

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-JLB-NPM

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Plaintiff JASON MARTIN hereby submits this Memorandum of Law in Opposition to Defendant, UPPER CAPTIVA FIRE PROTECTION & RESCUE SERVICE DISTRICT's Motion for Summary Judgment and states as follows:

I. Introduction

This action involves a singular count under which Plaintiff seeks recovery of unpaid overtime compensation earned while employed by Defendant as Chief. Defendant moves for summary judgment principally based upon its affirmative defense that Plaintiff was an FLSA "exempt" executive or administrative employee and therefore not entitled to the payment of overtime. As discussed below, Defendant has failed to establish

the absence of genuine issues of material fact necessary to obtain summary judgment.

Defendant had an obligation to proffer *clear and affirmative* record evidence establishing, as a matter of law, that the asserted FLSA exemption(s) applied. Defendant has not remotely satisfied its evidentiary burden with regard to the job duties test of either the executive or administrative exemption.¹ Defendant also erroneously argues that summary judgment is appropriate based upon its assertion of an “unreasonable delay” before Plaintiff asserted his entitlement to unpaid overtime. Simply put, this is not a recognized defense to an FLSA overtime claim which has otherwise been brought within the applicable statute of limitations. Defendant's motion should therefore be denied.

II. Response to Defendant's Statement of Facts

1. Admitted.
2. Admitted.²
3. Admitted.

¹ There is no dispute that the salary basis requirement of the administrative and executive exemptions has been met.

² Plaintiff notes that Exhibit B is technically not on the record as it is not a self-authenticating document and has not otherwise been authenticated by way of affidavit or deposition testimony. However, Plaintiff does not dispute the document's contents.

4. Admitted.³

5. The final contract is actually marked as Exhibit D.

6. Admitted.

7. Denied. Exhibit E should not be considered as proper summary judgment evidence because it is not a part of the record as it is not a self-authenticating document and has not otherwise been authenticated by way of affidavit or deposition testimony.

8. Denied. Exhibit E should not be considered as proper summary judgment evidence because it is not a part of the record as it is not a self-authenticating document and has not otherwise been authenticated by way of affidavit or deposition testimony.

9. Admitted

10. Admitted.

11. Denied. The exhibits cited by Defendant do not support the purported fact asserted.

12. Admitted.

13. Admitted.

14. Admitted.

³ Exhibits C and D are also not on the record. However, Plaintiff does not dispute the contents or authenticity of the documents.

15. Plaintiff denies that he contends that he was an exempt employee under the FLSA. It is admitted that Defendant filed its Answer and Affirmative Defenses and set forth affirmative defenses therein.

16. Admitted.

17. Plaintiff denies that the cited contracts are dispositive of the exemption issue. Moreover, despite Defendant's representation, it cites to no "statutory classification" of Plaintiff's former position.

III. Plaintiff's Statement of Additional Facts

1. As Chief of the District, Plaintiff primarily performed the job duties of a firefighter and paramedic. (Martin Aff. 3).⁴

2. He was also responsible for administrative tasks, though they comprised roughly one third of his daily job duties. (Martin Aff. 4).

3. Per the employment agreements, Plaintiff was required to obtain and maintain both firefighter and paramedic certifications. (Martin Aff. 5).

4. He did in fact maintain these certifications and performed EMS duties as a patient care provider on EMS calls while on shift. (Martin Aff. 6).

5. Plaintiff was one of only two (2) full-time first responders of the District, the other being the Assistant Chief. (Martin Aff. 7).

⁴The Affidavit of Jason Martin is attached hereto as Exhibit A. "Marti Aff. ___" references the affidavit paragraph number.

6. All other firefighters employed by the District worked part-time. (Martin Aff. 8).

7. All firefighters of the District (including the Assistant Chief and Plaintiff), regardless of rank, were required to work 24 hour shifts. (Martin Aff. 9).

8. Plaintiff was generally scheduled for two 24 hour shifts followed by two days off. (Martin Aff. 10).

9. However, due to the needs of the District, he routinely worked additional unscheduled 24 hour shifts during a given pay period. (Martin Aff. 11).

10. Plaintiff was required to utilize his accrued paid time off (PTO) for scheduled shifts he was unable to work. (Martin Aff. 12).

11. For insurance purposes, Defendant was required to have a minimum staffing level of 4 firefighters on 24-hour shifts, 365 days per year. This standard was set by the Insurance Services Office (ISO). (Martin Aff. 13).

12. ISO conducts periodic inspections, the results of which determine a score upon which insurers rely for not only insuring the District but also community businesses and property. (Martin Aff. 15-20).

13. Everything from the 911 system, municipal, private or natural water supply systems, as well as the entire fire department's structure, performance capabilities and administrative strengths in training, compliance, and prevention all go into a score that is awarded at the end of the inspection. (Martin Aff. 16).

14. In order to satisfy the minimum staffing level of 4 firefighters, Defendant placed three (3) part-time firefighters and one full-time employee on each 24 hour shift. (Martin Aff. 21).

15. On all shifts for which Plaintiff was scheduled, he had to serve as one of the 4 required firefighters. (Martin Aff. 22).

16. On any given shift, each firefighter, including Plaintiff, was assigned an apparatus of which to take charge and maintain for the entire shift. Each person assigned would conduct the following:

- a. Visually inspect the entire vehicle and equipment using an electronic checklist to verify that every piece of equipment was in place and in working order;
- b. That the vehicle and its components were in serviceable condition. This included but was not limited to mechanical function of all systems to include pump testing, safety

- equipment presence and function, water level replenishment, maintain or refill air levels in vehicle and air pack systems; and
- c. Reporting and troubleshooting of systems or equipment needed to be repaired, serviced, (Within the person's expertise and legal authorization level).

(Martin Aff. 23).

17. This meant that Plaintiff was responsible for the equipment and operation of the piece of equipment assigned to him. (Martin Aff. 24).

18. At any time during a shift, along with all other firefighters on duty, Plaintiff was expected to respond to all alarms and calls for service that were sent to the District. These included all fire, EMS, mutual aid and marine operation calls. (Martin Aff. 25).

19. Just like all other firefighters employed by the Defendant, Plaintiff was also expected to attend and participate in any training exercise assigned for the day while on shift. (Martin Aff. 26).

20. As an NFPA Certified Fire Inspector II and Certified NFPA Plans reviewer, Plaintiff performed inspections in local business establishments to ensure fire and life safety standards were met. These duties are normally

conducted by fire inspectors who operate outside a fire chief's job description. (Martin Aff. 27).

21. Following the shift assignment and performance of the duties Plaintiff was assigned, he then conducted administrative work until 1700 hrs. (Martin Aff. 28).

22. However, the administrative duties would be interrupted in the event of calls for response. (Martin Aff. 29).

23. The administrative tasks included, but were not limited to, reviewing payroll, recruitment and retention, governmental records compliance, and safety. (Martin Aff. 30).

24. Following performance of the administrative tasks, Plaintiff remained on shift in the capacity of the required fourth firefighter on staff. This normally was conducted from the hours of 1700 until relieved by oncoming shift staff at 0900 hrs the following day. (Martin Aff. 31).

25. Plaintiff's compensation as Chief of the District was determined exclusively by the District Board of Commissioners. (Martin Aff. 32).

26. Plaintiff did not have the authority to unilaterally modify his compensation or determine his FLSA non-exempt/exempt status. (Martin Aff. 33).

27. Plaintiff's rates of pay during the time period relevant to this action were as follow:

- a. \$2,971.15 salary (bi-weekly) from March 4, 2020 - September 29, 2020;
- b. \$2,989.00 salary (bi-weekly) from September 30, 2020 - September 28, 2021; and
- c. \$3,078.65 salary (bi-weekly) from September 29, 2021 - September 13, 2022.

(Martin Aff. 34).

28. Pursuant to his employment contracts, Plaintiff's salary was based upon a forty (40) hour workweek. (Martin Aff. 35).

29. Per the employment contracts, Plaintiff only received overtime pay for hours worked during certain emergencies as opposed to all overtime hours worked. (Martin Aff. 36).

30. Plaintiff's overtime rate for such hours was determined by dividing his weekly salary by 40 hours to reach the regular hourly rate which was then multiplied by time and one half. (Martin Aff. 37).

31. Defendant also employed Division Chiefs and Lieutenants who were paid in the range of \$20-\$23 and \$19-\$20 per hour, respectively. (Martin Aff. 38).

32. The Division Chiefs and Lieutenants were employed on a part-time basis and were assigned to 24 hour shifts. (Martin Aff. 39).

33. Due to the volume of unpaid overtime hours worked by Plaintiff, his effective hourly wage rate was often significantly less than that of the Division Chiefs and Lieutenants. (Martin Aff. 40).

34. Plaintiff's effective hourly rate for any given workweek can be ascertained from his sworn Answers to the Court's FLSA Interrogatories. ([Doc. 22-1] Plaintiff's FLSA Interrogatory Answers , #7, Ex. A).

35. By way of example, during the pay period ending October 27, 2020, Plaintiff's effective hourly rate was \$15.47 after dividing his salary of \$2,989.00 by the 192 hours he worked. During the pay period ending January 19, 2021, his effective hourly rate was \$20.76. (Id.).

IV. Procedural Posture of Case

The Case Management and Scheduling Order [Doc. 34] was entered on November 9, 2023 following the parties completion of the requirements of the Court's previously entered FLSA Fast-Track Scheduling Order [Doc. 13]. The parties have exchanged initial disclosures and have each propounded

initial written discovery requests, the responses to which are due in early January 2024. Depositions have yet to be taken in the case. The discovery deadline is March 15, 2024 and dispositive motions must be filed no later than April 8, 2024.

V. Standard of Review for Summary Judgment

Summary judgment is only appropriate where the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The Court must view the facts and draw reasonable inferences in the light most favorable to the nonmoving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007).

VI. Argument

A. Defendant Must Affirmatively Prove an FLSA Exemption Applies

FLSA exemptions are affirmative defenses, meaning Defendant bears the burden of proving the asserted exemption(s) applies by “clear and affirmative evidence.” *Mendoza v. Disc. C.V. Joint Rack & Pinion Rebuilding, Inc.*, 101 F. Supp. 3d 1282, 1290 (S.D. Fla. 2015).

B. Plaintiff’s Primary Job Duties Were Not Managerial and Supervisory in Scope

In conclusory fashion, Defendant asserts that Plaintiff’s primary job duties were “managerial and supervisory” in scope. For this proposition,

Defendant improperly relies on nothing more than written characterizations of Plaintiff's job duties as Chief as opposed to the *actual* primary job duties performed on a day-to-day basis. See *Palma v. Metro Pcs Wireless*, No. 8:13-cv-698-T-33MAP, 2014 U.S. Dist. LEXIS 206059 *3 (M.D. Fla. May 12, 2014); and *Trammell v. Amdocs, Inc.*, No. 2:15-cv-01473-RDP, 2018 U.S. Dist. LEXIS 27511, at *9 (N.D. Ala. Feb. 21, 2018)(“Analysis of whether an employee qualifies as an administrative employee requires a fact-intensive inquiry of the employee's primary duties”).

As with job descriptions, job titles are immaterial when assessing the applicability of a white collar exemption. See *Gregory v. First Title of Am., Inc.*, 555 F.3d 1300, 1303 (11th Cir. 2009). This principle has particular force in the context of first responders who also perform managerial and/or administrative tasks. To be sure, FLSA implementing regulation 29 C.F.R. § 541.3, commonly referred to as the “first responder regulation,” makes clear that a firefighter, *regardless of rank or pay level*, is not subject to the white collar exemptions because “their primary duty is not the performance of work directly related to the management or general business operations of the employer or the employer's customers...”

