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10 IN THE UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

13 KEVIN BURRIS, on behalf of himself and)
14 all similarly situated individuals,)
15 Plaintiffs,)
16 v.)
17 CITY OF PETALUMA,)
18 Defendant.)

Case No.

**COMPLAINT FOR VIOLATIONS OF THE
FAIR LABOR STANDARDS ACT**

COLLECTIVE ACTION - 29 U.S.C. § 216

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I.

INTRODUCTION

1. This action is brought pursuant to the provisions of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. sections 201, *et seq.*, to recover from Defendant CITY OF PETALUMA (hereinafter “Defendant”) unpaid overtime compensation, interest thereon, liquidated damages, costs of suit, and reasonable attorney’s fees.
2. This action arises from Defendant’s failure to include all statutorily required forms of compensation in the “regular rate” of pay, thereby resulting in the systematic underpayment of overtime compensation to Plaintiff and all similarly situated individuals.

II.

PARTIES

3. Plaintiff Kevin Burris (“Plaintiff”) is currently employed by Defendant as a Firefighter with the Petaluma Fire Department.
4. Defendant is a political subdivision of the State of California and, at all relevant times hereto, employed Plaintiff.

III.

JURISDICTION

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. section 1331 because the claims alleged herein arise under the FLSA. (*See* 29 U.S.C. §§ 201, *et seq.*).

IV.

COLLECTIVE ACTION ALLEGATIONS

6. This action is brought by Plaintiff as a collective action, on his own behalf and on behalf of all others similarly situated, under the provisions of 29 U.S.C. section 216 for unpaid overtime compensation, interest thereon, liquidated damages, costs of suit, and reasonable attorney’s fees.
7. Plaintiff brings this action on behalf of himself and all other persons similarly situated who work, or have worked, for Defendant at any time over the last three years and were deprived of their complete statutory overtime compensation. Those individuals are similarly situated and

- 1 constitute a well-defined community of interest in their respective questions of law and fact
2 relevant to this action. Plaintiff's claims are typical of those of other individuals similarly
3 situated. Plaintiff will fairly and adequately represent the interests of those similarly situated.
- 4 8. On information and belief, the exact number of members similarly situated in the collective
5 group, as herein identified and described, is estimated to consist of well over forty individuals.
- 6 9. There are common questions of law and fact in this action relating to and affecting the rights
7 of each member of the collective group, including whether Defendant failed to fully compensate
8 Plaintiff and similarly situated individuals for all overtime hours worked by excluding certain
9 remunerations from the "regular rate" of pay used to calculate overtime compensation. The
10 relief sought is common to the entire class.
- 11 10. Plaintiff's claims and the claims of those similarly situated depend on a showing of Defendant's
12 acts and omissions giving rise to Plaintiff's right to the relief sought herein. There is no conflict
13 between Plaintiff and other members of the collective group seeking to opt in with respect to
14 this action, or with respect to the claims for relief set forth herein.
- 15 11. This action is properly maintained as a collective action in that the prosecution of separate
16 actions by individual members of the collective group would create a risk of adjudications with
17 respect to individual members of the class which may, as a practical matter, be dispositive of
18 the interests of the other members not parties to the adjudications, or may substantially impair
19 or impede their ability to protect their interests.
- 20 12. Plaintiff's lawyers are experienced and capable in the field of FLSA and labor/employment
21 litigation and have successfully represented thousands of claimants in other litigation of this
22 nature.
- 23 13. Plaintiff's counsel, Mastagni Holstedt, APC, will conduct and be responsible for Plaintiff's case
24 herein. David E. Mastagni and Isaac S. Stevens, who will be primarily responsible for litigating
25 this matter, have represented thousands of employees pursuing wage and hour claims
26 throughout the State of California, and have recovered millions of dollars on their behalf.
- 27 14. This action is appropriate for conditional certification as a collective action because Defendant
28 subjected Plaintiff, and the class of putative plaintiffs he seeks to represent, to the same uniform

1 practice of excluding certain remunerations from the "regular rate" of pay used to calculate their
2 overtime compensation.

3 15. This factual nexus is sufficient to justify the Court to exercise its discretion to ensure that
4 accurate and timely notice is given to all similarly situated former and current employees of
5 Defendant so that they may make an informed decision about whether or not to join this action.

6 **V.**

7 **FACTUAL ASSERTIONS**

8 16. Plaintiff is a member of the Petaluma Firefighters, International Association of Firefighters,
9 Local 1415 ("Local 1415").

10 17. Local 1415 is the exclusive bargaining representative of employees in the Firefighters
11 Bargaining Unit (i.e., Unit 7), which consists of all full-time employees in the job classifications
12 of Firefighter, Firefighter Paramedic, Fire Engineer, Fire Engineer/Paramedic, Fire Captain, and
13 Fire Inspector.

14 18. The terms and conditions of employment of Local 1415 members, including but not limited to
15 compensation, are governed by a Memorandum of Understanding ("MOU") between Local
16 1415 and Defendant.

17 19. Pursuant to the MOU, Plaintiff's total compensation consists of a base salary as well as
18 incentives and other forms of remuneration that compensate him for his regularly scheduled
19 shifts.

20 20. For example, Defendant provides Plaintiff monetary compensation in lieu of contributing
21 towards Defendant-provided health insurance ("Cash-In-Lieu") pursuant to Section 30 "Cash
22 In Lieu of Health and Dental Benefits" of the MOU between Local 1415 and Defendant.

23 21. At all times relevant hereto, Defendant treated these Cash-In-Lieu payments to Plaintiff as
24 wages for the purpose of applicable tax withholdings.

25 22. Plaintiff is informed and believes Defendant provides Cash-In-Lieu payments to other similarly
26 situated employees and treats such payments in the same manner.

27 23. On information and belief, Defendant's health benefits plan is not bona fide for the purposes
28 of 29 U.S.C. 207(e)(4) and 29 C.F.R. section 778.215.

1 24. Defendant also provides Plaintiff monetary compensation in lieu of observing holidays
2 (“Holiday Pay”) pursuant to Section 11 “Holidays” of the MOU between Local 1415 and
3 Defendant.

4 25. At all times relevant hereto, Defendant treated these payments to Plaintiff as wages for the
5 purpose of applicable tax withholdings.

6 26. Plaintiff is informed and believes Defendant provided Holiday Pay to other similarly situated
7 employees and treated such payments in the same manner.

8 27. At all times relevant hereto, Defendant suffered or permitted Plaintiff to work hours beyond
9 statutory thresholds, thus triggering Defendant’s obligation to pay Plaintiff overtime
10 compensation as required by the FLSA.

11 28. Pursuant to 29 U.S.C. section 207(e), the “regular rate” upon which all forms of Plaintiff’s
12 overtime compensation are based must include all remuneration received by Plaintiff, unless
13 explicitly excluded.

14 29. At all times relevant hereto, Defendant impermissibly excluded certain remuneration from
15 Plaintiff’s “regular rate” of pay, including but not limited to Cash-In-Lieu and Holiday Pay,
16 thereby resulting in the systematic underpayment of overtime compensation to Plaintiff.

17 30. By the same conduct (i.e., the impermissible exclusion of remuneration from the “regular rate”),
18 Defendant failed to pay Plaintiff and other similarly situated individuals for cashed out
19 compensatory time off (“CTO”) at the “regular rate” of pay as required by 29 U.S.C. section
20 207(o)(3)-(4).

21 **FIRST COUNT**

22 **(Fair Labor Standards Act - Failure to Pay All Overtime Compensation Earned)**

23 31. Plaintiff incorporates by reference each and every paragraph above as though set forth fully
24 herein.

25 32. Defendant suffered or permitted Plaintiff and, on information and belief, other similarly situated
26 individuals to work hours beyond statutory thresholds, thus triggering Defendant’s obligation
27 to pay overtime compensation as required by the FLSA, but failed to include all required forms
28

1 of compensation into the “regular rate” of pay used to calculate their overtime compensation
2 and cash out their CTO.

3 33. By failing to include all required forms of compensation in the “regular rate” of pay used to
4 calculate overtime compensation and cash out CTO, Defendant failed to compensate Plaintiff
5 and other similarly situated individuals at one and one-half times the “regular rate” of pay for
6 all overtime hours worked as required by the FLSA.

7 34. At all times relevant hereto, Defendant and its agents and representatives were aware of their
8 obligation to pay Plaintiff and other similarly situated individuals for all overtime hours worked
9 at one and one-half times the “regular rate” of pay as required by the FLSA.

10 35. At all times relevant hereto, Defendant and its agents and representatives knew, or should have
11 known, of their obligation to pay Plaintiff and other similarly situated individuals overtime
12 compensation at one and one-half of their “regular rate” of pay for all hours worked in excess
13 of the applicable thresholds established by section 207 of the FLSA.

14 36. At all times relevant hereto, Defendant’s failure to fully compensate Plaintiff and other similarly
15 situated individuals for all overtime hours worked was not in good faith, and was a willful
16 violation of the FLSA.

17 37. As a result of the foregoing violations of the FLSA as enumerated herein, Plaintiff seeks
18 damages for three (3) years of unpaid overtime compensation that was earned but not paid, as
19 well as an equal amount in liquidated damages.

20 38. Plaintiff also seeks reasonable attorney fees and costs pursuant to 29 U.S.C. section 216(b).

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1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment as follows:

- 3 1. For recovery of unpaid overtime compensation and interest thereon plus an equal
- 4 amount of liquidated damages for Plaintiff and all other similarly situated individuals
- 5 pursuant to 29 U.S.C. section 216(b);
- 6 2. For a determination that Defendant’s conduct was reckless and/or an intentional,
- 7 knowing, and willful violation of the FLSA, therefore entitling Plaintiff and all other
- 8 similarly situated individuals to recover damages under a three (3) year statute of
- 9 limitations;
- 10 3. For reasonable attorney fees pursuant to 29 U.S.C. section 216(b);
- 11 4. For costs incurred as a result of this proceeding;
- 12 5. For injunctive relief ordering the Defendant to cease and desist from engaging in said
- 13 unlawful conduct, including but not limited to, revisions to applicable compensation
- 14 policies to clearly indicate that the above-referenced remuneration will be included in
- 15 the “regular rate” of pay for the purposes of overtime compensation;
- 16 6. For conditional certification of the collective class as pled;
- 17 7. For an order to timely notify all potential collective class members of this action;
- 18 8. For such other and further relief as the court deems just and proper.

19
20 Respectfully submitted,

21 Dated: April 6, 2018

MASTAGNI HOLSTEDT, APC

22
23 By: /s/ David E. Mastagni
 24 DAVID E. MASTAGNI
 25 ISAAC S. STEVENS
 26 ACE T. TATE
 27 IAN B. SANGSTER
 28 Attorneys for Plaintiff

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8 Attorneys for Plaintiff

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10 IN THE UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12
13 KEVIN BURRIS, on behalf of himself and)
14 all similarly situated individuals,)

15 Plaintiffs,)

v.)

16 CITY OF PETALUMA,)

17 Defendant.)
18

Case No.

**CONSENT TO BE INCLUDED AS AN
INDIVIDUAL PLAINTIFF**

[29 U.S.C. § 216(b)]

19
20 I have been employed by the City of Petaluma ("City") within the last three years from the date
21 indicated below, and I am generally familiar with the above-captioned litigation. The City has not fully
22 compensated me for the hours of overtime I have worked in violation of the Fair Labor Standards Act.
23 The City failed to pay my overtime at the "regular rate of pay" as defined by 29 U.S.C. § 207(e). I
24 therefore consent to be included as a Plaintiff in the above-mentioned litigation and to be awarded
25 damages if any are recovered. I understand that the law offices of Mastagni Holstedt, APC, will be
26 representing me in this action and that this consent form will be filed with the court pursuant to 29
27 U.S.C. § 216(b).
28

CONSENT TO BE INCLUDED AS AN
INDIVIDUAL PLAINTIFF

Burris, et. al. v. City of Petaluma

1 I authorize said counsel to make all decisions with respect to the conduct and handling of this case,
2 including the settlement thereof as they deem appropriate and/or necessary.

3
4 Dated: 4-21, 2018


(Signature)

6 Kevin Burris
7 (Print Name)

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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Kevin Burris, on behalf of himself and all similarly situated individuals
(b) County of Residence of First Listed Plaintiff Sonoma
(c) Attorneys (Firm Name, Address, and Telephone Number) David E. Mastagni Mastagni Holstedt, APC 1912 I Street, Sacramento, CA 95811 (916) 446-4692

DEFENDANTS City of Petaluma
County of Residence of First Listed Defendant Sonoma
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State PTF 1 DEF 1
Citizen of Another State PTF 2 DEF 2
Citizen or Subject of a Foreign Country PTF 3 DEF 3
Incorporated or Principal Place of Business In This State PTF 4 DEF 4
Incorporated and Principal Place of Business In Another State PTF 5 DEF 5
Foreign Nation PTF 6 DEF 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, IMMIGRATION, LABOR, PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 201, et. seq.
Brief description of cause:
Collective Action for unpaid overtime and other compensation, interest thereon, liquidated damages, costs of suit and reasonable attorney fees.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ TBD CHECK YES only if demanded in complaint: JURY DEMAND: Yes X No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 4/6/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ David E. Mastagni

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
 - c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. **Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. **Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”

Date and Attorney Signature. Date and sign the civil cover sheet.