

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

Case No.:

JEFFREY BERNSTEIN,
VINCENT CURCIO, and
JOHN ANGELONE

Plaintiffs,

vs.

TOWN OF JUPITER, a municipal
corporation,

Defendant.

COMPLAINT

Plaintiffs, JEFFREY BERNSTEIN (“Mr. Bernstein”), VINCENT CURCIO (“Mr. Curcio”) and JOHN ANGELONE (“Mr. Angelone”) (collectively, “Plaintiffs”), by and through the undersigned attorneys, sue Defendant, TOWN OF JUPITER, and allege the following:

I. NATURE OF THE CLAIM

1. Plaintiffs, for themselves and on behalf of others similarly situated who consent to representation, assert claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et. seq.* (“FLSA”), for unpaid overtime compensation, liquidated damages, reasonable expenses of litigation and attorneys’ fees, on the grounds set forth below.

II. JURISDICITON AND VENUE

2. Jurisdiction of this Court is involved pursuant to 28 U.S.C. §§ 1331, 1337 and 29 U.S.C. § 216(b).

3. This Court has venue for all causes of action stated herein pursuant to 28 U.S.C. § 1391 (b)(2) as the acts alleged as a basis for the claims at issue took place within this Court's jurisdictional boundaries.

4. Defendant, TOWN OF JUPITER, is a duly formed, organized, and authorized municipal corporation situated in Palm Beach County, Florida, and is subject to the jurisdiction of this Court.

5. This is an action for damages in excess of thirty thousand dollars (\$30,000.00) exclusive of interest, attorneys' fees, and costs.

6. All conditions precedent to bringing suit, including the notice requirements of Fla. Stat. §768.28, have occurred or have been waived.

III. PARTIES

A. Plaintiffs

7. Plaintiff, Mr. Bernstein, resides within the geographical jurisdiction of this Court, is over the age of 18 and is otherwise *sui juris*.

8. Plaintiff, Mr. Curcio, resides within the geographical jurisdiction of this Court, is over the age of 18 and is otherwise *sui juris*.

9. Plaintiff, Mr. Angelone, resides within the geographical jurisdiction of this Court, is over the age of 18 and is otherwise *sui juris*.

10. Plaintiffs are presently sworn law enforcement officers, employed at various times within the last three (3) calendar years back from the date of the filing of this suit, by the TOWN OF JUPITER.

11. Each Plaintiff, at relevant times, has faithfully and loyally served the TOWN OF JUPITER, by performing services for the police department, and performing valuable, difficult, and dangerous work and services on behalf of the TOWN OF JUPITER.

12. The named Plaintiffs bring this action as a collective action on behalf of themselves and all other similarly situated current and former employees who consent to representation who have been denied proper overtime compensation, pursuant to 29 U.S.C. § 216(b). The named Plaintiffs consent to participate in this suit and to represent the interests of the putative class. The consents of other similarly situated individuals to participate in this suit may be filed with the Court from time to time as they opt-in to this litigation, pursuant to 29 U.S.C. § 216(b).

B. Defendant

13. Defendant, TOWN OF JUPITER, is a municipal corporation organized under the laws of the State of Florida.

14. The TOWN OF JUPITER is an employer as defined by Section 3(d) of the FLSA (29 U.S.C. § 203(d)) and is a “public agency” within 29 U.S.C. § 203(x), with its principal place of business within the Southern District of Florida.

15. The TOWN OF JUPITER at all relevant times has been aware of the provisions of the FLSA, as amended, to-wit: 29 U.S.C. §§ 201, *et seq.*

16. The TOWN OF JUPITER is also an enterprise, as defined by Section 3(r) of the FLSA (29 U.S.C. § 203(r)).

IV. FACTUAL ALLEGATIONS

17. The TOWN OF JUPITER creates, manages, oversees, and is ultimately responsible for the personnel policies of the Jupiter Police Department, including the compensation policies affecting all members of the Jupiter Police Department.

18. Plaintiffs, and the members of the class each seek to represent, throughout the relevant period of this lawsuit, were employees engaged in interstate commerce expressly covered by the protections of the FLSA, 29 U.S.C. § 207(a).

19. At all times relevant, Plaintiffs and all other similarly situated employees who are members of the class who hereafter consent to join this collective action in accordance with 29 U.S.C. § 201 *et seq.* were nonexempt employees within the meaning of the FLSA.

20. Throughout the relevant period of the lawsuit, Plaintiffs and similarly situated employees who worked for the Jupiter Police Department as law enforcement officers worked in excess of 171 hours in a 28-day work period (and/or any other applicable “work period”).

21. Throughout Plaintiffs employment, the TOWN OF JUPITER did not pay proper overtime compensation to Plaintiffs or to other similarly situated Jupiter Police Department law enforcement officers for work performed in excess of 171 hours in a 28-day work period (and/or any other applicable “work period”). The TOWN OF JUPITER did not pay Plaintiffs or the other similarly situated employees at the rate of one and one-half times their regular rate of pay when each worked overtime hours.

22. Throughout the relevant period of this lawsuit, there is no evidence that the conduct of the TOWN OF JUPITER that gave rise to this action was in good faith and based on reasonable grounds for believing that its conduct did not violate the FLSA. Rather, the evidence is that the TOWN OF JUPITER acted in bad faith and upon unreasonable grounds.

23. Throughout the relevant period of this lawsuit, the TOWN OF JUPITER knowingly, intentionally, and willfully violated the FLSA by failing to pay Plaintiffs and all similarly situated employees the overtime compensation to which they were entitled.

V. CLASS ALLEGATIONS

24. Plaintiffs re-allege and reaffirm paragraphs 1 through 23 as if fully set forth herein.

25. Plaintiffs bring this action under 29 U.S.C. § 201 *et seq.* on their own behalf and on behalf of a class of other employees similarly situated pursuant to 29 U.S.C. § 216(b).

26. Plaintiffs seek to represent a class including all current and former law enforcement officers of Jupiter Police Department wheresoever located who, during the last three (3) years, worked as a Jupiter Police Department law enforcement officer, whose rights were violated because of the TOWN OF JUPITER's knowing, intentional, and willful failure to pay them proper overtime compensation to which they were entitled, in violation of the FLSA.

27. Plaintiffs are appropriate representatives for the class.

28. The potential class of plaintiffs consists of all current and former employees of the TOWN OF JUPITER wheresoever located who, during the last three (3) years, worked as a Jupiter Police Department law enforcement officer, who were employed at any time during the applicable limitations period or during such period as the Court may designate pursuant to equitable tolling of the limitations period and who performed work similar to that which Plaintiffs performed, whose rights were violated because of the TOWN OF JUPITER's knowing, intentional, and willful failure to pay them the overtime compensation to which they were entitled, in violation of the FLSA.

29. Plaintiffs and the above-described members of the class are "similarly-situated employees" within the meaning of 29 U.S.C. § 216(b) of the FLSA.

30. The TOWN OF JUPITER is in possession of the names, addresses, and employment records of those persons similarly situated to Plaintiffs whom Plaintiffs seek to represent.

31. Pursuant to 29 U.S.C. § 216(b) of the FLSA, those individuals are entitled to court-administered notice of this lawsuit in order that they may elect to join Plaintiffs in the prosecution of this action.

32. The class of current and former employees of the TOWN OF JUPITER as described above total approximately 100 individuals and is so numerous that joinder of all members is impactable.

33. There are questions of the law and fact common to the class.

34. The employment policies, practices, and agreements of the TOWN OF JUPITER raise questions of law and fact common to the class, including, but not limited to:

- a. Whether the TOWN OF JUPITER has engaged in a police department-wide pattern or practice of permitting Plaintiffs and the class to work without payment for all overtime worked at the applicable federal overtime rate;
- b. Whether the TOWN OF JUPITER knowingly, intentionally, and willfully failed to pay Plaintiffs and the class at the applicable overtime rates for work the TOWN OF JUPITER permitted them to perform; and
- c. Whether the TOWN OF JUPITER acted in good faith in failing to pay Plaintiffs and the class at the applicable overtime rate for the work the TOWN OF JUPITER permitted them to perform.

35. The claims of Plaintiffs as named representatives are typical to the claims of the class because the same unlawful conduct was directed at or affected both the class representatives and the class itself.

36. Plaintiffs' claims encompass the challenged practices and course of conduct of the TOWN OF JUPITER.

37. The legal issues raised in this action apply equally to Plaintiffs and the putative class members.

38. Plaintiffs as named representatives will fairly and adequately protect the interests of the class.

39. The prosecution of separate actions by individual members of the putative class would create a risk of inconsistencies or varying adjudication with respect to individual members of the putative class which would establish incompatible standards of conduct for the TOWN OF JUPITER.

40. The prosecution of separate actions by individual members of the putative class would create a risk of adjudication with respect to individual members of the putative class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair their ability to protect their interests.

41. The TOWN OF JUPITER has 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.

42. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a collective action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I
RECOVERY OF UNPAID OVERTIME- VIOLATION OF THE FLSA, 29 U.S.C. § 207
ON BEHALF OF PLAINTIFFS (AND THOSE SIMILARLY SITUATED) AGAINST
DEFENDANT

43. Plaintiffs and those similarly situated re-allege and reaffirm paragraphs 1 through 42 as if fully set forth herein.

44. This is an action for Unpaid Overtime on behalf of Plaintiffs and those similarly situated against the TOWN OF JUPITER.

45. During Plaintiffs' employment with TOWN OF JUPITER, each worked overtime hours for which each was not properly compensated.

46. Plaintiffs were entitled to be paid at the rate of time and one-half for overtime hours pursuant to the FLSA.

47. Plaintiffs were never paid proper overtime wages for the hours each worked for TOWN OF JUPITER, from three (3) years prior to the date of this filing through the date of this filing.

48. Plaintiffs were entitled to be paid the regular rate and proper overtime rate for the relevant time periods as referenced above. The TOWN OF JUPITER has failed and refused to do so.

49. The TOWN OF JUPITER knew of and/or showed a willful disregard for the provisions of the FLSA as evidenced by TOWN OF JUPITER's failure to pay Plaintiffs and others similarly situated time and one-half wages for overtime hours when the TOWN OF JUPITER knew or should have known such was due. Rather, the TOWN OF JUPITER attempted to intentionally skirt federal law.

50. The TOWN OF JUPITER failed to properly disclose or apprise Plaintiffs and others similarly situated of their rights under the FLSA.

51. Plaintiffs and other similarly situated are entitled to liquidated damages pursuant to the FLSA.

52. Due to the intentional, willful, and unlawful acts of TOWN OF JUPITER, Plaintiffs and others similarly situated have suffered damages in the amount not presently ascertainable of unpaid overtime wages, plus an equal amount as liquidated damages, together with interest.

53. Plaintiffs and others similarly situated are entitled to an award of his reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

WHEREFORE, Plaintiffs respectfully pray that this Court do the following:

- a. Certify the FLSA claim as a collective action under 29 U.S.C. § 216 and direct notice to all eligible class members who can be identified by reasonable effort of the part of the TOWN OF JUPITER;
- b. Declare that the TOWN OF JUPITER has violated the overtime provisions of 29 U.S.C. § 207;
- c. Award Plaintiffs and all eligible members of the class who elect to participate in this action overtime compensation in the amount to be calculated;
- d. Award Plaintiffs and all eligible members of the class who elect to participate in this action liquidated damages in the amount to be calculated;
- e. Award Plaintiffs and all eligible members of the class who elect to participate in this action reasonable attorneys' fees and costs and expenses of this litigation pursuant to 29 U.S.C. § 216(b);
- f. Award Plaintiffs and all eligible members of the class who elect to participate in this action pre- and post-judgment interest; and
- g. Ordering any other and further relief this Honorable Court deems to be just and proper, including but not limited to relief in favor of all others similarly situated who join this action after notice.

COUNT II
RECOVERY OF UNPAID OVERTIME- VIOLATION OF THE FLSA, ALTERNATE
7(k) CLAIM ON BEHALF OF PLAINTIFFS (AND THOSE SIMILARLY SITUATED)
AGAINST DEFENDANT

54. Plaintiffs and those similarly situated re-allege and reaffirm paragraphs 1 through 42 as if fully set forth herein.

55. This is an action for Unpaid Overtime on behalf of Plaintiffs and those similarly situated against the TOWN OF JUPITER.

56. At all times material hereto, Plaintiffs and those similarly situated were law enforcement employees covered by the FLSA and entitled to the minimum wage and overtime protections set forth in FLSA §§6 and 7(k), 29 U.S.C. §§ 206, 207(k).

57. During Plaintiffs' employment with the TOWN OF JUPITER, each was not properly compensated pursuant to the requirements set forth in FLSA §§6 and 7(k), 29 U.S.C. §§ 206, 207(k).

58. Plaintiffs were never paid full overtime wages for the hours each worked for the TOWN OF JUPITER pursuant to the requirements of 7(k).

59. Plaintiffs were entitled to be paid the regular rate and overtime rate for the relevant time periods. The TOWN OF JUPITER has failed and refused to do so.

60. The TOWN OF JUPITER knew of and/or showed a willful disregard for the provisions of the FLSA as evidenced by the TOWN OF JUPITER's failure to pay Plaintiffs time and one-half wages for the hours each worked in excess of the work period when the TOWN OF JUPITER knew or should have known such was due. Rather, the TOWN OF JUPITER attempted to intentionally skirt federal law.

61. The TOWN OF JUPITER failed to properly disclose or apprise Plaintiffs of their rights under the FLSA.

62. Plaintiffs and others similarly situated are entitled to liquidated damages pursuant to the FLSA.

63. Due to the intentional, willful, and unlawful acts of TOWN OF JUPITER, Plaintiffs and others similarly situated have suffered damages in the amount not presently ascertainable of unpaid overtime wages, plus an equal amount as liquidated damages, together with interest.

64. Plaintiffs and others similarly situated are entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

WHEREFORE, Plaintiffs and others similarly situated respectfully request that a judgment be entered against the TOWN OF JUPITER:

- a. Certify the FLSA claim as a collective action under 29 U.S.C. § 216 and direct notice to all eligible class members who can be identified by reasonable effort of the part of the TOWN OF JUPITER;
- b. Declare that the TOWN OF JUPITER has violated 7(k) of the FLSA.
- c. Award Plaintiffs and all eligible members of the class who elect to participate in this action overtime compensation in the amount to be calculated;
- d. Award Plaintiffs and all eligible members of the class who elect to participate in this action liquidated damages in the amount to be calculated;
- e. Award Plaintiffs and all eligible members of the class who elect to participate in this action reasonable attorneys' fees and costs and expenses of this litigation pursuant to 29 U.S.C. § 216(b);
- f. Award Plaintiffs and all eligible members of the class who elect to participate in this action pre- and post-judgment interest; and

- g. Ordering any other and further relief this Honorable Court deems to be just and proper, including but not limited to relief in favor of all others similarly situated who join this action after notice.

Respectfully Submitted on this 1st day of June 2021.

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