

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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JASON COLLINS  
*Individually and on behalf of all others  
similarly situated*  
25800 Bowman Acres Lane  
Damascus, MD 20872-1206

Plaintiff,

Case No:

v.

DISTRICT OF COLUMBIA  
(A Municipal Corporation)  
Fire And Emergency Medical Services  
Department  
2000 14<sup>th</sup> Street, N.W.  
5<sup>th</sup> Floor  
Washington, DC 20009

**COLLECTIVE ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Serve: Office of Mayor Muriel Bowser  
1350 Pennsylvania Ave, N.W.  
Washington, DC 20004

Serve: Office of Attorney General Karl  
Racine  
400 6<sup>th</sup> St. NW  
Washington, DC 20001

Defendant.

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**COLLECTIVE ACTION COMPLAINT**

By and through his undersigned counsel, Plaintiff Jason Collins, individually and on behalf of all others similarly situated, hereby brings this Collective Action against the District of Columbia Fire And Emergency Medical Services Department to recover unpaid overtime compensation, liquidated damages, attorney’s fees, costs and other relief as appropriate under the

Fair Labor Standards Act (“FLSA”) 29 U.S.C. §§ 201 *et seq.* Plaintiff’s allegations herein are based upon knowledge as to matters relating to himself and upon information and belief as to all other matters:

**JURISDICTION AND VENUE**

1. The subject matter jurisdiction of the Court is invoked pursuant 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.
2. Venue lies in in this District pursuant to 28 U.S.C. § 1391 as Defendant resides in the District of Columbia and the events or omissions giving rise to this claim occurred in this District.

**PARTIES**

3. Plaintiff Jason Collins is a firefighter working for the District of Columbia Fire and Emergency Medical Services Department (“FEMS”).
4. Defendant District of Columbia Fire and Emergency Medical Services Department (“FEMS”) is an administrative division of the District of Columbia. The District of Columbia is an employer and public agency as defined under FLSA. 29 U.S.C § 203(d) and 29 U.S.C. § 203(x). FEMS principal office is located at 2000 14<sup>th</sup> Street, N.W., 5<sup>th</sup> Floor, Washington, DC 20009. The central office for the District of Columbia is located at 1350 Pennsylvania Ave, N.W., Washington, DC 20004.

**STATEMENT OF FACTS**

5. On March 11, 2020, Muriel Bowser, Mayor of the District of Columbia declared a Public Emergency (Mayor’s Order 2020-045) and Public Health Emergency (Mayor’s Order 2020-046) in the District as a result of the spread of Covid-19 and the ongoing global pandemic.
6. The Public Emergency and the Public Health Emergency were extended

numerous times throughout the pandemic until the Public Health Emergency was terminated by order on July 25, 2021 due to the availability of vaccines and improving health metrics. Mayor's Order 2021-096. The Public Emergency is set to expire January 7, 2022. *See* Mayor's Order 2021-119.

7. Firefighters are first responders who must physically report to work. The nature of the job includes medical calls and close proximity to others, which has put them at heightened risk of exposure to Covid-19 on a daily basis during the pandemic. In Washington D.C., since the start of the pandemic, there have been 62,240 positive Covid-19 cases and 1,190 known deaths.

8. On April 14, 2020, Mayor Bower authorized a \$14 per diem premium payment for District employees who were physically required to report to work, up to \$140 per pay period. The email to employees announced the premium pay, effective immediately, was retroactive to the government's March 16 shift to modified operations and would continue throughout the emergency.

9. A Special Order signed by Gregory Dean, Fire and EMS Chief, effective April 21, 2020, provided supplemental details about the hazard pay for FEMS employees. Special Order, Per Diem Supplemental Direct Deposit, 2020-102. The Fire Chief clarified that the hazard pay was "based on hours worked for employees on shift work." Employees who reported for all their regularly scheduled tours of duty during a pay period were eligible for the full \$140 in premium pay.

10. During the time period from March 16, 2020 to July 25, 2021, Plaintiff and those similarly situated have physically reported to work and were eligible for and did receive the premium pay authorized by the Mayor.

11. Consistent with Section 7(k) of the Fair Labor Standards Act, and as set forth in

the collective bargaining unit between the District of Columbia and the International Association of Firefighters Local 36, AFL-CIO, MWC, Plaintiff Collins and those similarly situated are entitled to overtime pay equal to one and one-half times their regular rate of pay. Overtime, for employees whose duties include fire suppression, is defined as all hours worked in excess of 42 averaged over a four-week period.

12. During the time period beginning March 16, 2020 and extending through the end of the Public Health Emergency on July 25, 2021, Plaintiff and those similarly situated have regularly worked in excess of 42 hours averaged over a four-week period and have been paid overtime for those hours but a rate that does not include hazard premiums.

13. For example, an exemplar pay stub for Plaintiff for pay period 7/19/2020-8/01/2020, shows a regular rate of \$39.157967 and an overtime rate of \$58.736951, which is one and one-half times the stated regular rate without accounting for the hazard premium.

14. The Fair Labor Standards Act and its implementing regulations require that the regular rate of pay include all forms of remuneration including “such extra premiums as night shift differentials... and premiums paid for hazardous, arduous, or dirty work.” 29 C.F.R. §778.207(b).

15. As a result of Defendant’s violations of the Fair Labor Standards Act, Defendant is liable to Plaintiff and those similarly situated for unpaid wages, liquidated damages, reasonable attorney’s fees and expenses, interest, court costs, and any other relief deemed appropriate by the Court.

**COLLECTIVE ACTION ALLEGATIONS UNDER THE  
FAIR LABOR STANDARDS ACT**

16. Pursuant to 29 U.S.C § 216(b), Plaintiff brings this action on behalf of all District employees working through the Fire and Emergency Medical Services Department who (a) were eligible for and received the \$14 per diem hazard pay in their pay checks for work performed from March 16, 2020-July 25, 2021 and (b) whose overtime rates during this period did not account for their hazard pay as required by FLSA and its implementing regulations.

17. Plaintiff and Collective Action Members are “similarly situated” as that term is used 29 U.S.C § 216(b) because, among other things, all such individuals were eligible for and did receive hazard pay but such hazard pay was not considered a part of their regular rate of pay for determining overtime as statutorily required.

18. Resolution of this action requires inquiry into common facts.

19. These similarly situated individuals are known to the Defendant, are readily identifiable, and can be located through Defendant’s payroll records, which Defendant is required to maintain pursuant to the FLSA. 29 U.S.C. § 211(c); 29 C.F.R. § 516 *et seq.*

20. Conditional certification of this case as a collective action pursuant to 29 U.S.C § 216(b) is proper and necessary so that these employees may be readily notified of this action through direct U.S. mail and/or other means including email and allowed to opt in for the purpose of collectively adjudicating their claims for overtime compensation, liquidated damages and/or interest, and attorneys’ fees and costs under the Fair Labor Standards Act.

21. There are many similarly situated current and former District employees working under FEMS who have not been paid their statutorily-required overtime rates and who would

benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it.

**COUNT 1**

**VIOLATION OF THE FEDERAL LABOR STANDARDS ACT—OVERTIME**

22. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

23. The District of Columbia is an employer within the meaning of 29 U.S.C § 203(d) and 29 U.S.C. § 203(x).

24. Plaintiff is an employee within the meaning of 29 U.S.C. § 203(e).

25. Section 207(a) and (k) of the FLSA, as well as its implementing regulations, require that an employer include all forms of remuneration when calculating the rate at which overtime is paid, including “premiums paid for hazardous, arduous, or dirty work.” 29 C.F.R. § 778.207(b).

26. The District of Columbia failed to include the hazard premium into the regular rate of pay for Plaintiff and all others similarly situated when calculating overtime rates. The failure to include this remuneration in overtime computations violates Section 7(a) and 7(k) of the FLSA, because Defendant’s employees are working overtime without being paid the statutorily required rates. 29 U.S.C § 207(a) and 29 U.S.C. § 207(k).

