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8
9 Attorneys for Plaintiffs,
10 **DARRELL ROBERTS, ET AL.**

11
12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 **DARRELL ROBERTS, TIMOTHY**
15 **ABRAMS, DAVID ALBRIGHT,**
16 **BRADLEY ALT, JAVIER ARAZA,**
17 **DAVID ARCOSTA, KURT BAU,**
18 **DARRIN BEAN, JAMES BERRY,**
19 **KENNETH BERTELSEN, RICHARD**
20 **BROCCHINI, VINCE CARDONA,**
21 **BRAD CARLIN, BRIAN CLARK,**
22 **ROBRT CUNNINGHAM, JEREMY**
23 **CZAPINSKI, TIFFANI CZAPINSKI,**
24 **SHANE D'AMBRA, MATTHEW**
25 **D'AMICO, LINDA D'ORSI, DUSTIN**
26 **DAUBER, BARRETT DAVENPORT,**
27 **RUDY DIAZ, RICH EAGAN, CHRIS**
28 **EDWART, MICHAEL T. ENGELMAN,**
JEFF EWERT, JEREMY FELBER,
MICHAEL FILSON, TREVOR
FLORES, ANDREW FONDACARO,
KAREN FOSTER, CHRISTOPHER
FRANSWAY, RICARDO FUENTES,
JAY NELSON GABIOLA, GARCIA
JAMES MICHAEL, RICHARD I. GARI,
DAN GILES, FRANK GODINEZ,

Case No.: **'16CV1955 MMADHB**

COMPLAINT ALLEGING
VIOLATIONS OF THE FAIR
LABOR STANDARDS ACT (29
U.S.C. §§ 201 et seq.)

DEMAND FOR JURY TRIAL

1 TIMOTHY GORMAN, TIMOTHY
2 GORMAN, JACOB GREGOIRE,
3 ROBERT GUARCELLO, ROB
4 HALCON, VICTOR HERRERIA, JOHN
5 HESS, ROBERT JR. HILL, THOMAS
6 HYDE, TOM JOHNSON, STEIN
7 JORGENSEN, JONAS JUSAY, CHRIS
8 KASTELIC, LISA KELLEY, BRIAN
9 KRAKLOW, CHARLES KUNIYOSHI,
10 ALEX LANDA, JEFF LINDGREN,
11 TANNER LINDSAY, SEAN LOWERY,
12 CHRIS MANROE, DAVID N.
13 MARGETTS JR., ANTONIO R.
14 MARTINEZ, BERNIE MARTINEZ,
15 ERIL D. MARTINEZ, MODESTO
16 MARTINEZ, ANDREW MATHEWS,
17 RYAN MATTER, MARK MCDONALD,
18 JOHN MCLINTOCK, TIM MEHRER,
19 TIM MEHRER, GREG MILLER,
20 MATTHEW MINEHAN, JASON NASH,
21 MICHAEL NASH, MICHAEL NEAL,
22 ERIK NELSON, ROB NELSON,
23 DANGKHOA NGUYEN, WILLIAM H.
24 IV NIGH, PABLO ORNELAS, BRYAN
25 OTTO, ROBERT PARKHILL, JEFF
26 PETER, PATRICK POWERS,
27 CHRISTOPHER RACAURSE, JOSH
28 REES, MIKE REEVES, VICTOR
REEVES, TOM RIEMER, ROBERT
JOSHUA SANDERS, ANTHONY
SARDO, CLINT SCHEPE, ERIC
SETTER, MARK SHELDON, RAY
SMITH, ENRIQUE SOTO, FRANCISCO
SOTO, RYAN STOLZOFF, KENNETH
D. STOVALL, DANIEL TARIN,
DANIEL THOMAS, ERIC TOPACIO,
TYSON VON GWENANZA, SCOTT
WAIKER, KIM WALLER, BRENT
WARREN, ANDY WILSON, TERRY

1 WIRTH, CRAIG ZEILINGER,
2 ZACHARY ZIETLOW, JOSEPH
3 ZIOMEK, and BRIAN T. ZOMIK,

4 Plaintiffs,

5 vs.

6 CITY OF CHULA VISTA; and DOES 1
7 THROUGH 10, inclusive,

8 Defendants.

9
10 **JURISDICTION**

11 1. This Court has subject matter jurisdiction over this action pursuant to
12 28 U.S.C. §§ 1331 and 1343(3), as the controversy arises under “the Constitution,
13 laws or treaties of the United States.” Specifically, the claim arises under the Fair
14 Labor Standard Act of 1938, 29 U.S.C. §§ 201 et seq. (“FLSA”).

15 **VENUE**

16 2. Venue is proper in the Southern District of California pursuant to 28
17 U.S.C. §1391(b) because the acts, events, or omissions giving rise to the claim
18 occurred in this District.

19 **PARTIES**

20 3. Plaintiffs Darrell Roberts, Timothy Abrams, David Albright, Bradley
21 Alt, Javier Araza, David Arcosta, Kurt Bau, Darrin Bean, James Berry, Kenneth
22 Bertelsen, Richard Brocchini, Vince Cardona, Brad Carlin, Brian Clark, Robrt
23 Cunningham, Jeremy Czapinski, Tiffani Czapinski, Shane D’Ambra, Matthew
24 D’Amico, Linda D’orsi, Dustin Dauber, Barrett Davenport, Rudy Diaz, Rich
25 Eagan, Chris Edwart, Michael T. Engelman, Jeff Ewert, Jeremy Felber, Michael
26 Filson, Trevor Flores, Andrew Fondacaro, Karen Foster, Christopher Fransway,
27 Ricardo Fuentes, Jay Nelson Gabiola, Garcia James Michael, Richard I. Gari, Dan
28 Giles, Frank Godinez, Timothy Gorman, Timothy Gorman, Jacob Gregoire, Robert

1 Guarcello, Rob Halcon, Victor Herreria, John Hess, Robert Jr. Hill, Thomas Hyde,
2 Tom Johnson, Stein Jorgenson, Jonas Jusay, Chris Kastelic, Lisa Kelley, Brian
3 Kraklow, Charles Kuniyoshi, Alex Landa, Jeff Lindgren, Tanner Lindsay, Sean
4 Lowery, Chris Manroe, David N. Margetts Jr., Antonio R. Martinez, Bernie
5 Martinez, Eril D. Martinez, Modesto Martinez, Andrew Mathews, Ryan Matter,
6 Mark McDonald, John McLintock, Tim Mehrer, Tim Mehrer, Greg Miller,
7 Matthew Minehan, Jason Nash, Michael Nash, Michael Neal, Erik Nelson, Rob
8 Nelson, Dangkhua Nguyen, William H. IV Nigh, Pablo Ornelas, Bryan Otto,
9 Robert Parkhill, Jeff Peter, Patrick Powers, Christopher Racourse, Josh Rees, Mike
10 Reeves, Victor Reeves, Tom Riemer, Robert Joshua Sanders, Anthony Sardo, Clint
11 Schepe, Eric Setter, Mark Sheldon, Ray Smith, Enrique Soto, Francisco Soto, Ryan
12 Stolzoff, Kenneth D. Stovall, Daniel Tarin, Daniel Thomas, Eric Topacio, Tyson
13 Von Gwenanza, Scott Waiker, Kim Waller, Brent Warren, Andy Wilson, Terry
14 Wirth, Craig Zeilinger, Zachary Zietlow, Joseph Ziomek, and Brian T. Zomik are
15 each United States citizens and are currently employed by the Defendant City of
16 Chula Vista.

17 4. Defendant City of Chula Vista (City) is a political subdivision of the
18 State of California. Defendant is, and at all relevant times was, the employer of
19 Plaintiffs. Defendant is an employer whose employees are engaged in commerce
20 within the meaning of 29 U.S.C. §207(a) and as defined in 29 U.S.C. §§ 203(d)
21 and 203(e)(2)(c).

22 **CLAIM FOR RELIEF**

23 5. Plaintiffs are non-exempt rank and file employees who are regularly
24 suffered or permitted to work in excess of the applicable overtime threshold every
25 work period, but do not receive compensation for all such time worked at the rate
26 of one and one-half times their regular rate of pay from Defendant.

27 6. Defendant has acknowledged this mistake, but has refused to fully
28 correct the matter. Not only is Defendant not paying for all hours worked above

1 the overtime threshold, but based upon information and belief, Defendant does not
2 include all forms of compensation in its calculation of the Plaintiffs' regular rate of
3 pay, all in violation of 29 U.S.C. Section 207.

4 7. Plaintiffs must be paid compensation for overtime work pursuant to
5 the provisions of Section 7 of the Fair Labor Standards Act, 29 U.S.C. § 207, et
6 seq. ("FLSA"), and regulations of the United States Department of Labor, and state
7 and local law, but they were not so paid.

8 8. Plaintiffs have informed Defendant that the complained of policies
9 and practices violate FLSA overtime provisions. However, Defendant have
10 refused to alter said policies and practices. In fact, Defendant has refused to
11 provide any meaningful response explaining its rationale and/or defense to said
12 illegal practices. Rather, Defendant has maintained the illegal practice.

13 9. Defendant knew or should have known of its obligation to pay
14 overtime compensation to Plaintiffs but nevertheless failed to honor that
15 obligation.

