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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

MICHAEL PETERS, individually and)
on behalf of himself and all others)
similarly situated; JESSICA ABELOE,)
FREDERICK BRIERE, WINONA GIBBS,)
KYLAN JENSEN, LISA WENGER, DAVID)
WHARTON, HECTOR BRAVO, CHERYL)
DUNCAN, ATHENA GARDENIER, JACK GIBBS,)
PATRICK GRAY, BRIANNE HANSON,)
AMBER JENSEN, DAWN LEE, JANET LOOMIS,)
RAYMOND MINES, MEGAN MURPHY)
HOFFMAN, ALEXA OLSON-FRANKS, RHONDA)
PARSONS, REBECCA ROGENES, ALISHA)
ROSELEIP, KIMBERLY RUDNINGEN, AARON)
RUDNINGEN, THURMAN WESTERBY, and)
JANE DOE,)

Plaintiffs,)

vs.)

SHERIDAN MEMORIAL HOSPITAL)
ASSOCIATION, a Domestic Non-Profit)
Corporation; BILLINGS CLINIC, a Domestic)
Non-Profit Corporation, and KODY NELSON,)
Individually,)

Defendants.)

CASE NO.: CV-25-51-GF-JTJ

COMPLAINT
AND DEMAND FOR
JURY TRIAL

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW Plaintiff Michael Peters, and other Plaintiffs similarly situated to him as identified herein and otherwise, by and through undersigned counsel, Adrienne M. Tranel, of the firm AT Legal PC, and for their Complaint allege as follows:

1. This case arises out of Defendant Sheridan Memorial Hospital Association's ("SMHA") and Defendant Billings Clinic's ("Billings Clinic") unlawful employment practices. Defendants unlawfully classified, and continue to misclassify, first responder employees, who work as Emergency Medical Technicians, Paramedics, and Ambulance Personnel, as exempt from the overtime requirements of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.* Specifically, Defendants have failed to pay overtime compensation in violation of the FLSA and in violation of Montana's Labor, Minimum Wage, Overtime & Wage Payment Act ("Montana Wage Act"), M.C.A. §39-3-405 *et seq.*
2. In addition, Defendants failed, and continue to fail, to pay employees properly for hours worked while employed in an on-call duty status, in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, and the Montana Labor, Minimum Wage, Overtime & Wage Payment Act ("Montana Wage Act"), M.C.A. §39-3-405, *et seq.*
3. Some of the Plaintiffs are depicted in the below picture, from left to right, as follows: David Wharton, Fred Briere, Michael Peters, and Lisa Wenger.



JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States. Specifically, this action is brought under 29 U.S.C. §216(b). This court has pendent jurisdiction over the state claims pursuant to 28 U.S.C. § 1367(a).
5. This Court has personal jurisdiction over Defendants because SMHA, Billings Clinic, and Kody Nelson regularly transact business in and have significant and continuous contact with this District.
6. At all times material to this Complaint, Defendants were, and continue to be, engaged in the operation of a hospital, which activities are performed for a business purpose, as defined by the FLSA and the Montana Wage Act.

7. At all times material to this Complaint, during their employment with Defendants, Plaintiffs were and/or are employees of Defendants as defined by the FLSA and the Montana Wage Act.
8. Venue is proper under 28 U.S.C. § 1391(b) as Defendants are domiciled in or around Sheridan County, Montana, which is profiled within the Great Falls Division.

PARTIES

9. The Plaintiffs identified herein consent to becoming party Plaintiffs to this action and their individual consents are attached hereto as Exhibit 1.
10. Plaintiff MICHAEL PETERS is a United States citizen and is currently employed as an Emergency Medical Technician with the Defendants. Mr. Peters maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act; (3) misclassification as exempt from overtime under the FLSA; and (4) misclassification as exempt from overtime under the Montana Wage Act.
11. Plaintiff JESSICA ABELOE is a United States citizen and is currently employed as an Emergency Medical Technician with the Defendants. Ms. Abeloe maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; (2) failure to compensate for hours worked while working on call duty, under the Montana

Labor, Minimum Wage, Overtime & Wage Payment Act; (3) misclassification as exempt from overtime under the FLSA; and (4) misclassification as exempt from overtime under the Montana Wage Act.

12. Plaintiff FREDERICK BRIERE is a United States citizen and is currently employed as an Emergency Medical Technician with the Defendants. Mr. Briere maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act; (3) misclassification as exempt from overtime under the FLSA; and (4) misclassification as exempt from overtime under the Montana Wage Act.

13. Plaintiff WINONA (“NONT”) GIBBS is a United States citizen and is currently employed as a Paramedic with the Defendants. Ms. Gibbs maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act; (3) misclassification as exempt from overtime under the FLSA; and (4) misclassification as exempt from overtime under the Montana Wage Act.

