

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

**DANIEL RUDELLE, on his own behalf
and on behalf of those similarly situated,**

Plaintiffs,

CASE NO.: 3:14-CV-00873-MMH-MCR

vs.

**FLAGLER COUNTY SHERIFF'S
OFFICE and JAMES L. MANFRE,
Individually and in his official capacity
as Sheriff of FLAGLER COUNTY
SHERIFF'S OFFICE,**

Defendants. _____/

AMENDED COMPLAINT & DEMAND FOR JURY TRIAL
(Class/Collective Action Complaint)

Plaintiff, DANIEL RUDELLE, on his own behalf and on behalf of those similarly situated ("Plaintiff"), was an employee of Defendants, FLAGLER COUNTY SHERIFF'S OFFICE ("FLAGLER") and JAMES L. MANFRE, Individually and in his official capacity as the Sheriff of the FLAGLER COUNTY SHERIFF'S OFFICE ("MANFRE" or "Defendants"), and brings this action for unpaid overtime compensation, liquidated damages, declaratory relief and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (the "FLSA").

INTRODUCTION

1. Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) and 29 U.S.C. § 207(a).
2. The Fair Labor Standards Act was passed in 1938. Its principle purpose was to protect all covered workers from substandard wages and oppressive working hours, labor conditions that are detrimental to the maintenance of minimum standards of living necessary for

health, efficient, and the general well-being of workers. *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 739, 101 S.Ct. 1437, 1444 (1981).

3. Section 7(a) of the FLSA requires payment of time-and-one-half an employee's regular hourly rate whenever a covered employee works more than forty (40) hours during one or more workweeks. 29 U.S.C. § 207(a).

4. Section 7(k) of the FLSA provides that employees engaged in law enforcement may be paid overtime compensation on a "work period" basis which may be from seven (7) to twenty-eight (28) consecutive days. 29 U.S.C. §207(k).

5. The liquidated damages provision of the FLSA constitutes a congressional recognition that failure to pay the statutory minimum on time may be so detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and the general well-being of workers and to the free flow of commerce, that double payment must be made in the event of a delay in order to insure restoration of the worker to that minimum standard. *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707-08, 65 S.Ct. 895, 902 (1945).

6. To the extent any partial payments have been made by Defendants to Plaintiff of the disputed amounts at the time of the filing of this complaint, this action seeks to recover judgment in favor of Plaintiffs and against Defendants as well as all remaining damages, including but not limited to, liquidated damages and reasonable attorneys' fees and costs. *See id.*

7. The Defendants in this case violated the FLSA by failing to pay Plaintiff and other similarly-situated deputy sheriff/road deputy proper time and one-half compensation for all of their overtime hours worked.

8. This action is intended to include each and every hourly-paid deputy sheriff/road deputy who worked for Defendants at any time within the past three (3) years.

9. Plaintiff further complains on behalf of himself and a class of other similarly situated current and former “deputy sheriff/road deputy” employees of the Defendants, pursuant to Fed.R.Civ.P.23, that they are entitled to back wages from Defendants for hours of work for which they did not receive compensation at their regular hourly rate for all non-overtime hours worked.

PARTIES

10. Plaintiff, and those similarly situated individuals (“class members”), were hourly paid deputy sheriffs/road deputies who performed law enforcement services for Defendants.

11. Defendant, FLAGLER, is a Florida Profit Corporation.

12. Defendant, FLAGLER, conducts business in Flagler County, Florida, therefore venue is proper in the Middle District of Florida, Jacksonville Division, pursuant to 28 U.S.C. § 1391(b)(1) & (c).

13. Defendants are in the business of providing law enforcement and protection to the general public.

14. Defendants are employers within the meaning of Section 203(d).

15. Plaintiff, and those similarly situated to him, are employees within the meaning of Section 203(e).

JURISDICTION

16. This Court has original jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1331 as they arise under the FLSA, 29 U.S.C. § 201, *et seq.* and supplemental jurisdiction pursuant to 28 U.S.C. §1367.

17. Venue is proper in this Court because Plaintiff resides within the District, Defendants maintain business operations within the District, and Plaintiff’s claims accrued in this District.

COVERAGE

18. At all material times during the last three years, Defendants were an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(s)(1)(C).

19. At all times material hereto, Plaintiff was an “employee” of Defendants within the meaning of FLSA.

20. At all times material hereto, Defendants were the “employer” within the meaning of FLSA.

21. Defendants were, and continue to be an, “employer” within the meaning of FLSA.

FACTUAL ALLEGATIONS

22. Defendants are a company classified as a governmental law enforcement agency.

23. Defendants have a common pay policy and/or pay practice which fails to pay certain hourly rate law enforcement employees at a rate of time and one-half their regular rate of pay for their overtime hours worked.

24. These hourly rate employees regularly work overtime hours.

25. Plaintiff, DANIEL RUDELL, was employed as a deputy sheriff/road deputy for Defendants from on or around September 2006 through April 2014.

26. Plaintiff was paid an hourly rate of \$19.74 per hour in exchange for work performed.

27. Plaintiff and those similarly situated to him were required to attend “shift briefings” and pre-shift “prep time” throughout his/their employment with Defendants.

28. For instance, Plaintiff and those similarly situated to him were required to attend “shift briefings”, but were not permitted to record the time expended on attending these

meetings. The additional undocumented hours from attending the “shift briefings” resulted in unpaid non-overtime hours and overtime hours worked in one or more workweeks.

29. Because of these improper policies and procedures, Plaintiff and those similarly situated to him, did not earn his/their regular rate of pay for all of their non-overtime hours worked during one or more workweeks.

30. Because of these improper policies and procedures, Plaintiff and those similarly situated to him, did not earn at least time and one-half of his/their regular rate of pay for all of their overtime hours worked during one or more workweeks.

31. Defendants knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to pay proper overtime compensation with respect to Plaintiff and those similarly situated to him.

32. Defendants did not act in good faith or reliance upon any of the following in formulating its pay practices: (a) case law, (b) the FLSA, 29 U.S.C. § 201, *et seq.*, (c) Department of Labor Wage & Hour Opinion Letters or (d) the Code of Federal Regulations.

33. Defendants have acted willfully in failing to pay Plaintiff and those similarly situated to him in accordance with the law.

34. Defendants failed to maintain accurate pay and time records in violation of the FLSA’s record keeping requirements and 29 C.F.R. 516.

CLASS ALLEGATIONS

35. Plaintiff sues on his own behalf and on behalf of a class of persons under Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

36. Plaintiff brings his Florida Unpaid Wage Claims on behalf of all persons who were employed by Defendants at any time since September 2012 to the entry of judgment in this

case (the “Class Period”), who were “deputy sheriff/road deputy” employees and who have not been paid at least the agreed upon hourly wage for all hours worked in one or more workweeks.

37. The persons in the Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of the Defendants, upon information and belief, there are between 100 and 150 members of the Class during the Class Period.

38. The claims of Plaintiff are typical of the claims of the Class, and a class action is superior to other available methods of fair and efficient adjudication of the controversy - - particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute a lawsuit in federal court against corporate Defendants.

39. The Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

40. Specifically, Defendants have illegally failed to pay its deputy sheriffs/road deputies at least their agreed upon hourly wage for all hours worked.

41. Application of this policy or practice does/did not depend on the personal circumstances of Plaintiff or those joining this lawsuit. Rather, the same policy or practice which resulted in the non-payment of minimum wages to Plaintiff applied and continues to apply to all class members. Accordingly, the class members are properly defined as:

All “deputy sheriff/road deputy” employees who worked for Defendants within the last two (2) years who were not paid at least their agreed upon hourly wage for all hours worked in one or more workweeks.

42. Plaintiff is committed to pursuing this action and has retained competent counsel experienced in employment law and class action litigation.

43. Plaintiff has the same interests in this matter as all other members of the class and Plaintiff's claims are typical of the Class.

44. There are questions of law and fact common to the Class which predominate over any questions solely affecting the individual members of the Class.

COUNT I - RECOVERY OF OVERTIME COMPENSATION (FLSA)

45. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-44 above.

46. Plaintiff, and those similarly situated to him, are/were entitled to be paid time and one-half of their regular rate of pay for each of their overtime hours pursuant to section 207(a) of the FLSA.

47. Alternatively, Plaintiff, and those similarly situated to him, are/were entitled to be paid time and one-half of their regular rate of pay for each of their overtime hours pursuant to section 207(k) of the FLSA.

48. During his/their employment with Defendants, Plaintiff, and those similarly situated to him, regularly worked overtime hours but was/were not paid time and one-half compensation for same.

49. As a result of Defendants' intentional, willful, and unlawful acts in refusing to pay Plaintiff, and those similarly situated to him, time and one-half his/their regular rate of pay for each overtime hour worked per workweek in one or more workweeks, Plaintiff, and those similarly situated to him, has/have suffered damages, plus incurring reasonable attorneys' fees and costs.

50. As a result of Defendants' willful violation of the FLSA, Plaintiff, and those similarly situated to him, is/are entitled to liquidated damages.

51. Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 29 U.S.C. §216(b).

WHEREFORE, Plaintiff, and those similarly situated employees, demand judgment against Defendants:

- a. Designating this action as a collective action under the terms of 29 U.S.C. §216(b) to all similarly situated members of the FLSA Opt-in Class, apprising them of the pendency of this action and permitting them to assert their FLSA claims in this action through individual consent;
- b. Awarding Plaintiff, and those similarly situated to him, his/their unpaid overtime wages;
- c. Awarding liquidated damages in an amount equal to the overtime wage award, or alternatively, awarding pre-judgment interest;
- d. Awarding reasonable attorney's fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b); and
- e. Ordering any other further relief the Court deems just and proper.

COUNT II
RECOVERY OF UNPAID WAGES (FLORIDA LAW)

52. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates by reference the allegations contained in paragraphs 1 through 44 above as if fully set forth herein.

53. Plaintiff, and those similarly situated employees, are/were entitled to be paid at least the agreed upon hourly wage for each hour/week worked during his/their employment with Defendants.

54. Plaintiff, and those similarly situated employees, were required to attend “shift briefings” and pre-shift “prep time” throughout his/their employment with Defendants.

55. For instance, Plaintiff and those similarly situated to him were required to attend “shift briefings”, but were not permitted to record the time expended on attending these meetings. The undocumented hours from attending the “shift briefings” resulted in unpaid hours worked in one or more workweeks.

56. As a direct and proximate result of Defendants’ deliberate underpayment of wages, Plaintiff, and those similarly situated employees, has/have been damaged in the loss of wages for one or more weeks of work with Defendants.

57. Accordingly, Plaintiff and those similarly situated employees, are entitled to recover his/their unpaid wages at his/their agreed upon regular hourly rate of pay.

58. Plaintiff is entitled to an award of attorneys’ fees and costs.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor against Defendants:

- a. Certification of this action as a class action pursuant to Fed. R. Civ. P. 23(b)(2) and (3) on behalf of the members of the Class and appointing Plaintiff and his counsel to represent the Class;
- b. Awarding Plaintiff his unpaid wages in the amount due to him for Plaintiff’s time worked in each work week;
- c. Awarding Plaintiff reasonable attorney’s fees and costs and expenses of the

litigation pursuant to Florida Statute Section 448.08;

- d. Awarding Plaintiff pre-judgment interest;
- e. Granting Plaintiff an Order, on an expedited basis, allowing him to send Notice of this action, pursuant to FRCP 23, to those similarly situated to Plaintiff; and
- f. Ordering any other further relief the Court deems just and proper.

JURY DEMAND

Plaintiffs demand trial by jury on all issues so triable as a matter of right by jury.

Dated: September 30, 2014

Respectfully submitted by,

/s/ Kimberly De Arcangelis Woods
Kimberly De Arcangelis Woods, Esquire
Florida Bar: 0025871
Morgan & Morgan, P.A.
20 N. Orange Ave., 14th Floor
P.O. Box 4979
Orlando, FL 32802-4979
Telephone: (407) 420-1414
Facsimile: (407) 245-3383
Email: kwoods@forthepeople.com
Trial Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document has been furnished to the Clerk of the Court using the CM/ECF System which I understand will send electronic notice to the following: Mark E. Levitt, Esq., Allen Norton & Blue, P.A., 1477 West Fairbanks Avenue, Suite 100, Winter Park, Florida 32789. I further certify that a copy of the foregoing has been furnished to the following Non-CM/ECF Participants: None, this 30th day of September, 2014.

/s/ Kimberly De Arcangelis Woods
Kimberly De Arcangelis Woods, Esquire