

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Fort Myers Division**

Case No. _____

CHRISTIAN TOBIN, MATTHEW TRENT, JEFF DAVENPORT,
ANDY KRAJEWSKI, COREY NELSON, FORREST CAMPBELL,

Plaintiffs,

v.

GREATER NAPLES FIRE RESCUE DISTRICT,

Defendant.

COMPLAINT

Plaintiffs bring this cause of action against their employer and Defendant the GREATER NAPLES FIRE RESCUE DISTRICT to secure overtime wages owed them pursuant to the federal Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (“FLSA”).

Parties

1. Plaintiffs CHRISTIAN TOBIN, MATTHEW TRENT, JEFF DAVENPORT, ANDY KRAJEWSKI, COREY NELSON, FORREST CAMPBELL are residents of Florida, and work for Defendant GREATER NAPLES FIRE RESCUE DISTRICT (the “District”) as Battalion Chiefs in Collier County, Florida.

2. Plaintiffs are each an “employee” within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

3. Plaintiffs bring this action for a declaratory judgment, back pay, liquidated damages and other relief pursuant to 29 U.S.C. §207, 29 U.S.C. §216(b), and 28 U.S.C. §1331, to remedy

the Defendant's willful and unlawful violations of federal law.

4. Plaintiffs are identified in the caption of the Complaint and have given their consent to be party plaintiffs in this action pursuant to 29 U.S.C. § 216(b). Written consents will be filed shortly after the filing of this Complaint.

5. Each of the Plaintiffs while employed by the District have been “fire protection employees” within the meaning of the FLSA, 29 U.S.C. §203(y).

6. The District is a Florida special taxing district that provides fire suppression and rescue services in Collier County, Florida.

7. The Fire District is an “employer” as that term is defined by 29 U.S.C. § 203(d) and is headquartered at 14575 Collier Blvd, Naples, FL 34119.

Jurisdiction and Venue

8. This Court has subject matter jurisdiction over this lawsuit pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

9. This Court is the appropriate venue, as the events underlying this action occurred in Collier County, Florida.

Statement of Facts

10. The Plaintiffs are part of the core group of firefighters who are required to respond to a typical call.

11. Plaintiffs routinely work more than 53 hours per week and 212 hours in a 28-day period.

12. The District has fifteen (15) fire stations.

13. Each station is staffed similarly, with three 24-hour long shifts to ensure continuous 24-hour coverage 365 days a year. The shifts are identified as A shift, B shift, and C shift.

14. The District assigns each Battalion Chief Plaintiff to a particular shift and station.
15. Defendant has in its custody and control the records showing the shift and station assignments of each Plaintiff during the relevant time period.

Statement of Facts Related to Job Duties

16. Within the last three years, and continuing to date, while working on behalf of the District, the Plaintiffs' primary job duty has been, and remains, to protect and serve the public by engaging in fire suppression and related activities.

17. Plaintiffs' principal duties are the direct, on-site suppression of fires.
18. Plaintiffs' primary job duty is emergency response.
19. When an emergency call comes in, it takes priority.
20. The Plaintiffs do not have discretion to decline to respond.
21. The Plaintiffs are required to respond to all fire calls within the geographic boundaries of the Fire District.

22. While on the scene of fire calls, the Plaintiffs, along-side their crew and facing the same hazards and danger, engage in the control, suppression, and extinguishment of fires and the rescue of fire or accident victims.

23. The Plaintiffs are part of the Fire District's emergency response analog of units automatically dispatched to certain calls where they go into a fire scene to determine whether there are any safety issues that might be present (*i.e.*, endangered or trapped occupants, hazardous materials/substances, property exposures, gas levels, the structural integrity of the fire scene, etc.), to ensure the safety and security of the employees engaging in fire suppression activities.

24. The Plaintiffs undergo training to hone front line firefighting duties, which is the same training as all other firefighters so that they are able to fulfill their first responder obligations

and assure a constant state of preparedness training.

25. Plaintiffs despite their managerial title, spend more only about two (2) hours per month of their time on the job on manual or ministerial tasks such as data entry, inventory, delivering, ordering, completing assigned tasks, and other related functions which involve no exercise of independent discretion or meaningful authority over any Fire District employees. Further, some of these tasks are assigned to and performed by non-exempt employees.

26. The Plaintiffs are not high-level fire officials contemplated as exempt as they lack the discretion to determine whether and where their assistance is needed.

27. Whatever the precise importance of the Plaintiffs' non-firefighting duties; e.g. filling out evaluations, department reports, and/or station policies, fighting fires and emergency response is the more important part of their jobs.

28. Plaintiffs, like non-exempt employees of for the District, work continuous, rotating, 24 hour shifts, 7 days per week, with 48 hours of leave between shifts; in contrast to the 8 hour per day, Monday through Friday shifts that the administrative and executive personnel work in the administrative offices.

