

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 MOTION FOR PARTIAL SUMMARY JUDGMENT AND
MEMORANDUM OF LAW**

Plaintiff JASON MARTIN moves for summary judgment in his favor as to Defendant’s assertions: 1) that Plaintiff is an FLSA exempt employee; and 2) that Plaintiff’s overtime claim is barred by the doctrine laches, and states as follows:

I. Introduction

In this action, Plaintiff seeks recovery of unpaid overtime compensation earned while employed by Defendant Upper Captiva Fire Protection & Rescue Service District (“Defendant” or “the District”) as Chief.

Defendant asserts that Plaintiff was an FLSA “exempt” employee and therefore not entitled to overtime pay. For this proposition, Defendant relies

upon the administrative and executive exemptions.¹ Defendant further contends that Plaintiff's overtime claim is precluded by the doctrine of laches.²

With regard to its claim of an overtime exemption, Defendant has the burden of proof such that it must proffer *clear and affirmative* record evidence establishing applicability of the exemption(s) asserted. Plaintiff shows that Defendant cannot meet this evidentiary burden, particularly with regard to the job duties test of either the executive or administrative exemption.³ Moreover, Defendant's affirmative defense of laches is unavailing as a matter of law as it is not a recognized defense to an FLSA overtime claim which has otherwise been brought within the applicable statute of limitations.

II. Plaintiff's Statement of Facts

1. Plaintiff was employed by Defendant as Chief of the District during the period of October 2018 – January 2023. (Martin Aff. 2).
2. As Chief of the District, Plaintiff primarily performed the job duties of a firefighter and paramedic. (Martin Aff. 3).⁴

¹ Defendant's Answer and Affirmative Defenses, First and Second Affirmative Defenses [Docket Entry 16]. In its Third Affirmative Defense, Defendant asserts entitlement to a non-existent "managerial" exemption with reference to 29 CFR, Section 541.102.

² Ninth Affirmative Defense [Dok__].

³ There is no dispute that the salary basis requirement of the administrative and executive exemptions has been met.

⁴ The Affidavit of Jason Martin is included with this Motion as Exhibit A. "Marti Aff. __" references the affidavit paragraph number.

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

4. Per the employment agreements, Plaintiff was required to obtain and maintain both firefighter and paramedic certifications. (Martin Aff. 5; Martin Supp. Aff., Attachment 1, pp. 3-4).

5. 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).

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

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

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

9. 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, Martin Supp. Aff., Attachment 1, pp. 10-11).

10. 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).

11. 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).

12. 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).

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

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

15. On account of his "two on, two off" 24 hour shift schedule, Plaintiff's weekly hours far exceeded 40 hours. (Martin Supp. Aff. 15).⁵

⁵The Supplemental Affidavit of Jason Martin is included with this Motion as Exhibit B. "Martin Supp. Aff. ___" references the affidavit paragraph number. The affidavit contains seven enumerated attachments each with page numbering. "Attachment __, p. ___" references the attachment number and page number.

16. In addition, Plaintiff often worked unscheduled shifts in order to fill-in for an absent firefighter to ensure the department was staffed with the required 4 firefighters. (Martin Supp. Aff. 16).

17. During his unscheduled shifts, Plaintiff generally did not perform administrative or managerial tasks. (Martin Supp. Aff. 17).

18. Per his employment contracts, Plaintiff was entitled to be paid for the unscheduled shifts, but only at the rate of pay of the firefighter for whom he was filling in. (Martin Supp. Aff., Attachment 1, p. 11)

19. Plaintiff's time records indicate his scheduled versus unscheduled shifts. (Martin Supp. Aff. 3-6, 18, Attachments 3-5).

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

21. 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).

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

23. 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, Martin Supp. Aff., Attachment 1, p. 3).

24. 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).

25. 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).

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

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

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

29. 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 hours the following day. (Martin Aff. 31).

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

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

32. 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).

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

34. Just the same, his contracts expressly stated that he was expected to work outside of an assumed 40 hour administrative week on account of the District having a small department with only 2 full-time employees and the rest being part-time, and the need to maintain at least 4 firefighters on duty. (Martin Supp. Aff., Attachment 1, pp. 10-11).

35. Though his salary was purportedly based on a 40 hour workweek, Plaintiff was generally not entitled to additional pay to the extent he worked in excess of 40 hours in a workweek. (Martin Supp. Aff. 14).

36. 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).

37. 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).

38. 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).

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

40. 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).

41. Plaintiff's effective hourly rate for any given workweek can be ascertained from his sworn Answers to the Court's FLSA Interrogatories. (Plaintiff's FLSA Interrogatory Answers , #7, ex. A).⁶

42. 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.; and Martin Supp. Aff., Attachment 3, pp. 12-13, Attachment 4, pp. 25-26).

43. In 2021, in connection with his request for modification of his employment contract, Plaintiff gathered survey data regarding the compensation of fire chiefs in other districts and municipalities. (Martin Supp. Aff. 7-8, Attachment 6).

44. The data revealed that Plaintiff's salary was considerably lower than the vast majority of his chief counterparts, notably in surrounding departments. (Martin Supp. Aff. 9).

45. Moreover, despite the significantly higher salaries, the chiefs in the other districts and municipalities worked a 40 hour workweek as opposed to

⁶ Plaintiff's previously filed FLSA Interrogatory Answers [Document 22-1] are included with this Motion as Exhibit C.

24 hours shifts entailing firefighter and paramedic job duties Plaintiff performed. (Martin Supp. Aff. 10).

46. Rick Fox, who had chaired the search committee responsible for Plaintiff's hiring in 2018, was enlisted by the District's then Board Chair, Bill Byrnes, to work with another former committee member to make a recommendation to the Board regarding the request for a contract modification. (Martin Supp. Aff. 11).

47. Mr. Fox ultimately wrote a letter to the Board of Commissioners with his recommendation. (Martin Supp. Aff. 12, Attachment 7).

48. In his letter, Mr. Fox accurately described the true nature of Plaintiff's position, his work schedule, and the comparative data. (Martin Supp. Aff. 13).

III. 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). A dispute of material fact "is 'genuine' . . . [only] if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). 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).

IV. 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.” *Gelber v. Akal Security, Inc.*, 14 F. 4th 1279, 1283 n.3 (11th Cir. 2021). “Generally, ‘whether employees are exempt from the requirements of the Fair Labor Standards Act involves a question of fact.’” *Bethel v. Lazer Spot, Inc.*, No. 1:20-cv-1835-AT, 2022 U.S. Dist. LEXIS 95595, at *8 (N.D. Ga. Mar. 28, 2022)(citing *Hodgson v Colonnades, Inc.*, 472 F.2d 42, 47 (5th Cir. 1973)). Just the same, courts have recognized that summary judgment on the issue may be appropriate, including in the context of the exempt/non-exempt status of employees in fire departments. *See Morrison v. Cty. of Fairfax, VA*, 826 F.3d 758 (4th Cir. 2016); and *Emmons v. City of Chesapeake, VA*, 982 F.3d 245 (4th Cir. 2020).

B. The Primary Duties Test and First Responders Regulation

In its own summary judgment motion, for the proposition that Plaintiff was exempt, Defendant principally relies on written characterizations of Plaintiff's job duties, and it is anticipated it will do so in opposition to the instant motion. However, Defendant's reliance is misplaced as the *actual* primary job duties performed by an employee on a day-to-day basis is the pertinent inquiry. 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”).

Defendant will insist that the employment contracts 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.

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, “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...”

With regard to firefighters, “to determine whether Plaintiffs are subject to the executive, administrative, or HCE exemptions, the Court must first ascertain Plaintiffs' primary duty and whether Plaintiffs' fall under the purview of the First Responder Regulation.” *Emmons v. City of Chesapeake*, No. 2:18cv402, 2019 U.S. Dist. LEXIS 231372, at *21 (E.D. Va. June 18, 2019). An employee's "primary duty" is the "principle, main, major or most important duty that the employee performs" after analyzing "all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole." 29 C.F.R. § 541.700(a).

Four “non-exhaustive factors” are “consider[ed] in determining the primary duty of an employee: (1) the relative importance of the exempt duties as compared with other types of duties; (2) the amount of time spent performing exempt work; (3) the employee's relative freedom from direct

supervision; and (4) the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee." *Morrison v. Cty. of Fairfax, VA*, 826 F.3d 758, 769 (4th Cir. 2016).

a. Defendant Cannot Demonstrate that Plaintiff's Administrative or Managerial Duties Outweighed his Firefighter/Paramedic Duties in Level of Importance

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. To be sure, he constituted one of the minimum four firefighters required to be on staff on any given shift whether scheduled or unscheduled. Furthermore, any administrative or managerial duties always had to give way to firefighting duties as Plaintiff was required to participate in the response to every call while on shift.

In its own summary judgment motion, 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 on scheduled shifts leaving the vast majority of time to his firefighter/paramedic responsibilities, never mind the unscheduled shifts on which generally found Plaintiff only performing firefighter and paramedic duties.

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 or administrative in nature, his assignment to 24 hour shifts would have been unnecessary.

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

No doubt, Defendant will assert the comparative time factor favors its position. In opposition to Defendant's summary judgment motion, Plaintiff attested to the time he generally expended on his managerial/administrative responsibilities versus those of a firefighter/paramedic. In an attempt to countervail Plaintiff's averments, Defendant submitted with its reply the Affidavit of Jesse Cottrell (Plaintiff's successor) in which he states the number of "first-response calls" purportedly received by the District in years 2020 – 2022. (Document 44). Defendant erroneously attempts to reduce Plaintiff's

non-exempt activities to call response. (Document 44, pp. 3-4). Such an argument should be of little moment as firefighters and other first responders do far more than simply respond to calls. The Court in *Morrison* pointedly addressed this very issue:

The County repeatedly emphasizes that the Captains spend very little of their work time actually responding to emergency calls; it follows, the County argues, that first response cannot be the Captains' primary duty. And the district court seems to have agreed, stressing that "[a]lthough [the Captains] participate in emergency response, the bulk of their time" is spent at the station. *Morrison*, 2014 U.S. Dist. LEXIS 155443, 2014 WL 5591073, at *1. We think this analysis misapprehends both the nature of the "time" factor and the nature of firefighting.

First, as the *Barrows* court explained, that a fire captain's direct firefighting duties do not consume the majority of his or her time is simply the nature of first response work: "[T]he nature of the job of every front-line fire fighter[] is generally to wait. Any given day for a fire fighter may consist of extended periods of boredom, punctuated by periods of urgency and moments of terror." *Barrows*, 944 F. Supp. 2d at 604-05. And

it would be illogical to give much weight to how much time a Captain devotes to answering emergency calls; that time presumably would vary from year to year, based on how many emergencies arise, without changing the "character of the employee's job as a whole," 29 C.F.R. § 541.700.

Second, the regulation directs attention not to the amount of time spent performing non-exempt work like fighting fires, but specifically to "the amount of time spent performing exempt work." *Id.* § 541.700(a) (emphasis added).

826 F.3d at 770.

In the instant case, Defendant expressly contemplated that Plaintiff would be spending considerable time in a first responder capacity given the language in the employment contracts that Plaintiff's salary was based upon a 40 hour workweek, yet due to the small staff size of the District, Plaintiff would be required to work substantially more hours in order to meet the needs of the District. (Martin Supp. Aff., Attachment 1, pp. 10-11). This was not simply on paper, but in actual practice. As noted by Rick Fox, the individual enlisted by the District to make a recommendation regarding Plaintiff's requested

contract modification in the 2021, while Plaintiff's counterparts in other districts had an average of 40 work hours, Plaintiff was averaging 84. Mr. Fox went as far to say that Plaintiff essentially had "TWO separate job descriptions." (Martin Supp. Aff., Attachment 7).

c. Plaintiff was Subject to the Supervision of Defendant's Board of Commissioners

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 was subject to the Board's authority. Granted, there was not a layer of management between the Board and Plaintiff; however, the District's mandate to him was unequivocal insofar as his non-exempt firefighter/paramedic responsibilities were concerned. He was required to fill the role of firefighter on all of his shifts in light of the minimum staffing requirement to which the District had to adhere. The absence of a physical supervisory presence certainly did not change the first responder nature of that work.