27. Defendant’s violations of the FLSA were willful, intentional, and in bad faith.

28. Plaintiff and all others similarly situated are entitled to backpay as well as liquidated damages in an amount equal to their back pay. As a result of Defendant’s violations of FLSA, Plaintiff and all others similarly situated are owed overtime wages at a rate to be calculated by taking the difference between the overtime they should have received during the relevant time period and the overtime they did receive during the time period calculated using the incorrect regular rate. The exact amount is to be determined and can be readily determined

using payroll and other employment records Defendant is statutorily required to maintain under FLSA 29 U.S.C. § 211(c).

29. Plaintiff and all others similarly situated are entitled to back pay and liquidated damages in an amount equal to their back pay, as well as reasonable attorney's fees, costs and other relief as appropriate under the statute. 29 U.S.C. § 216(b).

**Prayer for Relief**

**WHEREFORE**, Plaintiff, on behalf of himself and all others similarly situated, prays for judgment as follows:

- a. Designation of this action as a collective action pursuant to the FLSA, 29 U.S.C. § 216(b), and an order directing Defendant to provide to Plaintiff a list of all persons employed by them who (a) were eligible for and did receive the \$14 per diem from March 16, 2020-July 25, 2021 on at least one pay check and (b) who received any overtime compensation from March 16, 2020-July 25, 2021. This list shall include the last known address, email, and telephone number of each such person, so that Plaintiff can give such persons notice of this action and an opportunity to make an informed decision about whether to participate;
- b. A complete accounting of all the compensation Plaintiff and all others similarly situated are owed;
- c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;
- d. An award of recovered backpay and an equal amount in liquidated damages;
- e. An award of damages representing the employer's share of FICA, FUTA, state unemployment insurance, and any other required employment taxes;

- f. An award of prejudgment and post-judgment interest;
- g. An award of costs and expenses of this action together with reasonable attorneys' and expert fees, and an award of a service payment to the Plaintiff; and
- h. Such other and further relief as this Court deems just and proper.

Dated: November 8, 2021

Respectfully submitted,

**MIGLIACCIO & RATHOD LLP**

*/s/ Jason S. Rathod*

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<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  530 Habeas Corpus – General 510 Motion/Vacate Sentence 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  895 Freedom of Information Act 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 740 Labor Railway Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 440 Other Civil Rights 445 Americans w/Disabilities – Employment 446 Americans w/Disabilities – Other 448 Education	<input type="radio"/> <b>M. Contract</b>  110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 153 Recovery of Overpayment of Veteran’s Benefits 160 Stockholder’s Suits 190 Other Contracts 195 Contract Product Liability 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi-district Litigation  
  7 Appeal to District Judge from Mag. Judge  
  8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input type="checkbox"/>
<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input type="checkbox"/> NO <input type="checkbox"/>	If yes, please complete related case form

DATE: _____	SIGNATURE OF ATTORNEY OF RECORD _____
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET 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 services 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

AO 440 (Rev. 06/12; DC 3/15) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_ District of \_\_\_\_\_

_____	)	
	)	
	)	
	)	
<i>Plaintiff(s)</i>	)	
v.	)	Civil Action No.
	)	
	)	
	)	
_____	)	
<i>Defendant(s)</i>	)	

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

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:

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.

ANGELA D. CAESAR, 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 \$ \_\_\_\_\_.

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 BECOME A PARTY PLAINTIFF**

I hereby consent to join this lawsuit seeking unpaid overtime wages based on the District of Columbia, Fire and Emergency Medical Services Department's alleged violations of the Fair Labor Standards Act, 29 U.S.C. Section 201, *et seq.*


Jason Scott Collins

Full Legal Name (please PRINT clearly)


  
Signature

11/04/2021  
Date


**\*\*\*Note: The Below Information Will Not Be Filed With the Court\*\*\***


  
Street Address (with apartment number, if applicable)

  
City, State, Zip Code

  
Home Phone Number

  
Cell Phone Number

  
Email Address (we will use this as our primary method to contact you)

  
Emergency Contact Name  
(in case we lose contact with you)

  
Emergency Contact Phone Number