

FILED  
04-22-2026  
Anna Maria Hodges  
Clerk of Circuit Court  
2026CV003781  
Honorable Paul R Van  
Grunsven-09  
Branch 09

STATE OF WISCONSIN  
MILWAUKEE COUNTY

CIRCUIT COURT  
CIVIL COURT DIVISION

KYLE NOVAK,  
MALLORY ERKE, and  
MARK SURA,  
c/o MacGillis Law Group, LLC  
12700 W. Bluemound Road, Suite 200  
Elm Grove, WI 53122

Plaintiffs,

v.

Case Number:  
Case Code: 30703, 30701  
Case Type: Unclassified, Declaratory  
Judgment

CITY OF WEST ALLIS  
7525 W Greenfield Ave,  
West Allis, WI 53214,

Defendant.

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SUMMONS

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**THE STATE OF WISCONSIN:**

To the Defendant named above:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of legal action.

Within 45 days of receiving this Summons, you must respond with a written statement, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of Wisconsin Statutes.

The Answer must be sent or delivered to the Court, whose address is:

Clerk of Courts  
Milwaukee County Courthouse  
901 North 9<sup>th</sup> Street, Room 104  
Milwaukee, WI 53233

RECEIVED

MAY 01 2026

CITY OF WEST ALLIS

and to MacGillis Law Group, LLC, attorneys for the Plaintiffs, at:

Attorney Christopher J. MacGillis  
Attorney Austin M. Felber  
MacGillis Law Group, LLC  
12700 W. Bluemound Road, Suite 200  
Elm Grove, WI 53122

You may have an attorney help or represent you.

If you do not provide a proper Answer within 45 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated at Elm Grove, Wisconsin, this 22<sup>nd</sup> day of April, 2026.

**MacGILLIS LAW GROUP, LLC**  
Attorneys for Plaintiffs, Kyle Novak, Mallory Erke,  
and Mark Sura



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Christopher J. MacGillis  
State Bar No. 1068944  
Austin M. Felber  
State Bar No. 1118680

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COMPLAINT

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NOW COMES Plaintiffs, Kyle Novak, Mallory Erke, and Mark Sura (collectively “Plaintiffs” or “Plaintiff Battalion Chiefs”) by their attorneys, MacGillis Law Group, LLC, by Christopher J. MacGillis and Austin M. Felber, show and allege to the Court as follows:

**PRELIMINARY STATEMENT**

1. This action is brought pursuant to the Fair Labor Standards Act of 1938, as amended, (“FLSA”) and Wisconsin’s Wage Payment and Collection Laws, Wis. Stat. § 109.01 *et seq.*, Wis. Stat. § 104.01 *et seq.*, Wis. Stat. § 103.001 *et seq.*, Wis. Admin. Code § DWD 274.01 *et seq.*, and Wis. Admin. Code § DWD 272.001 *et seq.* (“WWPCL”), by Plaintiffs for the purposes of obtaining relief under the FLSA and WWPCL for unpaid overtime compensation, unpaid agreed upon wages, liquidated damages, costs, attorneys’ fees, injunctive relief, and/or any such other relief the Court may deem appropriate.

2. Defendant, City of West Allis (the “City”), is a municipal agency that is engaged in governmental activities.

3. The City organized and established the City of West Allis Fire Department (“Fire Department” or “Department”).

4. The City controls and manages the Fire Department, and by extension, the employees of the Department.

5. Defendant operated an unlawful compensation system that deprived current and former Battalion Chiefs of their wages earned for all compensable work time, including the requisite overtime pay premium for each hour worked over 204 hours in a 27-day work period. As a result, every hour worked by Plaintiff and the proposed class exceeding 204 hours per 27-day work period was not compensated as required by the FLSA.

6. Defendant’s deliberate and intentional failure to properly compensate its employees for these hours worked violates federal law as set forth in the FLSA and state law as set forth in the WWPCL.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over Defendant in that Defendant is a governmental agency conducting operations throughout the City of West Allis, which is a part of Milwaukee County.

8. Defendant conducts substantial business in Milwaukee County.

### **PARTIES**

9. Defendant is a governmental agency with a principal place of business of 7525 W Greenfield Ave, West Allis, WI 53214.

10. For purposes of the FLSA, Defendant is an “employer” of an “employee,” Plaintiff, as those terms are used in 29 U.S.C. §§ 203(d) and (e).

11. For purposes of the FLSA, Defendant is an “employer” of Plaintiff, and Plaintiff is “employed” by Defendant, as those terms or variations thereof are used in Wis. Stat. §§ 109.01 *et seq.*, 104.01 *et seq.*, and Wis. Admin. Code § DWD 272.01.

12. Plaintiffs Kyle Novak, Mallory Erke, and Mark Sura are all adult residents of the State of Wisconsin.

13. Plaintiffs have worked as salary employees with the City of West Allis Fire Department within the last three (3) years from the date of filing of this Complaint.

14. Plaintiffs performed similar job duties as other non-exempt City of West Allis Fire Department employees employed by Defendant and who were subject to Defendant’s same unlawful policies as enumerated herein.

15. Plaintiffs performed compensable work within and for the City of West Allis.

16. Defendant supervises Plaintiffs’ day-to-day activities.

17. Defendant has the ability and authority to hire, terminate, promote, demote, and suspend Plaintiffs.

18. Defendant has the ability and authority to review Plaintiffs’ work performance.

19. Defendant establishes the work rules, policies, and procedures by which Plaintiffs abide in the workplace.

20. Defendant controls the terms and conditions of Plaintiffs’ employment.

21. Defendant establishes Plaintiffs’ work schedules and provides Plaintiffs with work assignments and hours of work.

22. Plaintiffs’ hours of work are tracked and recorded by Defendant.

### GENERAL ALLEGATIONS

23. Plaintiffs work or have worked for the Defendant in the position of Battalion Chief.

24. Within the last three years, and continuing to date, while working at the rank of Battalion Chief, Plaintiffs' primary job duties have been and remains, to respond to and protect and serve the public by engaging in fire suppression, emergency response, and related non-exempt activities.

25. Plaintiff Battalion Chiefs are required to, and have little to no discretion regarding whether to, respond to the vast majority of fire and/or emergency calls. When these calls come in, they take precedence over all other duties or obligations the Plaintiff Battalion Chiefs may have at the time. The Battalion Chiefs cannot make themselves unavailable for dispatch. If a call comes in, Battalion Chiefs must respond.

26. Plaintiff Battalion Chiefs are also required to complete all of the same training as other frontline fire fighters and are required to maintain Emergency Medical Services / Paramedic certifications. Their vehicles are all equipped with firefighting and emergency medical equipment. Plaintiff Battalion Chiefs also have a duty to (and have in practice) administered first aid to injured individuals on a scene.

27. Plaintiff Battalion Chiefs do not have the authority to hire or fire employees.

28. Plaintiff Battalion Chiefs do not control budgeting, promotions, or rates of pay for other employees of the Defendant.

29. With respect to Plaintiff Battalion Chiefs in the City of West Allis Fire Department, Defendant has adopted a 27-day work period under 29 U.S.C. § 207(k).

30. During the relevant time period, Defendant has adopted a 27-day work period under 29 U.S.C. § 207(k). During the 27-day work period, Plaintiff Battalion Chiefs are regularly

scheduled to work in excess of the applicable FLSA threshold under Section 7(k) – 212 hours in a 28-day period or 204 hours in a 27-day period. Additionally, Plaintiff Battalion Chiefs regularly work additional unscheduled time, outside their regular schedule, resulting in Plaintiff Battalion Chiefs working additional hours in excess of the applicable FLSA threshold under Section 7(k).

31. The exact hours worked by Plaintiff Battalion Chiefs and the exact workweeks in which Plaintiffs worked in excess of the FLSA limit can easily be determined by reviewing Plaintiff Battalion Chiefs timekeeping and payroll records, which are in the possession, custody, and control of Defendant.

