

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KEVIN CALDERONE, an individual,
GEORGE SCHWING, an individual,
MICHAEL ZALESKI, an individual, and
SELENA LEE, an individual,

Plaintiffs,

v.

Case No: 2:14-cv-519-FtM-29CM

MICHAEL SCOTT, as the duly elected Sheriff of Lee County, Florida,

Defendant.

NOTICE OF PENDENCY OF FLSA LAWSUIT

To: All Certified Deputy Sheriffs employed by the Lee County Sheriff's Office after August 13, 2012.

Re: Pending Collective Action lawsuit against Sheriff Michael Scott for unpaid overtime wages.

THE PURPOSE OF THIS NOTICE IS TO ADVISE YOU OF THE EXISTENCE OF A PENDING LAWSUIT THAT HAS BEEN FILED AGAINST MICHAEL SCOTT, SHERIFF OF LEE COUNTY, FLORIDA, WHICH SEEKS A RECOVERY OF UNPAID OVERTIME WAGES ALLEGEDLY DUE UNDER FEDERAL LAW

YOU MAY HAVE LEGAL RIGHTS IN CONNECTION WITH THIS LAWSUIT

1. DESCRIPTION OF THIS LAWSUIT

In this lawsuit, the above-named Plaintiffs ("Representative Plaintiffs") are three current sheriff deputies and one deputy sheriff formerly employed by the Lee County Sheriff's Office. The Representative Plaintiffs have filed an Amended Collective & Class Action Complaint, on their own behalf and on behalf of other similarly situated individuals, against Defendant Michael Scott, in his official capacity as Sheriff of Lee County, Florida ("Sheriff Scott" or "Defendant"). The Representative Plaintiffs allege in one claim of the pending lawsuit that they each performed off-the-clock work for which they were not properly compensated. This claim for overtime compensation under federal law is a claim that is open to all former or current certified deputy sheriffs who, in the 3 years preceding August 13, 2015, were/are employed by the Defendant and who:

- i. Were/are required to don and doff protective equipment prior to reporting for their assigned shift or once their shift has concluded;
- ii. Were/are issued Lee County Sheriff's Office vehicles to take home and performed law enforcement services while driving to/from their shifts;
- iii. Have been/are assigned to the Lee County Sheriff's Office's "Traffic Unit" and were not compensated for all time worked prior to their arrival at their assigned enforcement locations;
- iv. Were/are employed on an hourly basis and who were required to report to their sub-station for pre/post-shift meetings;
- v. Were/are at times required to be prepared for duty despite not being scheduled to work a scheduled shift, constituting "on-call" time;
- vi. Were/are Sergeants who have not received overtime pay because they received pay on a salary basis; or
- vii. Were/are entitled to "comp time" in lieu of receiving overtime pay on a time-and-a-half cash basis.

In this lawsuit, the Representative Plaintiffs allege that they (and those described in subparagraphs i-vii, above) are owed additional overtime wages for hours worked in excess of 86 hours per pay period, together with other damages, including double damages, under the Fair Labor Standards Act of 1938 ("FLSA").

Sheriff Scott denies all claims in this lawsuit, including claims for double damages. The Court has not taken a position regarding the merits of this lawsuit. The case is currently in the discovery phase and is currently scheduled for trial to commence in March 2017.

2. YOUR RIGHT TO MAKE A CLAIM IN THIS LAWSUIT

Because you have been identified as a certified deputy sheriff employed by the Defendant within the three years preceding August 13, 2015, you have the right to assert a claim for unpaid overtime in this lawsuit. You also have the right to not assert a claim, as described further in Section 4 below.

To assert a claim for overtime compensation in this lawsuit, you must sign the attached written Consent to Join in the lawsuit and return the executed form to the Representative Plaintiffs' attorney by the deadline described in Section 3 below. Upon receipt, this executed form would be filed with the Court by the Representative Plaintiffs' attorney. It is entirely your own voluntary decision whether or not to sign and return the Consent to Join.

You do not need to have any records of your wages or the hours you worked in order to execute a Consent to Join form and proceed with your overtime wage claim in this lawsuit.

The Defendant is prohibited from retaliating against you in any way for joining this lawsuit, including taking any action based on your decision whether to join or not join this lawsuit.

3. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT

If you fit the description in Section 1 above, you may elect to join this lawsuit (that is, you may "opt-in"). Attached to this Notice is a "Consent to Join" form, which you would need to sign and return to pursue your claim for overtime compensation allegedly due under FLSA in this pending lawsuit. Also enclosed is a client information sheet, which - if you elect to join this lawsuit's claim for overtime compensation - should be completed and returned with the executed Consent to Join to facilitate the Representative Plaintiffs' attorney's ability to contact you. The information you provide on this information sheet will not be made public and will not be filed with the Court, but will be used only by the Representative Plaintiffs' attorney for the sole purpose of communicating with you about your pending claim in this lawsuit

To make an FLSA claim in this lawsuit, fill out the Consent to Join form, sign it, and fax, mail, PDF or send it overnight to Plaintiffs' attorney of record in the lawsuit, at the following address:

Benjamin H. Yormak, Esquire
Yormak Employment & Disability Law
9990 Coconut Road
Bonita Springs, Florida 34135
Telephone: (239) 985-9691
Fax: (239) 288-2534
Email: byormak@yormaklaw.com

If you choose to join this lawsuit, your Consent to Join form must be postmarked or otherwise dated for delivery to Plaintiffs' attorney of record by no later than December 31, 2015.

For your convenience, a self-addressed, postage paid envelope is enclosed. Please also fill out the information sheet and send it together with the Consent to Join form.

If you have any questions with respect to this lawsuit, you may contact the Representative Plaintiffs' attorney of record, Benjamin H. Yormak, by calling (239) 985-9691 or by e-mailing him at byormak@yormaklaw.com or yormakstaff@yormaklaw.com.

4. YOUR RIGHT NOT TO PARTICIPATE IN THIS LAWSUIT

Even if you fit the description in Section 1 above, you are not required to join this lawsuit. If you do not want to participate in this lawsuit you do not have to do anything at this time and you do not need to return either the attached Consent to Join form or the information sheet. If you do not participate in the lawsuit, you will not be affected by any settlement or judgment rendered in this lawsuit, whether favorable or unfavorable, which means that you will not be eligible to receive any portion of any recovery that might be obtained by the Plaintiffs nor will you be affected by any negative ruling or judgment against Plaintiffs. If you choose not to join this lawsuit, you are free to file your own lawsuit either with or without an attorney of your choosing.

5. YOUR OBLIGATIONS IF YOU JOIN THIS LAWSUIT

If you choose to join the pending lawsuit by asserting your own claim for overtime compensation, you will be bound by any Judgment entered on the FLSA claims you will have asserted in the lawsuit, whether favorable or unfavorable. While the lawsuit is pending, you may be required to provide certain information to the Defendant

regarding your asserted claim for overtime compensation, and it may be necessary for you to provide deposition or trial testimony. In order to recover any potential overtime damages in the lawsuit, you must prove that you have worked more than 86 hours per pay period at least once within the past three years, and that you were not properly compensated for such overtime work.

6. YOUR REPRESENTATION IF YOU JOIN THIS LAWSUIT

If you sign and timely submit the Consent to Join form, it will be filed with the Court and you will become a Plaintiff. The law firm of Yormak Employment & Disability Law (Plaintiffs' counsel) represents the Plaintiffs in this lawsuit.

Yormak Employment & Disability Law is handling this matter for the Plaintiffs on a contingency fee basis, meaning that should the Plaintiffs prevail on their asserted overtime compensation claims, the attorney's fees will be determined on a percentage basis based on the recovery on behalf of all Plaintiffs, subject to the Court's approval. In the absence of a recovery on the asserted claims for overtime compensation, the contingency fee basis of representation means that you would not be responsible to Yormak Employment & Disability Law for any attorney's fees it occurred on your behalf.

By joining this lawsuit, you designate the Representative Plaintiffs as your agents to make decisions on your behalf concerning your overtime compensation claim. These decisions and agreements made and entered into by the Representative Plaintiffs on your behalf will be binding on you if you elect to join this lawsuit.

7. YOU MAY SELECT YOUR OWN REPRESENTATION

If you want to pursue an overtime compensation claim against the Defendant, you may elect to be represented by the Representative Plaintiffs' counsel in the lawsuit's claim for overtime compensation or you can choose your own legal counsel and pursue your overtime claim in a separate legal proceeding. However, if you choose your own legal counsel, you will be responsible for paying him or her an agreed fee for his or her professional services.

8. LEGAL EFFECT OF FILING OR NOT FILING THIS CONSENT FORM

If you do not timely sign and return a Consent to Join form, you will not be eligible to receive any money or other relief for FLSA claims in this lawsuit, and you will not be bound by any judgment or settlement in this case, whether favorable or unfavorable. If

you choose not to join this lawsuit, you are free to file your own lawsuit with your own attorney.

Although the Court has approved the sending of this Notice and its language, the Court expresses no opinion on the merits of this lawsuit. In other words, the Court has not yet decided who is right or wrong. Further, your receipt of this Notice does not indicate that you have a claim or are entitled to recovery on such a claim.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE