

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

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**TERRY JACOBSON**, individually and  
on behalf of all others similarly situated,  
c/o DiCello Levitt Gutzler LLC  
Post Office Box 437  
Platteville, Wisconsin 53818,

Case No:

Case Code: 30303 Other - Contracts

**NICOLE MCDANIEL**, individually and  
on behalf of all others similarly situated,  
c/o DiCello Levitt Gutzler LLC  
Post Office Box 437  
Platteville, Wisconsin 53818,

**MARK MUMMA**, individual and  
on behalf of all others similarly situated,  
c/o DiCello Levitt Gutzler LLC  
Post Office Box 437  
Platteville, Wisconsin 53818,

**JENNIFER NASH**, individual and  
on behalf of all others similarly situated,  
c/o DiCello Levitt Gutzler LLC  
Post Office Box 437  
Platteville, Wisconsin 53818,

**JOHN SCHMIDT**, individual and  
on behalf of all others similarly situated,  
c/o DiCello Levitt Gutzler LLC  
Post Office Box 437  
Platteville, Wisconsin 53818,

and

**JOE ST. ANTOINE**, individual and  
on behalf of all others similarly situated,  
c/o DiCello Levitt Gutzler LLC  
Post Office Box 437  
Platteville, Wisconsin 53818,

Plaintiffs,

**FILED**  
**08-03-2020**  
**John Barrett**  
**Clerk of Circuit Court**  
**2020CV004571**  
**Honorable Kevin E.**  
**Martens-27**  
**Branch 27**

vs.

**WISCONSIN DEPARTMENT OF CORRECTIONS**  
3099 East Washington Avenue  
Madison, Wisconsin 53704,

Defendant.

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**SUMMONS**

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To: **WISCONSIN DEPARTMENT OF CORRECTIONS**  
3099 East Washington Avenue  
Madison, Wisconsin 53704

You are hereby notified that the Plaintiffs named above have filed a lawsuit against you. The complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this summons, you must respond with a written answer, 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 the statutes. The answer must be sent or delivered to the Clerk of Circuit Court, whose address is Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, Wisconsin 53233, and to DiCello Levitt Gutzler LLC, Plaintiffs' attorneys, whose address is Post Office Box 437, Platteville, Wisconsin 53818.

You may have an attorney help or represent you. If you do not provide a proper answer within forty-five (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: August 3, 2020

Respectfully submitted,

/s/ Christopher D. Stombaugh

Christopher D. Stombaugh  
State Bar No: 1022065  
**DICELLO LEVITT GUTZLER LLC**  
Post Office Box 437  
Platteville, Wisconsin 53818  
Tel.: 440-953-8888  
[cstombaugh@dicellolevitt.com](mailto:cstombaugh@dicellolevitt.com)

Adam J. Levitt\*  
Laura E. Reasons\*  
**DICELLO LEVITT GUTZLER LLC**  
Ten North Dearborn Street, Sixth Floor  
Chicago, Illinois 60602  
Tel.: 312-214-7900  
[alevitt@dicellolevitt.com](mailto:alevitt@dicellolevitt.com)  
[lreasons@dicellolevitt.com](mailto:lreasons@dicellolevitt.com)

Gary K. Burger\*  
**BURGER LAW, LLC**  
500 North Broadway, Suite 1860  
St. Louis, Missouri 63102  
Tel.: 618-272-2222  
[gary@burgerlaw.com](mailto:gary@burgerlaw.com)

Charles J. LaDuca\*  
R. Michael Smith\*  
Katherine Van Dyck\*  
**CUNEO GILBERT & LADUCA, LLP**  
4725 Wisconsin Avenue, Northwest, Suite 200  
Washington, DC 20016  
Tel.: 202-789-3960  
[charles@cuneolaw.com](mailto:charles@cuneolaw.com)  
[mike@cuneolaw.com](mailto:mike@cuneolaw.com)  
[kvandyck@cuneolaw.com](mailto:kvandyck@cuneolaw.com)

Michael J. Flannery\*  
**CUNEO GILBERT & LADUCA, LLP**  
500 North Broadway, Suite 1450  
St. Louis, Missouri 63102  
Tel.: 314-226-1015  
[mflannery@cuneolaw.com](mailto:mflannery@cuneolaw.com)

***Counsel for Plaintiffs and the Class***

\* To Seek Admission *Pro Hac Vice*

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Madison, Wisconsin 53704,

Defendant.

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**CLASS ACTION COMPLAINT**

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Plaintiffs Terry Jacobson, Nicole McDaniel, Mark Mumma, Jennifer Nash, John Schmidt, and Joe St. Antoine (collectively, “Plaintiffs”), individually and on behalf of all others similarly-situated (the “Class,” as more fully defined below), bring this action against Defendant Wisconsin Department of Corrections (“WDC” or “Defendant”). Plaintiffs make the following allegations upon personal knowledge as to their own acts, and upon information and belief and their attorneys’ investigation as to all other matters, alleging as follows:

**INTRODUCTION**

1. Plaintiffs bring this action individually and on behalf of the other Class members against WDC to recover straight time and overtime compensation that WDC owes them for mandatory pre- and post-shift duties performed at the direction of or with WDC’s knowledge of, and for the benefit of, WDC at its facilities. Plaintiffs and each of the other Class members are current or former WDC employees who worked as non-exempt, hourly-paid security personnel in a correctional institution, including but not limited to, correctional officers (“Correctional Officers”).

2. Plaintiffs’ and the other Class members’ pre- and post-shift duties, discussed in more detail below, are critical to the safety and security of WDC’s facilities and are performed in close proximity to inmates. As a result, Plaintiffs and the other Class members must remain

vigilant and respond to inmate incidents and other emergencies while performing these security-critical pre- and post-shift activities.

3. These pre- and post-shift duties are integral and indispensable to Plaintiffs' and the other Class members' principal work activities, which include maintaining order, discipline, safety, and security; guarding and escorting inmates; and enforcing rules and regulations at WDC facilities where inmates are housed or incarcerated.

4. Plaintiffs, individually and on behalf of the other Class members, seek unpaid straight time and overtime compensation, liquidated damages or penalties in the amount of 50 percent of the compensation due, attorneys' fees and litigation expenses and costs, declaratory and injunctive relief, and all other relief that the Court deems appropriate pursuant to: (a) Wis. Stat. §§ 803.08, 103.01-03, 109.01, 109.03, and 806.04, and Wis. Admin. Code §§ DWD 272 and 274; (b) the Contracts (defined below) between WDC and Plaintiffs and the other Class members; and (c) Wisconsin common law.

5. Plaintiffs seek to certify this action as a class action so that they and the other Class members can recover the unpaid straight time and overtime compensation that WDC owes them.

## **PARTIES**

### **A. Plaintiffs**

6. Terry Jacobson is a citizen of the State of Wisconsin. During the Class Period, he was employed by WDC as a Correctional Officer at Racine Correctional Institution.

7. Nicole McDaniel is a citizen of the State of Wisconsin. During the Class Period, she has been employed by WDC as a Correctional Officer at the Wisconsin Secure Program Facility.

8. Mark Mumma is a citizen of the State of Wisconsin. During the Class Period, he has been employed by WDC as a Correctional Officer at Green Bay Correctional Institution, Kettle Moraine Correctional Institution, and Wisconsin Resource Center facilities.

9. Jennifer Nash is a citizen of the State of Wisconsin. During the Class Period, she has been employed by WDC as a Correctional Officer at Redgranite Correctional Institution.

10. John Schmidt is a citizen of the State of Wisconsin. During the Class Period, he has been employed by WDC as a Correctional Officer at Dodge Correctional Institution.

11. Joe St. Antoine is a citizen of the State of Wisconsin. During the Class Period, he has been employed by WDC as a Correctional Officer at Waupun Correctional Institution.

**B. Defendant**

12. WDC is a state agency whose address is 3099 East Washington Avenue, P.O. Box 7925, Madison, Wisconsin 53707. WDC's powers and duties are set forth in Wisc. Stat. § 301.03.

**JURISDICTION AND VENUE**

13. This Court has original jurisdiction over this action because it is brought under the laws of the State of Wisconsin.

14. Venue in this Court is proper pursuant to Wis. Stat. § 801.50(3), which permits Plaintiffs to designate the venue.

**STATEMENT OF FACTS**

**A. DWC Contracted to Pay Plaintiffs and the Other Class Members for all Hours Worked**

15. During the relevant time period, Plaintiffs and the other Class members have been employed as Correctional Officers at various correctional facilities operated by WDC throughout the State of Wisconsin.

