

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JEFFREY KOZMA, on behalf of himself and others similarly situated,)	
)	CASE NO.
Plaintiff,)	JUDGE
)	
vs.)	
)	
THE CITY OF CLEVELAND,)	
)	<u>COLLECTIVE ACTION COMPLAINT</u>
Defendant.)	

Plaintiff Jeffrey Kozma (“Plaintiff”), by and through counsel, for his Complaint against Defendant The City of Cleveland (“Defendant”) for the failure to pay overtime in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219; and based on personal knowledge of his own conduct and upon information and belief as to the conduct and acts of others, states and alleges as follows:

INTRODUCTION

1) This case challenges policies and practices of Defendant that violate the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (the “FLSA”).

2) Plaintiff brings this case as an FLSA “collective action” pursuant to 29 U.S.C. §216(b), which provides that “[a]n action to recover the liability” prescribed by the FLSA “may be maintained against any employer ... by any one or more employees for and on behalf of himself or themselves and other employees similarly situated.” Plaintiff brings this case on behalf of himself and the following similarly situated employees who may join this case pursuant to §216(b) (the “Putative Class”):

All former and current hourly non-exempt employees of Defendant who worked in a public safety or emergency response activity and

who accrued compensatory time in lieu of overtime in excess of 480 hours at any time during the last three years.

JURISDICTION AND VENUE

- 3) This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).
- 4) Venue is proper in this forum pursuant to 28 U.S.C. § 1391.

PARTIES

- 5) At all times relevant herein, Plaintiff was a citizen of the United States and resident of Cuyahoga County, Ohio.
- 6) At all times relevant herein, Plaintiff was an employee of Defendant within the meaning of 29 U.S.C. § 203(e).
- 7) At all times relevant herein, Defendant was an employer within the meaning of 29 U.S.C. § 203(s)(1)(C).
- 8) Plaintiff's written consent to join this action is attached hereto as Exhibit A. Written consents to join this action when executed by other individual plaintiffs will be filed pursuant to 29 U.S.C. § 216(b).

FACTUAL ALLEGATIONS

- 9) At all relevant times, Defendant has operated and controlled the Cleveland Police Department.
- 10) Plaintiff is employed and has been employed by Defendant as a non-exempt, hourly police officer for approximately 20 years.
- 11) As a police officer, Plaintiff is an employee engaged in a public safety activity and in an emergency response activity within the meaning of the FLSA.
- 12) At all relevant times, Plaintiff typically worked over 40 hours per workweek.

13) Defendant failed to pay Plaintiff and the Putative Class members overtime compensation as required by the FLSA at a rate of not less than one and one-half his regular rate, and such overtime remains unpaid.

14) Instead, Defendant requires Plaintiff and the Putative Class members to accept “compensatory time off” in lieu of overtime wages in an amount in excess of 480 hours. For example, Plaintiff has now accrued, and regularly maintains, over one thousand hours of compensatory time.

15) The FLSA prohibits employers from allowing or requiring employees to accrue over 480 hours of compensatory time. *See* 29 U.S.C. § 207(o)(3)(A) (“...the employee engaged in such work may accrue not more than 480 hours of compensatory time...”).

16) In impermissibly requiring Plaintiff and the Putative Class members to accrue “compensatory time” in an amount well in excess of 480 hours, Defendant has violated the FLSA by failing to pay Plaintiff and the Putative Class members overtime compensation as at a rate of not less than one and one-half their regular rate, and such overtime remains unpaid.

17) Defendant knowingly and willfully engaged in the above-mentioned violations of the FLSA.

18) To the extent that Defendant failed to make, keep, and preserve records of all hours worked, Plaintiff is entitled to a reasonable estimate of such time.

COLLECTIVE ACTION ALLEGATIONS

19) Plaintiff incorporates by reference the foregoing allegations as if fully rewritten herein.

20) Plaintiff brings this action on his own behalf pursuant to 29 U.S.C. § 216(b), and on behalf of himself and on behalf of the Putative Class members:

All former and current hourly non-exempt employees of Defendant who worked in a public safety or emergency response activity and who accrued compensatory time in lieu of overtime in excess of 480 hours at any time during the last three years.

21) This action is maintainable as an “opt-in” collective action pursuant to 29 U.S.C. § 216(b) as to claims for: (1) unpaid overtime compensation; (2) liquidated damages; and (3) attorneys’ fees and costs under the FLSA. Putative Class members are similarly situated to Plaintiff with regard to their claims for unpaid overtime compensation, liquidated damages, attorneys’ fees and costs under the FLSA.

