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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 RONALD W. PELHAM,
13 Plaintiff,
14
15 vs.
16 CITY OF MONROVIA,
17 Defendant

Case No. 2:18-cv-08110

**COMPLAINT FOR DAMAGES
AND OTHER RELIEF:**

1. Fair Labor Standards Act [29 U.S.C.
§ 201, *et seq.*];

DEMAND FOR JURY TRIAL

1 Plaintiff Ronald W. Pelham (“Plaintiff”), based upon facts that either have
2 evidentiary support or are likely to have evidentiary support after a reasonable
3 opportunity for further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff, a former employee of Defendant City of Monrovia, brings
6 this action for unpaid wages and other relief under the Fair Labor Standards Act, as
7 amended, 29 U.S.C. § 201, *et seq.* (“FLSA”).

8 **JURISDICTION AND VENUE**

9 2. This Court has jurisdiction over Defendant’s violations of the FLSA
10 pursuant to 29 U.S.C. § 216 and 28 U.S.C. § 1331 because the action asserts rights
11 arising under federal law.

12 3. Venue is proper under 28 U.S.C. § 1391 because the claims arose
13 within the Central District of California and Defendant is within the Central
14 District of California.

15 **THE PARTIES**

16 4. Plaintiff is a former Division Chief employed by Defendant City of
17 Monrovia’s Fire Department.

18 5. Defendant City of Monrovia is a municipality located within the
19 Central District of California and is an employer subject to FLSA requirements.

20 **GENERAL ALLEGATIONS**

21 6. Plaintiff was, at all times material herein, employed in an enterprise
22 engaged in commerce or in the production of goods for commerce, as defined by 29
23 U.S.C. § 203(s). More specifically, Plaintiff was employed by the City of
24 Monrovia’s Fire Department as a Division Chief.

25 7. Plaintiff, while employed by Defendant, was an “employee” within the
26 meaning of the FLSA, 29 U.S.C. § 203(e)(1).

27 8. Defendant City of Monrovia is an “employer” as defined by 29 U.S.C.
28 § 203(d) and a “public agency” within 29 U.S.C. § 203(x). Upon information and

1 belief, the defendant at all relevant times has been aware of the provisions of the
2 FLSA.

3 9. Defendant is an enterprise, as defined by 29 U.S.C. § 203(r).

4 10. Within the last three years, Defendant always employed more than five
5 persons in fire suppression activities. These persons were: (1) trained in fire
6 suppression; (2) had the legal authority and responsibility to engage in fire
7 suppression; (3) employed by a fire department of a municipality, the City of
8 Monrovia; and (4) either engaged in the prevention, control, and extinguishment of
9 fires or responded to emergency situations where life, property, or the environment
10 is at risk.

11 11. Throughout Plaintiff's employment with Defendant as a Division
12 Chief, Plaintiff performed management work that was not directly related to fire
13 protection activities, and this management work regularly took more than twenty
14 percent of Plaintiff's work time. Plaintiff's management duties as a Division Chief
15 included: training, supervising, scheduling, evaluating and disciplining subordinate
16 personnel; developing and directing training programs; maintaining an inventory of
17 medical supplies and equipment; maintaining records; developing and monitoring
18 the department budget, including identifying needed staffing, equipment, materials,
19 and supplies; and approving expenditures.

20 12. Within the last three years, Defendant paid Plaintiff by the hours he
21 worked. Defendant never paid Plaintiff a salary. For instance, on the pay period
22 ending on September 5, 2015, Defendant paid Plaintiff for 112.0 hours of work at
23 his straight time rate; on the following pay period ending on September 19, 2015,
24 Defendant paid Plaintiff for 64.0 hours of work at his straight time rate and 12.0 for
25 "OT 1.0" that was not paid at time-and-one-half.

26 13. Plaintiff routinely worked more than forty (40) hours per week for
27 Defendant during the three years prior to the filing of this complaint. For instance,
28 during the pay period beginning on December 10, 2017 and ending on December

1 23, 2017, Plaintiff worked at least 168 total hours for Defendant, including at least
2 96 hours during the workweek beginning on December 10, 2017 and ending on
3 December 17, 2017.

4 14. Defendant routinely employed Plaintiff to work in excess of forty (40)
5 hours per week, yet Defendant did not pay Plaintiff time-and-one-half (1.5)
6 overtime pay for all overtime hours worked. For example, during the work week
7 beginning on December 10, 2017 and ending on December 16, 2017, Plaintiff
8 worked at least 96 total hours for Defendant. Although Defendant paid Plaintiff
9 time-and-one-half (1.5) overtime pay for 24 hours worked during this week, this
10 pay did not fully account for all the overtime hours Plaintiff worked as Plaintiff
11 was entitled to 32 additional hours of overtime paid at time-and-one-half.

12 **FIRST CAUSE OF ACTION**

13 **(Against Defendant for Violation of the FLSA)**

14 15. Plaintiff incorporates by reference and re-alleges as if fully stated
15 herein all preceding paragraphs in this Complaint.

16 16. Employees covered under the FLSA are entitled to overtime
17 compensation at the rate of one and one-half times their regular rate of pay for all
18 hours worked in excess of the maximum hours set forth in 29 U.S.C. § 207.

19 17. At all times material herein, Plaintiff worked hours in excess of the
20 hourly levels specified in the FLSA, 29 U.S.C. § 207(a). As a result, at all times
21 material herein, Plaintiff was entitled to overtime compensation at a rate of not less
22 than one and one-half times his regular rate of pay for the hours he worked in
23 excess of 40 hours per workweek. 29 U.S.C. § 207(a).

24 18. At all times material herein, the defendant has failed and refused to
25 provide Plaintiff with overtime compensation at a rate of one and one-half times his
26 regular rate of pay for all the hours they have worked in excess of 40 hours per
27 workweek, thereby violating 29 U.S.C. § 207(a).

1 19. Specifically, in violation of 29 U.S.C. § 207(a), Defendant paid
2 Plaintiff his straight time rate even when Plaintiff worked overtime hours.

3 20. Defendant's refusal to provide overtime pay at the proper rate to
4 Plaintiff for the hours he worked in excess of 40 hours per workweek, as specified
5 in the FLSA, 29 U.S.C. § 207(a), wrongly deprives him of the overtime
6 compensation that has been due to him at times material herein.

7 21. As a result of the aforesaid willful violations of the FLSA, overtime
8 compensation has been unlawfully withheld by Defendant from Plaintiff for which
9 Defendant is liable pursuant to 29 U.S.C. §§ 216(b) and 255, together with an
10 additional equal amount as liquidated damages, interest, reasonable attorneys' fees,
11 and the costs of this action.

12 22. As a result of Defendant's willful and purposeful violations of the
13 FLSA, there has become due and owing to Plaintiff an amount that has not yet been
14 precisely determined. The employment and work records for Plaintiff are in the
15 possession, custody and control of Defendant and Plaintiff is unable to state at this
16 time the exact amount owing to him. Defendant is under a duty imposed by the
17 FLSA, 29 U.S.C. § 211(c), and the regulations of the United States Department of
18 Labor, to maintain and preserve payroll and other employment records with respect
19 to Plaintiff which the amount of Defendant's liability can be ascertained.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff requests from the Court the following relief:

22 A. A declaratory judgment declaring that Defendant has willfully,
23 recklessly, unreasonably, wrongfully, and with a lack of good faith, violated its
24 statutory and legal obligations, and deprived Plaintiff of his rights, protections
25 and entitlements under federal law, as alleged herein;

26 B. An order for a complete and accurate accounting of all the
27 compensation to which Plaintiff is entitled;

28 C. Judgment against Defendant awarding Plaintiff monetary damages in

1 the form of back pay compensation, liquidated damages equal to his unpaid
2 compensation, plus pre-judgment and post-judgment interest;

3 D. Reasonable attorneys' fees and the costs and disbursement of this
4 action; and

5 E. Such other and further relief as the Court deems proper.

6 **DEMAND FOR A JURY TRIAL**

7 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff
8 hereby respectfully requests a trial by jury on all claims presented in this
9 Complaint.

10 Dated: September 19, 2018

Respectfully submitted,

11 MOON & YANG, APC

12
13 By: /s/ Justin F. Marquez _____

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14 Attorneys for Plaintiff RONALD W.
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