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8 Attorney for Plaintiffs

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 ANDREW GLAZE, DANNY
12 MONTOYA, LEONARD KILMAN,
13 ADRIAN VILLARREAL, TODD
14 HAROUTUNIAN, KEVIN M.
15 WILTON, TIM MARINO, JAMES
16 WILFONG, CORY THOMPSON,
17 SAMUEL DOMINICK, VLADIMIR
18 TRUBIN, STEPHEN QUEZADA,
19 DAVID BONANNO, MICHAEL
20 BENTZ, DAVID GARCIA, JOE
21 MANCINO, LARRY CAMPBELL,
22 JOHN GRAPENTIN, JOHN
23 CONNOLLY, KEVIN GREENWAY
24 FRANK HERNANDEZ, STEPHEN
25 PAIGE and ANDRE FLORES,

26 Plaintiffs,

27 vs.

28 CITY OF LA VERNE,

Defendant.

Case No.: 5:18-cv-00352

**FLSA COMPLAINT – 29 U.S.C. §§
201 et seq.**

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I.
JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the controversy arises under “the Constitution, laws or treaties of the United States.” Specifically, the claim rises under the Fair Labor Standard Act of 1938, 29 U.S.C. §§ 201 et seq. (“FLSA”), for which the Federal Courts have jurisdiction to enforce pursuant to 29 U.S.C. § 216.

II.
VENUE

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

III.
PARTIES

3. Plaintiffs are United States citizens and employed during the 36 months preceding the filing of this Complaint, as firefighters with the Defendant City of La Verne.

4. Defendant, CITY OF LA VERNE (“Defendant”), is and at all relevant times was, the employer of Plaintiffs. Defendant is a political subdivision of the State of California. Defendant is an employer whose employees are engaged in commerce within the meaning of 29 U.S.C. §207(a) and as defined in 29 U.S.C. §§203(d) and 203(e)(2)(c).

IV.
FACTS

5. Plaintiffs are currently employed, or were employed between February

1 18, 2015 and February 18, 2018 (“applicable period”), as firefighters with the
2 Defendant City of La Verne.

3 *Unpaid Overtime Hours*

4 5. Plaintiffs ANDREW GLAZE, DANNY MONTOYA, TODD
5 HAROUTUNIAN, KEVIN M. WILTON, VLADIMIR TRUBIN, LARRY
6 CAMPBELL, JOHN GRAPENTIN, JOHN CONNOLLY, KEVIN GREENWAY
7 and STEPHEN PAIGE have worked, during the applicable period, beyond their
8 regular work hours for the benefit of City without compensation.

9 6. This Count arises from Defendants’ violation of the FLSA for
10 Defendants’ failure to pay the identified Plaintiffs one and a half times their regular
11 rate of pay for all overtime time worked.

12 7. For its firefighters, the City has designated a 24 day work period to
13 take advantage of the FLSA exemption for firefighters. Utilizing this employer
14 friendly exemption, Defendant does not need to pay overtime above 40 hours a
15 week but instead, needs to pay overtime only when a firefighter works more than
16 182 hours in a 24 day work period.

17 8. Defendant City, through its management, directed Plaintiffs
18 ANDREW GLAZE, DANNY MONTOYA, TODD HAROUTUNIAN, KEVIN M.
19 WILTON, VLADIMIR TRUBIN, LARRY CAMPBELL, JOHN GRAPENTIN,
20 JOHN CONNOLLY, KEVIN GREENWAY and STEPHEN PAIGE to work, and
21 these Plaintiffs did work, in excess of 182 hours in individual work periods in the
22 applicable period (three (3) years prior to Plaintiffs filing this lawsuit). For
23 example, the following plaintiffs worked the following uncompensated overtime
24 hours approximately;

25	ANDREW GLAZE – Committees	11 hours
26	DANNY MONTOYA – Staff Meetings & Committees	250 hours
27	TODD HAROUTUNIAN – Staff Meetings	28 hours
28	KEVIN M. WILTON – Staff Meetings & Holiday Work	28 hours

1	VLADIMIR TRUBIN – Equip. Design & Committees	300 hours
2	LARRY CAMPBELL – Training	20 hours
3	JOHN GRAPENTIN – Apparatus Committee	120 hours
4	JOHN CONNOLLY – Interviews, Payroll, Committees	108 hours
5	KEVIN GREENWAY – Staff Meetings	12 hours
6	STEPHEN PAIGE – Explorer Meetings	100 hours

7 9. Plaintiffs were not exempt from the overtime provisions of the FLSA.

8 10. Plaintiffs were entitled to be paid overtime wages for all time worked
9 in excess of 182 hours in a 24 day work period.

10 11. Defendant did not pay Plaintiffs overtime wages for all time worked
11 in excess of 182 hours in a 24 day work periods.

12 12. Defendant’s failure to pay Plaintiffs overtime wages for all time
13 worked in excess of 182 hours in a 24 day work period was a violation of the
14 FLSA.

15 *“Shift” Employees Holiday in Lieu Pay*

16 13. The City of La Verne and the bargaining unit representing the City’s
17 firefighters, including the Plaintiffs, have entered into agreements set forth in
18 Memorandum of Understandings (“MOU’s”), which requires “shift” employees to
19 be paid Holiday in Lieu Pay over the course of the year as added cash to the “shift”
20 employee’s paycheck.

21 14. Under the current agreement between the City and Plaintiffs, “shift”
22 employees are entitled to receive Holiday in Lieu Pay in an amount equal to 120
23 hours of regular pay for the year, paid at 10 hours of pay per month.

24 15. Defendant is obligated to follow the terms of the MOU’s. (29 C.F.R.
25 §778.102).

26 16. Training materials provided to Defendant City, occurring before 2015
27 and ongoing, in regard to FLSA Compliance, recommended that City include the
28 Holiday in Lieu Pay in determining the regular rate of pay for overtime purposes.

1
2 17. However, Defendant has failed to apply the cash payments for
3 Holiday in Lieu Pay to Plaintiffs “regular rate” of pay. Pursuant to 29 U.S.C.
4 Section 207(e), the “regular rate” must include all remuneration received by an
5 employee unless it is explicitly excluded.

6 18. Defendant knew or should have known of their obligation to include
7 the Holiday in Lieu Pay to Plaintiffs in their regular rate of pay but nevertheless
8 failed to do so. Thus, Defendant failed to pay Plaintiffs for overtime compensation
9 at one and one half times their regular rate of pay.

10 19. Defendant acted voluntarily and deliberately in maintaining an
11 intentional practice of failing to compensate Plaintiffs in accordance with the
12 FLSA.

13 20. Plaintiffs have no administrative remedies to exhaust, and in this
14 matter are not required to.

15
16 **V.**

17 **CLAIM FOR RELIEF**

18 21. As a direct and proximate result of their failure and refusal to pay
19 such compensation, Defendant has violated Title 29 U.S.C. §207, et seq.

20 22. As a direct and proximate result of Defendant’s conduct, Plaintiffs
21 have been damaged in an amount according to proof at trial including, but not
22 limited to, a sum equivalent to the unpaid overtime compensation as required by 29
23 U.S.C. §216(b) and such other and further damages as may be shown at the time of
24 trial.

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

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

1 25. Doing all things described and alleged, Defendant has deprived, and
2 continues to deprive Plaintiffs of their rights, privileges and immunities which
3 were clearly established at the time the Defendant acted herein and the Defendant
4 knew or should have known that its conduct would violate these rights, privileges
5 and immunities. The Defendant acted with the intent to deprive Plaintiffs of their
6 rights, privileges, and immunities by purposely and intentionally refusing and
7 failing to pay or compensate Plaintiffs for hours they provided.
8

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

10 26. All actual, consequential, liquidated and incidental losses and
11 damages, according to proof;

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

15 28. Attorney fees pursuant to 29 U.S.C. §216 and costs pursuant to Rule
16 54(d) of the Federal Rules of Civil Procedure;

17 29. Any and all other relief, including equitable relief, as the Court may
18 deem just and proper.

19 Respectfully submitted,

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21 Date: February 18, 2018

DAMMEIER LAW FIRM

22
23 /s/ Dieter C Dammeier
24 Dieter C. Dammeier
25 Attorneys for Plaintiffs
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