16 10. Defendant acted voluntarily and deliberately in maintaining an
17 intentional practice of failing to compensate Plaintiffs in accordance with the
18 FLSA.

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

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

23 13. As a direct and proximate result of Defendant's conduct, Plaintiffs
24 have been damaged in an amount according to proof at trial including, but not
25 limited to, a sum equivalent to the unpaid overtime compensation as required and
26 such other and further damages as may be shown.

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

1 15. Plaintiffs are also entitled to recovery of reasonable attorney fees and
2 costs incurred in pursuit of this action pursuant to 29 U.S.C. §216(b).

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

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

11 1. All actual, consequential, liquidated and incidental losses and
12 damages, according to proof;

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

16 3. Attorney fees pursuant to 29 U.S.C. §216 and costs pursuant to Rule
17 54(d) of the Federal Rules of Civil Procedure;

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

20 Respectfully submitted,

22 Date: August 2, 2016

ADAMS, FERRONE & FERRONE

24 _____
25 s/ Michael A. McGill
26 Michael A. McGill, Esq.
27 Attorneys for Plaintiffs,
28 DARRELL ROBERTS, ET AL.

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a jury trial under F.R. Civ. P., Rule 38 and E.D.
3 Local Rule 201.

4 Respectfully submitted,

5
6 Date: August 2, 2016

ADAMS, FERRONE & FERRONE

7
8 s/ Michael A. McGill

9 Michael A. McGill, Esq.

10 Attorneys for Plaintiffs,

11 DARRELL ROBERTS, ET AL.
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The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

See Attachment A

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Michael A. McGill, SBN 231613 Telephone: (805) 373-5900 ADAMS, FERRONE & FERRONE 4333 Park Terrace Drive, Suite 200, Westlake Village, California 91361

DEFENDANTS

City of Chula Vista; and DOES 1 THROUGH 10, inclusive

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor Standards, etc.

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, 6 Multidistrict Litigation

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: FLSA claim against Defendant for failure to pay overtime

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/02/2016 SIGNATURE OF ATTORNEY OF RECORD s/ Michael A. McGill

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPROVED BY JUDGE MAG JUDGE

Attachment A

Darrell Roberts, Timothy Abrams, David Albright, Bradley Alt, Javier Araza, David Arcosta, Kurt Bau, Darrin Bean, James Berry, Kenneth Bertelsen, Richard Brocchini, Vince Cardona, Brad Carlin, Brian Clark, Robrt Cunningham, Jeremy Czapinski, Tiffani Czapinski, Shane D’Ambra, Matthew D’Amico, Linda D’orsi, Dustin Dauber, Barrett Davenport, Rudy Diaz, Rich Eagan, Chris Edwart, Michael T. Engelman, Jeff Ewert, Jeremy Felber, Michael Filson, Trevor Flores, Andrew Fondacaro, Karen Foster, Christopher Fransway, Ricardo Fuentes, Jay Nelson Gabiola, Garcia James Michael, Richard I. Gari, Dan Giles, Frank Godinez, Timothy Gorman, Timothy Gorman, Jacob Gregoire, Robert Guarcello, Rob Halcon, Victor Herreria, John Hess, Robert Jr. Hill, Thomas Hyde, Tom Johnson, Stein Jorgenson, Jonas Jusay, Chris Kastelic, Lisa Kelley, Brian Kraklow, Charles Kuniyoshi, Alex Landa, Jeff Lindgren, Tanner Lindsay, Sean Lowery, Chris Manroe, David N. Margetts Jr., Antonio R. Martinez, Bernie Martinez, Eril D. Martinez, Modesto Martinez, Andrew Mathews, Ryan Matter, Mark McDonald, John McLintock, Tim Mehrer, Tim Mehrer, Greg Miller, Matthew Minehan, Jason Nash, Michael Nash, Michael Neal, Erik Nelson, Rob Nelson, Dangkhwa Nguyen, William H. IV Nigh, Pablo Ornelas, Bryan Otto, Robert Parkhill, Jeff Peter, Patrick Powers, Christopher Racourse, Josh Rees, Mike Reeves, Victor Reeves, Tom Riemer, Robert Joshua Sanders, Anthony Sardo, Clint Schepe, Eric Setter, Mark Sheldon, Ray Smith, Enrique Soto, Francisco Soto, Ryan Stolzoff, Kenneth D. Stovall, Daniel Tarin, Daniel Thomas, Eric Topacio, Tyson Von Gwenanza, Scott Waiker, Kim Waller, Brent Warren, Andy Wilson, Terry Wirth, Craig Zeilinger, Zachary Zietlow, Joseph Ziomek, and Brian T. Zomik