32. Defendant misclassifies Plaintiff Battalion Chiefs as “exempt” employees under 29 C.F.R. 541.3 and unlawfully fails to pay Plaintiff Battalion Chiefs overtime compensation at one and one-half time their regular rate of pay for all hours worked in excess of 204 hours in a 27-day period. Instead, Defendant compensates Plaintiff Battalion Chiefs only at the rate of straight time, regardless of whether Plaintiff Battalion Chiefs work in excess of 204 hours in a 27-day period.

33. Plaintiff Battalion Chiefs are paid on a salaried basis.

34. Defendant, at all times material herein, has intentionally failed and continues to fail to pay Plaintiff Battalion Chiefs overtime compensation at the rate of one and one-half times their regular rate of pay when it suffers or permits Plaintiff Battalion Chiefs to work in excess of 204 hours in a 27-day period.

35. Defendant’s actions in refusing to provide Battalion Chiefs the rights and protections provided under the FLSA are willful in that the Defendant knew or should have known that uncompensated overtime work was being performed by Plaintiffs due to Defendant’s established policies and procedures, work schedule, and observation of Plaintiff Battalion Chiefs.

36. Plaintiff Battalion Chiefs are entitled to and do receive additional compensation. During work periods in which Plaintiff Battalion Chiefs work over 204 hours, Defendant fails to

include such additional compensation in the calculation of the regular rate of pay on which Plaintiff Battalion Chiefs overtime rate is based.

**FIRST CLAIM FOR RELIEF**  
**Violation of Section 207(A) of the Fair Labor Standards Act of 1938, as Amended**

37. Plaintiffs reassert and incorporate by reference all paragraphs set forth above as if restated herein.

38. During the times that Plaintiffs have worked in excess of 204 hours in a 27-day period, Defendant has failed to provide them with the rights and protections provided under the FLSA, including overtime pay at the rate of one and one-half times their regular rates of pay for all hours worked in excess of the hourly standards set forth under 29 U.S.C. § 207(a).

39. By failing to pay the Plaintiffs the overtime pay required under the law, Defendant has violated and is continuing to violate the provisions of the FLSA in a manner that is unreasonable, willful, and in bad faith. As a result, at all times material herein, Plaintiffs have been unlawfully deprived of overtime compensation and other relief for the maximum, three-year period allowed under the law.

40. As a result of Defendant's willful, unreasonable, and bad faith violations of the FLSA, there have become due and owing to Plaintiffs an amount that has not yet been precisely determined. The employment and work records for Plaintiffs (including time and attendance records) are in the exclusive possession, custody and control of Defendant, and Plaintiffs are unable to state at this time the exact amount owed to them. Defendant is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to Plaintiffs from which the amount of Defendant's liability can be ascertained.

41. Section 207(a) of the FLSA, 29 U.S.C. § 207(a), as well as regulations of the U.S. Department of Labor, 29 CFR Part 778, *et seq.*, require that all forms of remuneration be included in the rate at which FLSA overtime is paid, with some limited exceptions. Defendant has failed to include certain payments in Plaintiffs' regular rates of pay for purposes of computing their overtime pay entitlements. Defendant's failure to include these forms of additional compensation in Plaintiffs' regular rates of pay violates section 7(a) of the FLSA. 29 U.S.C. § 207(a); 29 CFR Part 778, *et seq.*

42. Pursuant to 29 U.S.C. § 216(b), Plaintiffs are entitled to recover liquidated damages in an amount equal to their backpay damages for Defendant's failure to pay overtime compensation.

43. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

**SECOND CLAIM FOR RELIEF**  
**Violation of Section 207(K) of the Fair Labor Standards Act of 1938, as Amended**

44. Plaintiffs reassert and incorporate by reference all paragraphs set forth above as if restated herein.

45. Under the U.S. Department of Labor's regulations applicable to fire fighters covered under 29 U.S.C. § 207(k), (29 C.F.R. § 553.230), an employer must pay overtime compensation to such employees at a rate not less than one and one-half times their regular rate of pay for hours of work in excess of 204 hours in a 27-day work period.

46. During the times that Plaintiffs have worked in excess above FLSA limit, Defendant has failed to provide them with the rights and protections provided under the FLSA, including overtime pay at the rate of one and one-half times their regular rates of pay for all hours worked in excess of the hourly standards set forth under 29 U.S.C. § 207(k) and 29 C.F.R. § 553.230.

47. By failing to pay the Plaintiffs the overtime pay required under the law, Defendant has violated and is continuing to violate the provisions of the FLSA in a manner that is unreasonable, willful, and in bad faith. As a result, at all times material herein, Plaintiffs have been unlawfully deprived of overtime compensation and other relief for the maximum, three-year period allowed under the law.

48. As a result of Defendant's willful, unreasonable, and bad faith violations of the FLSA, there have become due and owing to Plaintiffs an amount that has not yet been precisely determined. The employment and work records for Plaintiffs (including time and attendance records) are in the exclusive possession, custody, and control of Defendant and Plaintiffs are unable to state at this time the exact amount owing to them. Defendant is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and other various statutory and regulatory provision, to maintain and preserve payroll and other employment records with respect to Plaintiffs from which the amount of Defendant's liability can be ascertained.

49. Pursuant to 29 U.S.C. § 216(b), Plaintiffs are entitled to recover liquidated damages in an amount equal to their backpay damages for Defendant's failure to pay overtime compensation.

50. Plaintiffs are entitled to recover attorney's fees and costs under 29 U.S.C. § 216(b).

**THIRD CLAIM FOR RELIEF**  
**Violation of WWPCCL – Unpaid Overtime**

51. Plaintiffs reassert and incorporate all previous paragraphs as if they were set forth herein.

52. At all relevant times, Plaintiffs were employees of Defendant within the meaning of Wis. Stat. § 109.01(1r).

53. At all relevant times, Plaintiffs were employees of Defendant within the meaning

of Wis. Stat. § 103.001(5).

54. At all relevant times, Plaintiffs were employees of Defendant within the meaning of Wis. Stat. § 104.01(2)(a).

55. At all relevant times, Defendant was an employer of Plaintiffs within the meaning of Wis. Stat. § 109.01(2).

56. At all relevant times, Defendant was an employer of Plaintiffs within the meaning of Wis. Stat. § 103.001(6).

57. At all relevant times, Defendant was an employer of Plaintiffs within the meaning of Wis. Stat. § 104.01(3)(b).

58. At all relevant times, Defendant was an employer of Plaintiffs within the meaning of Wis. Admin. Code § DWD 274.015.

59. At all relevant times, Defendant has employed, and continues to employ, Plaintiffs within the meaning of Wis. Stat. §§ 109.01 *et seq.*, 103.01 *et seq.*, 104.01 *et seq.*, and Wis. Admin. Code § DWD 274.01 *et seq.*

60. Throughout the relevant time period, Plaintiffs regularly performed activities that were an integral and indispensable part of their principal activities without receiving compensation for these activities.

61. At all relevant times, Defendant had common policies, programs, practices, procedures, protocols, routines, and rules of willfully failing to properly pay Plaintiffs overtime compensation.

62. The foregoing conduct, as alleged above, constitutes continuing, willful violations of the Wisconsin Wage Payment and Collection Laws.

63. Defendant willfully failed to pay Plaintiffs overtime premium compensation for all

hours worked in excess of 204 hours in a 27-day period, in violation of Wisconsin Wage Payment Laws.

64. As set forth above, Plaintiffs have sustained losses in their compensation as a proximate result of Defendant's violations. Accordingly, Plaintiffs seek damages in the amount of their respective unpaid compensation, injunctive relief requiring Defendant to cease and desist from its violations of the Wisconsin laws described herein and to comply with them, and such other legal and equitable relief as the Court deems just and proper. Under Wis. Stat. § 109.11, Plaintiffs may be entitled to liquidated damages equal and up to fifty percent (50%) of the unpaid wages.