29. The Plaintiffs are assigned to work, and in fact do work, a regular and recurrent schedule of 24 hours on-duty, followed by 48 hours off-duty, which results in their working, on average 56 hours per week, and either 216 hours or 240 hours every 28 days.

30. The Plaintiffs are therefore regularly assigned to work, and do work, in excess of 53 hours per week and 212 hours in a 28-day period.

Statement of Facts Related to the District's Pay Practices that Violate the FLSA

31. When the Plaintiffs work hours in excess of 53 hours per week and 212 hours in a 28-day period, the Plaintiffs receive only straight time pay for their overtime hours.

32. At all relevant times, and ongoing, the straight time rate of pay, as opposed to time and one-half their regular rate of pay, as opposed to time and one-half their regular rate of pay for any and all hours worked in excess of 53 hours per week and 212 hours in a 28-day period.

33. Plaintiffs estimate that their unpaid overtime for the duration of their employment over the last three (3) years equals \$20,000.00 per year per Plaintiff.

34. This estimate is based on hours worked on a weekly basis, divided by the total number of hours worked in each week, and then multiplying that figure by one half for each hour of overtime worked in that week (i.e., the unpaid half of the time and a half owed for each hour worked in excess of fifty-three).

35. The District has treated Plaintiffs as salaried employees.

36. The Plaintiffs' paychecks do not vary from week to week on account of hours worked unless there is a deduction made by the District that amounts to a suspension of less than one week without pay.

37. Plaintiffs, while salaried, do not perform duties that would exempt them from the overtime provisions of the FLSA. Each of the Plaintiffs should have received overtime wages for hours that they worked in excess of fifty-three in a work week.

38. Defendant has refused to pay overtime wages to Plaintiffs, contending that Plaintiffs are exempt Administrative and/or Executive employees under Section 13(a) of the Act, as amended, 29 U.S.C. §213(a)(1). Defendant's contention is without merit.

39. Plaintiffs are not paid on a salary basis, and the duties that Plaintiffs perform do not qualify as administrative or executive under the Act.

Count 1 – Failure to Pay Overtime

40. By failing to pay Plaintiffs overtime wages at the rate of one and one-half times

their base hourly wage rate for hours that they have worked in excess of 53 hours per week and 212 hours in a 28-day period, the District has violated the FLSA.

Count II - Retaliation

41. On or about August 9, Plaintiff Christian Tobin, through his attorneys, provided a copy of a draft complaint alleging, in writing, that he was owed unpaid overtime wages under the FLSA.

42. On August 23, Tobin received a suspension.


43. The motivating factor in Tobin's suspension was the exercise of his rights under the FLSA. He would not have been suspended but for his allegations, in violation of the anti-retaliation protections at 29 U.S.C. section 215 (a)(3).

44. WHEREFORE, Plaintiff requests that this Honorable Court enter judgment against defendant for back wages for the suspension and an equal amount of back wages as liquidated damages, attorneys' fees, costs; reinstatement or promotion; or other injunctive relief prohibiting defendant from discriminating in this manner; awarding damages for emotional distress, humiliation, and pain and suffering, front wages, as well as other damages recoverable by law under 29 U.S.C. § 216(b).

WHEREFORE the Plaintiffs request a trial by jury and a final order from the Court finding the District to have violated the FLSA with respect to its failure to pay overtime to them, directing the District to pay them their overtime properly, awarding them an amount equal to their unpaid overtime as liquidated damages, pre-judgment interest, costs, and attorneys' fees.

This 29th day of August, 2018.

SUGARMAN & SUSSKIND, P.A.

A handwritten signature in blue ink, appearing to read "D. Marcus Braswell, Jr.", is written over the firm name.

D. Marcus Braswell, Jr., Esq., Trial Counsel

Florida Bar Number 0146160

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CHRISTIAN TOBIN, MATTHEW TRENT, JEFF DAVENPORT,
ANDY KRAJEWSKI, COREY NELSON, FORREST CAMPBELL

(b) County of Residence of First Listed Plaintiff Collier County, FL
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

D. Marcus Braswell, Jr., Esq. | Sugarman & Susskind, P.A.
100 Miracle Mile, Suite 300 | Coral Gables, FL 33134

DEFENDANTS

GREATER NAPLES FIRE RESCUE DISTRICT

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Fair Labor Standards Act. 29 U.S.C. 201, et. seq.

Brief description of cause:

Suit for payment of willfully, wrongfully withheld overtime wages.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/03/2018

SIGNATURE OF ATTORNEY OF RECORD

D. Marcus Braswell, Jr.

D. Marcus Braswell, Jr. - FBN: 146160

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE