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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
15

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BARBERA, WILLIAM BARNES SR,
27 AMANTE BARTOLOME, THOMAS
BASHARA, RALPH BASSIL,
28 NICHOLAS BEAR, CHRISTOPHER

Case No. 2:23-cv-09565

**COMPLAINT FOR
DECLARATORY JUDGMENT,
COMPENSATION, AND OTHER
RELIEF**

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SCRIVNER, MICHAEL SEISER.
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MATTHEW SESTICH, NICHOLAS
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SIVABORVORN, DALE SMITH,
17 KEVIN SMITH, MARLEESE SMITH,
IAN SORIANO, MOHAMMAD
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ROBERT WYATT, GEORGE
YLLESCAS, DARYL YOSHIHASHI,
CHRISTOPHER YOUNG, KEENAN
YOUNG, GREGORY ZACCARO,
ELOY ZEPEDA, RICHARD ZWIRN,

Plaintiffs,

vs.

CITY OF LOS ANGELES,
CALIFORNIA

Defendant.

1 Plaintiffs, by and through their counsel, the law firm of Mooney, Green,
2 Saindon, Murphy & Welch, P.C., respectfully submit their complaint against the City
3 of Los Angeles, California, and state as follows:

4 **PARTIES**

5 1. At all times material herein, plaintiffs have been employed by the
6 defendant City of Los Angeles, California in the following classifications: Fire
7 fighter I; Fire fighter II; Fire Fighter III; Fire Inspector I; Fire Inspector II; Helicopter
8 Pilot I; Helicopter Pilot II; Helicopter Pilot III; Helicopter Pilot IV; Helicopter Pilot
9 V; Fire Captain I; Fire Captain II; Apparatus Operator; Engineer; Fireboat Pilot and
10 Fireboat Mate.

11 2. Plaintiffs bring this action for a declaratory judgment, back pay,
12 liquidated damages and other relief pursuant to 29 U.S.C. § 207, 29 U.S.C. § 216(b),
13 and 28 U.S.C. § 1331, to remedy the defendant's willful and unlawful violations of
14 federal law complained of herein.

15 3. Plaintiffs, who number 532 as of the date this Complaint is filed, are
16 identified in the caption of the Complaint and have given their written consent to be
17 party plaintiffs in this action pursuant to 29 U.S.C. § 216(b). Such written consents
18 are appended hereto in Appendix A. These written consent forms set forth each
19 plaintiff's name and address.

20 4. Each of the plaintiffs in this action while employed by the defendant has
21 been an "employee" within the meaning of the Fair Labor Standards Act ("FLSA"),
22 29 U.S.C. Section 203(e)(1).

23 5. Each of the plaintiffs is either a non-exempt employee entitled under
24 Section 7(a) of the FLSA to overtime equal to time and one-half their regular rate of
25 pay for all hours worked over forty (40) in a workweek, or, for those engaged in fire
26 protection activities, is a partially-exempt employee entitled under Section 7(k) of
27 the FLSA to overtime equal to time and one-half their regular rate of pay for all
28 hours worked over two-hundred twelve (212) in a twenty-eight (28) day period (or in

1 excess of a proportionate number of hours for work periods between 7 and 28 days).
2 29 U.S.C. § 207(a) and 207(k).

3 6. Defendant City of Los Angeles, California ("Los Angeles"), is an
4 employer within the meaning of Section 3(d) of the FLSA and a public agency
5 within the meaning of Section 3(x) of the FLSA. 29 U.S.C. § 203(d) and 203(x). Los
6 Angeles’s principal office and place of business is located at 200 N Spring St, Los
7 Angeles, CA 90012.

8 **JURISDICTION AND VENUE**

9 7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
10 and 29 U.S.C. § 216(b).

11 8. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

12 **FACTS**

13 9. At all times material to this action, plaintiffs have worked within the
14 Los Angeles Fire Department ("LAFD") for the defendant in the position of fire
15 fighter, fire inspector; helicopter pilot; fire captain; apparatus operator; engineer;
16 fireboat pilot or fireboat mate.

17 10. Plaintiffs are represented for the purposes of collective bargaining by
18 the International Association of Fire Fighters, Local 112, which is party to a
19 collective bargaining agreement (“CBA”) with the City of Los Angeles governing
20 the terms and conditions of Plaintiffs’ employment, including their hourly wage rate
21 and entitlement to certain other types of remuneration, including but not limited to:
22 Longevity Pay (CBA Art. 8.5), Wellness Bonuses (CBA Art. 9(a)), Retirement
23 Incentive Pay (CBA Letter of Agreement 2019-2023, MOU No. 23), Special Duty
24 and Platoon Duty Pay (CBA Art. 8.3), and Educational Bonuses (CBA Art. 8.6).
25 Cited sections of the CBA setting forth the agreement to provide these payments are
26 appended hereto in Appendix B.

27 11. The regular rate is the hourly rate actually paid to an employee for the
28 normal, non-overtime workweek (or work period under Section 7(k)) for which he or

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1 she is employed and must reflect all payments which the parties have agreed shall be
2 received regularly during the workweek, exclusive of payments excluded by Section
3 7(e)(1)-(8) of the Act. 29 U.S.C. § 207(e).

4 12. In addition to the hourly rate agreed upon by the parties in the CBA, the
5 regular rate used for the purpose of calculating the amount of overtime due and
6 owing to Plaintiffs must also include applicable Longevity Pay, Wellness Bonuses,
7 Retirement Incentive Pay, Special Duty and Platoon Duty Pay, and Educational
8 Bonuses, none of which are excludable from the regular rate by Section 7(e)(1-8) of
9 the Act. 29 U.S.C. § 207(e).

10 13. Los Angeles does not include applicable Longevity Pay, Wellness
11 Bonuses, Retirement Incentive Pay, Special Duty and Platoon Duty Pay, and
12 Educational Bonuses in the regular rate used for the purpose of calculating the
13 amount of overtime due and owing to all Plaintiffs, including those covered non-
14 exempt employees entitled to overtime as provided by Section 207(a) of the FLSA as
15 well as those covered partially-exempt employees entitled to overtime as provided by
16 Section 207(k) of the FLSA.

17 14. Each Plaintiff has in at least one work period within the last three years
18 worked more than the requisite number of hours to be entitled to overtime pay, in the
19 same period received or became entitled to immediately receive one of the types of
20 remuneration described in paragraph 10, and for that same period received overtime
21 pay from Defendant in amounts insufficient to meet Defendant's obligation to pay
22 time and one half a regular rate that does not exclude the payments described in
23 paragraph 10 of this Complaint.

24 **COUNT I – VIOLATION OF SECTION 207(a) of the**
25 **FAIR LABOR STANDARDS ACT**

26 15. Plaintiffs reallege and incorporate the allegations set forth in paragraphs
27 1 through 14.

28

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1 16. During the times that covered non-exempt Plaintiffs have worked in
2 excess of 40 hours in a workweek, defendant has failed to provide covered non-
3 exempt Plaintiffs with the rights and protections provided under the FLSA, including
4 overtime pay at the rate of one and one-half times their regular rates of pay for all
5 hours the covered non-exempt Plaintiffs have worked in excess of the hourly
6 standards set forth under 29 U.S.C. § 207(a).

7 17. By failing to pay covered non-exempt Plaintiffs the overtime pay
8 required under the law, the defendant has violated and is continuing to violate the
9 provisions of the FLSA in a manner that is unreasonable, willful and in bad faith. As
10 a result, at all times material herein, the Plaintiffs have been unlawfully deprived of
11 overtime compensation and other relief for the maximum period allowed under the
12 law.

13 18. As a result of the defendant's willful, unreasonable and bad faith
14 violations of the FLSA, there have become due and owing to the covered non-
15 exempt Plaintiffs an amount that has not yet been precisely determined. The
16 employment and work records for the covered non-exempt Plaintiffs (including time
17 and attendance records) are in the exclusive possession, custody and control of the
18 defendant and the plaintiffs are unable to state at this time the exact amount owing to
19 them. Defendant is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and
20 various other statutory and regulatory provisions, to maintain and preserve payroll
21 and other employment records with respect to the covered non-exempt Plaintiffs
22 from which the amount of defendant's liability can be ascertained.

23 19. Pursuant to 29 U.S.C. § 216(b), the covered non-exempt Plaintiffs are
24 entitled to recover liquidated damages in an amount equal to their back pay damages
25 for the defendant's failure to pay overtime compensation.

26 20. Covered non-exempt Plaintiffs are entitled to recover attorneys' fees
27 and costs under 29 U.S.C. § 216(b).

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**COUNT II – VIOLATION OF SECTION 207(k) of the
FAIR LABOR STANDARDS ACT**

21. Plaintiffs reallege and incorporate the allegations set forth in paragraphs 1 through 20.

22. During the times that covered partially-exempt Plaintiffs have worked in excess of 212 hours in a 28-day period (or in excess of a proportionate number of hours for work periods between 7 and 28 days), defendant has failed to provide covered partially-exempt Plaintiffs with the rights and protections provided under the FLSA, including overtime pay at the rate of one and one-half times their regular rates of pay for all hours the covered partially-exempt Plaintiffs have worked in excess of the hourly standards set forth under 29 U.S.C. § 207(k).

23. By failing to pay covered partially-exempt Plaintiffs and other employees the overtime pay required under the law, the defendant has violated and is continuing to violate the provisions of the FLSA in a manner that is unreasonable, willful and in bad faith. As a result, at all times material herein, the plaintiffs have been unlawfully deprived of overtime compensation and other relief for the maximum period allowed under the law.

24. As a result of the defendant's willful, unreasonable and bad faith violations of the FLSA, there have become due and owing to the covered partially-exempt Plaintiffs an amount that has not yet been precisely determined. The employment and work records for the covered non-exempt Plaintiffs (including time and attendance records) are in the exclusive possession, custody and control of the defendant and the plaintiffs are unable to state at this time the exact amount owing to them. Defendant is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to the covered partially-exempt Plaintiffs from which the amount of defendant's liability can be ascertained.

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Dated: November 13, 2023

LAUREN MCDERMOTT
(*Pro Hac Vice* to be Submitted)
SAMMY SUGIURA
(*Pro Hac Vice* to be Submitted)
ARTHUR R. TRAYNOR
(*Pro Hac Vice* to be Submitted)
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By: /s/ Lauren McDermott

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