22) The Putative Class members are known to Defendant and are readily identifiable through Defendant’s payroll and other records. These individuals may readily be notified of this action, and allowed to opt in pursuant to 29 U.S.C. § 216(b), for the purpose of collectively adjudicating their claims for: (1) unpaid overtime compensation; (2) liquidated damages; and (3) attorneys’ fees and costs under the FLSA.

COUNT ONE
(Overtime Violations – FLSA)

23) Plaintiff incorporates by reference the foregoing allegations as if fully rewritten herein.

24) The FLSA requires that non-exempt employees be paid for hours worked in excess of 40 in a workweek at a rate of not less than one and one-half their regular rates.

25) Plaintiff and the Putative Class members regularly worked over 40 hours per week.

26) Defendant failed to pay Plaintiff and the Putative Class members overtime compensation at a rate of not less than one and one-half their regular rates for overtime hours worked in violation of the FLSA.

27) As a result of Defendant's practices and policies, Plaintiff and the Putative Class members have been damaged in that they have not received wages due to them pursuant to the FLSA; and because wages remain unpaid, damages continue.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, and all similarly-situated employees, collectively pray that this Honorable Court:

- A. Conditionally certify this case as an FLSA "collective action" pursuant to 29 U.S.C. § 216(b) and direct that Court-approved notice be issued to similarly-situated employees informing them of this action and enabling them to opt-in;
- B. Enter judgment against Defendant and in favor of Plaintiff and the Putative Class members who join this case;
- C. Award Plaintiff and the Putative Class members actual damages for unpaid wages;
- D. Award Plaintiff and the Putative Class members liquidated damages equal in amount to the unpaid wages found due to Plaintiff and the Putative Class.
- E. Award Plaintiff and the Putative Class members pre-judgment and post-judgment interest at the statutory rate;
- F. Award Plaintiff and the Putative Class members fees, costs, and disbursements; and
- G. Award Plaintiff and the Putative Class members further and additional relief as this Court deems just and proper.

Respectfully submitted,

Nilges Draher LLC

/s/ Christopher J. Lalak

Christopher J. Lalak (0090079)

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Suite 1148

Cleveland, Ohio 44113

Telephone: (216) 230-2955

Email: clalak@ohlaborlaw.com

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Email: rbaishnab@ohlaborlaw.com

Counsel for Plaintiff

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

Jeffrey Kozma
1750 East 47th St., Cleveland, OH 44103

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Christopher Lalak,
Nilges Draher LLC, 614 W Superior Ave, Ste1148, Cleveland, OH 44113
216-230-2955

DEFENDANTS

The City of Cleveland
601 Lakeside Ave., Room 106, Cleveland, Ohio 44114

County of Residence of First Listed Defendant Cuyahoga
(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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: 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.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

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. §§ 201-219
Brief description of cause:
FLSA Violations

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 OR REFILED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 08/15/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Christopher J. Lalak

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

- 1. General Civil
- 2. Administrative Review/Social Security
- 3. Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action: is **RELATED** to another **PENDING** civil case is a **REFILED** case was **PREVIOUSLY REMANDED**

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY: Cuyahoga

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY:

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

AKRON

(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)

CLEVELAND

(Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake,

Lorain, Medina and Richland)

YOUNGSTOWN

(Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

TOLEDO

(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

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.
 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

Northern District of Ohio

Jeffrey Kozma, on behalf of himself and others
similarly situated,

Plaintiff(s)

v.

The City of Cleveland,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The City of Cleveland
c/o Department of Law
Barbara A. Langhenry, Director
601 Lakeside Ave., Room 106
Cleveland, Ohio 44114

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: Christopher J. Lalak
614 West Superior Ave.
Suite 1148,
Cleveland, OH 44113

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.

SANDY OPACICH, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

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:

**CONSENT TO JOIN
PURSUANT TO 29 U.S.C. §216(b)**

1. I, Jeffrey Kozma, hereby consent and agree and opt-in to become a plaintiff class member in a lawsuit or arbitration brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, *et seq.* against my current/former employer, City of Cleveland, and any of its officers, agents, parent corporations, subsidiaries, joint employers and representatives.

2. I hereby agree to be bound by any adjudication of this action by the Court or arbitrator, whether it is favorable or unfavorable. I further agree to be bound by any collective action settlement herein approved by my attorneys and approved by the Court or an arbitrator as fair, adequate, and reasonable.

DATE: 8-15-19

SIGNATURE: 

JEFFREY KOZMA
PRINTED NAME

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [City of Cleveland Facing Collective Action Over Alleged Failure to Pay Overtime](#)
