

May 22, 2023

Via Email and Priority Mail

Duncan Rosen, Chair
Upper Captiva Fire Protection & Rescue Service District
PO Box 322
Pineland, FL 33945
duncan@uppercaptivafire.org

Re: *Jason Martin v. Upper Captiva Fire Protection & Rescue Service District*
Unpaid Overtime
File No. CP01216

Dear Mr. Rosen:

Please be advised that this office and the undersigned have been retained to represent Mr. Jason Martin in his claim for unpaid overtime against Upper Captiva Fire Protection & Rescue Service District (“the District”).

The District violated the overtime pay provisions of the Fair Labor Standards Act (29 U.S.C. § 203) (“FLSA”) with respect to its compensation of Mr. Martin. Enclosed is a draft federal lawsuit detailing the facts of his claim against the District.

Pursuant to applicable FLSA implementing regulations, Mr. Martin was entitled to payment of overtime compensation at 1½ times his effective hourly rate for each hour worked in excess of 53 in a workweek. During the period commencing with his employment start date and ending on or about October 1, 2022, Mr. Martin worked in excess of 80 hours in most workweeks. It is my understanding that the District possesses records which document Mr. Martin’s weekly work hours throughout his employment.

Under the FLSA, my client is entitled to recover not only the underlying unpaid overtime wages, but also an equal amount in the way of statutory liquidated damages plus reasonable attorneys’ fees.

It is certainly my hope this matter can be resolved without the need for further escalation. To that end, and to allow for good faith settlement discussions, I have enclosed a proposed agreement to toll the applicable statute of limitations (“Tolling Agreement”). Please have the Tolling Agreement executed by an authorized representative of the District and returned to me **no later than Friday, May 26, 2023.**

I would also appreciate production of the above-referenced time records to facilitate a calculation of Mr. Martin’s total unpaid overtime compensation. If you require a more formal public records request for these documents pursuant to Chapter 119, please advise.

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If the executed Tolling Agreement is not timely returned, I will assume there is no interest in resolving this matter and I will immediately initiate legal proceedings on Mr. Martin's behalf.

Thank you for your attention. I look forward to hearing from you soon.

Sincerely,

s/ R. Michael Pierro, Jr.

R. Michael Pierro, Jr.

RMP/tac

Enclosures (*Draft Federal Complaint & Proposed Tolling Agreement*)

cc: Mr. Jason Martin

Via Email Only

Van Hammon, Vice Chair [*Van Hammond@uppercaptivafire.org*]

William Fry, Secretary/Treasurer [*Bill.Fy@uppercaptivafire.org*]

Williams Byrnes, Commissioner [*byrnes4551@gmail.com*]

Michael Filipeczak, Commissioner [*mkffireboard@gmail.com*]

IN UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JASON MARTIN,

Plaintiff,

v.

UPPER CAPTIVA FIRE PROTECTION
& RESCUE SERVICE DISTRICT,

Defendant.

Case No. **DRAFT**

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff JASON MARTIN (“Plaintiff” or “Martin”) sues Defendant, UPPER CAPTIVA FIRE PROTECTION & RESCUE SERVICE DISTRICT, (“Defendant” or “the District”), and states as follows:

CAUSES OF ACTION

1. This is an action brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et. seq.* (FLSA).

PARTIES

2. Plaintiff is an individual who currently resides in Lee County, Florida.

3. Defendant UPPER CAPTIVA FIRE PROTECTION & RESCUE SERVICE DISTRICT is a district whose purpose is to establish and maintain fire suppression and control services, provide emergency medical services and rescue response services business and is located in Lee County, Florida.

JURISDICTION AND VENUE

4. Subject matter Jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 29 U.S.C. §216 (b) because this action involves a federal question under the Fair Labor Standards Act.

5. Personal jurisdiction and venue are proper in the United States District Court for the Middle District of Florida because at all times material, Defendant conducted its business in, and significant events giving rise to Plaintiff's claims occurred within the Florida counties comprising the U.S. District Court, Middle District of Florida.

6. Venue is proper in the Fort Myers Division under Local Rule 1.04 because the action accrued in Lee County, Florida over which the Fort Myers Division has jurisdiction.

GENERAL ALLEGATIONS

7. Defendant, as a public agency, is an “employer” within the meaning of 29 U.S.C. Section 203 and therefore is a covered employer subject to the wage and hour requirements of the FLSA including the payment of overtime compensation to non-exempt employees.

8. At all times material to this action, Defendant employed five (5) or more individuals who performed fire protection activities.

9. Plaintiff was formerly employed by Defendant as Chief of the District from October 2018 until January 2023.

10. Despite his job title, Plaintiff primarily performed the job duties of a firefighter and paramedic and was contractually required to maintain his certifications in those positions.

11. As such, at all times material hereto, Plaintiff was an FLSA non-exempt employee of Defendant. (29 C.F.R. Section 541.3(b)).

12. Defendant was required under the FLSA to pay Plaintiff one and one half (1½) times his effective hourly rate for each hour worked over 53 hours in a workweek or 212 hours in 28 days.

13. Plaintiff routinely worked in excess of 53 hours in a workweek and/or 212 hours in 28 days.

14. In fact, it is reasonably estimated that Plaintiff regularly worked in excess of 80 hours in most workweeks.

15. Nevertheless, from the commencement of his employment through October 1, 2022, Defendant failed to pay Plaintiff for his accrued overtime hours at one and one half (1 ½) times his regular hourly pay rate.

16. Plaintiff has had to retain the undersigned counsel to bring the instant action and will incur attorney's fees for said representation.

COUNT I

(Failure to Pay Overtime Wages in violation of the FLSA, 29 U.S.C. Section 207)

17. Plaintiff realleges and adopts, as if fully set forth in Count I, the allegations in paragraphs 1 through 16.

18. During the relevant time period, Plaintiff was a non-exempt employee under the FLSA.

19. As a firefighter, Plaintiff was entitled to overtime pay at time and one-half his regular rate of pay for all hours worked in excess of 53 in a workweek or 212 in 28 days. (29 C.F.R. Sections 553.201 and 553.230).

20. During the relevant time period, Defendant routinely worked in excess of 53 hours in a workweek and 212 hours in a 28 day period.

21. In violation of the FLSA, Defendant willfully failed to pay Plaintiff time and one-half his regular rate of pay for overtime hours worked.

22. As a direct result of Defendant's violation of the FLSA, Plaintiff has suffered damages in the way of unpaid overtime compensation.

23. Defendant did not make a good faith effort to comply with the FLSA with respect to its compensation of Plaintiff.

24. Plaintiff is entitled to recover from Defendant the unpaid overtime compensation, and an additional equal amount as liquidated damages, prejudgment interest, and reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

WHEREFORE, Plaintiff demands judgment against Defendant for unpaid overtime compensation, statutory liquidated damages, prejudgment interest together with the costs of suit and reasonable attorney's fees (pursuant to § 216(b) of the FLSA), and such other and further relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b) and the Seventh Amendment to the United States, Plaintiff demands a trial by jury as to all triable issues.

Dated this ____ day of ____ 2023.

Respectfully submitted,

s/ DRAFT

R. MICHAEL PIERRO, JR.
Florida Bar No. 0013023
Trial Counsel for Plaintiff

CALCIANO PIERRO, PLLC
146 Second Street North – Suite 304
St. Petersburg, Florida 33701
(727) 201-2573 | (727) 491-7072 – Fax
mike@femploymentlaw.com

DRAFT

TOLLING AGREEMENT

This Agreement is made by and between Upper Captiva Fire Protection & Rescue Service District referred to herein as “the District”) and Jason Martin (“Martin”).

WHEREAS Martin was an employee of the District and has asserted a claim against the District for unpaid overtime compensation under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”);

WHEREAS Martin and the District desire to pursue a possible pre-suit resolution of the claim for unpaid overtime wages (“the Claim”);

WHEREAS to facilitate possible resolution without the need for litigation, the Parties desire to make provision for the tolling of the statute of limitations applicable to the Claim;

NOW THEREFORE, for good and sufficient consideration, the receipt of which is hereby acknowledged, Martin and the District hereby agree as follows:

1. Tolling Provision. The statute of limitations applicable to the Claim under the FLSA shall be tolled during the period of time while this Agreement is in effect and neither party shall put forward or rely upon the period of time while this Agreement is in effect as a bar or laches or for any other purpose to defeat the Claim. This paragraph does not apply to claims made to enforce this Agreement. Nothing contained in this Agreement shall be deemed as an admission by any party with respect to any allegations or claims.

2. Duration. This Agreement is effective as of May 22, 2023, and shall terminate on June 22, 2023, and running of the statute of limitations applicable to the Claim shall resume on June 26, 2023.

3. Early Termination. Any of the Parties may terminate the Tolling Agreement by giving ten (10) days’ notice of its termination to the other Party. Until the eleventh (11th) day after such notice of termination is given, this Tolling Agreement shall remain in full force and effect.

4. Use of Agreement. During the term of this Agreement, Martin shall refrain and forebear from commencing, instituting or prosecuting any lawsuit, action or other proceeding against the District raising the Claim. Except as specifically stated, this Agreement shall not be deemed to constitute a waiver of any rights, claims or defenses of the parties to this Agreement, nor shall it be deemed to limit or affect any defense based upon the statute of limitations, laches or any other limitations (whether equitable, statutory, contractual or otherwise) to the extent such defense could have been asserted on or before May 22, 2023.

5. Modification. This Agreement can be modified only in a writing signed by the parties. This Agreement shall constitute the entire understanding between the parties concerning the subject matter of this Agreement and supersedes and replaces all prior negotiations, proposed agreements, and agreements, written or oral, relating to this subject.

6. Successors. This Agreement shall bind and benefit each of the parties and their respective predecessors, successors and assigns.

7. Governing law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

8. Execution of Counterparts. Separate counterparts of this Agreement may be executed by the parties with the same force and effect as if all such parties had executed a single copy of this Agreement.

9. Authority to Bind. Each Counsel executing this Agreement represents and warrants that he has been authorized to enter into this Agreement on behalf of the party on whose behalf he signed and that signatory has full and complete authority to do so.

10. Confidentiality. The parties and their attorneys shall keep the terms of the Agreement confidential, and shall not disclose such terms to anyone unless required to disclose such information by court order or to enforce this Agreement.

11. Notices. Any notice, request, instructions or other document to be provided hereunder by either party to the other shall be in writing and delivered personally or mailed by certified mail, postage prepaid, return receipt requested (such personally delivered or mailed notice to be effective on the date actually received) or by electronic means as follows:

If to Martin, address to:

R. Michael Pierro, Jr., Esq.
146 2nd Street North, #304
St. Petersburg, FL 33701
(727) 201-2573 (f)
mike@femploymentlaw.com

If to the District, address to:

On behalf of Matthew Martin

Dated: _____ BY: _____

R. Michael Pierro, Jr., Esq.

On behalf of Upper Captiva Fire Protection &
Rescue Service District

Dated: _____ BY: _____

Name: _____

Title: _____