

Civil Action No. \_\_\_\_\_

AND NOW, Plaintiff, Philip Mollichella, by and through his attorneys, Derek Smith Law Group, PLLC, hereby bring the following action individually and also as a collective action for similarly situated individuals, seeking relief from discriminatory, unlawful, and wrongful conduct of Defendant, West Brandywine Township, and Defendant, Jeff Kimes, specifically for, violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §203 *et. seq.*, the Pennsylvania Wage Payment and Collection Law (“PaWP&CL”), 43 P.S. §260.1, *et. seq.* the Pennsylvania Minimum Wage Act (“PaMWA”), 43 P.S. §333.104 *et. seq.*, Pennsylvania Whistleblower Law, 43 Pa.C.S.A. §1423, and violations of Plaintiff’s United States Constitutional First Amendment rights under 42 U.C.S.A. §1983. Plaintiff alleges and avers in support thereof:

**Parties**

1. Plaintiff, Philip Mollichella, is an adult male individual and twelve (12) year member of West Brandywine Township Police Department, who has worked primarily as a full-time Narcotics officer, and who resides at the above captioned address.

2. Plaintiff class (“Plaintiff(s)”) is a collection of similarly situated opt-in Plaintiffs who have worked for the Police Department for West Brandywine Township Municipal Authority in three (3) years from the filing of this complaint, and suffered similar harms and damages from the donning and doffing rule(s) and the time-clock manipulation as alleged herein.

3. Defendant, West Brandywine Township Municipal Authority (“West Brandywine Township”), is a corporation and/or municipality duly existing under the laws of the Commonwealth of Pennsylvania, with a registered office at the above address.

4. Defendant, Jeff Kimes, is an adult male individual and Lieutenant employed and working for Defendant, West Brandywine Township, and is the current Acting Officer in Charge, in the absence of a Chief of Police. Defendant Kimes has a regular place of employment at the above captioned address. At all times, Defendant Kimes is/was a supervisor of Plaintiff, with the authority to make material decisions over Plaintiff’s employment including decisions to hire, fire, promote, demote, discipline and other material decisions. Defendant Kimes further had control over decisions regarding pay and schedules for Plaintiff, and other similarly situated individuals.

5. Defendant, West Brandywine Township, agreed, accepted, adopted, acquiesced, and/or otherwise is bound by the acts, omits, and conduct of its officers, managers, supervisors, employees, and agents including Defendant Kimes.

### **Jurisdiction and Venue**

6. Subject matter jurisdiction is appropriate before this Court under Federal Question Jurisdiction, 28 U.S.C. §1331, for Plaintiff's claims under the FLSA and 42 U.S.C.A. §1983, and under Supplemental Jurisdiction, 28 U.S.C. §1367, for Plaintiff's State law claims.

7. Personal jurisdiction and Venue are appropriate before this Court as Defendants reside and reasonably avail it/themselves of the Commonwealth of Pennsylvania and all actions, omissions, and conduct giving rise to this action occurred in the Eastern District of Pennsylvania. (i.e. Berks, Bucks, Chester, Delaware, Lancaster, Lehigh, Montgomery, Northampton, and Philadelphia Counties).

### **Summary of Facts**

8. Plaintiff is an accomplished and honored veteran of Defendant West Brandywine Township's Police Department and an executive member of the local Fraternal Order of Police for Defendant West Brandywine Township's police officers. Plaintiff works full-time (40 hours a week), in a non-exempt position and earns at the rate of \$40.46 an hour in straight time.

9. In the Fall of 2017 Police Chief Walt Werner stepped down and was replaced by Defendant Kimes as the Acting Officer in Charge of Defendant West Brandywine Township.

### **Time Clock Issues**

10. Defendant West Brandywine Township maintains a policy dating back to June 3, 2013 whereby "All officers must be in uniform and ready ten (10) minutes prior to the start of their shift."

11. Plaintiff and all other similarly situated officers for Defendant West Brandywine Township have abided by this policy and/or have been disciplined for failure to do so.

12. In or around May of 2018 Defendant(s) installed a time-clock that officers can clock-in in-person and/or over a computer system.

13. In May and/or June 2018 Plaintiff noticed that when he attempted to clock-in upon arriving early to dress for work, his time entry moved from the time he clocked-in to the start time of his shift (e.g. 5:38 p.m. clock-in moved to 5:45 p.m. for beginning of shift)

14. Plaintiff's similarly situated co-workers and peers noticed the same.

15. Furthermore, when Plaintiff would clock-out at the end of a shift, the time entry would similarly jump back to the scheduled end-of-shift time, thus removing additional time Plaintiff worked.

16. It is believed and therefore averred that similarly situated officers also had their clock-out times adjusted back, thereby depriving them of pay for additional time worked.

17. The superficial time entries from the time clock are the entries by which Plaintiff and similarly situated co-workers were paid, and not by the actual time entries.

18. In June 2018, Plaintiff complained to Defendant Kimes about the change in time entries as Plaintiff was aware that Defendant Kimes was in control of the time clock.

19. Plaintiff informed Defendant Kimes it was against the law to change the time entries.

20. As a result of the complaint, nothing was done and the changes in time entries continued.

21. In June 2018, Plaintiff then informed and complained to Bonnie Lucy, the Treasurer and Senior Accountant for Defendant West Brandywine Township, and informed her about the time entries being changed and that he suspected Defendant Kimes was responsible, which was illegal conduct.

22. To date, the foregoing practice continues.

23. As a direct result of the foregoing, Plaintiff and similarly situated individuals, have been deprived pay for time worked and pay for overtime worked.

Collective Bargaining Agreement 8 Hours Plus Overtime Pay Rule

24. Plaintiff(s) work under a Collective Bargaining Agreement (“CBA”) that provides that any hours worked in excess of 8 hours entitles the employee to time-and-a half pay.

25. Under Defendant Kimes, Plaintiff and Plaintiff collective class were required to work twelve (12) hours shifts, but were not paid time-and-a-half as provided for under the CBA.

26. Thus, Defendants have failed pay Plaintiff(s) wages.

Retaliation / Whistleblower Retaliation

27. Plaintiff’s complaint to Defendant Kimes and also Bonny Lucy about the illegal activity with regard to the time-clock was/were protected activity.

28. Plaintiff’s complaint to Bonnie Lucy was a complaint to someone outside the hierarchy of the Police Department and pertained to Defendant Kimes wrongdoing, which qualifies for Whistleblower Law protection.

29. It is believed Defendant Kimes was made aware of Plaintiff’s complaint to Ms. Lucy.

30. Since Plaintiff made the complaints to Defendant Kimes and to Ms. Lucy, he has received multiple and various disciplinary actions resulting in at least one suspension.

31. Since Plaintiff made the complaints to Defendant Kimes and Ms. Lucy, he has been removed from his duties as a Narcotics Officer.

32. Since Plaintiff made the complaints to Defendant Kimes and Ms. Lucy, he has been replaced by a significantly less experienced individual and has had his vehicle removed.

33. Plaintiff has been relegated to a traffic officer and one that does not have the requisite tools to adequately perform the position.

34. The foregoing adverse actions are temporally proximate to the complaint(s) /whistleblowing such that they are unusually suggestive of a retaliation.

35. Alternatively, other evidence exists that the adverse actions are the result of the foregoing protected activity and thus retaliatory.

36. Similarly situated individuals who have not made complaints have been treated better than Plaintiff and thus in retaliation, Plaintiff has been disparately treated.

37. Alternatively, other evidence of the retaliatory nature of these actions exist including that Plaintiff was replaced by a significantly less experienced individual to do the job Narcotics job for which Plaintiff is an awarded and recognized veteran.

#### First Amendment Violation

38. Plaintiff was the President of the local FOP and recently has taken the role of Vice President of the FOP.

39. In this role, Plaintiff must voice concerns about Union Activities, initiate votes, and take other actions to keep Defendant in good standing with the FOP.

40. In or around November of 2017 Plaintiff learned that Defendant Kimes was paying 5% into his pension while everyone else paid 3%.

41. Plaintiff informed Defendant Kimes and Defendant Kimes took umbrage, pointing out that he had a deal with Defendant West Brandywine Township that permitted him the larger contribution.

42. Defendant Kimes was ultimately returned to the 3% pension contribution.

43. In or around December of 2017 Plaintiff had to put to a vote whether to keep Defendant Kimes as a member of the local FOP and the vote went against Defendant Kimes.

44. As a result, Defendant Kimes was removed from the local FOP.

45. In or around January of 2018 Defendant Kimes attempted to have the local FOP pay for Defendant Kimes dues, as if he were still an executive member, though he was not.

46. Plaintiff informed Defendant Kimes that they could not pay his dues and Plaintiff even later came into information that Defendant Kimes still attempted to have his dues paid but his attempt failed.

47. Since Plaintiff's foregoing First Amendment activity and union activity, Defendant Kimes has disciplined Plaintiff upward of forty (40) separate times, has suspended Plaintiff, has removed Plaintiff from Narcotics duties, has removed Plaintiff's training responsibilities, has taken Plaintiff's vehicle, has taken Plaintiff's earnings, and has left/rendered Plaintiff with a position that has minimal importance in light of Plaintiff's work history.

48. The foregoing retaliations are temporally proximate to the complaints /whistleblowing such that they are unusually suggestive of a retaliation.

49. Alternatively, other evidence of the retaliatory nature of these actions exist including that Plaintiff was disparately treated with respect to disciplinary actions, and was replaced by a significantly less experienced individual to do the job Narcotics job for which Plaintiff is an awarded and recognized veteran.

Collective Action

50. Plaintiff brings the non-payment of wages claim(s) individually and as a collective action on behalf of a collection of similarly situated employees of Defendant West Brandywine Township who, in the past three (3) years have been victim of the same policy and/or decisions as Plaintiff. Plaintiff does not seek a “class action” under Federal or State law.

**COUNT ONE**

**Non-Payment of Overtime**

**Fair Labor Standards Act (“FLSA”), 29 U.S.C.A. §207 *et. seq.***

**Plaintiff(s) v. Defendants**

51. Plaintiff incorporates the foregoing paragraphs as if set forth at length herein.

52. Defendant is an employer under the FLSA because it is an association, corporation, public agency, and/or organized group of people acting in relation to an employee.

53. Defendant Kimes is an employer under the FLSA because he is an individual acting directly and/or indirectly in the interest of an employer in relation to an employee.

54. Plaintiff is an employee under the FLSA as he is employed by an employer.

55. The collective class of similarly situated employees of Defendant also fit the definition of employee.

56. Plaintiff seeks permission from the Court and will soon move for permission to begin sending notice to potential opt-in Plaintiffs to perfect a collective action.

57. Defendants violated 29 U.S.C.A. §207 by having Plaintiff and similarly situated individuals work more than forty (40) hours in a workweek, and not pay them time-and-a-half.

58. Defendants violated 29 U.S.C.A. §211 by failing to keep records of Plaintiff and similarly situated individuals.



59. Defendants intentionally attempted to hide records and intentionally deprive employees of overtime pay by changing the time clock entries.

60. As a direct and proximate result of Defendants violations of the FLSA, Plaintiff(s) have suffered damages including loss of wages and Plaintiff(s) seek relief for overtime worked and not paid, liquidated damages, and reasonable attorney's fees.

WHEREFORE, Plaintiff, Philip Mollichella, and Plaintiff, collective class, demand(s) all relief from Defendant, West Brandywine Township Municipal Authority, and Defendant, Jeff Kimes, recoverable in law and as deemed reasonable and necessary by the Court.

**COUNT TWO**

**Retaliation**

**Fair Labor Standards Act ("FLSA"), 29 U.S.C.A. §215(a)(3)**

**Plaintiff Mollichella v. Defendants**

61. Plaintiff incorporates the foregoing paragraphs as if set forth at length herein.

62. Defendants are employers under the FLSA.

63. Plaintiff engaged in protected activity when he made a verbal complaint in June of 2018 to Defendant Kimes and when he made a complaint to Bonnie Lucy about the non-payment of wages and non-payment of overtime.

64. As a direct and proximate result of Plaintiff's protected activity, Defendants retaliated against Plaintiff by disciplining Plaintiff, removing Plaintiff's job duties, removing Plaintiff's equipment, and similar conduct.

65. Defendants' actions were intentional and willful.

66. As a direct and proximate result of Defendants violations of the FLSA, Plaintiff has suffered damages including and compensatory and equitable relief including reasonable attorney's fees.

WHEREFORE, Plaintiff, Philip Mollichella, demands all relief from Defendant, West Brandywine Township Municipal Authority, and Defendant, Jeff Kimes, recoverable in law and as deemed reasonable and necessary by the Court.

**COUNT THREE**  
**Non-Payment of Overtime**  
**Pennsylvania Minimum Wage Act (“PaMWA”), 43 P.S. §333.104, *et. seq.***  
**Plaintiff(s) v. Defendants**

67. Plaintiff incorporates the foregoing paragraphs as if set forth at length herein.

68. Defendant is an employer under the PaMWA because it is an association, corporation, public agency, and/or organized group of people acting in relation to an employee.