16. Plaintiffs and the other Class members have been subject to the same Contracts, plans, policies, and practices related to compensation, recording of their hours worked, scheduling, entitlement to overtime, security protocols, compensatory time, entitlement to be paid for all hours worked, and required pre- and post-shift work.

17. Plaintiffs and the other Class members are entitled to receive compensation for all straight-time hours that they work at their straight-time rate, and for all overtime hours that they work at the rate of one and one-half times their regular rate of pay, pursuant to the State Human Resources Handbook, Department of Corrections policies, and other State- and Department-wide policies and procedures, which form contracts between themselves and WDC (the “Contracts”).

18. On information and belief, Plaintiffs and the other Class members were provided copies of the Contracts at the beginning of, and/or during, their employment with WDC.

19. The Contracts provide, among other things, that Plaintiffs and the other Class members will be paid for all hours worked, including all straight time hours at their hourly rates, and all overtime hours at one and one-half times their regular rates of pay.

20. During the relevant time period, Plaintiffs and the other Class members have been subject to the Department of Corrections Human Resources Policy, Number 200.30.103, Sec. X, entitled “PAYMENT OF OVERTIME”, a copy of which is attached as Exhibit 1 to this Complaint. WDC made certain promises and commitments to Plaintiffs and the other Class members, including: that “nonexempt employees must be compensated at the premium rate of 1.5 hours per hour worked, for all hours worked in excess of 40 hours in a work week.”

21. In Wisconsin Human Resources Handbook, Chapter 520, which includes Sections 520.070, entitled “Overtime Compensation for Nonexempt Employees,” and 520.080, entitled “Hours Worked by Nonexempt Employees,” to which Plaintiffs and the other Class members have

been subject during the relevant time period, a copy of which is attached as Exhibit 2 to this Complaint, WDC made certain promises and commitments to Plaintiffs and each of the other Class members, including:

(a) that “[n]onexempt employees must be paid at a premium rate or receive compensatory time credits at a rate of 1.5 hours per hour worked, for each hour worked in excess of 40 hours in a workweek.” *Id.* at 11.

(b) to pay “overtime... based... on hours worked.” *Id.* at 14. “Hours worked” is defined as “[a]ll time during which an employee is required or permitted to work or to wait for work when the employee is unable to use the working or waiting time effectively for his or her own purpose.” *Id.* at 31. Pre- and post-shift activity is *not* precluded from “working time” under Section 520.080. *Id.* at 15-18; and

(c) to keep records for “[h]ours worked on each workday and total hours actually worked each workweek or work period,” because “[a]ccurate record keeping is vital as it forms the basis of the employer’s ability to comply, and to prove compliance, with the FLSA.” *Id.* at 22.

**B. Plaintiffs and the Other Class Members Worked Off-The-Clock Without Compensation Both Before and After Their Shifts**

22. The principal activities of Plaintiffs and the other Class Members include maintaining order, discipline, safety and security, guarding and escorting inmates, and enforcing rules and regulations at WDC facilities where inmates are housed or incarcerated.

23. Correctional Officers constantly face stressful challenges relating to maintaining order, discipline, and safety, including but not limited to: (a) managing difficult inmates; (b) working according to strict security rules; (c) dealing with overcrowded facilities; (d) being

required to work long hours due to personnel shortages; and (e) understanding complex legal and public safety considerations related to incarcerated populations.

24. Correctional Officers' duties have included, among other things: (a) searching inmates and visitors for contraband, such as weapons and illegal drugs, and confiscating such items; (b) counting, feeding, guarding, escorting, protecting, and supervising inmates where they are housed and work; (c) preventing and responding to inmates' escape attempts and altercations; (d) ensuring the safety of prison visitors and personnel; and (e) preparing and maintaining records, forms, and reports. .

25. In addition to the hours worked during their scheduled shifts, Correctional Officers have worked "off-the-clock" approximately two and one-half (2.5) to four (4) or more hours per week and have not been compensated for that time.

26. WDC has enforced uniform, agency-wide policies and practices that have required all Correctional Officers to perform compensable work in excess of their scheduled shifts.

