectious
6 control officer, replace EMS equipment, Educate on new EMS procedures, new EMS
7 drugs, oversee UCAPIT system for tracking EMS drugs, expiration dates, provided after
8 hours EPCR helpline for other members in the field, liaison with Urgent Care Centers
9 and other facilities that use “911” system, and answer EMS questions for other PFD
10 members among many other day to day duties.

11
12
13 **25.** On October 19, 2021, Plaintiff was called out to a blood borne pathogen
14 exposure. A request for source testing was delivered to a local hospital by Car 959W
15 (“C959”).

16
17 **26.** As part of his job duties, Plaintiff was required to follow up with the testing
18 hospital and the member (person potentially infectious) to attain the results of the
19 bloodwork, and potentially provide next step directives to the member. During this the
20 relevant incident Plaintiff continually followed up with the Hospital from 6:15 p.m. on
21 October 19, 2021, until 7:00 on October 20, 2021.

22
23 **27.** Plaintiff worked for the entire incident and was on call for 12.75 hours
24 without being relieved from duty, per AR 2.21. Plaintiff was only paid overtime for 5.5
25 hours of this call. The City of Phoenix PD failed to properly pay Plaintiff for the overtime
26 hours he worked in violation of FLSA Section 207.
27
28

1 **28.** Johnson was not paid his proper overtime and stand-by pay and
2 subsequently filed two separate grievances on November 18, 2021, and December 21,
3 2021, and did not prevail, filing an appeal for stand-by pay.
4

5 **29.** On February 18, 2022, in violation of FLSA Section 215(a)(3) Plaintiff was
6 willfully and knowing retaliated against for bringing complaints about lack of overtime
7 and stand-by pay by Chief Frank Bayless in which he was abruptly notified of his removal
8 from his captain position on C959—to take effect on March 7, 2022.
9

10 **30.** Plaintiff was to be demoted into a roving pool which is a less desirable
11 position, suffer a loss of statute within the PFD community, and immediately resulted in
12 a 10% reduction in pay rate.
13

14 **31.** Plaintiff filed a grievance on February 22, 2022. A determination was made
15 on July 20, 2022, stating in part that, “Department Management Procedures were not
16 followed regarding the investigative process.”
17

18 **32.** Plaintiff filed a complaint with the Department of Labor (“DOL”), which
19 outlined his claim of retaliation of removal from C959 due to Plaintiff raising issues and
20 filing grievances related to unpaid overtime and stand-by pay.
21

22 **33.** An investigation was conducted by the DOL, during which the PFD
23 claimed that Plaintiff’s removal was both due to “business needs” as well as due to
24 complaints against Plaintiff that existed prior to January 19, 2022. However, upon
25 investigation neither of these reasons could be substantiated.
26
27
28

1 **34.** On April 4, 2023, the DOL issued its findings after an extensive
2 investigation and determined that the PFD violated Section 215 of the FLSA stating in
3 that:
4

5 **35.** “The investigation revealed that the FD wrongfully, and without cause,
6 removed C (Complainant) from his position as captain of C959 resulting in relation and
7 violation of section 215(a)(3).”
8

9 **36.** “Specifically, the investigation revealed that C was removed from his
10 position as captain shortly after he filed grievance because he believed he was not paid
11 OT correctly. The grievance was denied, and he was transferred to a roving pool.”
12

13 **37.** Throughout its investigation from October 10, 2022, until November 30,
14 2022, the DOL conducted several interviews but was unable to corroborate allegations
15 made by Chief Molitor and the PFD regarding the removal as a “business need” due to
16 Plaintiff’s inability to fulfil his duties as captain of C959.
17

18 **38.** Additionally, the investigation determined through interviews and
19 investigation that Plaintiff’s colleagues spoke very highly of Plaintiff and expressed
20 confidence in his ability to perform the duties required by his position as captain.
21

22 **39.** Plaintiff’s performance evaluations from 1996-2022 show all meets or
23 exceeds expectations and the DOL found no other disciplinary actions against Plaintiff to
24 justify the abrupt transfer.
25

26 **40.** The DOL investigation also determined that the PFD did not follow its own
27 disciplinary process when it removed Plaintiff out of C959. Specifically, the City of
28 Phoenix’s operation manual MP102.05 (Discipline Process) requires that, “Discipline

1 will normally begin with verbal reprimand or warning, and when circumstances of
2 separate or related incidents warrant, proceed to written reprimand(s), suspension without
3 pay, demotion, and finally to dismissal.”
4

5 **41.** Plaintiff was never given a verbal or written warning in conjunction with
6 any discipline during or leading up to his removal from C959.

7 **42.** However, during his notice of removal from C959 on February 18, 2022,
8 Plaintiff was given a verbal direct order from Chief Molitor stating, “Oh by the way, don’t
9 speak to any strategic partners about your removal from C959.”
10

11 **43.** On July 6, 2022, Plaintiff had a meeting with a Hospital Coordinator—that
12 Plaintiff frequently worked with and was on familiar terms with—in which Plaintiff never
13 mentioned anything about the current grievance processes nor his removal from C959.