The 4th Circuit, in *Morrison v. Cty. of Fairfax, VA*, 826 F.3d 758 (4th Cir. 2016), specifically considered the first responder regulation in reviewing whether fire captains were exempt executives. Not only did the Court reverse summary judgment in favor of the defendant, it remanded the case with instructions that the trial court enter summary judgment in favor of the plaintiffs. *Id.* at 773. The Court's decision centered on the failure of the defendant to proffer sufficient affirmative evidence establishing that managerial/administrative tasks were the primary duties of the captains. In fact, the Court went on to state:

Front-line firefighting, on the other hand, is at the [**34] center of the Captains' jobs. "Simply put, [the Captains are] tasked with the responsibility of interrupting whatever other task or activity they may have been involved in to respond to a fire or emergency call." Barrows, 944 F. Supp. 2d at 605. Like their subordinates, with whom they work side-by-side at the scene of a fire, **the Captains are part of the minimum staffing complement for emergency calls.** And when they are not responding to a call, the undisputed evidence shows, then they are mostly likely to be spending their time preparing to respond or waiting to respond.

Morrison v. Cty. of Fairfax, VA, 826 F.3d 758, 772 (4th Cir. 2016). (emphasis added). Notably, in the instant case, Plaintiff Martin was “part of the minimum staffing complement” of the District.

Defendant’s reliance on *Emmons v. City of Chesapeake, VA*, 982 F.3d 245 (4th Cir. 2020) is misplaced. Indeed, the Court concluded that the plaintiff battalion chiefs were exempt executives. However, the defendant in that case shouldered its evidentiary burden to affirmatively prove application of the exemption. In the instant case, Defendant has done nothing of the sort.

a. Defendant Has Not Demonstrated that Plaintiff’s Managerial Duties “Outweighed” his Firefighter/Paramedic Duties

Defendant arbitrarily asserts that by virtue of the simple number of enumerated duties it categorizes as managerial, Plaintiff’s managerial duties outweighed his firefighter/paramedic responsibilities, giving no mind to the *actual* volume of exempt versus non-exempt work in which Plaintiff engaged on a daily basis. In contrast, Plaintiff has averred that performance of his administrative/managerial tasks consumed only one third of his shift hours leaving the vast majority of time to his firefighter/paramedic responsibilities. Also, Plaintiff’s presence on any given shift for the full 24 hour duration was

absolutely required to meet minimum first responder staffing attendant to the ISO insurance rating. It stands to reason that if Plaintiff's primary duty was managerial in nature, his assignment to 24 hour shifts would have been unnecessary.

b. Plaintiff Did Not Spend Most of His time Performing Exempt Work

Despite failing to proffer any evidence as to the amount of time Plaintiff spent on exempt job duties, Defendant insists the comparative time factor favors its position. Again, in contrast to Defendant, Plaintiff has specifically attested to the time he generally expended on his managerial/administrative responsibilities versus those of a firefighter/paramedic. Plaintiff's sworn averments in this regard stand uncontroverted. See *Morrison*, 826 F.3d at 770 (The Court noting the absence of any evidence offered by the defendant as to the time worked by plaintiffs on managerial/administrative tasks versus the "unrebutted testimony" of the plaintiffs).

c. Defendant Incorrectly States that Plaintiff Had No Direct Supervision

While Plaintiff was certainly the highest ranking first responder employed by the District, he by no means had unfettered discretion and control of the District's operations. At all times, Plaintiff served at the

pleasure of the Board, under the Board's direct supervision, and subject to the Board's authority.

d. Plaintiff's Effective Hourly Pay Rate was Comparable to, If not Less Than, That of His Hourly-Paid Counterparts

Defendant seems to argue that the mere fact Plaintiff received a salary versus the hourly pay afforded the part-time first responders is dispositive of the comparative compensation factor, yet provides no record evidence demonstrating how the salary/hourly differentiation actually resulted in Plaintiff receiving comparatively higher compensation. Naturally, a relative comparison between the Plaintiff's salary and a comparator's hourly pay necessitates a conversion of Plaintiff's salary to an effective hourly rate for a given pay period. See *Roberts v. TJX Cos.*, Civil Action No. 13-cv-13142-ADB, 2017 U.S. Dist. LEXIS 49175, at *43 (D. Mass. Mar. 31, 2017). Defendant does not even identify a specific comparator or category of comparator employees, let alone conduct the proper analysis. This is not insignificant given that Defendant employed hourly fire fighters of varying ranks and corresponding pay rates.

Keeping in mind that an FLSA exemption is at issue, it is certainly not Plaintiff's burden to effectuate the proper compensation comparison. See *Morrison*, 826 F.3d at 771-72 (The Court noting that the defendant agency

failed to “[present] any evidence of a significant gap in pay” between plaintiffs and comparator positions). Nonetheless, an analysis of Plaintiff’s total work hours during a number of pay periods demonstrates that when converting his salary to an effective hourly rate of pay, said hourly rate was often less than his hourly paid counterparts. Furthermore, in the event Plaintiff had to miss a scheduled shift he had to use accrued PTO. If he worked unscheduled shifts, he did not receive additional pay except in limited circumstances.

C. Plaintiff’s Employment Contracts and District Policies are Not Dispositive of the Exemption Issue

Without citation to legal authority, Defendant insists that the employment contracts as well as the District’s purported internal written policies are in and of themselves determinative of whether Plaintiff was properly classified as an FLSA exempt employee. However, the applicability of an FLSA exemption depends on the particular details of an employee’s actual job duties and work performed, rather than mere job titles and/or employment agreements. See *Palma* and *Trammell*, supra at 12. Plaintiff’s final employment agreement stating he was an exempt employee is therefore not dispositive of his exemption status, particularly where it was inapplicable to the period of time at issue in the case. Rather, it is Plaintiff’s day-to-day job

tasks that determine whether he qualified for exemption under the FLSA. Likewise, even if the purported District policies had been properly authenticated and submitted on the record, they would no more support application of an exemption to Plaintiff's job position than the employment contracts.

Plaintiff has provided ample evidence that his actual job duties did not meet the requirements for either the executive or administrative exemption under the FLSA. This evidence at the very least creates a genuine issue of material fact as to whether Plaintiff qualifies for exemption.⁵

D. Defendant's Assertion of "Unreasonable Delay" is Not a Basis for Summary Judgment

Separate and apart from its claim of an FLSA exemption, Defendant incorrectly argues it is entitled to summary judgment based upon its contention of an "unreasonable delay" before Plaintiff asserted his right to unpaid overtime. Notably, Defendant cites to no case authority for this proposition. Defendant's argument is essentially one of "laches." However, it is well established that laches (along with waiver, estoppel and other

⁵ Not only has Defendant failed to establish its exemption defenses as a matter of law, but arguably, if the record evidence submitted by Plaintiff in opposition to Defendant's Motion for Summary Judgment remains uncontroverted, Plaintiff may be entitled to summary judgment on the exemption issue should Plaintiff file his own motion at a later date.

equitable defenses) is not an available defense to an FLSA overtime claim. *Perez-Nunez v. N. Broward Hosp. Dist.*, No. 08-61583-CIV-MOORE, 2009 U.S. Dist. LEXIS 25557, at *4 (S.D. Fla. Mar. 13, 2009) (“The doctrines of waiver, estoppel and laches are generally not applicable to FLSA claims, and Defendant has provided no factual basis whatsoever to support their application here”). In short, a plaintiff is not required to notify a defendant of potential FLSA violations during employment in order to later assert a claim. *Isaula v. Chi. Rest. Grp., LLC*, No. 13-CV-24387-JLK, 2014 U.S. Dist. LEXIS 98256, FN 13 (S.D. Fla. July 11, 2014).

It is further noted that despite its urgings, Defendant points to no record evidence to support the bold assertion that “Plaintiff had the ability to modify employee compensation and benefits as he saw fit, which he did for himself multiple times.” In fact, as Plaintiff has unequivocally averred, determination of his compensation and FLSA status was exclusively in the domain of the Board. Irrespective of Defendant’s erroneous statement, the defense of laches cannot lie.

WHEREFORE, Defendant's Motion for Summary Judgment should be denied.

Respectfully submitted,

s/ R. Micheal Pierro, Jr.

R. MICHAEL PIERRO, JR.

Florida Bar No. 0013023

BRIAN CALCIANO

Florida Bar No. 108879

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of December 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to Ron M. Campbell, Esquire and Melanie H. Everett Cole, Esquire, Scott & Kissane, P.A. Cole, Scott & Kissane Building, 27300 Riverview Center Boulevard, Suite 200, Bonita Springs, Florida 34134 (ron.campbell@csklegal.com, melanie.everett@csklegal.com and emiley.meisenheimer@csklegal.com).

s/ R. Michael Pierro, Jr.

ATTORNEY

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-JLB-NPM

AFFIDAVIT OF JASON MARTIN

I, Jason Martin, being over the age of 21 and of sound mind, attest as follows:

1. I am the Plaintiff in the above-styled action.
2. I was employed by Defendant Upper Captiva Fire Protection & Rescue Service District (“Defendant” or “the District”) as Chief of the District during the period of October 2018 – January 2023.
3. In my capacity as Chief of the District, I primarily performed the job duties of a firefighter and paramedic.
4. I was also responsible for administrative tasks, though they comprised roughly one third of my daily job duties.

5. Per my employment agreements, I was required to obtain and maintain both firefighter and paramedic certifications throughout my employment.

6. I did in fact maintain these certifications for the duration of my employment, and I performed EMS duties as a patient care provider on EMS calls while I was on shift.

7. I was one of only two (2) full-time employees of the District, the other being the Assistant Chief.

8. All other firefighters employed by the District worked part-time.

9. All firefighters of the District (including the Assistant Chief and me), regardless of rank, were required to work 24 hour shifts.

10. Generally, I was scheduled for two 24 hour shifts followed by two days off.

11. However, due to the needs of the District, I routinely worked additional unscheduled 24 hour shifts.

12. To the extent I was not able to work a given scheduled shift, I had to utilize accrued paid time off (PTO).

13. At all times during my employment, in order to procure and maintain proper insurance, Defendant was required to have a minimum

staffing level of 4 firefighters on 24-hour shifts, 365 days per year. This standard was set by the Insurance Services Office (ISO).

14. ISO is a world wide accepted agency that analyzes industry standards of performance and safety.

15. In the world of firefighting, ISO performs an all encompassing assessment of the protection abilities of an agency (such as Defendant) and the community as a whole.

16. Everything from the 911 system, municipal, private or natural water supply systems, as well as the entire fire department's structure, performance capabilities and administrative strengths in training, compliance, and prevention all go into a score that is awarded at the end of the inspection.

17. The importance of the ISO score awarded is that insurance companies use this rating as a primary source of information to decide whether or not to issue fire or property insurance to a potential customer. Should the score be too high, insurance companies are unlikely to take on the insurance risk.

18. In the case of an isolated island such as North Captiva Island, the lowest acceptable score was the community's agreed benchmark to ensure the community could obtain insurance for its businesses and properties.

19. To obtain this rating, a list of requirements are set forth for the Defendant to achieve the desired protection class. It is this list of requirements that sets forth the minimum staffing level permissible to obtain and maintain the rating needed for the community to be able to be insured.

20. As a general rule, ISO conducts ongoing inspections approximately every five years to ensure that compliance is maintained. If there are improvements or degradation in service, the score is recalculated to reflect the changes. Inspections by ISO can be done at-will.

21. In order to satisfy the minimum staffing level of 4 firefighters, Defendant placed three (3) part-time firefighters and one full-time employee on each 24 hour shift.

22. On all shifts for which I was scheduled, I had to serve as one of the 4 required firefighters.

23. On any given shift, each firefighter, including me, was assigned an apparatus of which to take charge and maintain for the entire shift. Each person assigned would conduct the following:

- a. Visually inspect the entire vehicle and equipment using an electronic checklist to verify that every piece of equipment was in place and in working order.

- b. That the vehicle and its components were in serviceable condition. This included but was not limited to mechanical function of all systems to include pump testing, safety equipment presence and function, water level replenishment, maintain or refill air levels in vehicle and air pack systems.
- c. Reporting and troubleshooting of systems or equipment needed to be repaired, serviced, (Within the person's expertise and legal authorization level).

24. This meant that I was responsible for the equipment and operation of the piece of equipment assigned to me.

25. At any time during a shift, along with all other firefighters on duty, I was expected to respond to all alarms and calls for service that were sent to the Upper Captiva Fire and Rescue District. These included all fire, EMS, mutual aid and marine operation calls.

26. Just like all other firefighters employed by the Defendant, I was also expected to attend and participate in any training exercise assigned for the day while on shift. This was done and documented in the district's training records.

27. As an NFPA Certified Fire Inspector II and Certified NFPA Plans reviewer, I performed inspections in local business establishments to ensure

fire and life safety standards were met. These duties are normally conducted by fire inspectors who operate outside a fire chief's job description.

28. Following the shift assignment and performance of the duties I was assigned, I then conducted administrative work until 1700 hrs.

29. However, the administrative duties would be interrupted in the event of calls for response.

30. The administrative tasks included, but were not limited to, reviewing payroll, recruitment and retention, governmental records compliance, and safety.

31. Following performance of the administrative tasks, I remained on shift in the capacity of the required fourth firefighter on staff. This normally was conducted from the hours of 1700 until relieved by oncoming shift staff at 0900 hrs the following day.

32. My compensation as Chief of the District was determined exclusively by the District Board of Commissioners.

33. I did not have the authority to unilaterally modify my compensation or determine my FLSA non-exempt/exempt status.

34. My rates of pay during the time period relevant to this action were as follow:

- a. \$2,971.15 salary (bi-weekly) from March 4, 2020 - September 29, 2020;
- b. \$2,989.00 salary (bi-weekly) from September 30, 2020 - September 28, 2021; and
- c. \$3,078.65 salary (bi-weekly) from September 29, 2021 - September 13, 2022.

35. Pursuant to my employment contracts, my salary was based upon a forty (40) hour workweek, though it is my understanding that under the Fair Labor Standards Act (FLSA), Defendant was at liberty to observe a 53 hour regular workweek with the obligation to pay me overtime (i.e., time and one half my effective hourly rate) only for hours I worked in excess thereof.

36. Nonetheless, per my contracts, I only received overtime pay for hours worked during certain emergencies and not for all hours worked in excess of 53 in a workweek.

37. My overtime rate for such hours was determined by dividing my weekly salary by 40 hours to reach the regular hourly rate which was then multiplied by time and one half.

38. While I served as Chief of the District, Defendant employed Division Chiefs and Lieutenants who were paid in the range of \$20-\$23 and \$19-\$20 per hour, respectively.

39. The Division Chiefs and Lieutenants were employed on a part-time basis, and like me, were assigned to 24 hour shifts.

40. Due to the unpaid overtime hours I worked, my effective hourly wage rate was often significantly less than my Division Chief and Lieutenant counterparts.

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true.

12 / 29 / 2023





This ____ day of December 2023.



Jason Martin
Plaintiff

Title	Jason Martin_Affidavit
File name	Jason Martin_Affidavit.pdf
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