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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JOSEPH CAIAZZA, on his own behalf and
those similarly situated

Plaintiff,

v.

CARMINE MARCENO, in his Official
Capacity as Sheriff of Lee County, Florida,

Defendant.

Case No. 2:18-cv-00784-SPC-MRM

**DEFENDANT’S MOTION *IN LIMINE* AND
SUPPORTING MEMORANDUM OF LAW**

COMES NOW CARMINE MARCENO, in his official capacity as the duly elected Sheriff of Lee County, Florida (“Defendant” or “Sheriff’s Office”), by and through his undersigned counsel and pursuant to Fed. R. Civ. P. 7(b), M.D. Fla. R. 3.01, and this Court’s Amended Case Management and Scheduling Order (D.E. 76), hereby files this Motion *in Limine* (“Motion”) to exclude certain testimony, evidence, and argument which is expected to be proffered at trial by Joseph Caiazza (“Plaintiff” or “Caiazza”). In support of this Motion, Defendant states as follows:

I. INTRODUCTION

Joseph Caiazza is a former Deputy Sheriff employed by the Sheriff’s Office as a Resident Deputy on Captiva. Plaintiff’s lawsuit asserted that the Sheriff’s Office violated the Fair Labor Standards Act, 29 U.S.C. §207 (the “FLSA”), by failing to compensate him for certain alleged hours of unpaid overtime. Plaintiff’s Amended Complaint (D.E. 17) asserted violations of the FLSA primarily predicated on his assertions that all his time spent serving on-call duty should be compensable for the maximum statutory period preceding the initiation of the present lawsuit (*i.e.*, November 28, 2015 to June 30, 2018) (the “Relevant Period”).

This Court's Order and Opinion (D.E. 72) on Defendant's Case Dispositive Motion for Summary Judgment (D.E. 46) and Plaintiff's cross-Motion for Summary Judgment (D.E. 67), resolved all of Plaintiff's claims for compensable on-call wait time in favor of the Sheriff's Office. Accordingly, all that remains for jury trial is whether the Sheriff's Office violated the FLSA by failing to compensate Plaintiff for certain overtime hours allegedly worked due to call outs for law enforcement service beyond his regularly scheduled shifts. (D.E. 72 at p. 12) ("extra-shift hours"). In briefing on the cross motions for summary judgment, Caiazza represented to this Court and to the Defendant that the total of this claim for unpaid extra shift hours was 258.50 hours. (D.E. 58-2 at p. 2-3).

Defendant files this Motion to exclude evidence, testimony, and argument based on anticipated use by Plaintiff at trial regarding the following matters:

- a. Plaintiff's inconsistent and erroneous belief that he was employed with the Sheriff's Office pursuant to a seven-day, 40-hour work period;¹
- b. All facts related to Plaintiff's unsuccessful claim for compensable on-call wait time;
- c. Plaintiff's "Personal Time Sheets", which Caiazza concedes were never certified or submitted to any representative of the Sheriff's Office; and
- d. Plaintiff's FLSA claims which arise outside of the applicable statute of limitations.

For reasons explained more fully below, some of the aforementioned categories of evidence are not relevant to this proceeding in that the evidence does not tend to prove or disprove

¹ The Sheriff's Office compensation policies describe the agency's obligation to pay overtime when employees exceed their regular "work period" of 84 hours (certified) or 40 hours (civilian). The phrase "pay period" refers to the normal 84 hours work period for certified personnel, and 80 hours for civilian personnel. (D.E. 48-2 at p. 23). Consistent with its stated policies, the Sheriff's Office herein refers to Caiazza's "work period" as the temporal period which measures when its policies designate when it will compensate agency employees at overtime rates.

a fact of consequence to Plaintiff's remaining FLSA claim for unpaid extra shift work hours, as set forth in the Court's Order (D.E. 72).² To the extent some categories of evidence may have some marginal relevance to the issues before this Court and the jury, the evidence should nonetheless be excluded because its probative value is substantially outweighed by its prejudicial impact or its likelihood to confuse, mislead, or inflame the jury, or it is otherwise inadmissible under the Federal Rules of Evidence. Therefore, to the extent Plaintiff seeks to present such testimony or evidence, the evidence should be excluded pursuant to Rules 401, 402, 403, and 801, Fed. R. Evid. Accordingly, Defendant respectfully requests that the Court grant this Motion and enter an Order precluding Plaintiff from introducing evidence or testimony at trial related to the aforementioned issues.

WHEREFORE, Defendant respectfully moves this Honorable Court, *in limine*, to prohibit the introduction of testimony or other evidence as outlined above, and as more fully explained below.

II. MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION *IN LIMINE*

a. Standard for Granting a Motion *in Limine*

A motion *in limine* is a motion made before or during trial, petitioning the court to preemptively exclude evidence before it is introduced. *Luce v. United States*, 469 U.S. 38 (1984). While neither the Federal Rules of Civil Procedure nor the Federal Rules of Evidence "explicitly authorize *in limine* rulings, the practice has developed pursuant to the district court's inherent authority to manage the course of trials." *Id.* at 41, n.4. Courts make these preliminary

² This Court has determined that "the parties genuinely dispute whether Caiazza worked unpaid overtime hours[.]" (D.E. 72 at p. 14), as well as "whether [Defendant] (or his employees) knew or should have known about the overtime." (D.E. 72 at p.15).

determinations of admissibility by considering whether the evidence comports with the Federal Rules of Evidence, the Federal Rules of Civil Procedure, and applicable case law. *See, e.g., Thompkins v. Lil' Joe Records, Inc.*, 2003 WL 25719229 (S.D. Fla. 2003). Moreover, the Court would be justified in limiting Plaintiff's evidence *in limine* to preserve judicial efficiency. *See In re: Lawrence*, 2008 WL 2095863, at *1 (Bkrtcy. N.D.N.Y. May 16, 2008).

One of the most well-established grounds for the exclusion of evidence is irrelevance. Fed. R. Evid. 402. The Federal Rules of Evidence define "relevant evidence" as that which has a tendency "to make a fact more or less probable than it would be without the evidence" *and* the fact is "of consequence in determining the action." Fed. R. Evid. 401. Moreover, "[e]vidence which is not relevant is not admissible." Fed. R. Evid. 402. Under Rule 403, Fed. R. Evid., however, relevant evidence can nonetheless be excluded "if its probative value is substantially outweighed by the danger of ... unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." A trial court has the discretion to exclude evidence or argument when the prejudice or confusion of issues from the admission of such evidence outweighs its probative value. *Allstate Ins. Co. v. James*, 845 F.2d 315, 320 (11th Cir. 1988).

- b. Plaintiff is judicially estopped from introducing testimony and other evidence pertaining to his unfounded belief that he was employed by the Sheriff's Office on a 40-hour work period schedule, and consequently, preclude argument that Plaintiff is entitled to overtime after working 40 hours in a seven-day period.**

A feature of this litigation has been the repeated inconsistent representations Caiazza has made to this Court and to the Sheriff's Office in his filings. This Court has commented upon such inconsistencies. (D.E. 72, n. 2). Caiazza's most recent inconsistencies pertain to when he was

entitled to overtime compensation as a Deputy Sheriff, and how many asserted unpaid extra shift work hours he claims to have worked. Simply stated, after initially representing to this Court (and to Defendant) that his unpaid extra shift hours totaled 258.50 hours³ (D.E. 58-2 at p. 2-3), Caiazza most recently asserts that his unpaid extra-shift hours should total 692.45 hours of alleged overtime (D.E. 88-1), after initially representing on November 13, 2020 that they totaled 234 hours (D.E. 88-2), and representing on November 17, 2020 that they totaled 428.50 (D.E. 88-3).

To be clear, this ever-changing charade of asserted damage claims is not the product of mere clerical errors or sloppiness of Caiazza's legal counsel. These filings represent deliberate and intentional discrepancies rendered to this Court and to Defendant to enhance alleged damage calculations, particularly after Caiazza lost his on-call wait time claim in this litigation. The question is whether Caiazza can get away with these inconsistent representations at trial in light of the record evidence, his prior filings and sworn testimony.

The Sheriff's Office respectfully submits that under Rule 403, Fed.R.Evid., this Court should judicially estop Plaintiff from introducing evidence or argument related to his erroneous and completely unfounded belief that he was employed on a 40-hour work period schedule, which is plainly incompatible with Defendant's stated compensation policies and payments to Caiazza, and inconsistent with both Plaintiff's prior sworn deposition testimony and affirmative

³ This total of 258.50 hours is derived from Caiazza's representation of actual hours worked each work period, exclusive of on call wait time, based upon the application of 29 U.S.C. 207(k)(2) to the Sheriff's Office's 14-day work period. Under this statute, Caiazza's entitlement to overtime occurs when he works more than 86 hours in his 14-day work period. 29 C.F.R. § 553.230(c) (establishing FLSA's overtime threshold for law enforcement employees at 86 hours for 14-day work periods). Although the Sheriff's Office compensation policy offers overtime pay after 84 hours in a certified member's work period, Caiazza's affirmative claim is for FLSA overtime, and he makes no contract claim for "gap time" compensation in those 14-day work periods in which he asserts to have worked between 84 and 86 hours.

representations to this Court through Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment (D.E. 58) (hereinafter Plaintiff's "Response").

Judicial estoppel is an equitable remedy with which the Court may invoke, at its discretion, to "prevent the perversion of the judicial process" and "protect its integrity ... by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *Slater v. U.S. Steel Corp.*, 871 F.3d 1174, 1180 (11th Cir. 2017) (citing *New Hampshire v. Maine*, 532 U.S. 742, 749-50, 121 S.Ct. 1808, 149 L.Ed.2d 968 (2001)). The doctrine of judicial estoppel rests on the principle that "absent any good explanation, a party should not be allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory." *Slater*, 871 F.3d at 1180-81 (citing *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 358 (3d Cir. 1996)).

The Eleventh Circuit employs a two-part test to guide district courts in applying the doctrine of judicial estoppel: (1) the party took an inconsistent position under oath in a separate proceeding, and (2) these inconsistent positions were "calculated to make a mockery of the judicial system." *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282, 1285 (11th Cir. 2002). Notwithstanding, several courts have held that the doctrine may apply in the same proceeding. *See e.g. In re: Eisen*, 679 Fed.Appx. 584 (Mem) (9th Cir. 2017) (citing *Milgard Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d 703, 716 (9th Cir. 1990) (the doctrine of judicial estoppel precludes parties from taking inconsistent positions in the *same* litigation) (emphasis added)). Under this test, a district court considers both the plaintiff's actions – whether he made inconsistent statements – and his motive – whether he intended to make a mockery of the judicial system. *Slater*, 871 F.3d at 181. More specifically, when analyzing a plaintiff's motive, the Court should look to all the facts and

circumstances of the case to determine whether a plaintiff intended to mislead the Court and manipulate the judicial system to his advantage. *Id.* at 1186.

In his Amended Complaint (D.E. 17), as well as through his responses to this Court's FLSA interrogatories (D.E. 23, Response to Interrogatory 7(a)), Plaintiff initially represented to this Court that, during his tenure with the Sheriff's Office, he was employed pursuant to a seven-day, 40-hour work period. Notwithstanding these affirmative representations, in his initial responses to Defendant's First Set of Interrogatories, Plaintiff contrarily represented to Defendant that he was employed pursuant to a 14-day work period. (D.E. 47-2, Ex. 19 at Response to Interrogatory 2). Moreover, at deposition, Plaintiff classified himself as a certified law enforcement officer (D.E. 47 at p. 23:2-9), and conceded that as a certified officer, he was not ever employed by the Sheriff's Office pursuant to a seven-day work period. (D.E. 47 at p.105:20-25 to 106:1-23). Plaintiff further conceded that he was familiar with the Sheriff's Office explicit policies governing compensation, benefits, and conditions of work during the Relevant Period. (D.E. 47 at p. 56:9-22). Pursuant to Section 22.1.1-e of the Sheriff's Office Operations Manual, "the 'work period' is defined as ... a two-week period for certified members." (D.E. 47-1, Ex. 5 at p. 29). Additionally, the Sheriff's Office's compensation policies explicitly state: "[a]ny hours worked in excess of ... 84 during the pay period for certified will be paid for at one and one half times their hourly rate of pay." *Id.*

Not surprisingly, when confronted at deposition with these stated policies and his incongruous sworn responses to the Court's FLSA interrogatories and pleadings asserting he was due compensation after working forty (40) hours in a work period, Caiazza testified as follows:

- 4 Q Okay. I'll show you Exhibit 16. Do you
5 recognize this document?
6 A That was -- the initial one was filed against
7 Sheriff Mike Scott and this is when Carmen was interim

8 sheriff after Mike Scott retired.

9 Q So this is the amended complaint demand for
10 jury trial that your attorney filed in the pending
11 litigation. Did you see this document or review it
12 before it was filed with the court, if you remember?

13 A I don't recall.

14 Q Is there anything inaccurate from your
15 perspective as stated in this amended complaint?

16 A Give me a second to look it over.

17 Q Take whatever time you need.

18 A Thank you.

19 Everything seems to be in order.

20 Q Let me direct your attention to a couple of
21 paragraphs.

22 A Okay.

23 Q Paragraph 14.

24 A Okay.

25 Q The final sentence of Paragraph 14 says,

1 Plaintiff should be compensated at the rate of one and
2 a half times -- Plaintiff's regular rate for those
3 hours the Plaintiff worked in excess of 40 hours per
4 week as required by the FLSA; do you see that?

5 A Uh-huh.

6 Q Yes?

7 A Yes, sir.

8 Q So you were not employed to work a seven-day
9 workweek; correct?

10 A No, sir.

11 Q You were employed to work a 14-day work
12 period; correct?

13 A Eighty-four hours, how many days that is.
14 Forty-two hours a week.

15 Q So it's not accurate that you were entitled
16 to overtime if you worked hours in excess of 40 in a
17 week; correct?

18 A I don't know how to answer that. Can you
19 restate it a different way?

20 Q No, sir, I cannot. But if --

21 A Ask it again, please.

22 Q You can just not answer it.

23 A I'm not answering it.

24 Q Paragraph 18 pretty much says the same thing.
25 That's not accurate; is it?

- 1 A I believe it is, that I should be paid time
2 and a half for anything I did overtime.
3 Q But your overtime was not based upon working
4 more than 40 hours in a workweek; correct?
5 A I'm not gonna answer that one.
6 Q You don't know?
7 A I don't know.

(D.E. 47: 105:4-25 to 106:1-7).

Nevertheless, in his August 6, 2020 response to Defendant's Case Dispositive Motion for Summary Judgment, Plaintiff affirmatively represented once again that his pay was based on a 40-hour work period (D.E. 58 at p. 5, ¶7), offering no predicate for this subjective and erroneous belief, or any explanation for the alleged epiphany which had clarified this understanding since his deposition testimony. More importantly, in his table summary as presented to the Court (D.E. 58-3 at pp 2-3), Plaintiff represented his calculations of alleged extra shift overtime and wait time calculations pursuant to 14-day work periods, compared to the number of work hours he claims that he was paid by the Sheriff's Office. (D.E. 67 at p. 8, ¶24). Plaintiff then argued in his summary judgment briefs that the table summary of his records "demonstrate that he was paid for significantly less hours than those that he worked." (D.E. 67 at pp. 6-7, ¶17).⁴

Unsurprisingly, Plaintiff's conflicting representations have fluctuated further throughout his most recent disclosures of asserted damage calculations for alleged unpaid extra shift work. In Plaintiff's Second Amended Responses to Defendant's First Set of Interrogatories (D.E. 88-3), he again asserts a calculation of alleged overtime compensation damages predicated upon the use of

⁴ In later filings dated September 4, 2020, Caiazza conceded that he was employed to work a total of 84 hours (or seven 12-hour shifts) as a Resident Deputy. (D.E. 67 at p. 5, ¶ 10).

a seven-day, 40-hour work period.⁵ Remarkably, less than a week later, Plaintiff again served Defendant with Third Amended Responses to Defendant's First Set of Interrogatories, where he uses color coding to designate 14-day work periods, yet calculates his asserted overtime damages pursuant to a seven-day, 40 hour work period, thereby conflating two distinct FLSA overtime computations.

The impact of Caiazza's inconsistent representations is made clear by the following illustrative examples:

- **For the work period ending May 6, 2017** – Plaintiff's "Personal Time Sheets" reflect that he worked 84 hours for the work period. (D.E. 58-3 at p. 41). The certified Time Sheet that he submitted to his supervisor for approval reflects the same hours total, with no extra shift work. (D.E. 48-2 at p. 74). In his table summary as presented to the Court, Plaintiff also represents to the Court that he worked 84 hours, and that without inclusion of his on-call wait time⁶, he is owed no overtime for extra shift work hours for the pay period ending 05/06/2017. (D.E. 58-3 at p. 2). However, Plaintiff now seeks eight hours of overtime (D.E. 88-1) and \$385.92 in back wages, plus an equivalent amount in liquidated damages for that same work period.
- **For the work period ending May 20, 2017** – Plaintiff's "Personal Time Sheets" reflect that he worked 84 hours for the work period. (D.E. 58-3 at p. 42). The Sheriff's Office certified Time Sheet reflects the same. (D.E. 48-2 at p. 73). In his table summary as presented to the Court, Plaintiff again represents that he worked 84 hours, exclusive of his on-call wait time, and therefore he is owed no overtime for the work period ending 05/20/2017. (D.E. 58-3 at p. 2). However, Plaintiff now seeks eight hours of overtime (D.E. 88-1) and \$385.92 in back wages, plus an equivalent amount in liquidated damages for that same work period.

⁵ Plaintiff's Second Amended Responses to Defendant's First Set of Interrogatories outlining newly calculated damages were served on Defendant on November 17, 2020 7:15 p.m. in advance of a Settlement Conference that was scheduled to commence less than fifteen hours later. These responses increased Caiazza's asserted unpaid extra shift overtime claim from 234 hours to 428.50 hours (compare D.E. 88-2 and D.E. 88-3).

⁶ Plaintiff's asserted claims for compensable on-call wait time were resolved by this Court in granting partial summary judgment in favor of Defendant on October 5, 2020. (D.E. 72). Accordingly, Defendant excludes such asserted "wait time" damages in these illustrative examples.

- **For the work period ending June 3, 2017** – Plaintiff’s “Personal Time Sheets” reflect that he worked 84 hours for the work period. (D.E. 58-3 at p. 43). The Sheriff’s Office certified Time Sheet reflects the same. (D.E. 48-2 at p. 72). In his table summary as presented to the Court in Plaintiff’s Response, Plaintiff again represents that he worked 84 hours, exclusive of his on-call wait time, and therefore he is owed no overtime for the work period ending 06/03/2017. (D.E. 58-3 at p. 2). Consistent with the examples highlighted above, Plaintiff now seeks eight (8) hours of overtime (D.E. 88-1) and \$385.92 in back wages, plus an equivalent amount in liquidated damages for that same work period.

Throughout this litigation, Plaintiff has repeatedly represented inconsistent calculations for his asserted extra shift work hours and overtime damages. Now, Plaintiff attempts to manufacture non-existent damages contrary to his prior affirmative representations to this Court and to Defendant, which have no reliable evidentiary basis. Caiazza’s assertions and his counsel’s arguments that Caiazza was entitled to overtime pay under the FLSA after working 40 hours in a 7-day work period are inconsistent with explicit Sheriff’s Office compensation policies, Plaintiff’s certified time sheets and paystubs, as well as with representations which concede that Plaintiff should be paid overtime based upon a 14-day period. Plaintiff cannot, in good faith, continue to make such conflicting arguments, unless for purposes of unnecessarily multiplying the proceedings and seeking to confuse the jury.

In applying the principles of judicial estoppel, the Court has ample grounds to prohibit Plaintiff from introducing testimony or other evidence pertaining to his erroneous belief that he was employed by the Sheriff’s Office on a 40-hour, seven-day work period. Specifically, Plaintiff erratically has advocated shifting positions with respect to his work period and entitlement to overtime compensation, tailoring his argument to whichever position yields him the greatest potential damages return at that point in this litigation. Secondly, and most notably, when considering all the facts and circumstances of the present litigation, Plaintiff’s fast and loose

arguments cannot be viewed as anything but a manipulative and calculated attempt to mislead and deceive this Court, as well as Defendant, and otherwise make a mockery out of the judicial process. Absent leave of court and a showing of good cause under Rule 16(b), Federal Rules of Civil Procedure, Plaintiff should be limited to abiding by the extra shift hours of alleged overtime damages which he affirmatively represented to be accurate in his briefs (*i.e.*, D.E. 58-3 at pp. 2-3). *Fox v. Safeco Insurance Company of Illinois*, 2017 WL 4102312 (M.D.Fla. Sept. 15, 2017) (precluding party from amending discovery responses after discovery deadline, absent showing of good cause).

Accordingly, Defendant respectfully submits that under Rule 403, Fed. R. Evid. and principles of judicial estoppel, Plaintiff should be estopped from introducing evidence or argument regarding his inconsistent position that he was employed with the Sheriff's Office pursuant to a 40-hour, seven-day work period, and entitled to overtime compensation after working more than 40 hours in any seven-day period.

c. Under Rules 402 and 403, Federal Rules of Evidence, the Court should preclude testimony or other evidence pertaining to Plaintiff's previously dismissed claims for compensable on-call wait time.

Generally, evidence concerning previously dismissed claims is not relevant and, consequently, is not admissible. *See DeBoze v. Univ. of S. Florida Bd. of Trustees*, 2018 WL 8919981, at *2 (M.D. Fla. Sept. 9, 2018) ("District courts routinely exclude evidence and argument related to previously dismissed claims as irrelevant and prejudicial"; excluding evidence of previously dismissed claims); *see also King v. Catholic Charities of Nw. Florida, Inc.*, 2018 WL 3848819, at *2 (N.D. Fla. Aug. 12, 2018) (granting motion in limine and excluding evidence of plaintiff's wrongful termination claim that was resolved by summary judgment); *Hannah v. Wal-*

Mart Stores, Inc., No. 3:12-CV-01361 (VAB), 2017 WL 690179, at *2 (D. Conn. Feb. 21, 2017) (“[W]here claims have been dismissed on summary judgment, therefore, it is appropriate to preclude testimony in evidence regarding those same previously dismissed claims during a jury trial”); *Anderson v. Brown Indus.*, 2014 WL 12521732, at *4 (N.D. Ga. Mar. 14, 2014) (granting motion in limine and precluding introduction of evidence relating to claims on which defendant obtained summary judgment or plaintiff elected not to pursue).

Throughout discovery of this matter, Plaintiff has heavily relied on his own self-imposed restrictions in contending that his work schedule was “oppressive,” and he therefore, should be entitled to compensation for his time serving in an on-call capacity. Specifically, Plaintiff has argued that he “vigilantly” monitored his computer during his on-call duty shifts, voluntarily responded to calls as back-up for other officers, slept clothed and in his armchair opposed to a bed, and refrained from engaging in social interactions with friends and family, in the event he may be called out and required to leave such events. (*See generally* D.E. 58 and D.E. 67). However, the Court has appropriately resolved these issues, in granting partial summary judgment for Defendant and finding that these self-imposed restrictions were merely an “admirable choice by Caiazza as opposed to restriction[s] or condition[s] placed upon his free time by [Defendant].” (D.E. 72 at p. 8-9).

Because Plaintiff’s claims for compensable on-call wait time have been resolved at summary judgment, such evidence pertaining to his on-call duty schedule or limitations on his personal life are plainly irrelevant under 401, Federal Rules of Evidence. Moreover, introduction of such evidence at trial is only for the purpose of unfairly prejudicing the Defendant, raising potential sympathy regarding Caiazza’s work schedule and confusing the triable issues remaining.

Parading such facts and arguments in front of the jury at trial will only serve to improperly invoke the jury's sympathy or mislead the jury from considering the relevant and applicable facts to Plaintiff's claims for unpaid extra shift work hours.

Accordingly, all evidence and argument of Plaintiff's previously adjudicated claims for compensable on-call waiting time, including Plaintiff's self-imposed wait time restrictions and Plaintiff's asserted dedication to law enforcement, are irrelevant pursuant to Federal Rules of Evidence 401 and 402 and should be excluded *in limine*. To the extent such evidence is deemed relevant to Plaintiff's remaining claims for alleged unpaid overtime compensation for certain extra shift work, Defendant respectfully submits such evidence should nonetheless be excluded because its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury.

d. Plaintiff's "personal timesheets" should be excluded from evidence under Rules 403 and 801(c), Fed. R. Evid., or alternatively, redacted to exclude portions

Under the Federal Rules of Evidence, hearsay is "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Fed. R. Evid. 801(c). Generally, hearsay is not admissible except as otherwise provided for under the Federal Rules of Evidence. Fed. R. Evid. 802.

At trial, Plaintiff will attempt to introduce his "Personal Time Sheets" as substantive proof of his asserted overtime hours worked. As a preliminary matter, these proffered timesheets are undoubtedly hearsay, as Plaintiff offers them to prove the truth of the hours documented within. Fed. R. Evid. 801(c). Moreover, these "Personal Time Sheets" do not qualify for any hearsay exception, and accordingly are not excluded from the hearsay rule.

As raised previously in the briefing on the cross motions for summary judgment, Plaintiff will likely argue that his “Personal Time Sheets” fall within the recorded recollection exception to hearsay, under Rule 803(5), Fed. R. Evid. However, this argument fails. The rule regarding recorded recollection provides:

A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness’ memory and *to reflect that knowledge correctly*. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

Rule 803(5), Fed. R. Evid. (emphasis supplied).

Here, Plaintiff cannot establish that his “Personal Time Sheets” reflect his prior knowledge correctly. As more fully discussed above, Plaintiff has failed to ever provide the Defendant or this Court with a consistent calculation regarding his asserted unpaid overtime hours, despite his access to and reliance upon these proffered “Personal Time Sheets” throughout the duration of this litigation. Remarkably, in his latest iteration of alleged unpaid extra-shift hours worked (D.E. 88-1), Caiazza now even asserts that his summary table of extra shift hours – excluding wait time – is inaccurate! (compare D.E. 58-3 at pp. 2-3 to D.E. 88-1, work periods ending July 29, 2017, September 23, 2017, and October 21, 2017).

Moreover, when analyzed in conjunction with official records of the Sheriff’s Office, Plaintiff’s “Personal Time Sheets” are marred with exaggerations and blatant misrepresentations regarding his alleged hours worked, such as seeking credit for a 12-hour shift when in fact, he was off duty for the entire day. (CITE?) Accordingly, Defendant respectfully submits that Plaintiff’s “Personal Time Sheets” should be excluded from evidence at trial.

Even assuming *arguendo* that Plaintiff might be able to establish the admissibility of his “Personal Time Sheets” under Rule 803(5), Fed. R. Evid., they are nonetheless inadmissible under Rule 403 as their probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading of the jury. Plaintiff’s “Personal Time Sheets” have been manipulated by Caiazza to reflect a form not authorized by the Sheriff’s Office, while nevertheless retaining elements of the authorized Time Sheet form for nonexempt personnel that existed for most of the work periods in the Relevant Period of Caiazza’s employment. In seeking to introduce these documents into evidence therefore, Caiazza seeks to present to the jury documents containing false representations of hours worked which have been unilaterally altered by Plaintiff to appear to be an official form of the Sheriff’s Office. Allowing falsified documents which present superficially as official documents from a certified law enforcement agency into evidence dangerously prejudices Defendant, who, prior to Plaintiff’s initiation of the present lawsuit, had no knowledge of such falsified documents. (D.E. 47, 131:9-12) (confirming he never submitted his “Personal Time Sheets to his supervisor).

More crucially, Plaintiff’s “Personal Time Sheets” present a misrepresentation of his work hours, including Plaintiff’s failure to reflect his use of compensatory or flex time to balance his Time Sheet, as well as explicit references to his asserted on call wait time. Plaintiff’s deliberate distortion of his asserted hours worked is undeniably self-serving, and further undermines the element of trustworthiness necessary for admissibility. Allowing such records to be admitted into evidence invites the jury to engage in rank speculation as to the validity of Plaintiff’s falsified time records and places Defendant in position of having to defend speculative and confusing “look-a-like” records. Accordingly, Defendant respectfully submits that the Court should prohibit Plaintiff

from presenting into evidence his “personal timesheets,” to avoid the jury’s inference of any improper animus or confusion of the issues.⁷

e. Evidence and testimony pertaining to Plaintiff’s FLSA claims should be limited to the applicable statute of limitation.

The FLSA provides for a private cause of action for employees to claim allegedly unpaid overtime compensation. 29 U.S.C. § 216. However, such action must be commenced within two years of its accrual date or will be forever barred. 29 U.S.C. § 255. Nevertheless, if it is found that the employer acted in a willful manner in denying overtime compensation, then the applicable statute of limitations is increased to three years. *Id.*; *McLaughlin v. Richland Shoe Company*, 486 U.S. 128 (1988) (setting standard for determining if employer’s conduct is “willful”). “It is well settled that [a] separate cause of action for overtime compensation accrues at each regular payday immediately following the work period during which the services were rendered and for which the overtime compensation is claimed.” *Hodgson v. Behrens Drug Co.*, 475 F.2d 1041, 1050 (5th Cir. 1973) (internal quotation marks omitted). In other words, “[t]he statute of limitations [of an FLSA claim] begins to run as soon as the claim for unpaid wages or overtime accrues ..., not as of the date employment ceases...” *Abdrabo v. State*, 2005 WL 1278539, at *2 (S.D.N.Y. May 27, 2005). Accordingly, the only conduct that is actionable must have occurred within the applicable statute of limitations. *Chavez v. Arancedo*, 2018 WL 4599585, at *3 (S.D. Fla. Sept. 24, 2018).

In the present litigation, Plaintiff filed his claims for unpaid overtime compensation on November 27, 2018. [D.E. 1]. On the other hand, it is undisputed that Plaintiff voluntarily retired

⁷ Notably, Defendant’s undersigned counsel has offered to consider the potential admission of redacted “Personal Time Sheets” in conferral discussions with Caiazza’s counsel on Caiazza’s intended Motion *in Limine*, to eliminate the prejudicial and confusing appearance of the manipulated forms. Caiazza’s counsel summarily rejected this proposal.

from his employment with the Sheriff's Office on June 30, 2018. [D.E. 46 at p. 3, ¶1; D.E. 58 at p. 3, ¶1]. Defendant respectfully submits that Plaintiff's claim for overtime compensation based upon unpaid extra shift work, if any, should be limited to the period between November 27, 2016 (two years prior to the filing of the Complaint)⁸, and June 30, 2018 (the date of Caiazza's voluntary retirement). This is so, because absent evidence to support a willful violation of the FLSA, any claim for overtime allegedly worked before November 27, 2016 is time-barred. Therefore, any claim for overtime compensation must be limited to the period between November 27, 2016 (or November 27, 2015 in the case of willfulness) and June 30, 2018.

Having established that Plaintiff's claim for unpaid overtime cannot extend beyond November 27, 2016 (or November 27, 2015 at most), it becomes clear that any contention of unpaid extra shift wages prior to that date is entirely irrelevant and immaterial to Plaintiff's efforts to recover such wages from Defendant. Moreover, to the extent Plaintiff contends that the Sheriff's Office engaged in a willful violation of the FLSA, only conduct within the relevant statute of limitations is considered relevant to Plaintiff's present cause of action. *Chavez*, 2018 WL 4599585, at *3 (rejecting plaintiff's argument that the jury needs evidence regarding the entire employment relationship to determine willfulness). Accordingly, any evidence of hours worked, or otherwise pertaining to the issue of a willful violation, that occurred prior to November 27, 2015 is irrelevant and would serve only to confuse or mislead the jury. For these reasons, Defendant respectfully submits that such evidence should not be allowed during the trial of this case.

⁸ Alternatively, the period would extend back to November 27, 2015, should the jury find that Defendant's alleged violations of the FLSA were willful.

Similarly, in response to Defendant's summary judgment motion, Plaintiff filed a declaration from Vicky George, who in part asserted that a supervisor of hers (Lt. Jeffrey Corkhill) directed that she destroy time sheets after the date on which Caiazza retired. (D.E. 58-2 at p. 4, ¶17). While Corkhill denies that he ever gave Vicky George such an instruction (D.E. 63-1 at p. 3, ¶¶ 7-8), this allegation should be excluded from evidence at trial due to its irrelevance to the issues in the case, and the fact that it asserts alleged conduct that supposedly took place after Caiazza's employment. Caiazza's certified or authorized Time Sheets for the Relevant Period of his employment are in the evidentiary record (D.E. 48-2 at pp. 30-111), and no person has ever asserted that one of Caiazza's Time Sheets is missing.

III. CONCLUSION

For the forgoing reasons, Defendant respectfully requests this Court enter an Order granting Defendant's Motion *in limine*, and exclude all evidence, testimony, and argument as described above from being introduced at trial.

CERTIFICATE OF GOOD FAITH CONFERRAL

Pursuant to Local Rule 3.01(g), Middle District of Florida, the undersigned counsel for Defendant has conferred with Plaintiff's counsel regarding the relief sought by Defendant in this Motion, and Plaintiff's counsel has indicated their opposition to the relief requested herein.

Dated this 25th day of November 2020.

Respectfully submitted,

s/ David J. Stefany

DAVID J. STEFANY

Florida Bar No. 438995

MATTHEW D. STEFANY

Florida Bar No. 98790

MAELYN M. MORRISON

Florida Bar No. 1018654

Counsel for Defendant

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(813) 251-1210 | (813) 253-2006 – Fax

E-mail: dstefany@anblaw.com

mstefany@anblaw.com

mmorrison@anblaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of November 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to Andrew R. Frisch, Esquire (afrisch@forthepeople.com) and Chanelle J. Ventura, Esquire (CVentura@forthepeople.com) of Morgan & Morgan, P.A., 600 N. Pine Island Road, Suite 400, Plantation, Florida 33324.

s/ David J. Stefany

ATTORNEY

EXHIBIT 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JOSEPH CAIAZZA, on his own behalf and
those similarly situated

Plaintiff,

Case No. 2:18-cv-00784-SPC-MRM

v.

CARMINE MARCENO, in his Official
Capacity as Sheriff of Lee County, Florida,

Defendant.

**PLAINTIFF'S SUPPLEMENTAL ANSWERS AND OBJECTIONS TO
DEFENDANT'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff, Joseph Caiazza, ("Plaintiff") hereby serves his Supplemental Answers and Objections to Defendant's First Set of Interrogatories in the above-referenced matter.

Dated: November 23, 2020

Respectfully submitted,

/s/ Andrew R. Frisch

Andrew R. Frisch

FBN: 027777

Chanelle J. Ventura

FBN: 1002876

Morgan & Morgan, P.A.

8151 Peters Road, Suite 4000

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Telephone: (954) WORKERS

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Email: AFrisch@forthepeople.com

Email: Cventura@forthepeople.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that November 23, 2020, a true and correct copy of the foregoing was transmitted via Electronic Mail to Counsel for Defendant, David J. Stefany, dstefany@anblaw.com, Matthew D. Stefany, mstefany@anblaw.com, and Maelyn M. Morrison, mmorrisson@anblaw.com.

/s/ ANDREW R. FRISCH

ANDREW R. FRISCH

PLAINTIFF'S SUPPLEMENTAL ANSWERS TO INTERROGATORIES

INTERROGATORY 2 By work period ending date, please identify each fourteen-day work period between November 27, 2015 and June 7, 2018 in which you claim to have worked in excess of 86 hours.

ANSWER: Plaintiff objects to this interrogatory based on the fact that it assumes that Plaintiff was employed on a fourteen-day work period which is a legal conclusion that has not been established. Notwithstanding the foregoing please *see* chart referenced below in Plaintiff's Supplemental Answer to Interrogatory No. 3 regarding the overtime hours that Plaintiff worked each work week.

INTERROGATORY 3 For each fourteen-day work period identified in response to Interrogatory #2 above, identify how many hours you claim to have worked, and specifically list or identify what records or documents you have that you believe may support the asserted hours worked you claim to have worked.

ANSWER: Plaintiff objects to this interrogatory based on the fact that it assumes that Plaintiff was employed on a fourteen-day work period which is a legal conclusion that has not been established. Notwithstanding the foregoing please see chart below regarding the overtime hours that Plaintiff worked each work week.

Week Ending	Hours Worked	Overtime Hours Paid	Overtime Hours Owed	Overtime Pay Owed
11/28/2015	54		14	\$ 675.36
12/5/2015	36		0	\$ -
12/12/2015	40		0	\$ -
12/19/2015	51		11	\$ 530.64
12/26/2015	42		2	\$ 96.48
1/2/2016	59		19	\$ 916.56
1/9/2016	12		0	\$ -
1/16/2016	55		15	\$ 723.60
1/23/2016	39		0	\$ -
1/30/2016	56		16	\$ 771.84
2/6/2016	49		9	\$ 434.16
2/13/2016	48		8	\$ 385.92
2/20/2016	44		4	\$ -

				192.96
2/27/2016	48		8	\$ 385.92
3/5/2016	38		0	\$ -
3/12/2016	48		8	\$ 385.92
3/19/2016	36		0	\$ -
3/26/2016	61		21	\$ 1,013.04
4/2/2016	60		20	\$ 964.80
4/9/2016	51		11	\$ 530.64
4/16/2016	42		2	\$ 96.48
4/23/2016	65		25	\$ 1,206.00
4/30/2016	47		7	\$ 337.68
5/7/2016	54		14	\$ 675.36
5/14/2016	42		2	\$ 96.48
5/21/2016	48		8	\$ 385.92
5/28/2016	43		3	\$ 144.72
6/4/2016	52		12	\$ 578.88
6/11/2016	36		0	\$ -
6/18/2016	56		16	\$ 771.84
6/25/2016	12		0	\$ -
7/2/2016	48		8	\$ 385.92
7/9/2016	46		6	\$ 289.44
7/16/2016	48		8	\$ 385.92
7/23/2016	37		0	\$ -
7/30/2016	48		8	\$ 385.92
8/6/2016	45		5	\$ 241.20
8/13/2016	48		8	\$ 385.92
8/20/2016	39		0	\$ -
8/27/2016	48		8	\$

				385.92
9/3/2016	0		0	\$ -
9/10/2016	52		12	\$ 578.88
9/17/2016	45		5	\$ 241.20
9/24/2016	61		21	\$ 1,013.04
10/1/2016	4		0	\$ -
10/8/2016	48		8	\$ 385.92
10/15/2016	41.5		1.5	\$ 72.36
10/22/2016	50		10	\$ 482.40
10/29/2016	42		2	\$ 96.48
11/5/2016	48		8	\$ 385.92
11/12/2016	42		2	\$ 96.48
11/19/2016	50		10	\$ 482.40
11/26/2016	44		4	\$ 192.96
12/3/2016	48		8	\$ 385.92
12/10/2016	39		0	\$ -
12/17/2016	0		0	\$ -
12/24/2016	0		0	\$ -
12/31/2016	30		0	\$ -
1/7/2017	38		0	\$ -
1/14/2017	54		14	\$ 675.36
1/21/2017	39		0	\$ -
1/28/2017	48		8	\$ 385.92
2/4/2017	59		19	\$ 916.56
2/11/2017	47		7	\$ 337.68
2/18/2017	40		0	\$ -
2/25/2017	48		8	\$ 385.92
3/4/2017	45		5	\$ -

				241.20
3/11/2017	48		8	\$ 385.92
3/18/2017	45		5	\$ 241.20
3/25/2017	48		8	\$ 385.92
4/1/2017	39		0	\$ -
4/8/2017	48		8	\$ 385.92
4/15/2017	12		0	\$ -
4/22/2017	25		0	\$ -
4/29/2017	36		0	\$ -
5/6/2017	48		8	\$ 385.92
5/13/2017	36		0	\$ -
5/20/2017	48		8	\$ 385.92
5/27/2017	48		8	\$ 385.92
6/3/2017	36		0	\$ -
6/10/2017	36		0	\$ -
6/17/2017	54		14	\$ 675.36
6/24/2017	38		0	\$ -
7/1/2017	48		8	\$ 385.92
7/8/2017	46		6	\$ 289.44
7/15/2017	54		14	\$ 675.36
7/22/2017	14		0	\$ -
7/29/2017	50		10	\$ 482.40
8/5/2017	38		0	\$ -
8/12/2017	52		12	\$ 578.88
8/19/2017	36		0	\$ -
8/26/2017	48	4	4	\$ 192.96
9/2/2017	36		0	\$ -
9/9/2017	38.75		0	\$

				-
9/16/2017	120		0	\$ -
9/23/2017	64	100	4	\$ 197.24
9/30/2017	36		0	\$ -
10/7/2017	48		8	\$ 394.48
10/14/2017	36		0	\$ -
10/21/2017	48		8	\$ 394.48
10/28/2017	36		0	\$ -
11/4/2017	48		8	\$ 394.48
11/11/2017	36		0	\$ -
11/18/2017	48		8	\$ 394.48
11/25/2017	36		0	\$ -
12/2/2017	48		8	\$ 394.48
12/9/2017	36		0	\$ -
12/16/2017	48		8	\$ 394.48
12/23/2017	36		0	\$ -
12/30/2017	50		10	\$ 493.10
1/6/2018	36		0	\$ -
1/13/2018	48	2	6	\$ 295.86
1/20/2018	38.5		0	\$ -
1/27/2018	45.5		5.5	\$ 271.21
2/3/2018	35		0	\$ -
2/10/2018	49		9	\$ 443.79
2/17/2018	37.55		0	\$ -
2/24/2018	52.9		12.9	\$ 636.10
3/3/2018	36		0	\$ -
3/10/2018	48	6.45	1.55	\$ 76.43
3/17/2018	36		0	\$ -

				-
3/24/2018	53.33	5.33	8	\$ 394.48
3/31/2018	36		0	\$ -
4/7/2018	48		8	\$ 394.48
4/14/2018	37.59		0	\$ -
4/21/2018	24		0	\$ -
4/28/2018	40		0	\$ -
5/5/2018	40		0	\$ -
5/12/2018	40		0	\$ -
5/19/2018	40		0	\$ -
5/26/2018	40		0	\$ -
6/2/2018	40		0	\$ -
6/9/2018	40		0	\$ -
			Unpaid Overtime	\$33,524.64
			Damages Including Liquidated Damages	\$67,049.29

By Joseph Canizza
Joseph Canizza

STATE OF PA
COUNTY OF LAWRENCE

BEFORE ME, the undersigned authority, on this day, personally appeared Joseph Canizza, who being first duly sworn, deposes and says that he has read the foregoing Supplemental Answers to Interrogatories, knows the contents of same, and to the best of his knowledge and belief, the same are true and correct.

SWORN TO (OR AFFIRMED) AND SUBSCRIBED before me, by means of physical presence or online notarization, this 23rd day of November, 2020. The

Affiant, Joseph Canizza, is personally known to me or has produced PA DRIVERS LICENSE identification, which is current or has been issued within the past five years and bears a serial number or other identifying number.

SEAL

Patti Ann Kelley
Notary Public Signature



EXHIBIT 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JOSEPH CAIAZZA, on his own behalf and
those similarly situated

Plaintiff,

Case No. 2:18-cv-00784-SPC-MRM

v.

CARMINE MARCENO, in his Official
Capacity as Sheriff of Lee County, Florida,

Defendant.

**PLAINTIFF'S SUPPLEMENTAL ANSWERS AND OBJECTIONS TO
DEFENDANT'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff, Joseph Caiazza, ("Plaintiff") hereby serves his Supplemental Answers and Objections to Defendant's First Set of Interrogatories in the above-referenced matter.

Dated: November 13, 2020

Respectfully submitted,

/s/ Andrew R. Frisch

Andrew R. Frisch

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Chanelle J. Ventura

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Email: Cventura@forthepeople.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that November 13, 2020, a true and correct copy of the foregoing was transmitted via Electronic Mail to Counsel for Defendant, David J. Stefany, dstefany@anblaw.com, Matthew D. Stefany, mstefany@anblaw.com, and Maelyn M. Morrison, mmorrisson@anblaw.com. Allen Norton & Blue, P.A., Hyde Park Plaza – Suite 225, 324 South Hyde Park Avenue, Tampa, Florida 33606-4127.

/s/ ANDREW R. FRISCH
ANDREW R. FRISCH

PLAINTIFF'S SUPPLEMENTAL ANSWERS TO INTERROGATORIES

INTERROGATORY 2 By work period ending date, please identify each fourteen-day work period between November 27, 2015 and June 7, 2018 in which you claim to have worked in excess of 86 hours.

ANSWER: *See chart referenced below in Plaintiff's Supplemental Answer to Interrogatory No. 3.*

INTERROGATORY 3 For each fourteen-day work period identified in response to Interrogatory #2 above, identify how many hours you claim to have worked, and specifically list or identify what records or documents you have that you believe may support the asserted hours worked you claim to have worked.

ANSWER: *See chart below.*

	Credited Hours Worked	Plaintiff's On Duty Hours Worked	On-Call Hours [Required to Respond to Calls]	Actual Time Spent responding to calls	On-Call Hours Worked - Owed
Week Ending					
11/28/2015	36	36	0	0	\$ -
12/5/2015	36	36	0	0	\$ -
12/12/2015	36	36	0	0	\$ -
12/19/2015	48	48	3	3	\$ 147.93
12/26/2015	36	36	0	0	\$ -
1/2/2016	48	48	0	0	\$ -
1/9/2016	12	12	0	0	\$ -
1/16/2016	48	48	6	6	\$ 295.86
1/23/2016	36	36	0	0	\$ -
1/30/2016	48	48	6	6	\$ 295.86
2/6/2016	36	36	0	0	\$ -
2/13/2016	48	48	0	0	\$ -
2/20/2016	36	36	0	0	\$ -
2/27/2016	48	48	0	0	\$ -
3/5/2016	24	24	0	0	\$ -
3/12/2016	36	36	0	0	\$ -

	Credited Hours Worked	Plaintiff's On Duty Hours Worked	On-Call Hours [Required to Respond to Calls]	Actual Time Spent responding to calls	On-Call Hours Worked - Owed
3/19/2016	36	36	3	3	\$ 147.93
3/26/2016	48	48	6	6	\$ 295.86
4/2/2016	36	36	3	3	\$ 147.93
4/9/2016	48	48	0	0	\$ -
4/16/2016	36	36	3	3	\$ 147.93
4/23/2016	48	48	6	6	\$ 295.86
4/30/2016	36	36	3	3	\$ 147.93
5/7/2016	48	48	0	0	\$ -
5/14/2016	36	36	3	3	\$ 147.93
5/21/2016	48	48	0	0	\$ -
5/28/2016	36	36	6	6	\$ 295.86
6/4/2016	48	48	6	6	\$ 295.86
6/11/2016	36	36	3	3	\$ 147.93
6/18/2016	48	48	9	9	\$ 443.79
6/25/2016	12	12	0	0	\$ -
7/2/2016	24	24	0	0	\$ -
7/9/2016	36	36	0	0	\$ -
7/16/2016	48	48	3	3	\$ 147.93
7/23/2016	36	36	6	6	\$ 295.86
7/30/2016	48	48	3	3	\$ 147.93
8/6/2016	36	36	3	3	\$ 147.93
8/13/2016	48	48	3	3	\$ 147.93
8/20/2016	39	39	6	6	\$ 295.86
8/27/2016	41	41	0	0	\$ -
9/3/2016	0	0	0	0	\$ -
9/10/2016	48	48	3	3	\$ 147.93
9/17/2016	36	36	0	0	\$ -
9/24/2016	48	48	0	0	\$ -
10/1/2016	4	4	0	0	\$ -
10/8/2016	48	48	0	0	\$ -
10/15/2016	36	36	3	3	\$ 147.93
10/22/2016	48	48	3	3	\$ 147.93
10/29/2016	36	36	0	0	\$ -
11/5/2016	48	48	0	0	\$ -
11/12/2016	36	36	3	3	\$ 147.93
11/19/2016	48	48	6	6	\$ 295.86
11/26/2016	36	36	3	3	\$ 147.93
12/3/2016	48	48	3	3	\$ 147.93

	Credited Hours Worked	Plaintiff's On Duty Hours Worked	On-Call Hours [Required to Respond to Calls]	Actual Time Spent responding to calls	On-Call Hours Worked - Owed
12/10/2016	36	36	0	0	\$ -
12/17/2016	0	0	0	0	\$ -
12/24/2016	0	0	0	0	\$ -
12/31/2016	24	24	3	3	\$ 147.93
1/7/2017	36	36	0	0	\$ -
1/14/2017	48	48	0	0	\$ -
1/21/2017	36	36	3	3	\$ 147.93
1/28/2017	48	48	0	0	\$ -
2/4/2017	36	36	6	6	\$ 295.86
2/11/2017	36	36	6	6	\$ 295.86
2/18/2017	36	36	0	0	\$ -
2/25/2017	48	48	0	0	\$ -
3/4/2017	36	36	9	9	\$ 443.79
3/11/2017	48	48	0	0	\$ -
3/18/2017	36	36	6	6	\$ 295.86
3/25/2017	10	10	0	0	\$ -
4/1/2017	24	24	3	3	\$ 147.93
4/8/2017	48	48	0	0	\$ -
4/15/2017	12	12	0	0	\$ -
4/22/2017	24	24	0	0	\$ -
4/29/2017	36	36	0	0	\$ -
5/6/2017	48	48	6	6	\$ 295.86
5/13/2017	36	36	3	3	\$ 147.93
5/20/2017	48	48	0	0	\$ -
5/27/2017	48	48	0	0	\$ -
6/3/2017	36	36	9	9	\$ 443.79
6/10/2017	36	36	0	0	\$ -
6/17/2017	48	48	3	3	\$ 147.93
6/24/2017	36	36	3	3	\$ 147.93
7/1/2017	48	48	0	0	\$ -
7/8/2017	36	36	3	3	\$ 147.93
7/15/2017	48	48	0	0	\$ -
7/22/2017	12	12	3	3	\$ 147.93
7/29/2017	48	48	3	3	\$ 147.93
8/5/2017	36	36	0	0	\$ -
8/12/2017	52	52	0	0	\$ -
8/19/2017	36	36	9	9	\$ 443.79
8/26/2017	24	24	0	0	\$ -

	Credited Hours Worked	Plaintiff's On Duty Hours Worked	On-Call Hours [Required to Respond to Calls]	Actual Time Spent responding to calls	On-Call Hours Worked - Owed
9/2/2017	0	0	0	0	\$ -
9/9/2017	38.75	38.75	0	0	\$ -
9/16/2017	120	120	0	0	\$ -
9/23/2017	64	64	3	3	\$ 147.93
9/30/2017	36	36	0	0	\$ -
10/7/2017	48	48	0	0	\$ -
10/14/2017	36	36	0	0	\$ -
10/21/2017	48	48	0	0	\$ -
10/28/2017	36	36	3	3	\$ 147.93
11/4/2017	48	48	6	6	\$ 295.86
11/11/2017	36	36	3	3	\$ 147.93
11/18/2017	48	48	0	0	\$ -
11/25/2017	36	36	3	3	\$ 147.93
12/2/2017	48	48	0	0	\$ -
12/9/2017	36	36	0	0	\$ -
12/16/2017	48	48	0	0	\$ -
12/23/2017	36	36	0	0	\$ -
12/30/2017	50	50	6	6	\$ 295.86
1/6/2018	36	36	3	3	\$ 147.93
1/13/2018	48	48	0	0	\$ -
1/20/2018	14.5	14.5	0	0	\$ -
1/27/2018	45.5	45.5	3	3	\$ 147.93
2/3/2018	14	14	0	0	\$ -
2/10/2018	49	49	0	0	\$ -
2/17/2018	37.55	37.55	3	3	\$ 147.93
2/24/2018	52.9	52.9	0	0	\$ -
3/3/2018	36	36	0	0	\$ -
3/10/2018	12	12	0	0	\$ -
3/17/2018	36	36	3	3	\$ 147.93
3/24/2018	53.33	53.33	3	3	\$ 147.93
3/31/2018	36	36	0	0	\$ -
4/7/2018	48	48	0	0	\$ -
4/14/2018	37.59	37.59	3	3	\$ 147.93
4/21/2018	24	24	0	0	\$ -
4/28/2018	0	0	0	0	\$ -
5/5/2018	0	0	0	0	\$ -
5/12/2018	0	0	0	0	\$ -
5/19/2018	0	0	0	0	\$ -

	Credited Hours Worked	Plaintiff's On Duty Hours Worked	On-Call Hours [Required to Respond to Calls]	Actual Time Spent responding to calls	On-Call Hours Worked - Owed
5/26/2018	0	0	0	0	\$ -
6/2/2018	36	36	0	0	\$ -
6/9/2018	36	36	0	0	\$ -
Totals	4887.12	4887.12	234	234.00	\$11,538.54

EXHIBIT 3

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JOSEPH CAIAZZA, on his own behalf and
those similarly situated

Plaintiff,

Case No. 2:18-cv-00784-SPC-MRM

v.

CARMINE MARCENO, in his Official
Capacity as Sheriff of Lee County, Florida,

Defendant.

**PLAINTIFF'S SUPPLEMENTAL ANSWERS AND OBJECTIONS TO
DEFENDANT'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff, Joseph Caiazza, ("Plaintiff") hereby serves his Supplemental Answers and Objections to Defendant's First Set of Interrogatories in the above-referenced matter.

Dated: November 17, 2020

Respectfully submitted,

/s/ Andrew R. Frisch

Andrew R. Frisch

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Chanelle J. Ventura

FBN: 1002876

Morgan & Morgan, P.A.

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Email: AFrisch@forthepeople.com

Email: Cventura@forthepeople.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that November 17, 2020, a true and correct copy of the foregoing was transmitted via Electronic Mail to Counsel for Defendant, David J. Stefany, dstefany@anblaw.com, Matthew D. Stefany, mstefany@anblaw.com, and Maelyn M. Morrison, mmorisson@anblaw.com.

/s/ ANDREW R. FRISCH
ANDREW R. FRISCH

PLAINTIFF'S SUPPLEMENTAL ANSWERS TO INTERROGATORIES

INTERROGATORY 2 By work period ending date, please identify each fourteen-day work period between November 27, 2015 and June 7, 2018 in which you claim to have worked in excess of 86 hours.

ANSWER: Plaintiff objects to this interrogatory based on the fact that it assumes that Plaintiff was employed on a fourteen-day work period which is a legal conclusion that has not been established. Notwithstanding the foregoing please *see* chart referenced below in Plaintiff's Supplemental Answer to Interrogatory No. 3 regarding the overtime hours that Plaintiff worked each work week.

INTERROGATORY 3 For each fourteen-day work period identified in response to Interrogatory #2 above, identify how many hours you claim to have worked, and specifically list or identify what records or documents you have that you believe may support the asserted hours worked you claim to have worked.

ANSWER: Plaintiff objects to this interrogatory based on the fact that it assumes that Plaintiff was employed on a fourteen-day work period which is a legal conclusion that has not been established. Notwithstanding the foregoing please see chart below regarding the overtime hours that Plaintiff worked each work week.

	Credited Hours Worked	Plaintiff's Actual Hours Worked	OT Hours Worked	OT Hours Worked - Owed
Week Ending				-
11/28/2015	36	54	14	\$ 675.36
12/5/2015	36	36	0	\$ -
12/12/2015	36	40	0	\$ -
12/19/2015	48	51	11	\$ 530.64
12/26/2015	36	42	2	\$ 96.48
1/2/2016	48	59	19	\$ 916.56
1/9/2016	12	12	0	\$ -
1/16/2016	48	55	15	\$ 723.60
1/23/2016	36	39	0	\$ -
1/30/2016	48	56	16	\$ 771.84
2/6/2016	36	49	9	\$ 434.16
2/13/2016	48	48	8	\$ 385.92
2/20/2016	36	44	4	\$ 192.96
2/27/2016	48	48	8	\$ 385.92
3/5/2016	24	38	0	\$ -
3/12/2016	36	48	8	\$ 385.92

	Credited Hours Worked	Plaintiff's On Duty Hours Worked	OT Hours Worked	OT Hours Worked - Owed
3/19/2016	36	36	0	\$ -
3/26/2016	48	61	21	\$ 1,013.04
4/2/2016	36	60	20	\$ 964.80
4/9/2016	48	51	11	\$ 530.64
4/16/2016	36	42	2	\$ 96.48
4/23/2016	48	65	25	\$ 1,206.00
4/30/2016	36	47	7	\$ 337.68
5/7/2016	48	54	14	\$ 675.36
5/14/2016	36	42	2	\$ 96.48
5/21/2016	48	48	8	\$ 385.92
5/28/2016	36	43	3	\$ 144.72
6/4/2016	48	52	12	\$ 578.88
6/11/2016	36	36	0	\$ -
6/18/2016	48	56	16	\$ 771.84
6/25/2016	12	12	0	\$ -
7/2/2016	36	48	8	\$ 385.92
7/9/2016	36	46	6	\$ 289.44
7/16/2016	48	48	8	\$ 385.92
7/23/2016	36	37	0	\$ -
7/30/2016	48	48	8	\$ 385.92
8/6/2016	36	45	5	\$ 241.20
8/13/2016	48	48	8	\$ 385.92
8/20/2016	39	39	0	\$ -
8/27/2016	41	48	8	\$ 385.92
9/3/2016	0	0	0	\$ -
9/10/2016	48	52	12	\$ 578.88
9/17/2016	36	45	5	\$ 241.20
9/24/2016	48	61	21	\$ 1,013.04
10/1/2016	4	4	0	\$ -
10/8/2016	48	48	8	\$ 385.92
10/15/2016	36	41.5	1.5	\$ 72.36
10/22/2016	48	50	10	\$ 482.40
10/29/2016	36	42	2	\$ 96.48
11/5/2016	48	48	8	\$ 385.92
11/12/2016	36	42	2	\$ 96.48
11/19/2016	48	50	10	\$ 482.40
11/26/2016	36	44	4	\$ 192.96
12/3/2016	48	48	8	\$ 385.92

	Credited Hours Worked	Plaintiff's On Duty Hours Worked	OT Hours Worked	OT Hours Worked - Owed
12/10/2016	36	39	0	\$ -
12/17/2016	0	0	0	\$ -
12/24/2016	0	0	0	\$ -
12/31/2016	24	30	0	\$ -
1/7/2017	36	38	0	\$ -
1/14/2017	48	54	14	\$ 675.36
1/21/2017	36	39	0	\$ -
1/28/2017	48	48	8	\$ 385.92
2/4/2017	36	59	19	\$ 916.56
2/11/2017	36	47	7	\$ 337.68
2/18/2017	36	40	0	\$ -
2/25/2017	48	48	8	\$ 385.92
3/4/2017	36	45	5	\$ 241.20
3/11/2017	48	48	8	\$ 385.92
3/18/2017	36	45	5	\$ 241.20
3/25/2017	48	48	8	\$ 385.92
4/1/2017	24	39	0	\$ -
4/8/2017	48	48	8	\$ 385.92
4/15/2017	12	12	0	\$ -
4/22/2017	24	25	0	\$ -
4/29/2017	36	36	0	\$ -
5/6/2017	48	48	8	\$ 385.92
5/13/2017	36	36	0	\$ -
5/20/2017	48	48	8	\$ 385.92
5/27/2017	48	48	8	\$ 385.92
6/3/2017	36	36	0	\$ -
6/10/2017	36	36	0	\$ -
6/17/2017	48	54	14	\$ 675.36
6/24/2017	36	38	0	\$ -
7/1/2017	48	48	8	\$ 385.92
7/8/2017	36	46	6	\$ 289.44
7/15/2017	48	54	14	\$ 675.36
7/22/2017	12	14	0	\$ -
7/29/2017	48	50	10	\$ 482.40
8/5/2017	36	38	0	\$ -
8/12/2017	52	52	12	\$ 578.88
8/19/2017	36	36	0	\$ -
8/26/2017	48	48	8	\$ 385.92

	Credited Hours Worked	Plaintiff's On Duty Hours Worked	OT Hours Worked	OT Hours Worked - Owed
9/2/2017	36	36	0	\$ -
9/9/2017	38.75	38.75	0	\$ -
9/16/2017	120	120	80	\$ 3,944.80
9/23/2017	64	64	24	\$ 1,183.44
9/30/2017	36	36	0	\$ -
10/7/2017	48	48	8	\$ 394.48
10/14/2017	36	36	0	\$ -
10/21/2017	48	48	8	\$ 394.48
10/28/2017	36	36	0	\$ -
11/4/2017	48	48	8	\$ 394.48
11/11/2017	36	36	0	\$ -
11/18/2017	48	48	8	\$ 394.48
11/25/2017	36	36	0	\$ -
12/2/2017	48	48	8	\$ 394.48
12/9/2017	36	36	0	\$ -
12/16/2017	48	48	8	\$ 394.48
12/23/2017	36	36	0	\$ -
12/30/2017	50	50	10	\$ 493.10
1/6/2018	36	36	0	\$ -
1/13/2018	48	48	8	\$ 394.48
1/20/2018	38.5	38.5	0	\$ -
1/27/2018	45.5	45.5	5.5	\$ 271.21
2/3/2018	35	35	0	\$ -
2/10/2018	49	49	9	\$ 443.79
2/17/2018	37.55	37.55	0	\$ -
2/24/2018	52.9	52.9	12.9	\$ 636.10
3/3/2018	36	36	0	\$ -
3/10/2018	48	48	8	\$ 394.48
3/17/2018	36	36	0	\$ -
3/24/2018	53.33	53.33	13.33	\$ 657.30
3/31/2018	36	36	0	\$ -
4/7/2018	48	48	8	\$ 394.48
4/14/2018	37.59	37.59	0	\$ -
4/21/2018	24	24	0	\$ -
4/28/2018	40	40	0	\$ -
5/5/2018	40	40	0	\$ -
5/12/2018	40	40	0	\$ -
5/19/2018	40	40	0	\$ -

	Credited Hours Worked	Plaintiff's On Duty Hours Worked	OT Hours Worked	OT Hours Worked - Owed
5/26/2018	40	40	0	\$ -
6/2/2018	40	40	0	\$ -
6/9/2018	40	40	0	\$ -
Totals	5286.12	5714.62		\$39,328.10

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