

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. 2:23-cv-00388

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 31st day of May 2023.

Respectfully submitted,

s/ R. Michael Pierro, Jr.

R. MICHAEL PIERRO, JR.

Florida Bar No. 0013023

Trial Counsel for Plaintiff

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