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

Defendant has previously argued 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. Of course, 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). 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. (Martin Aff. 38-40; Plaintiff's FLSA Interrogatory Answers, #7, ex. A; Martin Supp. Aff., Attachment 3, pp. 12-13, Attachment 4, pp. 25-26).

It should also not go unnoticed that Plaintiff was paid significantly less than fire chiefs employed by other districts and cities. In fact, most of the comparators served exclusively in administrative capacities commensurate with only a 40 hour workweek without the additional firefighting/paramedic duties assumed by Plaintiff. (Martin Supp. Aff. 7-10, Attachment 6).

C. The “Managerial” Exemption Does Not Exist

In its Third Affirmative Defense, Defendant asserts Plaintiff was a “managerial” exempt employee based upon the non-existent “managerial” exemption. For this defense, Defendant references 29 C.F.R., Section 541.102 which is simply an FLSA implementing regulation delineating the meaning of “management” as that term is used in the context of the executive exemption. Neither the FLSA nor its implementing regulations prescribes a “managerial” exemption. As such, the asserted defense is unavailing as a matter of law.

D. Defendant’s Defense of Laches Fails as a Matter of Law

Defendant erroneously argues that Plaintiff’s overtime claim is barred by the doctrine of laches based upon its contention in that “Plaintiff continued to work continuously until the conclusion of his employment without ever

asserting, claiming, or otherwise bringing to the attention of Defendant any alleged violations of the FLSA and his alleged entitlement to compensation.”

Remarkably, Defendant seems to suggest that Plaintiff was required to advise the Board (which had exclusive authority over the terms and conditions of Plaintiff's employment, including his compensation) its obligations under the FLSA in order to perfect his overtime claim. That is simply not the law.

It is well established that laches (along with waiver, estoppel and other 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).

Even assuming, for the sake of argument only, that laches was an available defense to an FLSA overtime claim, the defense is not supported by the facts. It is undisputed that at all times material to this case, the District

maintained contemporaneous records of Plaintiff's work hours including those worked during both scheduled and unscheduled shifts. In fact, Plaintiff was compensated each pay period in accordance with said time records. After all, Plaintiff served the District for over 4 years under substantially consistent terms and conditions.

Moreover, based upon the express language of the applicable employment contracts, it is undisputed that the District expressly understood, that Plaintiff would routinely work beyond regularly scheduled *administrative* hours which alone were typically in excess of fifty-three hours in a week and/or 106 hours in a two-week period.

WHEREFORE, Plaintiff asks that the Court grant summary judgment in its favor, finding as a matter of law:

- A) Plaintiff was a non-exempt employee under the FLSA; and
- B) Plaintiff's overtime claim is not barred by the doctrine of laches.

Respectfully submitted,

s/R. Micheal Pierro, Jr.

R. MICHAEL PIERRO, JR.

Florida Bar No. 0013023

Counsel for Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of April 2024, 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

Exhibit A

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.

A handwritten signature in black ink, appearing to read "J. Martin", with a long horizontal flourish extending to the right.

Jason Martin
Plaintiff

Title	Jason Martin_Affidavit
File name	Jason Martin_Affidavit.pdf
Document ID	c28d6a6c3bf97d30567f7349670271fb2a1b82ed
Audit trail date format	MM / DD / YYYY
Status	● Signed

Document History





 SENT	12 / 29 / 2023 14:53:09 UTC-5	Sent for signature to Jason Martin (jmmartin3583@gmail.com) from mikepiero@rmpemploymentlaw.com IP: 162.125.31.84
 VIEWED	12 / 29 / 2023 17:37:43 UTC-5	Viewed by Jason Martin (jmmartin3583@gmail.com) IP: 73.156.194.184
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 COMPLETED	12 / 29 / 2023 17:42:13 UTC-5	The document has been completed.

Exhibit C

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 ANSWERS TO COURT'S INTERROGATORIES

Plaintiff Jason Martin, pursuant to the Court's FLSA Fast Track Scheduling Order (Docket No. 13), responds to the Court's Interrogatories to Plaintiff. With respect to each separately numbered paragraph of the Court's Interrogatories to Plaintiff responds:

FLSA COURT'S INTERROGATORIES TO PLAINTIFF

1. During what period of time were you employed by the Defendant?

October 2018 – January 2023

2. Who was your immediate supervisor?

Board of Commissioners.

3. Did you have a regularly scheduled work period? If so, specify.

Two days on and two days off. Each workday was scheduled for twenty-four (24) hours.

4. What was your title or position? Briefly describe your job duties.

Chief of the District. Primarily performed the job duties of a firefighter and paramedic and was contractually required to maintain certifications in those positions. Also handled administrative tasks such as human resources, governmental records compliance, safety, interfaced with government officials, reviewed payroll, and handled recruiting and retention.

5. What was your regular rate of pay?

\$2,692.00 salary (semi-monthly) from August 1, 2018 - September 30, 2018;

\$2,916.67 salary (semi-monthly) from October 1, 2018 - July 15, 2019;

\$3,125.00 salary (semi-monthly) from July 16, 2019 - October 15, 2019;

\$3,218.75 salary (semi-monthly) from October 16, 2019 - March 3, 2020;

\$2,971.15 salary (bi-weekly) from March 4, 2020 - September 29, 2020;

\$2,989.00 salary (bi-weekly) from September 30, 2020 - September 28, 2021; and

\$3,078.65 salary (bi-weekly) from September 29, 2021 - September 13, 2022.

6. What is the nature of your claim (check all that apply)?

Off the clock work (Defendant failed to record, or prohibited you from recording, all of your working time;

Misclassification (Defendant mistakenly classified you as exempt from overtime);

Miscalculation (Defendant failed to correctly calculate your compensation);

Other (Please describe):

7. Provide an accounting of your claim, including:

(a) dates

(b) regular hours worked

- (c) over-time hours worked
- (d) pay received versus pay claimed
- (e) total amount claimed

See the attached and fully incorporated spreadsheet (**Exhibit A**) which sets forth the accounting of Plaintiff's unpaid overtime wages applying both the two (2) and three (3) year limitation periods under the FLSA.

This overtime calculation is based upon information currently available to Plaintiff, i.e., the time and pay records produced by Defendant pursuant to the FLSA Fast Track Scheduling Order. Based upon this information, Plaintiff's unpaid overtime wages total \$81,923.75. Plaintiff reserves the right to amend this answer to the extent discovery reveals additional information which necessitates revisiting the current overtime calculation.

In addition to the underlying unpaid overtime wages, Plaintiff seeks an additional equal amount in the way of statutory liquidated damages plus reasonable attorneys' fees and costs.

8. If you have brought this case as a collective action:

- (a) Describe the class of employees you seek to include in this action.

Not Applicable.

- (b) Has an opt-in notice been filed for every potential opt-in Plaintiff who has identified himself or herself as a person who wishes to join this action?

Not Applicable.

9. Specify all attorney's fees and costs incurred to date. With respect to attorney's fees, please provide the hourly rate(s) sought and the number of hours expended by each person who has billed time to this case.

Attorney R. Michael Pierro, Jr., has expended 11.2 hours at an hourly rate of \$425.00; and Paralegal Tracy Carnevalini has expended 11.6

hours at an hourly rate of \$150.00. Total attorney and paralegal fees to date are \$6,457.50.

Total costs are currently \$474.60 consisting of \$402.00 for the court filing fee and issuance of the summonses, \$65.00 for service of process, and \$7.60 for postage incurred in delivery of the initial demand letter.

10. When did you (or your attorney) first complain to your employer about alleged violations of the FLSA?

May 22, 2023

11. Was this complaint written or oral? (If a written complaint, attach a copy).

Counsel for Plaintiff sent the Defendants a demand letter with a draft complaint enclosed (**Exhibit B**).

12. What was your employer's response? (If a written response, attach a copy).

Defendant did not respond to Plaintiff's Demand Letter.

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

09 / 16 / 2023



Date

JASON MARTIN

EXHIBIT A

Pay Period Start	Pay Period End	Hours	Salary	OT HOURS PAID	OT PAID	Regular Pay	Notes	1.5x (using 40 Hours)		
								OT Hours	OT Rate	OT Owed
5/27/2020	6/9/2020	192.00	\$ 2,971.15			\$ 2,971.15		86	\$ 55.71	\$ 4,790.98
6/10/2020	6/23/2020	192.00	\$ 2,971.15	24.00	\$ 1,337.04	\$ 2,971.15	*Covid overtime	86	\$ 55.71	\$ 4,790.98
6/24/2020	7/7/2020	168.00	\$ 2,971.15	24.00	\$ 1,337.04	\$ 2,971.15	*Covid overtime; *paid holiday pay	62	\$ 55.71	\$ 3,453.96
7/8/2020	7/21/2020	150.00	\$ 2,971.15			\$ 2,971.15		44	\$ 55.71	\$ 2,451.20
7/22/2020	8/4/2020	144.00	\$ 2,971.15			\$ 2,971.15		38	\$ 55.71	\$ 2,116.94
8/5/2020	8/18/2020	126.00	\$ 2,971.15	54.00	\$ 1,180.44	\$ 2,971.15	*Covid overtime; Hourly-Chief extra days	20	\$ 55.71	\$ 1,114.18
8/19/2020	9/1/2020	56.00	\$ 2,971.15			\$ 2,971.15				
9/2/2020	9/15/2020	144.00	\$ 2,971.15			\$ 2,971.15		38	\$ 55.71	\$ 2,116.94
9/16/2020	9/29/2020	96.00	\$ 2,971.15			\$ 2,971.15				
9/30/2020	10/13/2020	120.00	\$ 2,989.00			\$ 2,989.00		14	\$ 56.04	\$ 784.61
10/14/2020	10/27/2020	192.00	\$ 2,989.00			\$ 2,989.00		86	\$ 56.04	\$ 4,819.76
10/28/2020	11/10/2020	144.00	\$ 2,989.00	24.00	\$ 1,344.96	\$ 2,989.00		38	\$ 56.04	\$ 2,129.66
11/11/2020	11/24/2020	144.00	\$ 2,989.00			\$ 2,989.00		38	\$ 56.04	\$ 2,129.66
11/25/2020	12/8/2020	168.00	\$ 2,989.00	24.00	\$ 391.68	\$ 2,989.00	*Hourly-Chief extra days; *paid holiday pay	62	\$ 56.04	\$ 3,474.71
12/9/2020	12/22/2020	48.00	\$ 2,989.00			\$ 2,989.00				
12/23/2020	1/5/2021	168.00	\$ 2,989.00	48.00	\$ 1,031.52	\$ 2,989.00	*Hourly-Chief extra days; *paid holiday pay	62	\$ 56.04	\$ 3,474.71
1/6/2021	1/19/2021	144.00	\$ 2,989.00			\$ 2,989.00		38	\$ 56.04	\$ 2,129.66
1/20/2021	2/2/2021	80.00	\$ 2,989.00			\$ 2,989.00				
2/3/2021	2/16/2021	144.00	\$ 2,989.00			\$ 2,989.00		38	\$ 56.04	\$ 2,129.66
2/17/2021	3/2/2021	144.00	\$ 2,989.00			\$ 2,989.00		38	\$ 56.04	\$ 2,129.66
3/3/2021	3/16/2021	96.00	\$ 2,989.00			\$ 2,989.00				
3/17/2021	3/30/2021	72.00	\$ 2,989.00			\$ 2,989.00				
3/31/2021	4/13/2021	144.00	\$ 2,989.00			\$ 2,989.00		38	\$ 56.04	\$ 2,129.66
4/14/2021	4/27/2021	144.00	\$ 2,989.00			\$ 2,989.00		38	\$ 56.04	\$ 2,129.66
4/28/2021	5/11/2021	168.00	\$ 2,989.00	24.00	\$ 395.52	\$ 2,989.00	*hourly-Chief extra days	62	\$ 56.04	\$ 3,474.71
5/12/2021	5/25/2021	168.00	\$ 2,989.00	24.00	\$ 391.68	\$ 2,989.00	*hourly-Chief extra days	62	\$ 56.04	\$ 3,474.71
5/26/2021	6/8/2021	168.00	\$ 2,989.00	48.00	\$ 933.12	\$ 2,989.00	*hourly-Chief extra days	62	\$ 56.04	\$ 3,474.71

