

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOSH RICE, on behalf of himself and all others similarly situated,)	
)	CASE NO.
)	
Plaintiff,)	JUDGE
)	
vs.)	
)	<u>COLLECTIVE ACTION COMPLAINT</u>
NORTHEAST OHIO REGIONAL SEWER DISTRICT,)	<u>JURY DEMAND ENDORSED HEREON</u>
)	
Defendant.)	

Plaintiff, Josh Rice, on behalf of himself and all others similarly situated (the “Putative Class”), brings this action against Defendant Northeast Ohio Regional Sewer District (the “District” or “Defendant”), seeking all available relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201, *et seq.* Plaintiff’s FLSA claims are asserted as a collective action pursuant to 29 U.S.C. §216(b). The following allegations are based on personal knowledge as to Plaintiff’s own conduct and the conduct and acts of others.

JURISDICTION AND VENUE

1. This Court has federal question jurisdiction over this action pursuant to Section 16(b) of the FLSA, 29 U.S.C. §216(b) and 28 U.S.C. §1331.
2. Venue is proper in this forum pursuant to 28 U.S.C. § 1391.

PARTIES

3. At all times relevant herein, Plaintiff was a citizen of the United States and resident of Cuyahoga County, Ohio.
4. The District is a political subdivision organized pursuant to Chapter 6119 of the Ohio Revised Code and is capable of being sued.

5. At all times relevant herein, Plaintiff was an employee of Defendant within the meaning of 29 U.S.C. § 203(e).

6. At all times relevant herein, Defendant was an employer within the meaning of 29 U.S.C. § 203(s)(1)(C).

7. 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

8. At all times relevant herein, Plaintiff Rice has been employed by the District as a police officer, an hourly non-exempt position.

9. Defendant required Plaintiff and similarly situated workers to complete pre-shift work that related to their jobs without pay.

10. Pursuant to the District's uniform policies and practices, police officers are considered to be working as soon as they punch in, even if they punch in before the start of their scheduled shift. Police officers do not, however, get paid any amount until the start of their scheduled shift.

11. Police officers not in uniform and completely ready for work at the time they punch in, even if before the start of their scheduled shift, are subject to discipline. Police officers are required to be in uniform and ready to work from punch-in until punch-out.

12. Plaintiff and the Putative Class regularly work hours in excess of forty (40) in a workweek.

13. Plaintiff brings this action on behalf of himself and all former and current hourly non-exempt police officers employed by the District who, at any time during the last three years, were required to complete pre-shift work (the “Putative Class”).

14. In failing to include this pre-shift work as time spent working by Plaintiff and the Putative Class, the District failed to properly compensate Plaintiff and the Putative Class members for all hours worked, including hours worked in excess of forty (40) in a workweek, and failed to pay Plaintiff and the Putative Class members for all hours spent working.

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

COLLECTIVE ACTION ALLEGATIONS

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

17. Plaintiff brings this action on behalf of himself and the Putative Class members who have been, are being, or will be adversely affected by Defendant’s unlawful conduct described above.

18. Plaintiff seeks to represent the following class for whom Plaintiff seeks the right to send “opt-in” notices to the Putative Class, of which Plaintiff is himself a member.

All former and current hourly non-exempt employees of the Northeast Ohio Regional Sewer District who worked as a police officer at any time during the last three years.

19. Plaintiff is unable to state at this time the exact size of the potential class, but upon information and belief, avers that it consists of more than 100 persons.

20. 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. In addition to Plaintiff, numerous current and former employees are similarly situated with regard to their wages and claims for unpaid wages and damages. Plaintiff is representative of other employees and are acting on behalf of their interests as well as his own in bringing this action.

21. These similarly situated employees 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.

CLAIMS FOR RELIEF

COUNT I

(Violations of the FLSA)

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

23. Defendant is an employer covered by the minimum wage and overtime requirements set forth in the Fair Labor Standards Act ("FLSA").

24. As employees for Defendant, Plaintiff and the Putative Class members worked hours in excess of the maximum weekly hours permitted under the FLSA but were not paid overtime for those excess hours.

25. Plaintiff and the Putative Class members do not qualify for an exemption from the minimum wage and overtime obligations imposed by the FLSA.

26. Throughout Plaintiff's and the Putative Class members' employment, Defendant has known that Plaintiff and the Putative Class members are not exempt from the minimum wage

and overtime obligations imposed by the FLSA. Defendant has known that they are required to pay Plaintiff and the Putative Class for all hours worked, including hours worked in excess of forty (40) in any workweek. In spite of such knowledge, Defendant has willfully withheld and failed to pay the wages and overtime compensation to which Plaintiff and the Putative Class members are entitled.

27. Because the Defendant's failure to pay such wages was willful pursuant to 29 U.S.C. § 255(a), Plaintiff and the Putative Class are entitled to these wages dating back three years.

28. The identity of all the Putative Class members is unknown at this time, but is known to Defendant, and is set forth in Defendant's records. Plaintiff is entitled to review these records and immediately identify the Putative Class members who have a right to join this collective action.

29. The exact amount of compensation, including overtime compensation that Defendant has failed to pay the Plaintiff and the Putative Class is unknown at this time, as many of the records necessary to make such precise calculations are in the possession of Defendant, or were not kept by Defendant.

30. The FLSA requires employers to make, keep, and preserve records of the wages, hours, and other conditions and practices of employment, and to preserve such records. Plaintiff is entitled to review their records of hours worked to determine the exact amount of overtime and minimum wages owed by Defendant. Absent Defendant keeping these records as required by law, Plaintiff and the Putative Class are entitled to submit their information about the number of hours worked.

31. Defendant's failure to pay Plaintiff and the Putative Class for all hours worked, including hours worked in excess of forty (40) in any workweek, is not based on good faith or reasonable grounds, or a belief that such failure is not in violation of FLSA. Pursuant to 29 U.S.C. § 216(b), Plaintiff and the Putative Class are therefore entitled to liquidated damages in an amount equal to the compensation and/or overtime which they have not been paid or were not paid in the pay period for the workweek in which such overtime was earned.

32. Plaintiff has been required to file this action as the result of Defendant's actions in failing to pay Plaintiff and the Putative Class proper compensation. As such, Plaintiff and the Putative Class are entitled to attorneys' fees and costs incurred pursuant to 29 U.S.C. §216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant as follows:

1. Issue an order permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. 216(b);
2. Awarding Plaintiff and the Putative Class members their unpaid wages including overtime wages as to be determined at trial together with any liquidated damages allowed by law;
3. For a judgment against Defendant for all damages, relief, or any other recovery whatsoever;
4. Awarding Plaintiff and the Putative Class their reasonable costs and attorney fees necessarily incurred herein; and
5. Awarding Plaintiff and the Putative Class such other and further relief as the Court deems just and proper.

Respectfully submitted,

Nilges Draher LLC

/s/ Hans A. Nilges

Hans A. Nilges (0076017)
Shannon M. Draher (0074304)
7266 Portage Street, N.W., Suite D
Massillon, OH 44646
Telephone: (330) 470-4428
Facsimile: (330) 754-1430
Email: sdraher@ohlaborlaw.com
hans@ohlaborlaw.com

Counsel for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all claims so triable.

/s/ Hans A. Nilges

Hans A. Nilges

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

Josh Rice
2788 StoneyRidge Rd., Avon, Ohio 44011

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Nilges Draher LLC
7266 Portage Street NW, Suite D, Massillon, Ohio 44646

DEFENDANTS

Northeast Ohio Regional Sewer District
3900 Euclid Avenue, Cleveland, Ohio 44125

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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

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: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 05/14/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Hans A. Nilges

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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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. When the petition for removal is granted, check this box.
 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. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

JOSH RICE

Plaintiff

v.

NORTHEAST OHIO REGIONAL SEWER DISTRICT

Defendant

)
)
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)
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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Northeast Ohio Regional Sewer District
c/o Jennifer Demmerle
3900 Euclid Avenue
Cleveland, Ohio 44125

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:

Hans A. Nilges
Nilges Draher LLC
7266 Portage Street NW, Suite D
Massillon, Ohio 44646

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:

Print

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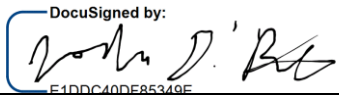
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**CONSENT TO JOIN
PURSUANT TO 29 U.S.C. §216(b)**

1. I, Josh Rice, 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, Northeast Ohio Regional Sewer District, 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: 5/7/2018 7:03:49 AM PDT

SIGNATURE:  E1DDC40DF85349E...

Josh Rice

PRINTED NAME

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Police Officer in Northeast Ohio Sues District Over Allegedly Unpaid Pre-Shift Work](#)