65. Plaintiffs seek recovery of attorneys' fees and the costs of this action to be paid by Defendant pursuant to the WWPCL.

**FOURTH CLAIM FOR RELIEF**  
**WWPCL - Failure To Pay Agreed Upon Wage**

66. Plaintiffs reassert and incorporate all previous paragraphs as if they were set forth herein.

67. Plaintiffs have been entitled to payment from Defendant at the agreed upon wage, as defined in Wis. Stat. § 109.01(3), for each hour worked by Plaintiffs pursuant to Wis. Stat. § 109.03.

68. Defendant violated the WWPCL by failing to properly compensate Plaintiffs for each hour worked by Plaintiffs through the failure to pay the overtime premium as described above.

69. As set forth above, Plaintiffs have sustained losses in their compensation as a proximate result of Defendant's violations. Accordingly, Plaintiffs seek damages in the amount of Plaintiffs' respective unpaid compensation, injunctive relief requiring Defendant to cease and desist from their violations of the Wisconsin laws described herein and to comply with them, and

such other legal and equitable relief as the Court deems just and proper. Under Wis. Stat. § 109.11, Plaintiffs may be entitled to liquidated damages equal and up to fifty percent (50%) of the unpaid wages.

70. Plaintiffs seek recovery of attorneys' fees and the costs of this action to be paid by Defendant pursuant to Wisconsin Wage Payment Laws.

### **DEMAND FOR RELIEF**

**WHEREFORE**, it is respectfully requested that this Court grant the following relief:

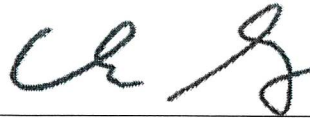
- a) Issue an Order declaring Defendant's actions as described in the Complaint as unlawful and in violation of the FLSA and Wisconsin Law and applicable regulations and as willful as defined in the FLSA and Wisconsin Law;
- b) Issue an Order directing and requiring Defendant to pay Plaintiffs damages in the form of reimbursement for unpaid overtime wages for all time spent performing compensable work for which they were not paid pursuant to the required rate, as provided by the FLSA and WWPCL;
- c) Issue an Order directing and requiring Defendant to pay Plaintiffs damages in the form of reimbursement for unpaid agreed upon wages for all time spent performing compensable overtime work for which they were not paid pursuant to the required rate, as provided by the FLSA and WWPCL;
- d) Issue an Order directing and requiring Defendant to pay Plaintiffs liquidated damages pursuant to the FLSA and WWPCL in an amount equal to, and in addition to the amount of wages and overtime wages owed to them;
- e) Issue an Order directing Defendant to reimburse Plaintiffs for the costs and attorneys' fees expended in the course of litigating this action, pre-judgment and post-judgment interest;
- f) For benefits for the full amount of the Plaintiffs' damages to be determined by a jury; and
- g) Provide Plaintiffs with such other and further relief, as the Court deems just and equitable.

**PLEASE TAKE NOTICE THAT THE PLAINTIFF DEMANDS A TRIAL BY A  
TWELVE (12) PERSON JURY IN THE ABOVE MATTER.**

Dated at Elm Grove, Wisconsin, this 22<sup>nd</sup> day of April, 2026.

**MacGILLIS LAW GROUP, LLC**

Attorneys for Plaintiffs, Kyle Novak, Mallory Erke,  
and Mark Sura



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**STATE OF WISCONSIN****CIRCUIT COURT****MILWAUKEE**

Kyle Novak et al vs. City of West Allis

**Electronic Filing  
Notice**

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Class Code: Unclassified

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Clerk of Circuit Court

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Honorable Paul R Van

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Case number 2026CV003781 was electronically filed with/converted by the Milwaukee County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a fee to register as an electronic party. This fee may be waived if you file a Petition for Waiver of Fees and Costs Affidavit of Indigency (CV-410A) and the court finds you are indigent under §814.29, Wisconsin Statutes.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

**Pro Se opt-in code: 522529**

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 414-278-4140.

Milwaukee County Circuit Court  
Date: April 22, 2026