Pay Period Start	Pay Period End	Hours	Salary	OT HOURS PAID	OT PAID	Regular Pay	Notes	1.5x (using 40 Hours)		
								OT Hours	OT Rate	OT Owed
6/9/2021	6/22/2021	120.00	\$ 2,989.00	72.00	\$ 1,488.88	\$ 2,989.00	*hourly-Chief extra days	14	\$ 56.04	\$ 784.61
6/23/2021	7/6/2021	144.00	\$ 2,989.00	24.00	\$ 515.76	\$ 2,989.00	*Hourly-Chief extra days; *paid holiday pay	38	\$ 56.04	\$ 2,129.66
7/7/2021	7/20/2021	144.00	\$ 2,989.00	24.00	\$ 777.12	\$ 2,989.00	*hourly-Chief extra days	38	\$ 56.04	\$ 2,129.66
7/21/2021	8/3/2021	120.00	\$ 2,989.00	24.00	\$ 466.56	\$ 2,989.00	*hourly-Chief extra days	14	\$ 56.04	\$ 784.61
8/4/2021	8/17/2021	168.00	\$ 2,989.00	24.00	\$ 777.12	\$ 2,989.00	*hourly-Chief extra days	62	\$ 56.04	\$ 3,474.71
8/18/2021	8/31/2021	144.00	\$ 2,989.00	24.00	\$ 777.12	\$ 2,989.00	*hourly-Chief extra days	38	\$ 56.04	\$ 2,129.66
9/1/2021	9/14/2021	192.00	\$ 2,989.00	48.00	\$ 1,031.52	\$ 2,989.00		86	\$ 56.04	\$ 4,819.76
9/15/2021	9/28/2021	90.00	\$ 2,989.00			\$ 2,989.00				
9/29/2021	10/12/2021	120.00	\$ 3,078.65			\$ 3,078.65		14	\$ 57.72	\$ 808.15
10/13/2021	10/26/2021	120.00	\$ 3,078.65			\$ 3,078.65		14	\$ 57.72	\$ 808.15
10/27/2021	11/9/2021	96.00	\$ 3,078.65			\$ 3,078.65				
11/10/2021	11/23/2021	120.00	\$ 3,078.65			\$ 3,078.65		14	\$ 57.72	\$ 808.15
11/24/2021	12/7/2021	144.00	\$ 3,078.65			\$ 3,078.65	*paid holiday pay	38	\$ 57.72	\$ 2,193.54
12/8/2021	12/21/2021	96.00	\$ 3,078.65			\$ 3,078.65				
12/22/2021	1/4/2022	120.00	\$ 3,078.65			\$ 3,078.65	*paid holiday pay	14	\$ 57.72	\$ 808.15
1/5/2022	1/18/2022	120.00	\$ 3,078.65			\$ 3,078.65		14	\$ 57.72	\$ 808.15
1/19/2022	2/1/2022	120.00	\$ 3,078.65			\$ 3,078.65		14	\$ 57.72	\$ 808.15
2/2/2022	2/15/2022	132.00	\$ 3,078.65			\$ 3,078.65		26	\$ 57.72	\$ 1,500.84
2/16/2022	3/1/2022	60.00	\$ 3,078.65			\$ 3,078.65				
3/2/2022	3/15/2022	144.00	\$ 3,078.65			\$ 3,078.65		38	\$ 57.72	\$ 2,193.54
3/16/2022	3/29/2022	120.00	\$ 3,078.65			\$ 3,078.65		14	\$ 57.72	\$ 808.15
3/30/2022	4/12/2022	144.00	\$ 3,078.65			\$ 3,078.65		38	\$ 57.72	\$ 2,193.54
4/13/2022	4/26/2022	120.00	\$ 3,078.65			\$ 3,078.65		14	\$ 57.72	\$ 808.15
4/27/2022	5/10/2022	**	\$ 3,078.65			\$ 3,078.65				
5/11/2022	5/24/2022	48.00	\$ 3,078.65			\$ 3,078.65				
5/25/2022	6/7/2022	120.00	\$ 3,078.65			\$ 3,078.65		14	\$ 57.72	\$ 808.15
6/8/2022	6/21/2022	120.00	\$ 3,078.65			\$ 3,078.65		14	\$ 57.72	\$ 808.15
6/22/2022	7/5/2022	120.00	\$ 3,078.65			\$ 3,078.65	*paid holiday pay	14	\$ 57.72	\$ 808.15

Pay Period Start	Pay Period End	Hours	Salary	OT HOURS PAID	OT PAID	Regular Pay	Notes	1.5x (using 40 Hours)		
								OT Hours	OT Rate	OT Owed
7/6/2022	7/19/2022	120.00	\$ 3,078.65			\$ 3,078.65		14	\$ 57.72	\$ 808.15
7/20/2022	8/2/2022	144.00	\$ 3,078.65	24.00	\$ 1,385.28	\$ 3,078.65		38	\$ 57.72	\$ 2,193.54
8/3/2022	8/16/2022	96.00	\$ 3,078.65			\$ 3,078.65				
8/17/2022	8/30/2022	112.00	\$ 3,078.65			\$ 3,078.65		6	\$ 57.72	\$ 346.35
8/31/2022	9/13/2022	150.00	\$ 3,078.65	6.00	\$ 346.32	\$ 3,078.65	*OT not paid with 9/13/22 payroll, paid on separate 9/15/22 payroll	44	\$ 57.72	\$ 2,539.89
3 Year OT Paid \$ 15,908.68 2 Year OT Paid \$ 8,498.80								3-year	Base	\$ 81,923.75
									Liquidated	\$ 81,923.75
									Total	\$ 163,847.50
** Do not have hours worked for this pay period.								2-year	Base	\$ 34,087.58
									Liquidated	\$ 34,087.58
									Total	\$ 68,175.15
								3 year hours		1736
								2 year hours		748

R. MICHAEL PIERRO, JR.
EMPLOYMENT LAWYER & MEDIATOR
mike@flemploymentlaw.com
Direct: 727.201.2573

CALCIANO PIERRO

BRIAN CALCIANO
BUSINESS & EMPLOYMENT LAWYER
brian@flemploymentlaw.com
Direct: 727.202.4516

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.

Jason Martin v. Upper Captiva Fire Protection & Rescue Service District

May 22, 2023

Page 2

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: _____

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Sent for signature to Jason Martin (jmmartin3583@gmail.com) from mikepiero@mpemploymentlaw.com
IP: 24.214.49.246



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09 / 16 / 2023

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Viewed by Jason Martin (jmmartin3583@gmail.com)
IP: 73.54.22.48



SIGNED

09 / 16 / 2023

10:16:28 UTC-4

Signed by Jason Martin (jmmartin3583@gmail.com)
IP: 73.54.22.48



COMPLETED

09 / 16 / 2023

10:16:28 UTC-4

The document has been completed.