

IN UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

BRIAN C. DUBRASKY,

Plaintiff,

v.

UPPER CAPTIVA FIRE PROTECTION  
& RESCUE SERVICE DISTRICT,

Defendant.

Case No. 2:23-cv-00640

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff BRIAN C. DUBRASKY (“Plaintiff” or “Dubrasky”) 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 Madisonville, Tennessee.

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 Firefighter, Lieutenant and then Deputy Chief of the District from 2014 until 2023.

10. Plaintiff's primary job duties included: operations and fire ground tasks, medical and emergency medical operations, daily equipment maintenance and management, boat operations, wildlife rescue, emergency vehicle operations, scheduling, and training.

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. Nevertheless, from the commencement of his employment through his separation in 2023, Defendant failed to pay Plaintiff for his accrued overtime hours at one and one half (1 ½) times his regular hourly pay rate.

15. 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)***

16. Plaintiff realleges and adopts, as if fully set forth in Count I, the allegations in paragraphs 1 through 15.

17. During the relevant time period, Plaintiff was a non-exempt employee under the FLSA.

18. As Deputy Chief, 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).

19. During the relevant time period, Defendant routinely worked in excess of 53 hours in a workweek and 212 hours in a 28 day period.

20. In violation of the FLSA, Defendant willfully failed to pay Plaintiff time and one-half his regular rate of pay for overtime hours worked.

21. As a direct result of Defendant's violation of the FLSA, Plaintiff has suffered damages in the way of unpaid overtime compensation.

22. Defendant did not make a good faith effort to comply with the FLSA with respect to its compensation of Plaintiff.

23. 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 18<sup>th</sup> day of August 2023.

Respectfully submitted,

*s/ R. Michael Pierro, Jr.*

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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) 217-5400

[mike@femploymentlaw.com](mailto:mike@femploymentlaw.com)

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
BRIAN C. DUBRASKY
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
R. Michael Pierro, Jr., Calciano Pierro, 146 2nd Street N., Suite 304, St. Petersburg, FL (727) 217-5400

DEFENDANTS
UPPER CAPTIVA FIRE PROTECTION & RESCUE SERVICE DISTRICT
County of Residence of First Listed Defendant
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
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice
PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability, 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
PRISONER PETITIONS: Habeas Corpus: 463 Alien Detainee, 510 Motions to Vacate Sentence, 530 General, 535 Death Penalty; Other: 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition, 560 Civil Detainee - Conditions of Confinement
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
INTELLECTUAL PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark, 880 Defend Trade Secrets Act of 2016
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

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 of 1938, as amended, 29 U.S.C. § 201, et. seq.
Brief description of cause:
Failure to Pay 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: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE: Aug 18, 2023 SIGNATURE OF ATTORNEY OF RECORD: s/ R. Michael Pierro, Jr.

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

BRIAN C. DUBRASKY

Plaintiff(s)

v.

UPPER CAPTIVA FIRE PROTECTION & RESCUE SERVICE DISTRICT

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) UPPER CAPTIVA FIRE PROTECTION & RESCUE SERVICE DISTRICT
c/o Interim Chief Jesse J. Cottrell
4511 Hodgepodge Lane
Captiva, FL 33924

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: R. Michael Pierro, Jr. (Florida Bar No. 0013023)
CALCIANO PIERRO, PLLC
146 Second Street North – Suite 304
St. Petersburg, Florida 33701
(727) 201-2573

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk