

1 ELI NADURIS-WEISSMAN (CSB 254788)
E-mail: enaduris-weissman@rsglabor.com
2 HANNAH WEINSTEIN (CSB 301666)
E-mail: hweinstein@rsglabor.com
3 ROTHNER, SEGALL & GREENSTONE
510 South Marengo Avenue
4 Pasadena, California 91101-3115
Telephone: (626) 796-7555
5 Facsimile: (626) 577-0124

6 Attorneys for Plaintiffs and those similarly
situated
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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 ALBERTO ARELLANO, MAICO
ALEJO, and GARY OLLISON, on
13 behalf of themselves and all other
employees similarly situated,

14 Plaintiffs,

15 v.

16 CITY OF SAN DIEGO; and DOES 1
17 through 10, inclusive,

18 Defendants.
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20
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CASE NO. '18CV0229 BAS MDD

COMPLAINT FOR OVERTIME
WAGES
[29 U.S.C. § 201 *et seq.*, Fair Labor
Standards Act]

JURY TRIAL DEMANDED

22 JURISDICTION

23 1. The Court has jurisdiction of this case under 28 U.S.C. §§ 1331 and
24 1343(3) because it presents a federal question under the Fair Labor Standards Act
25 of 1938 (“FLSA”), 29 U.S.C. § 201 *et seq.*

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VENUE

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because defendant City of San Diego is in this federal district and because the events giving rise to the claims for relief occurred in this District.

PARTIES

3. Plaintiffs are current or former non-exempt employees of the City of San Diego. Plaintiffs bring this action on their own behalf and, pursuant to 29 U.S.C. § 216(b), on behalf of all other current and former non-exempt employees similarly situated. Plaintiffs have consented in writing to become a party to this action. This is a proposed collective action for which current and former employees who opt in will file consents to join in this action pursuant to 29 U.S.C. § 216(b).

4. Defendant City of San Diego (“City”) is a charter city and a political subdivision of the State of California and at all relevant time is, or was, each plaintiff’s employer. The City is an employer within the meaning of 29 U.S.C. § 203(d).

5. The true names and/or capacities, whether individual, corporate, associate, or otherwise, of defendants DOES 1 through 10, inclusive, are unknown to plaintiffs, who therefore sue said defendants by such fictitious names.

6. Plaintiffs are informed and believe, and on that basis allege, that each defendant named in this action, including DOE defendants, was at all relevant times the agent, ostensible agent, servant, employee, representative, assistant, joint venture, and/or co-conspirator of each of the other defendants and was at all times acting within the course and scope of authority as agent, servant, employee,

1 representative, assistant, joint venture, and/or co-conspirator and with the same
2 authorization, consent, permission, and/or ratification of each of the other
3 defendants.

4
5 CLAIM FOR RELIEF

6 7. At all relevant times, Plaintiffs and those current and former
7 employees similarly situated are, and were, employed by the City within the
8 meaning of 29 U.S.C. § 203(g). Plaintiffs Alberto Arellano, Maico Alejo, and
9 Gary Ollison are, and were during the relevant three-year period, each employed
10 by the City as electricians. Each was at all relevant times a non-exempt employee
11 eligible to earn overtime under the FLSA who worked more than forty hours in one
12 or more seven-day workweeks within the relevant three-year period. Plaintiffs and
13 those current and former employees similarly situated did work more than forty
14 hours in one or more seven-day work weeks in the relevant three-year period. In
15 2015, 2016, and from January through July of 2017, Plaintiff Alberto Arellano
16 worked more than forty hours in a seven-day work week on average two times per
17 month. In 2015, 2016, and 2017, Plaintiff Maico Alejo worked at least one
18 hundred hours of overtime each year. In 2016 and in 2017, Plaintiff Gary Ollison
19 worked at least two hundred hours of overtime each year. Each was entitled to
20 have his or her overtime rate of pay determined by reference to his or her regular
21 rate of pay within the meaning of 29 U.S.C. § 207.

22
23 8. At all relevant times, Plaintiffs and those current and former
24 employees similarly situated are, and were, participants in the City's Flexible
25 Benefits Plan, under which each was entitled to an annual amount of money,
26 known as "flex dollars," which he or she could designate for use for purchase of
27 health and welfare benefits paid on the employee's behalf by the City to trustees or
28 third parties or which he or she could take in various forms as cash-in-lieu of

1 benefits. Within the relevant three-year period, Plaintiff Arellano has taken his
2 “flex dollars” as cash-in-lieu of health and welfare benefits. Within the relevant
3 three-year period, Plaintiffs Alejo and Ollison have designated their “flex dollars”
4 for use for purchase of health and welfare benefits paid by the City on their behalf
5 to trustees or third parties.

6
7 9. On or about June 30, 2017, the City notified employees that, effective
8 July 1, 2017, the City “will include in an employee’s FLSA overtime calculations
9 the cash value of any flexible benefit credits that they did not use to pay for health,
10 dental, vision or life insurance.” Plaintiffs are informed and believe, and on that
11 basis allege, that the City’s action was taken in response to the decision in *Flores v.*
12 *City of San Gabriel*, 824 F.3d 890 (9th Cir. 2016), cert. denied.

13
14 10. At all relevant times, the City failed to include all remuneration paid
15 to or on behalf of Plaintiffs and current and former employees similarly situated,
16 including “flex dollars,” in the employee’s regular rate of pay for purposes of
17 calculating the employee’s overtime rate of pay.

18
19 11. At relevant times, the City failed to include in overtime payments
20 made to Plaintiffs and current and former employees similarly situated flex
21 benefits paid as cash-in-lieu of benefits as remuneration to or on behalf of the
22 employee in the employee’s regular rate of pay for purposes of calculating the
23 employee’s overtime rate of pay.

24
25 12. At relevant times, the City failed to include in overtime payments
26 made to Plaintiffs and current and former employees similarly situated flex
27 benefits paid to trustees or third parties on behalf of employees as remuneration to
28 or on behalf of the employee in the employee’s regular rate of pay for purposes of

1 calculating the employee's overtime rate of pay. Such flex benefits paid to trustees
2 or third parties on behalf of employees for health, dental, vision, life insurance, or
3 other similar employee benefits were not, and are not, excludable from the
4 employee's regular rate of pay for purposes of calculating the employee's overtime
5 rate of pay under 29 U.S.C. § 207(e)(4) and under the *Flores* decision as
6 contributions irrevocably made to a bona fide plan.

7
8 13. The City's failure to include all remuneration paid to or on behalf of
9 the employee, including "flex dollars," in an employee's regular rate of pay for
10 purposes of calculating the employee's overtime rate of pay violated, and
11 continues to violate, the FLSA, in that the City underpaid and underpays Plaintiffs
12 and current and former employees similarly situated for all overtime hours for
13 which they worked and will work. The City's failure to include all remuneration
14 paid to or on behalf of the employee, including "flex dollars," in the employee's
15 regular rate of pay for purposes of calculating the employee's overtime rate of pay
16 affects all non-exempt employees who worked or will work in excess of forty
17 hours in any work week similarly, in that the City underpaid and underpays such
18 employees for overtime hours for which they worked or will work.

19
20 14. Plaintiffs and current and former employees similarly situated are
21 entitled to liquidated damages in an amount equal to the amount of underpaid
22 overtime under 29 U.S.C. § 216(b).

23
24 15. The City's and defendants' conduct was willful within the meaning of
25 29 U.S.C. § 255(a) in that the City was on notice of and knew its obligations under
26 the FLSA, including during the pendency of the *Flores* case and continuing after
27 its resolution, yet disregarded its obligations to treat flex dollars as remuneration
28 for overtime purposes.

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WHEREFORE, Plaintiffs pray for the following relief:

1. That notice be given to current and former non-exempt employees of the City that, if they worked during the relevant period and/or continue to work more than forty hours in a work week during a time when they participated and/or participate in the City’s Flex Benefits Plan, they have a right to join this action, without retaliation;

2. That judgment be entered against the City in the amounts respectively due plaintiffs and current and former employees similarly situated for unpaid overtime compensation, liquidated damages, and interest as the Court may determine pursuant to 29 U.S.C. § 216(b);

3. That the Court issue a permanent injunction against the City under 29 U.S.C. § 217 restraining further violations of the FLSA;

4. That the Court award attorneys’ fees, costs, and prejudgment interest pursuant to 29 U.S.C. § 216(b); and

5. For such other and further relief as to the Court may deem just and proper.

DATED: January 31, 2018

ELI NADURIS-WEISSMAN
HANNAH WEINSTEIN
ROTHNER, SEGALL & GREENSTONE

s/Hannah Weinstein
Attorneys for Plaintiffs Alberto Arellano,
Maico Alejo, and Gary Ollison, on behalf of
themselves and all other employees
similarly situated
E-mail: hweinstein@rsglabor.com

CIVIL COVER SHEET

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

Alberto Arellano, Maico Alejo, and Gary Ollison, on behalf of themselves and all other employees similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Eli Naduris-Weissman and Hannah Weinstein Rothner, Segall & Greenstone 510 S. Marengo Ave., Pasadena, CA 91101 (626) 796-7555

DEFENDANTS

City of San Diego, and DOES 1 through 10, inclusive

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'18CV0229 BAS MDD

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, BANKRUPTCY, 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. 216(b) Brief description of cause: Underpayment of FLSA-eligible overtime worked

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: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Roger T. Benitez DOCKET NUMBER 3:17CV1464 BEN BGS

DATE 01/31/2018 SIGNATURE OF ATTORNEY OF RECORD s/Hannah Weinstein

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 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 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. 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 Rule 8(a), F.R.Cv.P., 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.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 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.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 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 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN 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 Rule 23, F.R.Cv.P.
 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 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

1 ELI NADURIS-WEISSMAN (CSB 254788)
E-mail: enaduris-weissman@rsglabor.com
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6 Attorneys for Plaintiffs and those similarly
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALBERTO ARELLANO, MAICO
ALEJO, and GARY OLLISON, on
behalf of themselves and all other
employees similarly situated,

Plaintiffs,

v.

CITY OF SAN DIEGO; and DOES 1
through 10, inclusive,

Defendants.

CASE NO. '18CV0229 BAS MDD

**CONSENT TO JOIN ACTION
UNDER FAIR LABOR
STANDARDS ACT**
[29 U.S.C. § 216(b)]

I, Alberto Arellano, an employee of the City of San Diego,
want to join this lawsuit to seek unpaid overtime compensation which may be
owed to me by the City of San Diego. Accordingly, I consent to become a party
plaintiff in the above-captioned action filed under the Fair Labor Standards Act, 29
U.S.C. § 216(b).

Dated: 01/29/18

By: Alto Arellano

1 ELI NADURIS-WEISSMAN (CSB 254788)
E-mail: enaduris-weissman@rsglabor.com
2 HANNAH WEINSTEIN (CSB 301666)
E-mail: hweinstein@rsglabor.com
3 ROTHNER, SEGALL & GREENSTONE
510 South Marengo Avenue
4 Pasadena, California 91101-3115
Telephone: (626) 796-7555
5 Facsimile: (626) 577-0124

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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ALBERTO ARELLANO, MAICO
ALEJO, and GARY OLLISON, on
behalf of themselves and all other
employees similarly situated,

Plaintiffs,

v.

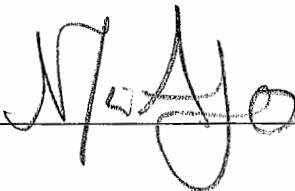
CITY OF SAN DIEGO; and DOES 1
through 10, inclusive,

Defendants.

CASE NO. '18CV0229 BAS MDD

**CONSENT TO JOIN ACTION
UNDER FAIR LABOR
STANDARDS ACT**
[29 U.S.C. § 216(b)]

I, Marco Alejo, an employee of the City of San Diego,
want to join this lawsuit to seek unpaid overtime compensation which may be
owed to me by the City of San Diego. Accordingly, I consent to become a party
plaintiff in the above-captioned action filed under the Fair Labor Standards Act, 29
U.S.C. § 216(b).

Dated: 1/26/2018 By: 

1 ELI NADURIS-WEISSMAN (CSB 254788)
E-mail: enaduris-weissman@rsglabor.com
2 HANNAH WEINSTEIN (CSB 301666)
E-mail: hweinstein@rsglabor.com
3 ROTHNER, SEGALL & GREENSTONE
510 South Marengo Avenue
4 Pasadena, California 91101-3115
Telephone: (626) 796-7555
5 Facsimile: (626) 577-0124

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 ALBERTO ARELLANO, MAICO
12 ALEJO, and GARY OLLISON, on
behalf of themselves and all other
13 employees similarly situated,

14 Plaintiffs,

15 v.

16 CITY OF SAN DIEGO; and DOES 1
through 10, inclusive,
17

18 Defendants.
19
20

CASE NO.

**CONSENT TO JOIN ACTION
UNDER FAIR LABOR
STANDARDS ACT**
[29 U.S.C. § 216(b)]

21 I, Gary Ollison, an employee of the City of San Diego,
22 want to join this lawsuit to seek unpaid overtime compensation which may be
23 owed to me by the City of San Diego. Accordingly, I consent to become a party
24 plaintiff in the above-captioned action filed under the Fair Labor Standards Act, 29
25 U.S.C. § 216(b).
26

27 Dated: 1/29/18
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By: Gary Ollison

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Against City of San Diego Seeks to Shed Light on Potentially Illegal Pay Practices](#)