14 **44.** On July 14, 2022, Plaintiff was notified by Chief Molitor that notice of intent
15 to discipline was initiated for “Violating a Direct Order.”
16

17 **45.** On July 19, 2022, Plaintiff was interviewed concerning the alleged direct
18 order violation.
19

20 **46.** On July 20, 2022, Plaintiff’s union representative requested interview notes
21 for all interviews concerning the investigation. However Chief Molitor stated the notes
22 were destroyed.
23

24 **47.** Plaintiff also requested information on who initiated the NOI (per internal
25 policy), however Chief Molitor stated the initial complaint came from an outside source.
26

27 **48.** Later, the OSI investigative report stated that Chief Molitor initiated the
28 inquiry on July 8, 2022. Subsequently, nothing in the OSI Report substantiates or

1 provides evidence that Plaintiff discussed his removal from C959 in violation of the direct
2 order.

3
4 **49.** On January 2, 2023, Plaintiff and his Union Representative had a meeting
5 with Chief Molitor to discuss the Notice of Intent to Discipline, but Chief Molitor refused
6 to change or appropriately adjust the discipline.

7
8 **50.** On January 6, 2023, Chief Molitor willfully and knowingly committed a
9 second act of retaliation against Plaintiff violating FLSA Section 215(a)(3) by
10 administering the wrongful disciplinary action via written reprimand for violating a
11 verbal direct order despite no evidence substantiating that Plaintiff violated the direct
12 order.
13

14 **COUNT ONE**
15 **Retaliation and Violation of FLSA Section 215(a)(3)**

16 **51.** Plaintiff incorporates each and every statement and allegation above as fully
17 set forth herein.

18
19 **52.** Because Plaintiff filed grievances due to unpaid OT and stand-by pay, PFD
20 willfully and knowingly retaliated against Plaintiff by removing him from his position of
21 captain on C959 and placing him in a rover pool, PFD wrongfully initiated an NOI against
22 Plaintiff for violating a direct order to not speak about his removal from C959, which in
23 itself was a retaliation for filing grievances for unpaid OT.
24

25 **53.** The acts committed by Defendant were unlawful employment practices of
26 discrimination in violation of 29 U.S.C. 215(a)(3) which states that it is unlawful:
27
28

1 (3) to discharge or in any other manner discriminate against any employee because
2 such employee has filed any complaint or instituted or caused to be instituted any
3 proceeding under or related to this chapter or has testified or is about to testify in
4 any such proceeding or has served or is about to serve on an industry committee.
5

6 **54.** As a direct and proximate result of Defendant's retaliation, Plaintiff has
7 suffered from emotional distress, physical illness, medical expenses, loss of pay, legal
8 fees and etc.
9

10 **COUNT TWO**

11 **Second Count of Retaliation and Violation of FLSA Section 215(a)(3)**

12 **55.** Plaintiff incorporates each and every allegation above as fully set forth
13 herein.
14

15 **56.** Because Plaintiff filed a grievance due to his wrongful and retaliatory
16 removal from C959, PFD wrongfully initiated an NOI against Plaintiff for allegedly
17 violating a direct order to not speak about his removal from C959, which in itself was a
18 retaliation for filing grievances for unpaid OT.
19

20 **57.** The acts committed by Defendant were unlawful employment practices of
21 discrimination in violation of 29 U.S.C. 215(a)(3) which states that it is unlawful:

22 (3) to discharge or in any other manner discriminate against any employee because
23 such employee has filed any complaint or instituted or caused to be instituted any
24 proceeding under or related to this chapter or has testified or is about to testify in
25 any such proceeding or has served or is about to serve on an industry committee.
26
27
28

1 **58.** As a direct and proximate result of Defendant’s retaliation, Plaintiff has
2 suffered from emotional distress, physical illness, medical expenses, loss of pay, legal
3 fees and etc.
4

5 **COUNT THREE**
6 **Violation of FLSA Section 207**

7 **59.** Plaintiff incorporates each and every allegation above as fully set forth
8 herein.
9

10 **60.** On October 19, 2021, Plaintiff was called out to a blood borne pathogen
11 exposure. A request for source testing was delivered to a local hospital by Car 959W
12 (“C959”).
13

14 **61.** As part of his job duties, Plaintiff was required to follow up with the testing
15 hospital and the member (person potentially infectious) to attain the results of the
16 bloodwork, and potentially provide next step directives to the member. During this the
17 relevant incident Plaintiff continually followed up with the Hospital from 6:15 p.m. on
18 October 19, 2021, until 7:00 on October 20, 2021.
19

