

**IN THE UNITED STATES DISTRICT COURT
NORTHER DISTRICT OF GEORGIA**

Tracey Cunningham, et al	:	
	:	
Plaintiffs	:	CIVIL ACTION FILE
	:	NO. 1:16-CV-00533-RWS
	:	
vs.	:	
	:	
FULTON COUNTY, GEORGIA, et al	:	
Defendants	:	

PLAINTIFFS’ SECOND AMENDED COMPLAINT

CLASS ACTION

COMES NOW the Plaintiffs in the above styled action and states their amended complaint as follows:

I. INTRODUCTION

1. This action is brought by current and former members of the Fulton County Sheriff’s Office for violations of the Fair Labor Standards Act, and for Breach of Contract.

II. JURISDICTION

2. This action is for violation of the Federal Fair Labor Standards Act 29 U.S.C. 201 et seq., and for violation of constitutional rights pursuant to 42 USC 1983, et seq. Therefore, this Honorable Court has jurisdiction over the Plaintiff’s claims pursuant to 28 U.S.C. § 1331.

- 3. This action is also for breach of contract between the Plaintiffs and Fulton County. This Honorable Court has jurisdiction over the Plaintiffs' state law pendant claims pursuant to 28 U.S.C. §1367 (A).**

III VENUE

- 4. The Northern District of Georgia is an appropriate venue for this action because all defendants sued in their official capacities reside in this district. 28 USC § 1391(b)(1).**
- 5. The Northern District of Georgia is also an appropriate venue because the events giving rise to Plaintiffs' claims have occurred in this district. 28 USC § 1391 (b)(2)**

IV THE PARTIES

- 6. The following Plaintiffs are currently employed as deputy sheriffs or custodial officers of the Fulton County Sheriff's Department, or have been so employed but have left the County within the past five years :**

AARON WOFFORD, ADJEI BOAKYE, ADRIANA CHRISTOPHER, ADRIANNA MCGREGORY, ALDEN WATERS, ALDRANON ENGLISH, ALEISHA KNIGHT, ALEXIS SMITH, ALICIA BROWN, ALTON NORRIS, ALVIN SLOCUM, AMY MORGAN, ANGELA BANKS, ANGELA MCCOY, ANN'NA HENRY, ANNETTE CURRENCE, ANNETTE GILBERT, ANTHONY BURGESS,

ANTHONY CATER, ANTHONY MATTHEWS, ANTHONY OKONKWO, ANTHONY VOLLEY, ANTHONY WILLIAMS, ANTRON, SHUMPERT , APRIL BENNETT, AREIAL SIMMONS, ARIKA LESSIER, ARONNE CAREY, ARQUETTE OLIVER, ASHLEY THORNTON , ASHLEY COPELAND, ASHLEY HIGHTOWER, AUBREY BURNETT, SR., AVIS LOFTON, AVIS RYAN, BARRON ROSS, BAYUNKA CULBERSON, BEATRICE MANS, BETRUM PRIDE, BETTY MANNEY, BEVERLY TAYLOR, BILLY LOWRY, BRANDON ROBERSON, BRANDY COLTON, BRENA WHEELER, BRIAN MARTIN, BRIAN MCGEE, BRIAN TRANG, BRICE AVERY, BRITTNEY SEARS, BRYAN TURNER, BURNICE HOWARD, BYRON MCMULLEN, CALVIN PILGRIM, CALVIN SCOFIELD, CAMARO ALEXANDER, CAREY STEELE, CARLA BUTLER, CARMEN RUFF, CAROL TUITT, CASSANDRA CRAWFORD, CHAQUITTA SHORTY, CHARISMA SWIFT, CHARLENE HEARD, CHARLES SHEPPARD JR., CHARLOTTE CALLOWAY, CHAUNTEA MCKINNON-HALL, CHELANDA HARPER, CHERYL MILTON, CHERVON FOREHAND, CHERYL LIMEHOUSE, CHET BEASLEY, CHRISTINE STREETER, CHRISTOPHER RYLES, CHUCK TAYLOR, CINDY LEWIS, CLIFTON MORRIS, CODY SLAY, CORETTA HART, COREY MILLER, CRYSTAL DAUGHERTY, DAMIEN BUTLER, DANIEL BELL, DANIEL MEDRANO, DANIELLE PITTS, DANIELLE WHITE, DANTE POUNDS, DARCY PATTERSON, DAVID GIBSON, DAVID MANGHAM, DAVID WELLS, DEBRA GREEN, DELMEKA EDWARDS, DEMARIO MATHIS, DEMARIO PHILLIPS, DENISE BRYANT, DEONTE FULLER, DEXTER JENKINS, DHAMEER WAITHE , DOLORES COLEY, DOMINIC ANAH, DOMINIQUE COUCH, DOMINQUE HAWKINS, DONALD BRAMBLETT, DONNELL COCKHREN, DWAYNE BOWIE, DWAYNE HARRIS, EBONY APPLING, ECTOR WALKER, EDDIE ROBINSON, EDWARD JONES, EMMITT C. STRINGER, ERICA COSTON, EUREKA PLATT, EVAN SHAW, EVELYN DAVIS, FAITH HAMPTON, FATOU MBALLOW, FELICIA KATES, FELISHA

HIDGON, FELIX MORDI , FRANCISCA FLORENT, FRANK JONES III, FRANK STRADFORD, FREDERICK BANKS, GAIL GOGGINS-HOLDER, GAYLA JOHNSON, GEORGE THARPE, GERALD JOHNSON, GILBERT FRANCOIS, GREGORY STEWART, GWENDALE STROZIER, GWENDOLYN DEVEREUX, HAROLD MOORE, HECTOR CABALLERO, HESTER LEE, HILDA WIGGINS, HOLLIS MASON, IRVELT BAROLETTE, IVETTE ZERQUERA, JACK CRAMER, JACOB UKAWU, JACQUELINE UNDERWOOD, JACQUELYN BROOKS, JAMES ANSARI, JAMES CONKLIN, JAMES WRIGHT , JANET JONES. JASMYN HARDY, JASON ROACHE, JEFFREY MOFFETT, JENNIFER MARLOW, JEREL CLIMPSON, JESSICA FINCH, JESSICA STEWART, JESSICA TORRES, JIMMY KENNEDY, JIMMY PARR, JOHANNE FRANCOIS, JOHN CHICHINSKY, JOHN JOSEPH, JOHNATHAN SMITH, JOHNNIE MOORE, JON GARDNER, JOSEPH JOHNSON, JOSEPH LOVEJOY, JR., JOSEPH SNEED, JUDSON BYRANT, KAASHIF ESTRADA, KAREN FEARS, KAREN NASH, KARLA BALL, KARLAND STOKES, KEISHA HEBERT, KEITH TINSLEY, KEITH WILSON, KEMDRICK JONES, KENNETH OLIVER, KENNETH SHROPSHIRE, KENNETH WALKER, KENNY INGRAM, KENYA BROOKS, KENYA HARRIS, KENYA STOKES, KENYATTA MCKINNON, KEVIN MORTON, KEYANA EDWARDS, KEYTH HARDY, KIARA CHILDRESS, KIMJUANA JONES, KIRT BEASLEY, KOKETHIA MANSON, KRISTI MAYO, KYANA JACKSON, LACONYA STEPHENS, LACRISSY COPELAND, LAPRINCESS JENKINS, LAQUITA MASSEY, LARHONDA HOLIDAY, LASHONDRA CHILDS, LASHONTA MCELDERRY, LASONNIA MATTHEWS, LATASHIA ADAMS, LATISHA GERALD, LATRONIA AUGUSTINE, LAVAR HAMM, LAWRENCE BURTH, LEATRA DENNARD, LEROY PENA, LEVERTUS SHURLEY, LEVOULAR MCCRAY, LINDA HOLMES, LISA HUNTLEY, LISA KENNEDY, LISA TAYLOR, LONNIE BAILEY,

LORNA HEATH, LUAQUARIUS DOYLE, LUCY JOHNSON, LUE KING, LURA BAXTER, MAHOGANY ROBINSON, MAKISHA ADAMS, MARC E. SCOTTON, SR, MARCUS PRESBURY-LOMAX, MARGARET WOODS, MARIA MCKEE, MARIO TAYLOR, MARION GRIFFIN, III, MARK ADGER, MARKENNIS JACKSON, MARKQUELL DANIEL, MARQUEZ BOGLE, MARQUITAS LIVERMAN, MARVIN JOHNSON, MARY JORDAN, MARYAM MUHAMMAD, MAURICE ARNOLD, MAURICE LOVE, MAURISA WILLIAMS, MELINDA ALEXANDER, MELVIN OWENS, MICHAEL BALL, MICHAEL HOLT, MICHAEL MITCHELL, MICHAEL PAGE, MICHAEL POTRUBACZ, MICHAEL PRITCHETT, MICHAEL THORPE, MICHAEL VALENTINE , MICHAEL WARD, MICHELLE LIVINGSTON, MODUPEOLA ANIFOWOSHE, MONICA LACY , MONSURU KOTUN, MONTRICE JOHNSON, NADDY ESUZOR, NAYMAN TAYLOR, NECOLA ELVINE, NEEL BERRY, NEFERTITI BRADLEY, NEVISON COLLINS, NINA MAYO, NOLAND BALLARD, NORMAN GIPSON, OZZ DURRAH, JR., PAMELA MURRY, PAMELA SHEFFIELD, PATRICIA BARTEE, PATRICK HORTON, PEARLIE YOUNG, PERRISH BROWN, PERRY DOSS, QUINTON PARKER, RAQUEL HOWELL, RAYMOND BAULDING, RICHARD GREEN, RICHARD JACKSON, RICHARD TURNBULL, ROBERT ABERCROMBIE, RODNEY HARP, RONALD COOK, ROSA TRUITT, ROXANNE KELLEY, RUBY SMITH, RUEBEN WINGFIELD, RUSSELL STOKES, SANDRA BLAYLOCK, SANDRA REESE, SANTREZ FITTEN, SARAH JONES-VIE, SARINA ROSCOE, SASHA HARRIS, SAVOYA LEMON, SAYEED DIGANKAR, SCOTT REESE, SCOTTIE MCWILLIAMS, SEAN WADE, SERBER CLARK-KENDLE, SERENA SPIKES, SHAKEITA COTHRAN, SHAMEKA ESCOFFERY, SHAMEKIA COVINGTON-BOWICK, SHAMIRA KITCHENS, SHANNON ROBERSON, SHARIA MORGAN, SHARON JACKSON, SHARON MCINTOSH,

SHAVEENA ROGERS, SHAVONNE EDWARDS, SHAWANDA THOMAS, SHAWN ALLEN, SHECOBIA MCCOY, SHEDRICK REID, SHELBY REID, SHELIA BROOKS, SHELLON NESMITH, SHENITA JACKSON, SHERRY HINES, SHERYL HOY, SHICANA BROWN, SHIKEITA FORBES, SONJA BLOUNT, STARLING JOHNSON, STEPHANIE MORTON, STEPHANIE ROBINSON-COOPER, STEPHEN BROWN, STEVE BETTS, STEVEN DALEY, SYLVESTER KELLY , T.J. COWINS , TAIBATU OLOTU, TAMEKA DAVIS, TAMENIKA DELGADO, TAMMY RUDISON, TAMMY THOMPSON-WINFREY, TANGANIKA HORNE, TARNEICIA CALLOWAY, TARSHIA LEE, TASHIKA WILSON, TAVANNIA LIVINGTSTON, TAWONA LOWERY, TEMEKA CHERRY, TEMIKA TILLMAN, TEQUICHA THOMPSON, TERESA DANIELS, TERRELL SANDERS, TERRENCE RILEY, TERRI GARDNER, TERRI GLANTON, TERRI HARRIS, TERRY DAVIS, THOMAS ADDY, TIECE WEST, TIMOTHY DESROSIERS, TINAKORN NALAMPOON, TONI JOHNSON, TRACEY CUNNINGHAM, TRICIA FOSTER, TROY COSTON, TROY WILSON, TWANTTA CLERK-JENNINGS, TYANA HANKS, TYNA TAYLOR, VERONICA KELLEY-AUSTIN, VICKY WHITE, VIVIAN DIXON-BRADFORD, VONDA VICTOR, WANAADA MURRAY, WANDA BARNARD, WILBERT KENNEDY, WILLIAM CARMICHAEL, WILLIAM CARTER, WILLIAM SANDERS, YAMILEE JEAN-PHILIPPE , YASHI YOUMANS, YOLANDA DUNN, YOLANDA JOHNSON, YOLANDA MARSHALL, YOWANDA CULLER, ZANIA BENJAMIN, and ZELENA BROWN.

- 7. The following Plaintiffs are currently employed as clerks or other non emergency administrative employees of the Fulton County Sheriff's**

Department:

ALOYSIOUS NASH, ALSHADAY ABATE, ANNETTE ALLEN,

BELINDA ZACKARY, BRENDA BURROUGHS, BRENDA JOHNSON, BRIDGETTE DZAH-FRANKS, BRUCE ALFORD, CEDRIC WALTERS, CHANTE HARRIS, CYNTHIA BLUITT, CYNTHIA LOVEJOY, DANA SINGLETON, DANYELL BOYD, DELORES LONG, DENITA WATKINS, EDWENA ROACH, EUNICE ONEIL, FELICIA IVEY, GENEVA GOODEN, JACQUELINE THOMPSON, JAHID ABDULSHAHID, JENNIFER BROWN, JULIE BANNER-CRITTLE , KHALID WISE, KIMBERLY ARNOLD, LACHONDA JOHNSON, LATOBIA SMITH, LINDA HENDERSON , LINDA PLUMMER, MARCIA BAUGH, MARISSA NELSON, MAXINE BLOUNT, MONICA WOODWARD, NICOLE DAVIS, NITOSHA RILEY, NORVA SAMUEL, PAMELA AUSTIN, PAMELA JACKSON, PATRICIA BURLEY, PAULETTE WILDY, PRISCILLA TOWNES, ROCHELLE WASHINGTON, SANTRICE HUNT, SHARON WINSTON, SHAURMETRIA FREEMAN, SHIRLEY HALL, SHUNQUA OGLESBY, SONJA SIMS, STEPHANIE BARNES, SUSAN KING, TASSJA GHENT, TERESA KNOX, TINA PONDER-LONG, VALERIE DAVIS, VICTORIA DAVIS, WANDA SMITH-CEESAY, and ZELMA WALKER

8. The following Plaintiffs are former employees of the Fulton County

Sheriff's Department who have retired :

ALAN FRALEY, ALESIA GALES, ALVIN LEE , ANGELA DANIEL, ANTHONY CAUTHUREN, ASHLEY KING, AUDREY PAYTON, BARBARA KENNBREW, BELINDA WILLIS, BERYSCIE CARTER, BETTY NELSON, CARLOS LEARY, CAROL WRIGHT, CAROLYN CHIZER, CATHERINE JONES, CHARLES RAMBO, CHERYL PAGE, CHERYL SMITH, CHRISTOPHER BAKER, CHRISTOPHER JOHNSON, CHRISTOPHER PHILBERT, CLARENCE UNDERWOOD, DAPHINE WEST, DAVID DENSON, DEBRA BURDEN, DEBRA JACKSON, DEON JOHNSON, DERRICK

BROUGHTON, DETRI HOUSTON, DEXTER MABRY, DILCIE THOMAS, DONNA WILLIAMS , DOROTHY WILLIAMS, DORTHY ABNER, EARDLEY JARVIS, EARL SMITH, JR., EARNEST DAVIS, EDDIE SEARS, EMILY MORGAN, ERIC HINTON, ERIC MCKINNON, ERNEST PATTERSON , EUGENE HAMM, EVELYN CARSON, FEBRUARY CLARK, FELICIA JOHNSON, FRED HIGHTOWER, FREDERICK ROBERSON, GARY MATHIS, GEORGE ALLEN, GERALD JOHNSON, JAMES REDDEN, JEANETTA HOUSTON, JEANETTE YIZAR, JESSICA BURTON, JOHN STARKS, KEISHA OOTEN, KEITH BATTLE,, KELLY REEVES, KENNETH CUNNINGHAM, KENNETH FEAGINS, KETERIA WYNN, LARRY LINDSEY, LATEEF MUHAMMAD, LATRESHA DAVIS, LELIA WALKER, LENNOX ALLEYNE, LISA CHAMBLEE, LUKE GREENE, LYDON BALDWIN, MAE BULLARD, MARCELL JACKSON, MARCIA COWINS-JONES MARCUS WOODS, MARGARET WARE, MARILYN LEVO, MARIO SIMMONS, MELVIN SMITH, MICHAEL LOYAL, MICHAEL WILCOX, MILDRED JACKSON, MILTON WEAVER, MIRIAM MONTGOMERY, MORRIS FULTON, NATTALY LUNDIE , NIKKITA MOSS, PAMELA MTCHELL, PATRICIA LETFORD, PAULA KING, PAULETTE MACK, PRISCILLA DAVIS, PRISCILLA ORR, REGINA GLENN, REGINALD PHILLIPS, REGINALD TURNER, RENEE CUNNINGHAM, ROBIN ANDERSON, ROBIN WILLIAMS, RODERICK BRADFORD, RODERICK GODWIN, ROSALYN GOOLSBY, SANDRA JACKSON, SHAWN JOHNSON, SHEILA WALKER, SHIRL GARLAND, SHIRLEY HILL, SHIRLEY JACKSON, SONYA DUFFY, STANLEY P.J. MAYS , STANLEY MARSHALL, SYLVIA MILLINES, TAMI PRAYOR, TANYA CROWDER, TERESA WILLIAMS, THADDEUS LEE, TIMOTHY BROWN, TOMMY DAVIS, TRACEY TRAWICK, TRACY HARPER, TYRONE INGRAM, VANESSA WALKER, VERNA RIVERS, VINCE WILLIAMS, VINCENT COSBY, VINCENT OWENS, VINCENT WILLIS, WANDA BOYER, WARDELL JENNINGS, WILLIAM ANGRY, WILLIAM PARKER, and XAVIER CHERRY.

- 9. The Defendant, Theodore Jackson, is the duly elected Sheriff of Fulton County, Georgia, and is sued in his official capacity. As Sheriff, Defendant Jackson is responsible for properly establishing procedures for his department and his employees that fairly compensate the employees, and that the County is properly complying with the Fair Labor Standards Act with regards to the members of his department.**
- 10. The Defendant Fulton County, Georgia (hereinafter “the County”), is a political subdivision of the State of Georgia, and is the governmental unit responsible for properly complying with the Fair Labor Standards Act and establishing policies and practices that ensure proper compensation to the employees such as the Plaintiffs herein.**
- 11. The Fulton County Commission, and its members, John H. Eaves, Liz Hausmann, Bob Ellis, Lee Morris, Joan P. Garner, Marvin S. Arrington Jr., and Emma I. Darnell, exercise authority under Georgia law over the Sheriff’s Department and its employees. They are obligated to properly initiate and enforce policies in compliance with the Fair Labor Standards Act, and other policies that fairly and correctly compensate employees for the work performed. The Fulton**

County Commission approved and put into practice the policies complained of herein.

V. CLASS ACTION ALLEGATIONS

- 12. Plaintiffs bring this action pursuant to 29 U.S.C. § 216 (b). The class consists of all current and former Fulton County Sheriff's Department employees who have agreed and consented in writing to be a party to this action.**
- 13. There are questions of law and fact common to the class, and those predominate over questions affecting only individual class members.**
- 14. A class action, in the case subjudice, is superior to other available methods for adjudicating the controversy.**
- 15. The named Plaintiffs will fairly and adequately represent the interest of the class. Because all employees within the class are entitled to pay for their overtime work, and to be treated fairly pursuant to the Fair Labor Standards Act, they possess the requisite personal interest in the subject matter. They are represented by counsel who is experienced in**

constitutional and civil rights litigation involving law enforcement personnel.

VI FACTUAL ALLEGATIONS

- 16. Although the Plaintiffs are members of the Fulton County Sheriff's Department, they are employees of Fulton County. The pay, schedules, and working conditions are set by Fulton County Human Resources Department and by the Fulton County Commissioners.**
- 17. The Plaintiffs are employees as defined by the Fair Labor Standards Act of 1938, (FLSA), and are covered under the provisions of said Act.**
- 18. The terms of employment identifying the Plaintiffs' rights and benefits are set forth in written policies created and maintained by Fulton County.**
- 19. The conditions, policies, customs and practices challenged in this action apply with equal force to the named Plaintiffs and all other members of the class, so that the claims of the named Plaintiffs are typical of those of the class.**

- 20. Pursuant to County Policy “Non-exempt employees who perform overtime work which exceeds the maximum number of hours prescribed for standard work periods which are established in their respective departments, including work performed on County holidays or official “off time” which exceeds the maximum prescribed number of hours, minus any non-compensable leave taken, shall be entitled to receive either overtime pay at 1.5 times their regular salary rates, or compensatory time at 1.5 hours for each hour worked, which is applicable under the Fair Labor Standards Acts (FLSA)...”**
- 21. Employees occupying permanent positions shall each accrue vacation leave based upon active creditable service. Vacation leave may be accumulated to a maximum number of standard hours; provided, however, that any accrued vacation leave in excess of that amount may be added to earned/accrued sick leave balances.**
- 22. Pursuant to County Policy all personal (vacation) leave taken shall be charged by such employees to their accrued compensatory time balances unless otherwise exempted by the County Manager.**

- 23. Pursuant to County Policy eligible employees who are entitled to vacation leave as specified in PR-1200-2 shall be granted sick leave to be accrued at the rate of 3 hours and 42 minutes for each full bi-weekly pay period (3.55 for 85 hour employees; and 5.33 for 106 hour employees) of active creditable service in addition to any excess vacation time that may be credited to the sick leave balance....”**
- 24. Pursuant to County Policy an employee who is dismissed, resigns, retires, is laid off, or whose appointment has expired, shall receive pay for all accrued vacation leave, compensatory leave and/or holiday leave to which he or she was entitled at the time of such separation, payable on the payday following the issuance of the final check for hours worked.”**
- 25. PR-1200-10 (1) provides “Official County holidays with pay shall be designated and observed for all employees as approved by the Board of Commissioners and announced publicly. A holiday is equivalent to the number of hours in an employee’s regular shift. In order to qualify for holiday pay, an employee must have been in a pay status immediately before and immediately after the holiday.”Pay status” is defined as**

either working on the scheduled workday or being on approved leave in any paid category

- 26. For several years the Fulton County Sheriff's Department has operated with understaffed personnel which resulted in Plaintiffs being required to work several hours per week, or pay period, overtime.**
- 27. The Defendants required the Plaintiffs to accept compensatory time in lieu of overtime pay.**
- 28. As described in further detail in the subsequent factual allegations, the Defendants use unwritten personnel policies and practices to deprive employees of compensatory time, vacation benefits, overtime pay, holiday pay and sick time earned.**
- 29. Under the practices of the Defendants, Plaintiffs cannot use their earned vacation, holiday, or sick time until they have used up all of their compensatory time.**
- 30. Under the practice of the Defendants, when Plaintiffs request vacation time, holiday time or sick leave, the time is always charged against their compensatory time.**

- 31. Since the Plaintiffs are required to work substantial amounts of overtime they reach the maximum accumulation of compensatory, vacation and holiday pay.**
- 32. Once a Plaintiff reached the maximum accumulation of compensatory, vacation and holiday pay, the Defendants then roll over the excess into a classification identified as sick time.**
- 33. The Defendants classification of “sick time” or “sick leave” is intentionally misleading since it is composed of rollover vacation time, holiday, and compensatory time earned.**
- 34. There are no provisions in the County’s policies for the employee to receive their pay for compensatory time, holiday and/or vacation time that has been rolled over into the sick leave.**
- 35. Employees who leave the County’s employment prior to retirement are not paid for their sick leave even though the sick leave includes vacation, holiday and possibly compensatory time earned.**

- 36. Employees who retire early are also limited in the amount and way to which they can use their accumulated sick leave resulting in a forfeiture of hours and pay earned.**
- 37. Plaintiffs that have either retired or left the employment of the County have been forced to forfeit thousands of hours of accumulated overtime, vacation, holiday and compensatory time that the County has rolled over into a category labeled sick time before they left the County.**
- 38. Under these policies the County enjoys an unjustified enrichment by rolling over the employee's compensatory time, overtime, and vacation time into a category labeled sick time and then requiring the employee to forfeit all, or part of, the sick time upon leaving.**
- 39. Since the filing of the original action in the case sub judice the Defendants have made changes to some of the policies involved in this action, but the practices complained of are still being enforced.**

VI. CAUSES OF ACTION

COUNT ONE

- 40. Plaintiffs realleges and incorporates into Count I the numbered paragraphs 1 through 39.**
- 41. Fulton County and the Fulton County Sheriff's Department are employers under the FLSA.**
- 42. Fulton County and the Fulton County Sheriff's Department are required under the FLSA (29 USC 207) to pay the Plaintiffs overtime pay for work performed in excess of 40 hours.**
- 43. Defendants pay the Plaintiff compensatory pay pursuant to 29 USC 207 (0) in lieu of overtime.**
- 44. By rolling over compensatory time into sick leave and subsequently forfeiting the sick time when the Plaintiff leaves the County, the Defendants are not paying the employees their pay and/or their overtime.**
- 45. The County uses the rollover provisions to avoid paying the employees earned vacation, holiday and overtime compensation.**
- 46. As a direct and proximate result of the roll over practices the Defendants have violated the provisions of 29 USC 207.**

47. As a direct and proximate result of the roll over practices the Defendants have deprived the Plaintiffs of just compensation for their labors in violation of 29 USC 207.

COUNT II

48. Plaintiffs realleges and incorporates into Count II the numbered paragraphs 1 through 47.

49. The clerks and other administrative personnel of the Sheriff's Department are not part of the emergency forces and/or the class identified by the Fair Labor Standards Act. They should be paid overtime rather than compensation time.

50. The Defendants compelling the clerks and administrative personnel to accept compensatory compensation rather than overtime pay is in violation of the FLSA (29 USC 207).

51. By rolling over compensatory time into sick leave and subsequently forfeiting the time when the Plaintiff leaves the county, the Defendants are not paying the employees their pay and/or their overtime.

- 52. The County uses the rollover provisions to avoid paying the employees earned vacation and overtime compensation.**
- 53. As a direct and proximate result of the roll over practices the Defendants have violated the provisions of 29 USC 207.**
- 54. As a direct and proximate result of the roll over practices the Defendants have deprived the Plaintiffs of compensation for their labors in violation of 29 USC 201 et seq.**

COUNT III

- 55. Plaintiffs realleges and incorporates into Count III the numbered paragraphs 1 through 54.**
- 56. Pursuant to the policies of Fulton County, as a part of their compensation, the Plaintiffs earn paid vacation, holiday and sick time.**
- 57. As part of the Plaintiffs' compensation, the County promises to pay for a certain number of holidays, but penalizes the employee for taking the holiday.**
- 58. As part of the Plaintiffs compensation, the Defendants promise to pay for vacation time and establishes an accumulation system. However, the**

County puts a limit on the number of vacation hours an employee can accumulate.

- 59. The County's policy requires that, when an employee exceeds the maximum number of hours accumulated for vacation pay, the excess hours are rolled over into and made a part of the sick time.**
- 60. The County, as part of the Plaintiffs compensation, promises to pay for sick time and establishes an accumulation system.**
- 61. The Plaintiffs were told that they would be allowed to take their sick time compensation with them if they left the County's employment.**
- 62. Pursuant to the policies of Fulton County, employees who leave the employment of the County forfeits their sick time.**
- 63. Pursuant to the policies of Fulton County, employees who retire may not be allowed to take their sick time with them or get compensated for the earned sick time.**
- 64. However, the accumulated sick time under the County's practices is a combination of overtime, vacation time, holiday time, compensator time and sick time.**

- 65. By requiring the Plaintiffs to forfeit accumulated sick time (which is in reality a combination of vacation, compensatory and/or holiday pay) the County is making a seizure of the Plaintiffs' wages and benefits without compensation.**
- 66. Pursuant to County policy, Plaintiffs are not allowed to use their vacation, holiday or sick time when they have unused compensatory time.**
- 67. The County and Sheriff Jackson violated the terms of the contract between the employees by not allowing the Plaintiffs to use their accumulated vacation, holiday or sick time.**
- 68. The rollover system employed by Fulton County whereby the Plaintiffs are forced to use compensatory time in lieu of vacation time, holiday pay and sick time results in the Plaintiffs not being paid for their earned benefits.**
- 69. As a result of the County's actions the Plaintiffs have suffered in lost hours and other compensation.**

- 70. That the County's policy of rolling over vacation, compensatory, and holiday hours into sick time and then making the employee forfeit the time constitute a wrongful taking of the employees benefits without compensation.**

WHEREFORE Plaintiff's pray:

- a. That this Honorable Court certify and Order that this case be maintained as a Class Action pursuant to 29 USC 216;**
- b. That the Fulton County and Sheriff Jackson's Policies and Conduct concerning employee overtime and benefits be found to be in violation of the Fair Labor Standards Act.**
- c. That the Court find Fulton County and Sherif Jackson have engaged in a pattern of conduct that deprives the employees of their just compensation and benefits.**
- d. That the Plaintiff's be awarded damages in an amount of not less than Six-Million (\$6,000,000.00) Dollars.**
- e. That Fulton County Personnel Policies, as applied to the members of the Sheriff's Department, be ordered to be changed so as to justly**

compensate the employees for their overtime, vacation, holiday, compensatory time and sick time, in order to bring the policies into compliance with the Fair Labor Standards Act.

- f. That Fulton County Personnel Policies be changed so as to allow the Plaintiffs to be able to choose when they want to use compensatory time and/or vacation time.**

- g. That Fulton County Personnel Policies, as to the members of the Sheriff's Department, be changed so as to eliminate the forfeiture provisions of sick time, or in the alternative, that vacation, holiday and sick time be kept separate and distinct.**

- h. That Plaintiffs be awarded reasonable attorney's fees and costs for having to prosecute this action.**

Respectfully submitted.
/s/Clifford H. Hardwick
Clifford H. Hardwick
Attorney for the Plaintiffs
Georgia Bar No. 325675

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CERTIFICATE OF COMPLIANCE WITH L.R. 5.1

I hereby certify that the foregoing document was prepared in Times New Roman, 14-point font, as approved by Local Rule 5.1C

/s/Clifford H. Hardwick

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

TRACEY CUNNINGHAM, ET AL	:	
Plaintiffs,	:	
	:	
vs.	:	CIVIL ACTION FILE
	:	NO. 1: 16-cv-00533-RWS
FULTON COUNTY GEORGIA, ET AL	:	
Defendants	:	

PLAINTIFFS' DEMAND FOR JURY TRIAL

**Comes now Tracey Cunningham, et al, Plaintiffs herein, and files this
their demand for
trial by jury.**

Respectfully submitted.
/s/Clifford H. Hardwick
Clifford H. Hardwick
Attorney for the Plaintiffs
Georgia Bar No. 325675

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