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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AARON MARKS; MATTHEW HOYT;
THOMAS SURBER; SCOTT DURKIN;
MIKE SMOTRYS; JIM BRUCCOLIERI;
BRIAN GREBBIEN; MICHAEL
GAROFANO; AARON BUSH; JAMES
CRAWFORD; DAVID SCHWARTING;
STEVE RAMIREZ; JAMES DE LOS
SANTOS,

Plaintiffs,

vs.

CITY OF HERMOSA BEACH, a
Municipal Corporation; HERMOSA
BEACH FIRE DEPARTMENT, a public
safety department; DOES I-X, inclusive

Defendants.

Case No.

FAIR LABOR STANDARDS ACT
COMPLAINT

(29 U.S.C. §§201, et seq.)

[Demand for Jury Trial]

I. JURISDICTION

1. This action is brought pursuant to the provisions of the Fair Labor Standards Act 29 USC §§ 201, et seq., to recover from Defendant CITY OF HERMOSA BEACH and/or HERMOSA BEACH FIRE DEPARTMENT unpaid overtime compensation, liquidated damages and reasonable attorney fees. Plaintiffs further seek a declaratory judgment, injunctive relief and other relief under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201 et. seq. ("FLSA").

2. Jurisdiction is conferred on this Court by 28 U.S.C. §1337 and 29 U.S.C.

1 §216(b) of the Act. This Court has subject matter jurisdiction of this action pursuant to
2 29 USC § 201, et seq., and/or pursuant to 28 U.S.C. §§ 1331 and 1343(3). As the
3 controversy arises under "the Constitution, laws or treaties of the United States;"
4 specifically, the claim rises under the Fair Labor Standard Act of 1938, 29 U.S.C. §§
5 201 et seq. ("FLSA").

6 **II. VENUE**

7 3. Venue is proper in the Central District of California pursuant to 28
8 U.S.C. §1391(b) because the acts, events, or omissions given rise to the claim
9 occurred in this District.

10 4. Plaintiffs request a jury trial in this matter.

11 **III. PARTIES**

12 5. Plaintiffs AARON MARKS, MATTHEW HOYT, THOMAS SORBER;
13 SCOTT DURKIN; MIKE SMOTRYS; JIM BRUCCOLIERI; BRIAN GREBBIEN;
14 MICHAEL GAROFANO; AARON BUSH; JAMES CRAWFORD; DAVID SCHWARTING;
15 STEVE RAMIREZ; and JAMES DE LOS SANTOS at all times hereinafter-mentioned
16 were employed by the CITY OF HERMOSA BEACH/HERMOSA BEACH FIRE
17 DEPARTMENT as firefighters, firefighter/paramedics, fire engineers, and/or fire
18 captains. Each Plaintiff is an United States citizen and resides in the State of
19 California.

20 6. Each Plaintiff is a non-exempt employee and is to be paid overtime
21 compensation according to the provisions of the Memorandum of Understanding and
22 the Fair Labors Standards Act.

23 7. Defendants, CITY OF HERMOSA BEACH and HERMOSA BEACH FIRE
24 DEPARTMENT ("Defendants"), are and at all relevant times were, the employer of
25 Plaintiffs. Defendant City of Hermosa Beach is a political subdivision of the State of
26 California. Defendants are employers whose employees are engage in commerce
27 within the meaning of 29 U.S.C. §207(a) and as defined in 29 U.S.C. §§203(d) and
28 203(e)(2)(c).

COLLECTIVE ACTION ALLEGATIONS

8. This action is brought by Plaintiffs as a collective action, on their own behalf and on behalf of all others similarly situated under the provisions of 29 USC §216, for damages, liquidated damages, three year statute of limitations and relief incident and subordinate thereto including costs and attorney fees.

9. Plaintiffs bring this collective action on behalf of themselves and all other persons similarly situated who were members of the Hermosa Beach Fire Department, between December 2014 and present and who were required or permitted to work additional hours, in excess of 53 hours a workweek (or 212 hours in a 28 day work period, if an 207k work period was established by the CITY OF HERMOSA BEACH), without being compensated the requisite compensation.

10. The exact number of members similarly situated in the collective group, as herein above identified and described, is estimated to consist of not more than fifty (50) plaintiffs.

11. Those individuals similarly situated constituted a well-defined community of interest in questions of law and fact. The claims of the represented parties are typical of the claims of those similarly situated. The represented parties will fairly and adequately reflect and represent the interest of those similarly situated.

12. There are common questions of law and fact in this action relating to and affecting the rights of each member of the collective group and the relief sought is common to the entire class, namely, whether Defendant owes Plaintiffs overtime compensation for hours of uncompensated work, performed in excess of regular work period and whether the overtime compensation paid to Plaintiffs was properly calculated.

13. The claims of Plaintiffs and those similarly situated, depend on a showing of the acts and omissions of Defendant giving rise to the rights of Plaintiffs to the relief sought herein. There is no known conflict as to any individually named Plaintiff and other members of the collective group seeking to opt-in, with respect to this action, or

1 with respect to the claims for relief herein set forth.

2 14. This action is properly maintained as a collective action in that the
3 prosecution of separate actions by individual members of the collective group would
4 create a risk of adjudications with respect to individual members of the class which
5 would as a practical matter be dispositive of the interest of the other members not
6 parties to the adjudication, or would substantially impair or impeded their ability to
7 protect their interests.

8 15. The attorneys for Plaintiffs are experienced and capable in litigation in the
9 field of Fair Labor Standards Act and Labor/Employment litigation and have
10 successfully represented claimants in other litigation of this nature.

11 **IV. FACTS**

12 16. Pursuant to the applicable Memorandum of Understanding, all employees
13 covered by the Memorandum of Understanding, were required to work shifts of twenty-
14 four (24) hours in such a manner that they averaged 56 hours per week. It is believed
15 that all overtime hours were calculated based on the average hours worked, instead of
16 the actual hours worked per work period. The FLSA does not allow such averaging.

17 17. The City of Hermosa Beach and the Hermosa Beach Firefighters
18 Association (HBFFA) have entered into agreements set forth in the Memorandum of
19 Understandings ("MOU"), since at least 2011, which allow for firefighters to choose a
20 health insurance cash out option wherein the employee can choose to take the value of
21 the city healthcare benefit, in whole or in part, as salary compensation. This program is
22 commonly referred to as the "Employee Option Benefit Program." ("EOB"). Under these
23 agreements and the EOB between the City and Plaintiffs, Plaintiff are entitled to receive
24 "cash back" payments for all and/or any unused portion of their medical benefits. This
25 cash back option does not meet the requirements under 29 C.F.R. §778.215 to be
26 excluded from the regular rate of pay.

27 18. The applicable Memorandum of Understandings include pay benefits,
28 including, but not limited to Temporary Upgrade Pay, Paramedic Coordinator Premium

1 Pay, Special Assignment Pay, EOB, Educational Incentive, Emergency Medical
2 Technician Pay, Paramedic Pay, Recertification Bonus, Certificate Pay, and Fire Staff
3 Premium Pay. The Memorandum of Understanding all calls for the including of the
4 Educational Incentive pay, Special Assignment Pay, and Acting Pay.

5 19. The Memorandum of Understanding also calls for the payment of
6 overtime, after an employee has accrued two hundred forty (240) hours of
7 compensatory time, to be paid at the straight time regular rate of pay.

8 20. The Memorandum of Understanding provides that, in determining an
9 employee's eligibility for overtime compensation in a work period, paid leaves of
10 absences for vacation, sick, comp. time and holiday comp. time shall be counted as
11 hours worked.

12 21. Defendant is obligated to follow the terms of the MOU. (29 C.F.R.
13 §778.102), and is currently paying the benefit to employees in a manner consistent with
14 the relevant provisions of the MOU, even if said procedure violates the Fair Labor
15 Standards Act.

16 22. Some of the Plaintiffs have been exercising their option to receive the
17 EOB cash back payment for the unused portion of their medical benefits; other have
18 exercised the option to use the benefits to purchase medical insurance through the
19 City.

20 23. Defendants have failed to apply any portion of the value of the benefit,
21 including the paid cash back portions of Plaintiffs EOB benefit to Plaintiffs regular rate
22 of pay.

23 24. Plaintiffs are informed and believe, and thereon allege, that other forms of
24 compensation paid to employees by Defendants, pursuant to the MOUs, Side Letter
25 Agreements and/or other practices, are also not being included in the employees'
26 regular rate of pay.

27 25. Plaintiffs have worked extensive overtime hours. However, the
28 overtime rate that Plaintiffs were paid for the overtime hours worked did not

1 include all remuneration paid to the employee, including, but not limited to the cash
2 back portions of Plaintiffs' "Employee Option Benefit Program" which Defendant failed
3 to apply to Plaintiff's regular rate of pay.

4 26. Defendant knew or should have known of their obligation to include the
5 cash back portions of Plaintiffs unused EOB benefits owed to Plaintiffs in their regular
6 rate of pay but nevertheless failed to do so. Thus, Defendant failed to pay Plaintiffs for
7 overtime compensation at one and one half times their regular rate of pay.

8 27. Defendant acted voluntarily and deliberately in maintaining an intentional
9 practice of failing to compensate Plaintiffs in accordance with the FLSA.

10 28. Plaintiffs have no administrative remedies to exhaust, and in this
11 matter are not required to.

12 **V. CLAIM FOR RELIEF**

13 29. As a direct and proximate result of their failure and refusal to pay such
14 compensation, Defendants have violated Title 29 U.S.C. §207, et seq.

15 30. As a direct and proximate result of Defendants' conduct, Plaintiffs
16 have been damaged in an amount according to proof at trial including, but not
17 limited to, a sum equivalent to the unpaid overtime compensation as required by 29
18 U.S.C. §216(b) and such other and further damages as made be shown at the time
19 of trial.

20 31. Plaintiffs are also entitled to liquidated damages in a sum equal to the
21 amount of the unpaid compensation due and owing pursuant to 29 U.S.C. §216(d).

22 32. Plaintiffs are also entitled to recovery of reasonable attorney fees and
23 costs in pursuit of this action pursuant to 29 U.S.C. §216(b).

24 33. Doing all things described and alleged, Defendants have deprived, and
25 continues to deprive Plaintiffs of their rights, privileges and immunities which were
26 clearly established at the time the Defendants acted herein and the Defendants knew or
27 should have known that its conduct would violate these rights, privileges and
28 immunities. The Defendants acted with the intent to deprive Plaintiffs of their rights,

1 privileges, and immunities by purposely and intentionally refusing and failing to pay or
2 compensate Plaintiffs for hours they provided.

3 **WHEREFORE**, Plaintiffs pray for Judgment as follows:

4 34. All actual, consequential, liquidated and incidental losses and damages,
5 according to proof;

6 35. Such other damages as may be allowed in accordance with the Federal
7 Rules of Civil Procedure, Rule 54(c), and 29 U.S.C. §216 according to proof at trial;

8 36. Attorney fees pursuant to 29 U.S.C. §216 and costs pursuant to Rule
9 54(d) of the Federal Rules of Civil Procedure;

10 37. Any and all other relief, including equitable relief, as the Court may deem
11 just and proper.

12
13 Respectfully submitted,

14 Dated: December 4, 2017

COREY W. GLAVE, ATTORNEY AT LAW

15 /s/ Corey Glave

16 By _____
17 Corey W. Glave,
18 Attorney for Plaintiffs
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial under F.R. Civ. P., Rule 38 and C.D.
Cal. Rule 38-1.

Dated: December 4, 2017

COREY W. GLAVE, ATTORNEY AT LAW

/s/ Corey Glave

By _____
Corey W. Glave,
Attorney for Plaintiffs

CONSENT TO BECOME A PARTY PLAINTIFF
IN A CIVIL ACTION UNDER THE FAIR LABOR STANDARDS ACT

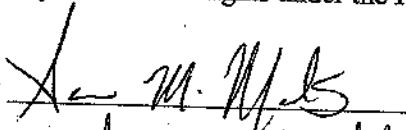
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I authorize Corey W. Glave, Attorney at Law, and/or any attorney affiliated with him, to represent me as counsel with respect to all claims under the FLSA, and other related laws, which I have or may have against my employer. This authorization includes both an investigation of the validity of the claims and any resulting litigation of the claims. The attorney(s) are authorized to file this consent on my behalf in an appropriate court and to take all steps pertinent thereto on my behalf, including the filing of complaints, amended complaints, and other pleadings, and the settlement and collection of any and all such claims.

I hereby request that the court assess any costs and expenses of this action and reasonable attorney fees against my employer, and award said costs and fees to the above named counsel.

I understand that under the FLSA I cannot be discharged or in any way disciplined or penalized by my employer or its agents because of my participation in an FLSA lawsuit or because of my assertion of rights under the FLSA.

Signature:



Name (printed)

Aaron M. Marks

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Signature: Matthew Hoyt

Name (printed) MATTHEW HOYT

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Signature: _____

Name (printed) _____

Thomas J. Surber

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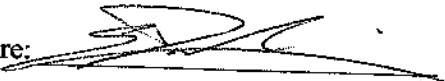
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Signature:

Name (printed)


SCOTT DURKIN

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Signature: 

Name (printed) Mike Smyth

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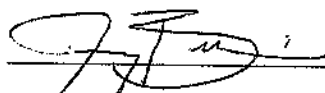
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Name (printed) _____


Jim Bruccolieri

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Signature: _____

Name (printed) Brian Grebbien

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IN A CIVIL ACTION UNDER THE FAIR LABOR STANDARDS ACT

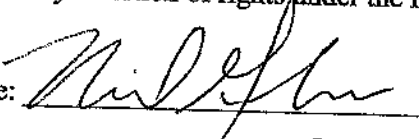
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Signature:



Name (printed) MICHAEL GAROFANO

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Signature: _____

Aaron Bush

Name (printed) _____

Aaron Bush

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Signature: James A. Crawford
Name (printed) James A. Crawford

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Signature: 

Name (printed) David Schwartz

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Signature:



Name (printed)

STEVE RAMIREZ

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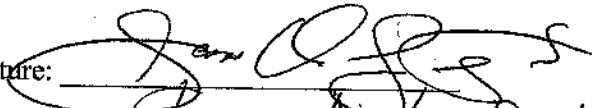
I authorize Corey W. Glave, Attorney at Law, and/or any attorney affiliated with him, to represent me as counsel with respect to all claims under the FLSA, and other related laws, which I have or may have against my employer. This authorization includes both an investigation of the validity of the claims and any resulting litigation of the claims. The attorney(s) are authorized to file this consent on my behalf in an appropriate court and to take all steps pertinent thereto on my behalf, including the filing of complaints, amended complaints, and other pleadings, and the settlement and collection of any and all such claims.

I hereby request that the court assess any costs and expenses of this action and reasonable attorney fees against my employer, and award said costs and fees to the above named counsel.

I understand that under the FLSA I cannot be discharged or in any way disciplined or penalized by my employer or its agents because of my participation in an FLSA lawsuit or because of my assertion of rights under the FLSA.

Signature: _____

Name (printed) _____


James De Los Santos