20 **62.** Plaintiff worked for the entire incident and was on call for 12.75 hours
21 without being relieved from duty, per AR 2.21. Plaintiff was only paid overtime for 5.5
22 hours of this call. The City of Phoenix PD failed to properly pay Plaintiff for the overtime
23 hours he worked in violation of FLSA Section 207.
24

25 **63.** FLSA Section 207 states: (a) Employees engaged in interstate commerce;
26 additional applicability to employees pursuant to subsequent amendatory provisions
27
28

1 (1) Except as otherwise provided in this section, no employer shall employ any of
2 his employees who in any workweek is engaged in commerce or in the
3 production of goods for commerce, or is employed in an enterprise engaged in
4 commerce or in the production of goods for commerce, for a workweek longer
5 than forty hours unless such employee receives compensation for his
6 employment in excess of the hours above specified at a rate not less than one
7 and one-half times the regular rate at which he is employed.
8

10 (2) No employer shall employ any of his employees who in any workweek is
11 engaged in commerce or in the production of goods for commerce, or is
12 employed in an enterprise engaged in commerce or in the production of goods
13 for commerce, and who in such workweek is brought within the purview of
14 this subsection by the amendments made to this chapter by the Fair Labor
15 Standards Amendments of 1966—
16

18 (A) for a workweek longer than forty-four hours during the first year
19 from the effective date of the Fair Labor Standards Amendments of 1966,

21 (B) for a workweek longer than forty-two hours during the second year
22 from such date, or

23 (C) for a workweek longer than forty hours after the expiration of the
24 second year from such date,
25

26 unless such employee receives compensation for his employment in excess of the
27 hours above specified at a rate not less than one and one-half times the regular rate
28 at which he is employed.

DAMAGES

1
2 **64.** As a direct and proximate result of Defendant violations of Plaintiff's
3 protected rights in each of the above-mentioned claims for relief, Plaintiff suffered and
4 continues to suffer from emotional distress, physical illness, medical expenses, loss of
5 pay, legal fees, etc. Plaintiff is entitled to compensatory damages to make him whole.
6

7 **65.** As set out above, Defendant's actions demonstrated a willful intent to
8 retaliate against Plaintiff and showed disregard for the protected rights under the Fair
9 Labor and Standards Act, substantiated in part by the United States Department of Labor.
10 Thus, Plaintiff is entitled to punitive damages.
11

12 **66.** Plaintiff is entitled legal fees and costs of this action and previous charge
13 pursuant to 42 U.S.C. § 2000e-5(k);
14

15 **WHEREFORE,** Plaintiff respectfully prays for judgment against Defendant,
16 and asks this Court to:
17

18 (A) Award Plaintiff compensatory damages for his emotional distress, physical
19 illness, medical expenses, loss of pay and any other appropriate relief to make Plaintiff
20 whole and compensate him for Defendant's adverse employment actions;
21

22 (B) Award Plaintiff legal fees and costs of this action and previous charge with
23 the Department of Labor, including attorneys' fees pursuant to 42 U.S.C. § 2000e-5(k);
24

25 (C) Award Plaintiff punitive damages; and

26 (D) Award Plaintiff other legal and equitable relief as this Court deems just and
27 proper.
28

DEMAND FOR JURY TRIAL

1 Plaintiff hereby demands a trial by jury as provided by Rule 38(a) of the Federal
2 Rules of Civil Procedure.

3
4 **RESPECTFULLY SUBMITTED** this 11th day of January 2024.

5
6 *Law Office of Joshua Black, PLC*

7
8 */s/ Joshua C. Black*

9 By: _____.

10 Joshua C. Black
11 Timothy F. Rosini
12 2999 N 44th St, Ste 308
13 Phoenix, AZ 85018
14 *Attorneys for Plaintiff*

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): **David Johnson , Individual;**

City of Phoenix Fire Department , Municipality;
Chief Frank Bayless , Individual; Michael Duran
Defendant(s): **III , Individual; Chief Michael Molitor , Individual;
Chief Kara Kalkbrenner , Individual; Chief Ray
Ochoa , Individual;**

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

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IFP REQUESTED**REMOVAL FROM COUNTY, CASE #**

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties(Diversity Cases Only)

1 Citizen of This State

Plaintiff:-

4 AZ corp or Principal place of Bus. in AZ

Defendant:-

IV. Origin : **1. Original Proceeding**
V. Nature of Suit: **710 Fair Labor Standards Act**

VI.Cause of Action: **1. This is an action under the Fair Labor and Standard Act, and Arizona Revised Statues ("ARS") against The City of Phoenix and its entities, specifically the Phoenix Fire Department ("PFD") or ("Defendant") and other individuals for their unlawful employment practices of retaliation, and failure to pay proper overtime wages.**

VII. Requested in Complaint

No

Class Action:

Dollar Demand:

Yes

Jury Demand:

VIII. This case is not related to another case.

Signature: /s/ Timothy Roini

Date: 1/11/24

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014