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8 Attorney for Plaintiffs

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 CHRISTOPHER GAFFNEY, ANDRE  
12 JEROME SOTO, JOHN C. O’LEARY,  
13 GUIDO QUARTAROLI and JEFF  
14 PROVANCHER, on behalf of  
15 themselves and all similarly situated  
16 individuals

17 Plaintiffs,

18 vs.

19 CITY OF SANTA CLARA,  
20

21 Defendant.

Case No.: 5:18-cv-6500

**COMPLAINT**

**FLSA COLLECTIVE ACTION – 29  
U.S.C. § 216**

22 **I.**

23 **JURISDICTION**

24 1. This Court has subject matter jurisdiction over this action pursuant to  
25 28 U.S.C. § 1331, as the controversy arises under “the Constitution, laws or  
26 treatises of the United States.” Specifically, the claim rises under the Fair Labor  
27 Standard Act of 1938, 29 U.S.C. §§ 201 et seq. (“FLSA”), for which the Federal  
28 Courts have jurisdiction to enforce pursuant to 29 U.S.C. § 216.

1 **II.**

2 **VENUE**

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

6 **III.**

7 **PARTIES**

8 3. Plaintiffs, CHRISTOPHER GAFFNEY, ANDRE JEROME SOTO,  
9 JOHN C. O’LEARY, GUIDO QUARTAROLI and JEFF PROVANCHER are  
10 United States citizens and currently employed by the Defendant, City of Santa  
11 Clara.

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

17 **IV.**

18 **COLLECTIVE ACTION ALLEGATIONS**

19 5. Plaintiffs bring this action on behalf of themselves and all other  
20 persons similarly situated who work, or have worked, for Defendant at any time  
21 since August 24, 2014 and were not paid their complete statutory overtime  
22 compensation. Those individuals are similarly situated and constitute a well-  
23 defined community of interest in their respective questions of law and fact relevant  
24 to this action. Plaintiffs’ claims are typical of those of other individuals similarly  
25 situated. Plaintiffs will fairly and adequately represent the interests of those  
26 similarly situated.

27 6. This action is brought by Plaintiffs as a collective action, on their  
28 own behalf and on behalf of all others similarly situated, under the provisions of 29

1 U.S.C. section 216, for damages, liquidated damages, a three-year statute of  
2 limitations plus any applicable tolling periods, and relief incident and subordinate  
3 thereto, including costs and attorney fees.

4 7. On information and belief, the exact number of members similarly  
5 situated in the collective group, as herein above described, is estimated to consist  
6 of well over one-hundred individuals.

7 8. Plaintiffs' claims and the claims of those similarly situated depend on  
8 a showing of Defendant's acts and omissions giving rise to Plaintiffs' rights to  
9 relief sought herein. There is no conflict as to the named Plaintiffs and other  
10 members of the collective group seeking to opt in, with respect to this action, or  
11 with respect to the claims for relief herein set forth.

12 9. This action is properly maintained as a collective action in that the  
13 prosecution of separate actions by individual members of the collective group  
14 would create a risk of adjudication with respect to individuals members of the class  
15 which may as a practical matter be dispositive of the interests of the other members  
16 not parties to the adjudications, or may substantially impair or impede their ability  
17 to protect their interests.

18 10. Plaintiff's counsel, Dieter C. Dammeier, is experienced and capable in  
19 the field of FLSA and labor/employment litigation, having represented hundreds of  
20 public sector claimants in similar wage and hour claims, including several litigated  
21 cases identical to the instant case.

22 11. This action is appropriate for conditional certification as a collective  
23 action because Defendant subjected Plaintiffs and all members of the collective  
24 class to the same practice for purposes of the FLSA, with respect to cash payments  
25 made in lieu of health insurance and other specialty pays (out of class pay,  
26 paramedic pay and hazardous materials pay) but failing to include such cash  
27 payments in the overtime rate calculation.  
28



*Cash In Lieu of Medical Benefits*

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2           18. The City of Santa Clara and the bargaining unit representing the  
3 City’s firefighters, including the Plaintiffs, have entered into agreements set forth  
4 in Memorandum of Understandings (“MOU’s”), which allows for employees to  
5 choose a health insurance “cash in lieu” option.

6           17. Under the “cash in lieu” option, employees of the City, including  
7 Plaintiffs, are entitled to receive “cash-out” payments for any unused portion of  
8 their medical benefits.

9           18. Defendant is obligated to follow the terms of the MOU’s. (29 C.F.R.  
10 §778.102)

11           19. Plaintiffs have been exercising their option to receive the cash-out  
12 payment for the unused portion of their medical benefits.

13           20. However, Defendant has failed to apply the cash-out portions of  
14 Plaintiffs unused medical benefits to Plaintiffs “regular rate” of pay when  
15 calculating overtime pay.

16           21. The Central District Court in 2013 (affirmed by the Ninth Circuit in  
17 2016) found this form of payment to not be excludable in determining the “regular  
18 rate” when calculating overtime payments. This was widely publicized in the  
19 public employment sector and Defendant was aware of these decisions.

20           22. In addition to the “cash-out” portion that was improperly excluded  
21 from the overtime rate, the entire amount paid as either “cash-out” or for medical  
22 benefits should have been included in the overtime rate. This is so because the  
23 entire benefit amount is not part of a “bona-fide plan” that is required for the City  
24 to exclude the amount paid toward medical benefits from the overtime rate. The  
25 City’s medical benefit plan is not a “bona-fide plan” because the cash payments  
26 made to employees is more than “incidental” to the plan.  
27  
28

1 *Specialty Pays Excluded from “Regular Rate”*

2 23. The City of Santa Clara, pursuant to MOU’s with its firefighter  
3 bargaining unit, pays when applicable, out of class pay, paramedic pay and  
4 hazardous materials pay.

5 24. Here again, the City has failed to include such pays in the “regular  
6 rate” of pay for overtime calculations.

7 25. Defendant knew or should have known of their obligation to include  
8 the cash-out portions of Plaintiffs unused medical benefits, out of class pay,  
9 paramedic pay and hazardous materials pay that was paid to Plaintiffs in their  
10 “regular rate” of pay but nevertheless failed to do so. Thus, Defendant failed to  
11 pay Plaintiffs for overtime compensation at one and one half times their regular  
12 rate of pay.

13 26. Defendant acted voluntarily and deliberately in maintaining an  
14 intentional practice of failing to compensate Plaintiffs in accordance with the  
15 FLSA.

16 27. Plaintiffs have no administrative remedies to exhaust, and in this  
17 matter are not required to.

18 *Settlement for Partial Damages*

19 28. The City of Santa Clara has provided payment for a portion of the  
20 FLSA damages arising in this case to some of the Plaintiffs. As a prerequisite for  
21 such payment, the City required employees to sign a Settlement Agreement that  
22 was not approved by the Court or Department of Labor as required by the FLSA to  
23 be enforceable.

24 **VI.**

25 **CLAIM FOR RELIEF**

26 29. As a direct and proximate result of their failure and refusal to pay  
27 such compensation, Defendant has violated Title 29 U.S.C. §207, et seq.  
28

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

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

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

10          33. Doing all things described and alleged, Defendant has deprived, and  
11 continues to deprive Plaintiffs of their rights, privileges and immunities which  
12 were clearly established at the time the Defendant acted herein and the Defendant  
13 knew or should have known that its conduct would violate these rights, privileges  
14 and immunities. The Defendant acted with the intent to deprive Plaintiffs of their  
15 rights, privileges, and immunities by purposely and intentionally refusing and  
16 failing to pay or compensate Plaintiffs for hours they provided.

17  
18                   **WHEREFORE**, Plaintiffs pray for Judgment as follows:

19          34. All actual, consequential, liquidated and incidental losses and  
20 damages, according to proof;

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

24          36. Attorney fees pursuant to 29 U.S.C. §216 and costs pursuant to Rule  
25 54(d) of the Federal Rules of Civil Procedure;

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

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Respectfully submitted,

Date: October 24, 2018

**DAMMEIER LAW FIRM**

/s/ Dieter C Dammeier  
Dieter C. Dammeier  
Attorneys for Plaintiffs