69. Defendant Kimes is an employer under the PaMWA because he is an individual acting directly or indirectly in the interest of an employer in relation to an employee.

70. Plaintiff is an employee under the PaMWA as he is employed by an employer.

71. The putative collective class of similarly situated individuals are employees as they are/were employed by an employer.

72. Defendants violated the PaMWA by not paying Plaintiff(s) time and a half for hours worked in excess of forty in a workweek.

73. As direct and proximate result of Defendants violations of the PaMWA, Plaintiff seeks relief from damages including

WHEREFORE, Plaintiff, Philip Mollichella, and Plaintiff, collective class of opt-in Plaintiffs, demand all relief from Defendant, West Brandywine Township Municipal Authority, and Defendant, Jeff Kimes, recoverable in law and as deemed reasonable and necessary by the Court.

**COUNT FOUR**  
**Non-Payment of Wages**  
**Pennsylvania Wage Payment and Collection Law (“PaWP&CL”), 43 P.S. §260.1, et. seq.**  
**Plaintiff(s) v. Defendants**

74. Plaintiff incorporates the foregoing paragraphs as if set forth at length herein.

75. Defendant West Brandywine Township is an employer under the PaWP&CL as it is a firm, partnership, association, corporation, or other entity employing a person in the Commonwealth of Pennsylvania.

76. Defendant Kimes is an employer under the PaWP&CL as he is an agent or officer of any of the above-mentioned classes employing any person in this Commonwealth.

77. Plaintiff and the collective class are employees under the PaWP&CL.

78. The PaWP&CL provides in relevant part:

Every employer shall pay all wages, other than fringe benefits and wage supplements, due to his employes on regular paydays designated in advance by the employer. Overtime wages may be considered as wages earned and payable in the next succeeding pay period. All wages, other than fringe benefits and wage supplements, earned in any pay period shall be due and payable within the number of days after the expiration of said pay period as provided in a written contract of employment or, if not so specified, within the standard time lapse customary in the trade or within 15 days from the end of such pay period. The wages shall be paid in lawful money of the United States or check, except that deductions provided by law, or as authorized by regulation of the Department of Labor and Industry for the convenience of the employee, may be made including deductions of contributions to employee benefit plans which are subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq.

79. In violation of the PaWP&CL, Defendants have failed to pay Plaintiff(s) time-and-a-half for hours worked in excess of forty (40) in a workweek (e.g. donning and doffing).

80. In violation of the PaWP&CL, Defendants have failed to pay Plaintiff(s) straight time for hours worked less than forty (40) in a workweek (e.g. donning and doffing).

81. In violation of Plaintiff and Defendants agreed pay/compensation schedule and/or CBA, Defendants have failed to pay Plaintiff(s) time-and-a-half for time worked in excess of eight (8) hours in a shift/workday.

82. Plaintiff(s) seek payment for unpaid wages plus interest, liquidated damages, attorneys fees, and all other relief permitted under law.

83. Plaintiff(s) seek to certify a collective action of similarly situated individuals who were deprived pay per Defendant(s) policies, customs, and conduct in the past three (3) years.

WHEREFORE, Plaintiff, Philip Mollichella, and Plaintiff, collective class, demand(s) all relief from Defendant, West Brandywine Township Municipal Authority, and Defendant, Jeff Kimes, recoverable in law and as deemed reasonable and necessary by the Court.

**COUNT FIVE**

**Retaliation**

**Pennsylvania Whistleblower Law, 43 Pa.C.S.A. §1423**

**Plaintiff v. Defendant West Brandywine Township**

84. Plaintiff incorporates the foregoing paragraphs as if set forth at length herein.

85. Defendant West Brandywine Township is subject to Pennsylvania Whistleblower statute as it is a public body, as it was created by the Commonwealth and/or is funded in an amount boy or through the Commonwealth and/or political subdivision authority. 43 P.S. §1422.

86. Plaintiff engaged protective activity in that he:

- a. Plaintiff made a good faith complaint to Bonnie Lucy of wrongdoing when he informed her that time-clocks were being changed by Defendant Kimes and/or
- b. Plaintiff made a good faith complaint of waste and wrongdoing when he complained about Defendant Kimes additional pay into his pension plan and Defendant Kimes having his dues wrongly paid by the local Union chapter.

87. As a direct and proximate result of Plaintiff's foregoing protected activity, Defendant retaliated against Plaintiff by unnecessarily disciplining, removing job duties/responsibilities, and removing equipment.

88. Plaintiff seeks all relief afforded under law including damages, attorneys fees, costs of litigation, and all other relief deemed appropriate.

WHEREFORE, Plaintiff, Philip Mollichella, and Plaintiff, demands all relief from Defendant, West Brandywine Township Municipal Authority, recoverable in law and as deemed reasonable and necessary by the Court.

**COUNT SIX**  
**Retaliation for Union Activity, Overpayment of Pension and Nonpayment of Dues**  
**First Amendment Violations, 42 U.S.C. §1983**  
**Plaintiff v. Defendants**

89. Plaintiff incorporates the foregoing paragraphs as if set forth at length herein.

90. As an executive level member of the local Fraternal Order Police ("FOP") union, Plaintiff was required to enforce certain activity including the payment of dues, and the correct allocation, payment, and/or contribution to pensions.

91. Plaintiff informed Defendant Kimes that he was paying too much into his pension and then took action to ensure that Defendant Kimes paid the same amount/percentage into his pension as all other employees as required.

92. Plaintiff also required Defendant Kimes to pay dues as a member of the FOP and not use FOP money to pay his dues as if her were an executive member of the Union, which he was not.

93. As a direct and proximate result of Plaintiff's forgoing Union and protected activity, he was retaliated against including he was wrongly and unnecessarily disciplined, had job duties removed, was replaced, had equipment taken, and similar retaliatory conduct.

94. At all times, Defendant Kimes was acting under color of state law in his capacity as Lieutenant and/or Officer in Charge for Defendant West Brandywine Township.

95. As a direct and proximate result of Defendants Conduct, Plaintiff has suffered economic and non-economic damages including emotional stress, embarrassment, humiliation, loss of reputation, and similar damages.

96. Plaintiff seeks reasonable attorney's fees and costs.

97. As Defendants conduct was malicious and/or wanton and prompted by ill will and spite towards the Plaintiff, Plaintiff seeks punitive damages.

WHEREFORE, Plaintiff, Philip Mollichella, and Plaintiff, collective class, demand(s) all relief from Defendant, West Brandywine Township Municipal Authority, and Defendant, Jeff Kimes, recoverable in law and as deemed reasonable and necessary by the Court.

**COUNT SEVEN**  
**Retaliation for Union Activity, Vote to Remove**  
**First Amendment Violations, 42 U.S.C. §1983**  
**Plaintiff v. Defendants**

98. Plaintiff incorporates the foregoing paragraphs as if set forth at length herein.

99. As an executive member of the local FOP, Plaintiff was required to make motions on votes including the vote to dismiss Defendant Kimes as an executive member of the local FOP.

100. Plaintiff made the motion to vote for whether Defendant Kimes remained a member of the Union's executive committee.

101. Though Plaintiff did not vote, Defendant Kimes was voted out with a unanimous vote.

102. As a direct and proximate result of Plaintiff's forgoing Union and protected activity, he was retaliated against including he was wrongly and unnecessarily disciplined, had job duties removed, was replaced, had equipment taken, and similar retaliatory conduct.

103. At all times, Defendant Kimes was acting under color of state law in his capacity as Lieutenant and/or Officer in Charge for Defendant West Brandywine Township.

104. As a direct and proximate result of Defendants Conduct, Plaintiff has suffered economic and non-economic damages including emotional stress, embarrassment, humiliation, loss of reputation, and similar damages.

105. Plaintiff seeks reasonable attorney's fees and costs.

106. As Defendants conduct was malicious and/or wanton and prompted by ill will and spite towards the Plaintiff, Plaintiff seeks punitive damages.

WHEREFORE, Plaintiff, Philip Mollichella, demands all relief from Defendant, West Brandywine Township Municipal Authority, and Defendant, Jeff Kimes, recoverable in law and as deemed reasonable and necessary by the Court

**COUNT EIGHT**  
**Breach of Contract – Time-and-a-Half over 8 Hour Shift/Workday**  
**Plaintiff v. Defendants**

107. Plaintiff incorporates the foregoing paragraphs as if set forth at length herein.

108. Plaintiff by and through the CBA has entered a contract with Defendant(s).

109. Under the CBA, Defendant(s) are to pay Plaintiff time-and-a-half for any hours worked in excess of eight (8) hours in a day/shift.

110. Defendant(s) scheduled Plaintiff for twelve (12) hours shifts, for which he was paid straight time for the twelve (12) hours in violation of the CBA.

111. Defendant(s) conduct is a material breach of the CBA.

112. As a direct and proximate result of Defendant(s) breach of contract, Plaintiff has been deprived wages, earnings, and money.

113. Plaintiff seeks all damages recoverable under law including unpaid wages plus interest, reasonable attorney's fees and costs.

WHEREFORE, Plaintiff, Philip Mollichella, demands all relief from Defendant, West Brandywine Township Municipal Authority, recoverable in law and as deemed reasonable and necessary by the Court

DEREK SMITH LAW GROUP, PLLC



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CHRISTOPHER J. DELGAIZO, ESQUIRE  
Attorney for Plaintiff, Philip Mollichella  
PA Attorney Number 200594

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Date: November 8, 2018



## CIVIL COVER SHEET

18-cv-4868

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

PHILIP MOLICHIELLA

## DEFENDANTS

WEST BRANDYWINE TOWNSHIP MUNICIPAL AUTHORITY and JEFF KIMES

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

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

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

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Christopher J. DeGaetano, Esquire - Derek Smith Law Group, PLLC  
1835 Market Street, Suite 2950, Philadelphia, PA 19103  
T: 215-391-4790 / Fax: 215-501-5911

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

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 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)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

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

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Remanded 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.A. 203 et. seq.

Brief description of cause

FLSA, FLSA Retaliation, PA Whistleblower, and 1983 Union Activity/First Amendment 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 CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

NOV - 9 2018

DATE  
11/08/2018

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**DESIGNATION FORM**

*(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)*

Address of Plaintiff: 1604 Margo Lane, West Chester, PA 19380  
 Address of Defendant: 198 Lafayette Road, West Brandywine, PA 19320  
 Place of Accident, Incident or Transaction: 198 Lafayette Road, West Brandywine, PA 19320

**RELATED CASE, IF ANY:**

Case Number \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated \_\_\_\_\_

Civil cases are deemed related when **Yes** is answered to any of the following questions

- |   |   |                              |  |
|---|---|------------------------------|--|
| 1 | Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2 | Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?            | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3 | Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4 | Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE 11/08/2018

*Attorney-at-Law / Pro Se Plaintiff*

200594

*Attorney I D # (if applicable)*

**CIVIL: (Place a ✓ in one category only)****A. Federal Question Cases:**

- ☐ 1 Indemnity Contract, Marine Contract, and All Other Contracts  
☐ 2 FELA  
☐ 3 Jones Act-Personal Injury  
☐ 4 Antitrust  
☐ 5 Patent  
☐ 6 Labor-Management Relations  
☐ 7 Civil Rights  
☐ 8 Habeas Corpus  
☐ 9 Securities Act(s) Cases  
☐ 10 Social Security Review Cases  
☒ 11 All other Federal Question Cases  
 (Please specify) Fair Labor Standards Act

**B. Diversity Jurisdiction Cases:**

- ☐ 1 Insurance Contract and Other Contracts  
☐ 2 Airplane Personal Injury  
☐ 3 Assault, Defamation  
☐ 4 Marine Personal Injury  
☐ 5 Motor Vehicle Personal Injury  
☐ 6 Other Personal Injury (Please specify) \_\_\_\_\_  
☐ 7 Products Liability  
☐ 8 Products Liability - Asbestos  
☐ 9 All other Diversity Cases  
 (Please specify) \_\_\_\_\_

**ARBITRATION CERTIFICATION**

*(The effect of this certification is to remove the case from eligibility for arbitration)*

I, Christopher J. DelGaizo, Esquire, counsel of record or pro se plaintiff, do hereby certify

- ☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:  
☐ Relief other than monetary damages is sought.

DATE 11/08/2018

*Attorney-at-Law / Pro Se Plaintiff*

200594

*Attorney I D # (if applicable)*

NOTE A trial de novo will be a trial by jury only if there has been compliance with F R C P 38

PBT  
PBTIN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIACASE MANAGEMENT TRACK DESIGNATION FORM

PHILIP MOLLICHELLA

CIVIL ACTION

v.  
WEST BRANDYWINE TOWNSHIP  
MUNICIPAL AUTHORITY & JEFF KIMES

NO.

18CV4868

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

November 8, 2018  
DateChristopher J. DelGaizo, Esq.  
Attorney-at-lawPlaintiff  
Attorney for

215-391-4790

215-501-5911

Chris@dereksmithlaw.com

Telephone

FAX Number

E-Mail Address

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former West Brandywine Township Narcotics Officer Sues Over Alleged Off-the-Clock Work](#)

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