27. Upon entering prisons and other facilities, Correctional Officers have been required by WDC to complete the following activities before their scheduled shifts begin:

- a. Initially undergo a security screening, including passing through metal detectors, submitting to additional searches of their persons and belongings for weapons and other contraband, and waiting while others go through the same process;
- b. Participate in briefings to receive post assignments, instructions, paperwork, and additional information from supervisors;
- c. Proceed to an area where Correctional Officers must line up, sign in, and identify themselves to ensure safety within the security envelope;

d. Obtain keys needed to enter restricted areas, and other equipment, such as handcuffs, radios, and pepper spray needed to guard and escort prisoners, respond to emergencies, communicate with prison personnel, and otherwise work as Correctional Officers;

e. Pass through security gates and air locks where Correctional Officers may be required to complete identification and sign-in procedures that ensure Correctional Officers can work safely within the security envelope; and

f. Walk to Correctional Officers' assigned posts and, upon arrival, participate in pass-down briefings from Correctional Officers being relieved at the end of their shifts in order to receive information critical to maintaining the safety and security of the facility.

28. When leaving their assigned posts, Correctional Officers must complete the following post-shift activities before leaving prisons and other facilities:

a. Secure inmates;

b. Provide pass-down briefings to the Correctional Officers who are relieving them;

c. Walk from their assigned posts to the security envelope entrance;

d. Pass through air locks and/or other security gates;

e. Return the keys and other equipment that were issued at the start of the day;

and

f. Retrieve their personal belongings and sign-out.

29. Plaintiffs and the Correctional Officers use: (a) keys to guard the inmates and detainees and to lock and unlock doors to ensure security; (b) radios to communicate with officers

at their posts and to give them directions and instructions throughout the day; and (c) hand restraints and pepper spray as both a deterrent and, if necessary, to control inmates.

30. During each of the aforementioned pre- and post-shift activities, Correctional Officers are in close proximity to inmates, and/or must remain on-guard and vigilant and prepared to respond to inmate emergencies or other incidents.

31. During each of the aforementioned pre- and post-shift activities, Correctional Officers are off-the-clock and not compensated for these activities, which can take Correctional Officers between 15 and 25 minutes at both the beginning and end of each of their scheduled shifts each day.

32. Shift change time, when pre- and post-shift activity occurs, is a crucial time where inmates are more likely to pass contraband, attack each other, attempt escapes, and commit other unlawful and dangerous activities.

33. For that reason, WDC has required all Correctional Officers to be on duty and perform compensable work, without compensation, in order to respond to such incidents and other emergencies at all times they are within a WDC-operated facility.

34. The above-described pre- and post-shift activities are integral and indispensable to Correctional Officers' principal work, which includes maintaining order, discipline, safety and security, guarding and escorting inmates, and enforcing rules and regulations, at WDC facilities where inmates are housed or incarcerated.

35. Although variations in the order and duration of the above-described pre- and post-shift activities may have existed across different WDC prisons and facilities, those differences pertain only to the amount of the damages Correctional Officers are entitled to recover, not the fact that Plaintiffs and each of the other Class members were required to perform those

uncompensated pre- and post-shift activities, the fact of which is uniform and systemic across the Class.

36. WDC has paid Correctional Officers only for the time that they are present at their assigned posts during their scheduled shift times, despite the fact that they are inside WDC facilities and on duty before and after their scheduled shifts to complete tasks necessary, integral, and indispensable to the principal activities of their employment with WDC.

37. In accordance with agency-wide policies and practices, WDC typically: (a) pays Correctional Officers based on the scheduled shift time, rather than the time after they clock-in and until they clock-out; and (b) fails to pay them for the time they devote to the pre- and post-shift activities described herein.

38. This time must be included in any calculation of the time worked by Correctional Officers during a workweek to determine whether Correctional Officers have earned straight time and overtime compensation.

39. WDC has not compensated Correctional Officers for all compensable hours worked: (a) at their straight time hourly rate for hours worked up to 40 hours in a workweek; and (b) at their overtime rate for hours worked over 40 hours in a workweek, as required by Wis. Stat. §§ 103.01-03, 109.01, and 109.03, Wis. Admin. Code §§ DWD 272 and 274, and the Contracts.

40. The number of compensable hours of work for which WDC does not pay Correctional Officers is not *de minimis*.

41. WDC has been aware of its obligation created by Wis. Stat. §§ 103.01-03, 109.01 and 109.03, Wis. Admin. Code §§ DWD 272 and 274, and the Contracts, to pay Correctional Officers for all hours worked, including pre- and post- shift activities, but has failed to comply with that obligation.

42. WDC's pay policies and practices have been and are unlawful because WDC has not paid Correctional Officers for all compensable straight time and overtime hours worked.

43. WDC has failed to keep accurate records of all time worked by Correctional Officers, as required by Wis. Admin. Code § DWD 272.11(1).

### **CLASS ACTION ALLEGATIONS**

44. Plaintiffs bring their claims individually and on behalf of all other Class members as a class action pursuant to Wis. Stat. § 803.08, seeking monetary damages and equitable relief on behalf of the following Class:

All current and former non-exempt, hourly-paid WDC employees who worked as security personnel in a correctional institution (including but not limited to Correctional Officers and Correctional Sergeants) in the State of Wisconsin at any time during the period starting six years before this action commenced and through the date of judgment ("the Class Period").

45. All allegations in this Complaint pertain to conduct and events occurring within the Class Period.

46. Excluded from the Class are WDC and any of its executives, secretaries, or directors; the judicial officers and their immediate family members; and Court staff assigned to this case. Plaintiffs reserve their right to modify or amend the Class definition as appropriate during the course of this litigation.

47. **Numerosity (Wis. Stat. § 803.08(1)(a)).** The Class members are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. Plaintiffs do not know the precise number of Class members, but it may be ascertained from WDC's records and, based upon publicly available information, the Class is expected to be not less than thousands of people. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

48. **Commonality (Wis. Stat. § 803.08(1)(b), Predominance (Wis. Stat. § 803.08(2)(c)).** This action involves questions of law and fact common to Plaintiffs and each of the other Class members, which predominate over any individual questions, including without limitation:

a. Whether WDC has paid Plaintiffs and the other Class members in the same manner pursuant to its policies and procedures, as further described herein;

b. Whether WDC has required Plaintiffs and the other Class members to: (i) arrive at work early enough to complete various their pre-shift duties before arriving at their assigned posts each day; (ii) remain at those assigned posts until relief arrives and while they perform a pass-down briefing; (iii) complete various other post-shift duties before exiting the facility; and (iv) be available to respond to inmate incidents and other emergencies at all times that they are at a WDC facility;

c. Whether Plaintiffs and the other Class members perform pre- and post-shift activities without compensation;

d. Whether the pre- and post-shift activities Plaintiffs and the other Class members perform are compensable work;

e. Whether WDC requires Plaintiffs and the other Class members to remain vigilant and respond to inmate incidents and other emergencies while performing pre- and post-shift activities;

f. Whether WDC requires Plaintiffs and the other Class members to perform pre- and post-shift activities in the presence of or in close proximity to inmates;

g. Whether WDC knew or had reason to know that Plaintiffs and the other Class members performed compensable pre- and post-shift activities without pay;

- h. Whether WDC required or instructed Plaintiffs and the other Class members to perform pre- and post-shift activities without pay;
- i. Whether WDC is legally obligated to compensate Plaintiffs and the other Class members for time spent on these pre- and post-shift activities;
- j. Whether WDC maintained accurate records of all time that Plaintiffs and the other Class members worked;
- k. Whether WDC's failure and refusal to compensate Plaintiffs and the other Class members violated Wisconsin's wage and hour laws;
- l. Whether WDC entered into the Contracts with Plaintiffs and the other Class members to pay them each a certain hourly rate for all time worked;
- m. Whether WDC's refusal to compensate Plaintiffs and the other Class members for such work breached the Contracts;
- n. Whether Plaintiffs and the other Class members conferred benefits on WDC when they performed pre- and post-shift duties activities;
- o. Whether WDC retained those benefits;
- p. Whether WDC was unjustly enriched by retaining the value of those benefits; and
- q. Whether WDC has valid defenses to any of Plaintiffs' and the other Class members' claims.

49. **Superiority and Manageability (Wis. Stat. § 803.08(2)(c).** A class action is superior to other available methods for fairly and efficiently adjudicating this controversy because of the similarity of Plaintiffs' and the other Class members' claims, because it would not be

efficient to adjudicate the claims individually, and because Plaintiffs do not know of any difficulties that would render this case unmanageable as a class action.

50. **Typicality (Wis. Stat. § 803.08(1)(c)).** Plaintiffs' claims are typical of the other Class members' claims because Plaintiffs and each of the other Class members performed compensable pre- and post-shift activities, which unjustly enriched WDC, and were not paid for those activities, as required by Wisconsin statutory law, common law, and the Contracts, and because Plaintiffs and the other Class members have been injured by WDC's refusal to compensate them for required pre- and post-shift activities.

51. **Adequacy of Representation (Wis. Stat. § 803.08(d)).** Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other Class members who they seek to represent. Plaintiffs have retained counsel competent and experienced in class action and wage and hour litigation, and Plaintiffs intend to prosecute this action vigorously. The Class members' interests will be fairly and adequately protected by Plaintiffs and their counsel.

52. **Risk of Inconsistent or Varying Adjudications (Wis. Stat. § 803.08(2)(a)).** Prosecution of this matter as a class action is appropriate because separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for WDC.

53. **Injunctive or Declaratory Relief (Wis. Stat. § 803.08(2)(b)).** WDC has acted or refused to act on grounds that apply generally to the Class, so that final injunctive or declaratory relief is appropriate respecting the class as a whole.

**CLAIMS FOR RELIEF**

**COUNT ONE**  
**WISCONSIN WAGE AND HOUR LAWS**

54. Plaintiffs repeat and reassert the allegations in Paragraphs 1-53, above, as if fully alleged herein.

55. Plaintiffs and each of the other Class members have been WDC “employees,” within the meaning of Wis. Stat. §§ 103.001(6) and 109.01(1).

56. WDC is an employer, within the meaning of Wis. Stat. §§ 103.001(6), 103.01(1), and 109.01(2) and Wis. Admin. Code § DWD 272.01(5).

57. The time spent by Plaintiffs and the other Class members performing pre- and post-shift duties was not “preliminary” or “postliminary” under the standards applicable pursuant to Wis. Admin. Code DWD §§ 272.12 and 274.

58. The performance of those duties was compensable “work” within the meaning of Wis. Stat. §§ 103.01-.03 and 109.03, Wis. Admin. Code §§ DWD 272 and 274.

59. WDC knowingly and willingly suffered and permitted Plaintiffs and the other Class members to perform pre- and post-shift duties without compensation.

60. WDC violated Wis. Stat. §§ 109.01 and 109.03 and the relevant interpreting regulations by failing to pay Plaintiffs and the other class members at their straight time rates of pay for the time that they each spent performing their pre- and post-shift activities.

61. WDC violated Wis. Stat. §§ 103.01-.03, 109.01, and 109.03, and the relevant interpreting regulations by failing to pay Plaintiffs and the other Class members one and one-half (1.5) times their regular rate of pay for the time that they each spent performing their pre- and post-shift duties in overtime weeks or in weeks where performance of this “off-the-clock” work would have caused Plaintiffs and the other Class members to go into overtime.

62. WDC knew or should have known that its policy and practice of requiring Plaintiffs and the other Class members to perform pre- and post-shift duties without compensation was unlawful and in violation of Wisconsin's wage and hour laws.

63. WDC knowingly, willfully, and with reckless disregard carried out an unlawful pattern and practice of failing to pay Plaintiffs and the other Class members for all time spent on pre- and post-shift duties.

64. WDC failed to maintain accurate records of all time worked by Plaintiffs and the other Class members, as required by Wis. Admin. Code § DWD 274.06.

65. Straight time and overtime compensation has been unlawfully withheld by WDC from Plaintiffs and the Class for the pre- and post-shift duties described above.

66. WDC is liable under Wis. Stat. §§ 109.01 and 109.03, and Wis. Admin. Code §§ DWD §§ 272 and 274 to Plaintiffs and the other Class members for unpaid straight time compensation, together with an additional 50% of the amount of those wages as liquidated damages or penalties.

67. WDC is liable under Wis. Stat. §§ 103.01-.03, 109.01, and 109.03, and Wis. Admin. Code §§ DWD 272 and 274 to Plaintiffs and the other Class members for unpaid overtime compensation, together with an additional 50% of the amount of those wages as liquidated damages or penalties.

68. As a direct and proximate result of WDC's unlawful conduct, Plaintiffs and the other Class members have suffered and will continue to suffer a loss of income and other damages.

69. Plaintiffs and the other Class members are entitled to and hereby seek: (a) compensation for unpaid straight time and overtime hours worked; (b) liquidated damages or penalties in the amount of 50 percent of the compensation due; (c) injunctive and declaratory relief;

(d) pre- and post-judgment interest; (e) attorneys' fees, expenses, and costs incurred in connection with this claim; and (f) any other just and proper relief available under the laws of the State of Wisconsin.

**COUNT TWO**  
**BREACH OF CONTRACT**

70. Plaintiffs repeat and reassert the allegations in Paragraphs 1-53, above, as if fully alleged herein.

71. Plaintiffs and the other Class members are required to comply with the State Human Resources Handbook, Department of Corrections policies, and other State- and Department-wide policies and procedures, which form the Contracts.

72. The Contracts promise that WDC will pay Plaintiffs and the other Class members for all hours worked, including for all straight time hours at their hourly rates of pay, and for all overtime hours at one and one-half times their regular rates of pay.

73. Plaintiffs and the other Class members accepted these promises by entering into and continuing their employment with WDC, abiding by WDC's policies, procedures, and manuals, forming express contracts between the Parties.

74. Plaintiffs and the other Class members performed their contractual obligations by working for WDC and performing their job duties.

75. WDC breached the Contracts by failing to pay Plaintiffs and the other Class members for straight time and overtime hours worked by them in accordance with the Contracts' terms.

76. WDC's breaches of their Contracts with Plaintiffs and the other Class members caused Plaintiffs and the other Class members to sustain damages in the amount of wages that they have not been paid.

77. Plaintiffs and the other Class members are entitled to damages equal to the contractual straight time rate of pay for all compensable work performed by them below 40 hours in a workweek, and equal to the contractual overtime rate of pay for all compensable work performed by them over 40 hours worked per week.

78. As a direct and proximate result of WDC's breach of contract, Plaintiffs and each of the other Class members have suffered and will continue to suffer a loss of income and other damages.

79. Plaintiffs and the other Class members are entitled to and hereby seek: (a) all unpaid wages due, including straight time and overtime compensation; (b) injunctive and declaratory relief; (c) pre- and post-judgment interest; (d) attorneys' fees, expenses, and costs incurred in connection with this claim; and (e) any other just and proper relief available under the laws of the State of Wisconsin.

**COUNT THREE**  
**UNJUST ENRICHMENT**

80. Plaintiffs repeat and reassert the allegations in Paragraphs 1-53, above, as if fully alleged herein.

81. Plaintiffs plead this Count in the alternative to Count Two.

82. Plaintiffs and each of the other Class members conferred substantial benefits on WDC by performing their pre- and post-shift duties in furtherance of their principal work activities at WDC's facilities.

83. WDC knowingly and willingly accepted and enjoyed those benefits.

84. WDC appreciated the fact of Plaintiffs' and the other Class members' performance of the pre- and post-shift job duties by retaining the benefits of the labor provided by Plaintiff and

the other Class members in performing those duties, while failing to compensate them for that time at their agreed upon rate of pay.

85. WDC either knew or should have known that Plaintiffs and the other Class members were performing compensable work, without compensation, which was integral and indispensable to Plaintiffs' and the other Class members' principal activities.

86. It is inequitable for WDC to accept and retain (and/or to have accepted and retained) the benefits of the above-described work performed by Plaintiffs and the other Class members, under the circumstances alleged herein, without paying them the reasonable value of those services.

87. As a direct and proximate result of WDC's unjust enrichment, Plaintiffs and the other Class members have suffered and will continue to suffer a loss of income and other damages.

88. Plaintiffs and the other Class members are entitled to and hereby seek: (a) compensation for unpaid straight time and overtime worked; (b) injunctive and declaratory relief; (c) pre- and post-judgment interest; (d) attorneys' fees, expenses, and costs incurred in connection with this claim; and (e) any other just and proper relief available under the laws of the State of Wisconsin.

**COUNT FOUR**  
**DECLARATORY JUDGMENT**

89. Plaintiffs repeat and reassert the allegations in Paragraphs 1-54, above, as if fully alleged herein.

90. This Court has the authority to grant a declaratory judgment, pursuant to Wis. Stat. § 806.04, that declares the right of Plaintiffs and the other Class members to be paid, pursuant to Wisconsin law, for all compensable work performed by them.

91. An actual controversy exists regarding whether Plaintiffs and the other Class members' have a right to compensation for work they performed, but for which they were not paid.

92. Plaintiffs and the other Class members are entitled to and hereby seek a judicial determination regarding the existence and nature of that right.

93. Plaintiffs and the other Class members have suffered and will continue to suffer financial and other harm if WDC continues denying them pay for their compensable work.

94. A declaratory judgment will assist the parties to this action by determining the respective legal rights and obligations of Plaintiffs and the other Class members on the one hand, and WDC, on the other.

#### **REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiffs, individually and on behalf of the other Class members, respectfully request that the Court enter judgment in their favor and against WDC as to each and every count alleged, including:

- A. An order certifying the Class pursuant to Wis. Stat. § 803.08 and issuing notice to the Class members;
- B. An order designating Plaintiffs as the Class Representatives;
- C. An order designating the law firms of DiCello Levitt Gutzler LLC, Cuneo Gilbert & LaDuca, LLP, and Burger Law, LLC as Class Counsel;
- D. An order declaring WDC's conduct described in this Complaint as being unlawful, and in violation of Wisconsin wage and hour laws and regulations;
- E. An order declaring WDC to be in breach of the Contracts with Plaintiffs and the other Class members;
- F. An order declaring that WDC has been unjustly enriched by retaining the value of Plaintiffs' and the other Class members' work without compensating them for it;

- G. An order requiring that WDC compensate Plaintiffs and the other Class members for pre- and post-shift duties performed in the future;
- H. A verdict and judgment for all unpaid straight time and overtime wages owed to Plaintiffs and the other Class members;
- I. A verdict and judgment for all actual damages sustained by Plaintiffs and the other Class members;
- J. A verdict and judgment for liquidated damages or penalties equaling 50 percent of the unpaid straight time and overtime wages owed to Plaintiffs and the other Class members;
- K. An order requiring WDC to pay all pre-judgment and post-judgment interest at the applicable legal rate;
- L. Attorneys' fees, costs, and expenses incurred by Plaintiffs and the other Class members in this litigation, including pre-suit investigation; and
- M. Any such other and further relief, in law and equity, as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Pursuant to Wis. Stat. § 805.01, Plaintiffs demand a trial by jury on all issues so triable.

Dated: August 3, 2020

Respectfully submitted,

/s/ Christopher D. Stombaugh

Christopher D. Stombaugh  
State Bar No: 1022065  
**DICELLO LEVITT GUTZLER LLC**  
Post Office Box 437  
Platteville, Wisconsin 53818  
Tel.: 440-953-8888  
[cstombaugh@dicellolevitt.com](mailto:cstombaugh@dicellolevitt.com)

Adam J. Levitt\*  
Laura E. Reasons\*  
**DICELLO LEVITT GUTZLER LLC**

Ten North Dearborn Street, Sixth Floor  
Chicago, Illinois 60602  
Tel.: 312-214-7900  
[alevitt@dicellolevitt.com](mailto:alevitt@dicellolevitt.com)  
[lreasons@dicellolevitt.com](mailto:lreasons@dicellolevitt.com)

Gary K. Burger\*  
**BURGER LAW, LLC**  
500 North Broadway, Suite 1860  
St. Louis, Missouri 63102  
Tel.: 618-272-2222  
[gary@burgerlaw.com](mailto:gary@burgerlaw.com)

Charles J. LaDuca\*  
R. Michael Smith\*  
Katherine Van Dyck\*  
**CUNEO GILBERT & LADUCA, LLP**  
4725 Wisconsin Avenue, Northwest, Suite 200  
Washington, DC 20016  
Tel.: 202-789-3960  
[charles@cuneolaw.com](mailto:charles@cuneolaw.com)  
[mike@cuneolaw.com](mailto:mike@cuneolaw.com)  
[kvandyck@cuneolaw.com](mailto:kvandyck@cuneolaw.com)

Michael J. Flannery\*  
**CUNEO GILBERT & LADUCA, LLP**  
500 North Broadway, Suite 1450  
St. Louis, Missouri 63102  
Tel.: 314-226-1015  
[mflannery@cuneolaw.com](mailto:mflannery@cuneolaw.com)

*Counsel for Plaintiffs and the Class*

\* To Seek Admission *Pro Hac Vice*