14. Plaintiff KYLAN JENSEN is a United States citizen and was previously employed as an Emergency Medical Technician with the Defendants. Ms. Jensen maintains claims against Defendants for (1) failure to compensate for

hours worked while working on call duty, under the FLSA; (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act; (3) misclassification as exempt from overtime under the FLSA; and (4) misclassification as exempt from overtime under the Montana Wage Act.

15. Plaintiff LISA WENGER is a United States citizen and is currently employed as an Emergency Medical Technician with the Defendants. Ms. Wenger maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act; (3) misclassification as exempt from overtime under the FLSA; and (4) misclassification as exempt from overtime under the Montana Wage Act.

16. Plaintiff DAVID WHARTON is a United States citizen and is currently employed as an Emergency Medical Technician with the Defendants. Mr. Wharton maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act; (3) misclassification as exempt from overtime under the FLSA; and (4) misclassification as exempt from overtime under the Montana Wage Act.

17. Plaintiff HECTOR BRAVO is a United States citizen and is currently employed as Ambulance Driver with the Defendants. Mr. Bravo maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

18. Plaintiff CHERYL DUNCAN is a United States citizen and was previously employed as a Nurse with Defendants. Ms. Duncan maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

19. Plaintiff ATHENA GARDENIER is a United States citizen and is currently employed as an Emergency Medical Technician and Licensed Practical Nurse with Defendants. Ms. Gardenier maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

20. Plaintiff JACK GIBBS is a United States citizen and is currently employed as an Emergency Medical Technician with Defendants. Mr. Gibbs maintains claims against Defendants for (1) failure to compensate for hours worked while

working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

21. Plaintiff PATRICK GRAY is a United States citizen and was previously employed as an Emergency Medical Technician with Defendants. Mr. Gray maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

22. Plaintiff BRIANNE HANSON is a United States citizen and was previously employed as an Emergency Medical Technician with Defendants. Ms. Hanson maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

23. Plaintiff AMBER JENSEN is a United States citizen and is currently employed as a Paramedic with Defendants. Ms. Jensen maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

24. Plaintiff DAWN LEE is a United States citizen and was previously employed as an Emergency Medical Technician with Defendants. Ms. Lee maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

25. Plaintiff JANET LOOMIS is a United States citizen and is currently employed as an Advanced Emergency Medical Technician with Defendants. Ms. Loomis maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

26. Plaintiff RAYMOND MINES is a United States citizen and was previously employed as an Emergency Medical Technician with Defendants. Mr. Mines maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

27. Plaintiff MEGAN MURPHY HOFFMAN is a United States citizen and is currently employed as a Paramedic with Defendants. Ms. Murphy maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours

worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

28. Plaintiff ALEXA OLSON-FRANKS is a United States citizen and is currently employed as an Ambulance Driver with Defendants. Ms. Olson-Franks maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

29. Plaintiff RHONDA PARSONS is a United States citizen and was previously employed as an Emergency Medical Technician with Defendants. Ms. Parsons maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

30. Plaintiff REBECCA ROGENES is a United States citizen and is currently employed as an Emergency Medical Technician with Defendants. Ms. Rogenes maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

31. Plaintiff ALISHA ROSELEIP is a United States citizen and is currently employed as an Advanced Emergency Medical Technician with Defendants.

Ms. Roseleip maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

32. Plaintiff KIMBERLY RUDNINGEN is a United States citizen and was previously employed as an Emergency Medical Technician with Defendants. Ms. Rudningen maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

33. Plaintiff AARON RUDNINGEN is a United States citizen and was previously employed as an Emergency Medical Technician with Defendants. Mr. Rudningen maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

34. Plaintiff THURMAN WESTERBY is a United States citizen and was previously employed as an Ambulance Driver with Defendants. Mr. Westerby maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

35. Plaintiff JANE DOE is a United States citizen and was previously employed as an Emergency Medical Technician with Defendants. Ms. Doe maintains claims against Defendants for (1) failure to compensate for hours worked while working on call duty, under the FLSA; and (2) failure to compensate for hours worked while working on call duty, under the Montana Labor, Minimum Wage, Overtime & Wage Payment Act.

36. In addition, Mr. Peters brings this action on behalf of himself and other Plaintiffs which may not be known as of the time of this filing.

37. Defendant SHERIDAN MEMORIAL HOSPITAL ASSOCIATION is a domestic non-profit corporation registered to do business in the State of Montana, with a Registered Agent of Kody Nelson, knelson@sheridanmemorial.net, 440 West Laurel Avenue, Plentywood, Montana 59254.

38. Defendant BILLINGS CLINIC is a domestic non-profit corporation registered to do business in the State of Montana, with a Registered Agent of Ellen Layton, 2800 10th Avenue North, Billings, MT 59101.

39. Defendant SMHA is an affiliate hospital of Billings Clinic. Billings Clinic manages SMHA and provides management and information system services to SMHA. *See, e.g.*, <https://www.billingsclinic.com/maps-locations/affiliate-hospitals-clinics/sheridan-memorial-hospital-association/> (last visited June 30, 2025).

40. Defendant KODY NELSON, the CEO of SMHA, is an employee of Billings Clinic who manages and operates SMHA. Upon information and belief, Mr.

Nelson authorized the decisions to re-classify the Overtime Collective Plaintiffs as exempt and/or to pay the On-Call Collective Plaintiffs \$4/hour for their hours worked while in an on-call duty status.

COLLECTIVE ACTION ALLEGATIONS

41. Michael Peters brings this action on behalf of himself and all other similarly situated persons, pursuant to 29 U.S.C. § 216(b).

42. Mr. Peters seeks to represent the following groups of similarly situated persons, identified herein and as follows:

- a. Plaintiffs Peters, Abeloe, Briere, Winona Gibbs, Kylan Jensen, Wenger, and Wharton, and possibly others, who are and/or were Emergency Medical Technicians and/or Paramedics who perform(ed) job duties consistent with their positions as “first responders.” These Plaintiffs are misclassified as “exempt” and seek overtime pay, reinstatement of their paid time off and sick leave, and all other relief allowed by law (the “Overtime Collective”).
- b. Plaintiffs Peters, Abeloe, Briere, Winona Gibbs, Kylan Jensen, Wenger, Wharton, Bravo, Duncan, Gardenier, Jack Gibbs, Gray, Hanson, Jensen, Lee, Loomis, Mines, Murphy, Olson-Franks, Parsons, Rogenes, Roseleip, Kimberly Rudningen, Aaron Rudningen, Westerdar, and Jane Doe, and all other persons who were, or are, employed by Defendants and who were not compensated at their regular rate of pay for hours worked while on call, and/or at an overtime rate of one and one-half

times their regular rate of pay for all time worked on call in excess of forty hours per week (“On Call Collective”).

43. Complete records concerning the dates/months/years and number of hours Plaintiffs were required to work without proper compensation are in the possession and control of Defendant and Plaintiffs do not yet know the exact amount owing to them.

44. The amount of underpaid on-call duty time, unpaid overtime, and non-compensated benefits, which Defendants failed and refused to pay Plaintiffs, as supported by Defendants’ records, will be shown at trial.

45. The amount of overtime pay that Defendants failed and refused to pay Plaintiffs, as supported by Defendants’ records, will be shown at trial.

46. Defendants’ misclassification of Plaintiffs Peters, Abeloe, Briere, W. Gibbs, K. Jensen, Wenger, and Wharton, as exempt from overtime, was and is intentional and willful.

47. Defendants’ failure and refusal to pay on-call duty time as “hours worked” was and is intentional and willful.

48. Mr. Peters will fairly and adequately protect the interests of the members of the On-Call Collective and the Overtime Collective and has retained counsel who is experienced and competent in the fields of wage and hour law and collective action litigation.

49. Questions of law and fact common to the members of each of the On-Call Collective and the Overtime Collective predominate over questions that may

affect only individual members because Defendants' violations of the FLSA described herein arise mostly out of official policy and are generally applicable to all members of each of the On-Call Collective and Overtime Collective.

FACTS COMMON TO ALL COUNTS

Overtime Collective

50. Certain Plaintiffs, identified as the "Overtime Collective," include Michael Peters, Jessica Abeloe, Frederick Briere, Winona Gibbs, Kylan Jensen, Lisa Wenger, and David Wharton.

51. The Overtime Collective Plaintiffs are employed full-time as Emergency Medical Technicians ("EMTs") and/or paramedics at Sheridan Memorial Hospital Association. In this role, the Overtime Collective Plaintiffs perform duties associated with their roles as first responders to emergency medical situations. For example, in response to a call for emergency help, Plaintiffs drive an ambulance to the site of the emergency, often performing Cardiopulmonary Resuscitation ("CPR"), attend to and care for the sick and injured, and triage the situation to minimize harm to the people in need. The following picture shows the six currently employed, full-time EMS staff:



52. The Overtime Collective are First Responders under both the FLSA and the Montana Wage Act.

53. Historically, the Overtime Plaintiffs were paid on an hourly basis for the first initial forty (40) hours worked in a seven-day period. Hours worked above and beyond the forty hours were compensated on a time-and-a-half basis as overtime hours worked.

54. On or about July 3, 2023, the Overtime Collective learned they would be paid under a new, salaried pay structure. In practice, this structure means that the Overtime Collective are paid the same amount regardless of how many hours worked, despite their status as first responders under the FLSA and the Montana Wage Act.

55. As of July 3, 2023, Mr. Nelson has mandated that the salaried staff are expected to be in the EMS Office from 8 am to 5 pm, with a lunch break, Monday through Friday (unless on a call or doing other business). This mandate holds true even if employees have been up in the night responding to an emergency service call.
56. Kody Nelson has advised that the Overtime Collective must be “on duty” for a minimum of 96 hours per two-week pay period in order to qualify for full-time status. Mr. Nelson has not told Mr. Peters or anyone else in the EMS Department what basis he uses to establish a “96 hour” minimum.
57. The salary pay structure is convoluted at best: for example, Mr. Nelson mandates a 96-hour two-week minimum, but the payroll software calculates salaried pay based on an 80-hour two-week structure.
58. In addition, if the Overtime Collective Plaintiffs do not work a full 96 hours per pay period, they are forced to use paid time off and/or sick leave in order to book what appears to be 96 hours of “work.” For example, if a Plaintiff works 86 hours instead of 96, that employee must use paid time off or sick leave for the remaining ten hours in order to meet the “minimum” of 96 hours. The time is deducted from the 80-hour work period, to show a total of 70 hours, despite the fact that 86 hours might have been worked.
59. This disorganized, unlawful payroll method does not account for the numerous hours employees work in excess of 40 hours per week. For example, in the pay period ending June 29, 2025, Mr. Peters worked 109.5 hours, but he will not

earn any overtime for the hours worked in excess of 40 hours per week. Likewise, Ms. Abeloe worked 133.5 hours, Mr. Briere worked 54.5 hours, Ms. Gibbs worked 96.25 hours, Ms. Wenger worked 178.25 hours, and Mr. Wharton worked 79.5 hours, but none of them will earn overtime for hours worked in excess of 40 hours per week.

60. Plaintiffs, especially Mr. Peters, have/has asked for a formal accounting of the basis for their current, salaried pay. Despite repeated requests, Defendants have not produced any documentation, metrics, or other calculations substantiating the bases for the Overtime Collective's salaries.

61. Mr. Nelson's unlawful payroll method results in (1) employees not being paid overtime in compliance with FLSA and the Montana Wage Act; (2) employees being forced to use PTO and sick leave for hours that were not truly PTO or sick leave; and (3) employees losing the benefit of paying into retirement, Social Security, and other benefits at the higher rate of pay.

62. In this pay structure, Overtime Plaintiffs earn less money to perform more work.

63. In November 2024, Mr. Nelson proposed a different pay structure that was confusing, unlawful, and did not properly compensate the Overtime Collective for hours worked. When the Overtime Collective declined the change in pay structure, Mr. Nelson handed out resignation forms to each and every full-time staff member of the EMS Department, threatening them with their jobs if they did not accept the second, also unlawful, pay structure.

64. Mr. Nelson and Defendants have made no effort to comply with federal and state wage laws in order to pay the Overtime Collective properly and lawfully.

65. The Overtime Collective continues to be paid on a salaried structure, without overtime, for their work as emergency responders, in violation of the FLSA and the Montana Wage Act. This violation is on-going.

On-Call Collective

66. Plaintiffs include both part-time and full-time employees who have worked in an on-call status.

67. The On-Call Collective pertains to all Plaintiffs identified in the Paragraphs above, and any other Plaintiffs (yet to be identified) who were paid \$4/hour to be in an “on call” duty status. The On-Call Collective also include the Overtime Collective, because the Overtime Collective were previously paid on a \$4/hour basis for time spent on-call.

68. The On-Call Collective includes Plaintiffs who work as Emergency Medical Technicians, Paramedics, Ambulance Personnel, and nurses. One of the nurses, Ms. Gardinier, is also trained and fully qualified as an EMT. Another nurse, Ms. Duncan, was a Registered Nurse with all training and qualifications in patient care, and she had taken additional training – specifically, nurse bridge to EMT classes – to perform all the duties of an EMT.

69. The duties include a scope of practice of responding to all 9-1-1 calls, supporting roles as an Emergency Room Technician in the SMHA critical access hospital, driving ambulances, teaching CPR to all hospital staff, and

staffing sporting events, parades, rodeos, and other local events. Plaintiffs have job descriptions outlining their duties, which are in the possession of Defendants.

70. When Plaintiffs are “on call,” they are paid an hourly rate of \$4/hour.

71. Plaintiffs are on call for shifts of varying lengths of hours, which they can select in advance. Although Plaintiffs could be on call for shifts longer than 96 hours due to short staffing and critical 9-1-1 service needs, they self-mitigate these much longer shifts due to self-awareness regarding fatigue, which is a safety hazard.

72. When Plaintiffs are “on call,” they must remain within a five (5) minute radius of the Community Fire Hall, which shares their space with the EMS Ambulance Center. A picture of the local Community Fire Hall follows:



73. The five (5) minute radius operates practically as a four (4) minute radius because the expectation is that the ambulance is rolling out of the Community Fire Hall within five (5) minutes of the time the first responders receive the call to respond to the 9-1-1 emergency.
74. The town of Plentywood, Montana, has a population of approximately 1,600 people and has a local grocery store. While there are local dentists and doctors, Plaintiffs cannot attend doctor and/or dental appointments while on call. For specialized medical care like the eye doctor, orthodontist, etc., Plaintiffs must travel either to Williston, North Dakota at a distance of 1.25 hours, or Billings, Montana, at a distance of 5 hours on good roads. Plaintiffs do not schedule these appointments when they are on call.
75. To perform more substantial grocery shopping, such as at Walmart or any bigger stores, many Plentywood residents drive to Williston, North Dakota, the nearest commercial center. Because of the 5-minute radius restriction, the On-Call Plaintiffs may be able to go to the local grocery store for everyday items since it is across the street from the Fire Hall, but they cannot do any more necessary, substantial shopping in Plentywood, Williston, or anywhere else.
76. Some Plaintiffs live within the town of Plentywood and can go home to sleep while they are “on call.” However, even while asleep, in the wintertime Plaintiffs will wear their long underwear and socks to bed so that they can be ready to arrive to the Community Fire Hall within four minutes. When the weather is sub-zero, Mr. Peters leaves a vehicle running around the clock so

that at least one vehicle will be able to respond and pick up any other responders, if needed, to get the crew to the Fire Hall quickly.

77. In addition, Plaintiffs will prepare all of their clothing and gear in a pile, bedside, ready to go, for the second they receive a call. They even have their boots or shoes pre-tied so they don't lose valuable seconds getting out the door.

78. Other Plaintiffs live outside of Plentywood by more than the requisite five-minute radius. In order to remain within the 5-minute radius, these employees will stay at the EMS House in Plentywood, adjacent to the hospital, for the duration of their shift. While they are at the EMS House, the out-of-town Plaintiffs assist with administrative office duties, vehicle/rig checks and maintenance, teaching CPR and First Aid classes, and otherwise engage in work. In down time, Plaintiffs can watch TV, read, or visit with others, but they must be ready to leave (i.e., "drop everything and go") within minutes.

79. The EMS House is equipped with one bedroom with one single bed for employee use, a kitchen, a main room with couches where employees sleep while they are on-call, and a bathroom with a shower. The EMS House is depicted below:



80. During the day, Plaintiffs dress in their uniforms and gear so they are ready to respond to an emergency call.

81. Plaintiffs adjust their personal schedules so that they are not cooking a time-consuming meal; going for a walk, hike, or run that takes them outside the 5-minute radius; or performing any personal activity that cannot be immediately dropped without notice.

82. In addition to the five-minute radius restriction, Plaintiffs cannot drink alcohol or otherwise become cognitively impaired in any way (including prescription medications) while they are on-call.

83. Plaintiffs likewise cannot attend any personal events, activities, family gatherings, etc., that might take place in another town, or anywhere outside the 5-minute radius. If a relative has a birthday party at their farm or ranch

fifteen minutes outside of town, for example, the On-Call Plaintiffs cannot attend.

84. The On-Call Collective cannot work another job while they are on-call.

85. In other words, Plaintiffs are engaged to wait for a call because they cannot attend to their personal pursuits.

86. Likewise, Plaintiffs are engaged to wait for a call because of the high frequency with which they expect to be called to duty.

87. For example, in the fiscal year of July 1, 2024 – June 30, 2025, the Emergency Medical Service department received 584 calls for service, of which they went out on almost every single call. For the fiscal year 2023-2024, EMS received 545 calls for service and in fiscal year 2022-2023, the Department received 445 calls for service.

88. When Plaintiffs are on-call, they are almost always called out to respond to an emergency.

89. In one example, Plaintiff Jessica Abeloe worked ninety-six (96) hours consecutively from May 6, 2025, through May 9, 2025, and each day she was called out twice. On May 13, 2025, she was on-duty for 9.75 hours and was not called out. From May 14 – 15, 2025, she was on a 48-hour shift, during which she was called out five times. And on May 16, 2025, she worked another two hours, which was entirely spent on an incident call. In total, Ms. Abeloe was called out on 14 incidents, as follows:

Call Number	Date	Time of Day	Time Spent on Call
Call 1	5/6/25	1438-1730	2.86 hours
Call 2	5/6/25	1755-2000	2.08 hours
Call 3	5/7/25	1733-1812	39 min
Call 4	5/7/25	1813-2000	1.75 hours
Call 5	5/8/25	0629-0830	2.01 hours
Call 6	5/8/25	1742-1830	48 minutes
Call 7	5/9/25	1004-1230	2.43 hours
Call 8	5/9/25	1714-1945	2.52 hours
Call 9	5/14/25	0326-0530	2.06 hours
Call 10	5/14/25	0945-1215	2.5 hours
Call 11	5/15/25	1003-1200	2 hours
Call 12	5/15/25	1638-2042	4.07 hours
Call 13	5/15/25	2043-2300	2.28 hours
Call 14	5/16/25	1255-1500	2.08 hours

90. During those shifts, Ms. Abeloe – as is the case with all Plaintiffs – likewise performed administrative duties.

91. While Plaintiffs are engaged to wait, Defendant has, and is currently, paying the On-Call Collective \$4/hour. As soon as a call comes in and Plaintiffs begin responding to an emergency situation, they are converted to a full-rate-of-pay

status. Once Plaintiffs return from the emergency situation and return to an “engaged to wait” status, their rate of pay switches back to the \$4/hour rate.

92. In one on-call shift, a Plaintiff will switch from the \$4/hour rate to his/her hourly rate as many times as he/she is called out.

93. Plaintiffs can choose when to be on-call by signing up for an on-call shift. When signing up for an on-call shift, Plaintiffs do so knowing that they will be unable to engage in any personal pursuits and they will almost certainly be called out to work. Accordingly, Plaintiffs sign up for on-call shifts as if they are signing up for work. Plaintiffs have every expectation that they will be called out to respond to an emergency.

94. The On-Call Collective likewise has difficulty trading out shifts because the pool of workers is too small. Since the On-Call Collective Plaintiffs are not properly compensated, many employees have moved away and taken better-paying jobs. Furthermore, it is not motivating to work for \$4/hour to be engaged to wait for a call, and so many of the On-Call Collective Plaintiffs are working more out of a sense for the public service than because they are being properly and adequately paid. These facts have made recruiting new hires very difficult.

95. In addition, Defendants have denied Plaintiffs’ repeated requests for additional staffing.

96. In reality, the On-Call Collective is in an “on duty” status while they are on call because they are engaged to wait.

97. SMHA CEO Kody Nelson has stated that the On-Call Collective is in an “on duty” status while they are on call. On November 22, 2024, he sent an email to Mr. Peters with an attachment entitled, “Action Steps:”

From: Nelson, Kody E <knelson@sheridanmemorial.net>
Sent: Friday, November 22, 2024 1:04 PM
To: Peters, Michael <mpeters@sheridanmemorial.net>
Subject: Follow-Up: Action Steps Document

Michael,

Thank you for meeting with me today. As promised, I have attached a copy of the Action Steps document that I provided to you during our meeting.

Please do not hesitate to reach out if you have any questions or need further clarification.

Respectfully,



Kody Nelson, MHPA, NHA
CEO & Nursing Home Administrator
Sheridan Memorial Hospital Association
440 West Laurel Avenue
Plentywood, MT 59254
W 406.765.3702

Our Mission: To provide exceptional and compassionate care to enhance the health, well-being, and quality of life for the people and communities we serve.

98. In the attachment, Mr. Nelson states the EMS employees are on-duty when they are “engaged to wait” which are “hours worked”:

absence. If necessary, he can attend via the Teams Meeting Link.

- 7. On-Duty Hours:** During their 48-hour shifts, EMS employees will be considered on-duty and must be actively engaged in work duties. This includes being on hospital premises, performing job-related tasks, waiting at home for calls, or providing ER Tech duties at the hospital. According to CFR 785.14-16, on-duty waiting time must be counted as hours worked because the employee is engaged to wait. This means that even if employees are not actively performing their primary job duties, they are still considered to be working if they are waiting for tasks and cannot use the time effectively for their own purposes. Therefore, all on-duty time is considered SMHA's time. During on-duty time, employees must focus on SMHA-specific responsibilities and cannot conduct personal tasks. If personal business is necessary, employees must transition to Off-Duty by finding coverage or using PTO.

99. Despite Mr. Nelson's own words that a 48-hour shift is on-duty and "hours worked," Defendants continue, and continue to this day, to pay the On-Call Collective at a rate of \$4/hour for all time spent on-call.
100. Defendants willfully and intentionally choose to pay the On-Call Collective at an unlawful rate of pay for hours worked.
101. This time is compensable at the employees' full regular rate of pay, plus any overtime accrued.
102. However, Defendants have broken, and are breaking, federal and state wage laws by paying Plaintiffs \$4/hour to be on call, which is anywhere from 1/5 to 1/8 of the employees' regular rate of pay.
103. This violation is on-going and a new violation occurs with each paycheck to Plaintiffs.

COUNT I
VIOLATION OF THE FAIR LABOR STANDARDS ACT
FAILURE TO PAY OVERTIME BASED ON
MISCLASSIFICATION OF FIRST RESPONDERS AS "EXEMPT"

104. Defendants are covered employers under the FLSA and employ the Plaintiffs in the Overtime Collective.
105. "[N]o employer shall employ any of [its] employees...for a workweek longer than forty hours unless such employee receives compensation for [their] employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which [they are] employed." 29 U.S.C.A. § 207(a).

106. The Code of Federal Regulations, which implements the requirements of the FLSA, mandates that the exemptions of Section 13(a)(1) do *not* apply to “paramedics, emergency medical technicians, [and] ambulance personnel.” 29 C.F.R. §541.3(b)(1) (Scope of the 13(a)(1) exemptions). In other words, paramedics, emergency medical technicians, and ambulance personnel must be paid overtime for any hours worked in excess of forty hours per week.
107. Until July 3, 2023, the Overtime Collective Plaintiffs were paid an hourly regular rate of pay, with overtime for any hours worked in excess of forty hours per week, plus the \$4/hour “on call” rate as described in the On Call Collective.
108. On July 3, 2023, Defendants changed this structure and now require the Overtime Collective Plaintiffs to work on a salaried basis.
109. In addition, Defendants require the Overtime Collective Plaintiffs to use paid time off and/or sick leave if they do not have enough work hours per week to meet the salaried requirements.
110. As a matter of policy and routine practice, Defendants misclassify and have misclassified the Overtime Collective and consequently the Plaintiffs are not paid overtime at one and one-half times their regular rate of pay for the time they work in excess of forty (40) hours per week.
111. In addition, these Plaintiffs are not paid correctly for on-call time that would give rise to additional hours worked and, in turn, additional overtime.
112. Defendants’ violations are willful and not in good faith.

113. Defendants are liable for unpaid overtime wages, unpaid regular rate of pay wages, liquidated damages in an equal amount, interest, and reasonable attorneys' fees and litigation costs.

**COUNT II
VIOLATION OF THE MONTANA WAGE ACT
FAILURE TO PAY OVERTIME BASED ON
MISCLASSIFICATION OF FIRST RESPONDERS AS "EXEMPT"**

114. Defendants are covered employers under the Montana Wage Act and employ the Plaintiffs in the Overtime Collective.
115. "An employer may not employ any employee for a workweek longer than 40 hours unless the employee receives compensation for employment in excess of 40 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which the employee is employed." M.C.A. § 39-3-405(1).
116. The Code of Federal Regulations, which implements the requirements of the FLSA, mandates that the exemptions of Section 13(a)(1) do *not* apply to "paramedics, emergency medical technicians, [and] ambulance personnel." 29 C.F.R. §541.3(b)(1) (Scope of the 13(a)(1) exemptions). In other words, paramedics, emergency medical technicians, and ambulance personnel must be paid overtime for any hours worked in excess of forty hours per week.
117. Until July 3, 2023, the Overtime Collective Plaintiffs were being paid an hourly regular rate of pay, with overtime for any hours worked in excess of forty hours per week, plus the \$4/hour "on call" rate as described in the On Call Collective.

118. On July 3, 2023, Defendants changed this structure and now require the Overtime Collective Plaintiffs to work on a salaried basis.

119. In addition, Defendants require the Overtime Collective Plaintiffs to use paid time off and/or sick leave if they do not have enough work hours per week to meet the salaried requirements.

120. As a matter of policy and routine practice, Defendants misclassify and have misclassified the Overtime Collective and consequently the Plaintiffs are not paid overtime at one and one-half times their regular rate of pay for the time they work in excess of forty (40) hours per week.

121. In addition, these Plaintiffs are not paid correctly for on-call time that would give rise to additional hours worked and, in turn, additional overtime.

122. Defendants' violations are willful and not in good faith.

123. Defendants are liable for unpaid overtime wages, unpaid regular rate of pay wages, liquidated damages in an equal amount, interest, and reasonable attorneys' fees and litigation costs. In addition, under Montana law, Defendants are liable for penalties of up to 110% of the wages due and unpaid.

**COUNT III
VIOLATION OF THE FAIR LABOR STANDARDS ACT
FAILURE TO PAY ON-CALL DUTY
AT REGULAR RATE OF PAY AND/OR OVERTIME**

124. Defendants are covered employers under the FLSA and employ the Plaintiffs in the On-Call Collective.

125. “[N]o employer shall employ any of [its] employees...for a workweek longer than forty hours unless such employee receives compensation for [their]

employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which [they are] employed.” 29 U.S.C.A. § 207(a).

126. “When employees are engaged to wait for the employer’s call to duty, this time may be compensable under the FLSA. The question of whether employees are working during this time for purposes of the FLSA depends on the degree to which the employee may use the time for personal activities.” *Birdwell v. City of Gadsden, Ala.*, 970 F.2d 802, 807 (11th Cir. 1992) (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 136-138 (1944)).
127. The On-Call Collective Plaintiffs are engaged to wait while they are on-call.
128. The On-Call Collective regularly work on call, typically for twenty-four to forty-eight hours at a time, often much more, during which they cannot effectively use their time for their personal benefit.
129. The frequency with which the On-Call Collective receives calls, and the duration of the calls, render the Plaintiffs unable to perform any other activities with their time.
130. As a matter of policy and routine practice, Defendants fail and have failed to compensate the On-Call Collective at their regular rate for hours worked while on-call.
131. Further, Defendants fail and have failed to compensate the On-Call Collective at their overtime rate for hours worked in excess of forty hours per

week because they fail to include all time worked on call when calculating and paying overtime wages.

132. Defendants' violations are willful and not in good faith.

133. Defendants are liable for unpaid overtime wages, unpaid regular rate of pay wages, liquidated damages in an equal amount, interest, and reasonable attorneys' fees and litigation costs.

**COUNT IV
VIOLATION OF THE MONTANA WAGE ACT
FAILURE TO PAY ON-CALL DUTY
AT REGULAR RATE OF PAY AND/OR OVERTIME**

134. Defendants are covered employers under the Montana wage and hour laws, specifically, M.C.A. § 39-3-401 *et seq.*, and employ the Plaintiffs in the On-Call Collective.

135. "An employer may not employ any employee for a workweek longer than 40 hours unless the employee receives compensation for employment in excess of 40 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which the employee is employed." M.C.A. § 39-3-405(1).

136. "If the employee [is] engaged to wait, the on-call time [is] compensable. If waiting to be engaged, the on-call time [is] not compensable." *Sands v. Town of West Yellowstone*, 337 Mont. 209, 214 (2007), 158 P.3d 432, 436 (Mont. 2007) (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 136-138 (1944)).

137. The On-Call Collective Plaintiffs are engaged to wait while they are on-call.

138. The On-Call Collective regularly work on call, typically for twenty-four to forty-eight hours at a time, often much more, during which they cannot effectively use their time for their personal benefit.

139. The frequency with which the On-Call Collective receives calls, and the duration of the calls, render the Plaintiffs unable to perform any other activities with their time.

140. As a matter of policy and routine practice, Defendants fail and have failed to compensate the On-Call Collective at their regular rate for hours worked while on-call.

141. Further, Defendants fail and have failed to compensate the On-Call Collective at their overtime rate for hours worked in excess of forty hours per week because they fail to include all time worked on call when calculating and paying overtime wages.

142. Defendants' violations are willful and not in good faith.

143. Defendants are liable for unpaid overtime wages, unpaid regular rate of pay wages, liquidated damages in an equal amount, interest, and reasonable attorneys' fees and litigation costs. In addition, under Montana law, Defendants are liable for penalties of up to 110% of the wages due and unpaid.

PRAYER FOR RELIEF

WHEREUPON, Plaintiffs make the following prayer for relief:

1. For designation of this action as a collective action and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated person in the Overtime Collective as defined herein, apprising them of the pendency of this

action, permitting them to assert timely FMLA claims in this action by filing individual Consents to Join pursuant to 29 U.S.C. § 216(b) and tolling the statute of limitations;

2. For designation of this action as a collective action and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated person in the On-Call Collective as defined herein, apprising them of the pendency of this action, permitting them to assert timely FMLA claims in this action by filing individual Consents to Join pursuant to 29 U.S.C. § 216(b) and tolling the statute of limitations;
3. For a declaratory judgment that Defendants' practices complained of herein are unlawful under the FLSA and the Montana Wage Act;
4. For an award of unpaid overtime wages due under the FLSA and the Montana Wage Act to Plaintiffs, the On-Call Collective, and the Overtime Collective;
5. For all unpaid regular rate of pay wages, and other compensation, due to Plaintiffs, the On-Call Collective, and the Overtime Collective;
6. Restoration of all paid time off, sick leave, and/or other leave that the Overtime Collective Plaintiffs were forced to use while they are on a salaried basis;
7. For an award of liquidated damages for Defendants' failure to pay overtime wages to Plaintiffs, the On-Call Collective, and the Overtime Collective;
8. For an award of 110% of the wages due, penalizing Defendants for their actions and omissions under the Montana Wage Act;
9. For an award of prejudgment and post-judgment interest;

10. For an award of costs and expenses to this action, including reasonable attorneys' fees, expert fees, and costs; and
11. Such other relief as is determined to be fair and equitable.

JURY DEMAND

Wherefore, Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted this 2nd day of July, 2025,

AT LEGAL PC



Adrienne M. Tranel
Attorney at Law