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8 Attorney for Plaintiffs David K. Kries, Gary Mondesir
9 and those similarly situated

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

12	DAVID K. KRIES, and GARY MONDESIR, on behalf of themselves and all other employees similarly situated,)	Case No. <u>'17CV1464 BEN BGS</u>
13	Plaintiffs,)	COMPLAINT FOR OVERTIME WAGES (29 U.S.C. § 207)
14	vs.)	
15	CITY OF SAN DIEGO; and DOES 1 through 10, inclusive,)	
16	Defendants.)	
17)	
18)	

19 1. Plaintiffs DAVID K. KRIES, and GARY MONDESIR, on behalf of themselves
20 and all other employees similarly situated, bring this action on behalf of themselves and other
21 employees and former employees of the City of San Diego to recover unpaid overtime
22 compensation, liquidated damages, interest, attorney’s fees and costs under the provisions of Fair
23 Labor Standards Act of 1938, as amended (29 U.S.C. § 201, et seq.).

24 **I.**
25 **PARTIES**

26 4. The Plaintiffs are employees of the City of San Diego. The plaintiffs bring this
27 action on their own behalf and, pursuant to 29 U.S.C. § 216(b), on behalf of all other employees
28 and former employees similarly situated. The plaintiffs have consented in writing to becoming

1 such a party and have filed such written consents pursuant to 29 U.S.C. § 216(b).

2 5. Defendant City of San Diego (“City”) is the employer of the plaintiffs and those
3 similarly situated.

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

7 7. The plaintiffs are informed and believe and thereon allege that each of the
8 defendants designated herein as a DOE is responsible in some manner for the events and
9 happenings herein referred to, and caused injury and damages proximately thereby to plaintiff as
10 herein alleged. Plaintiffs will seek leave of court to amend this complaint to set forth the true
11 names and capacities of such named defendants when their identities become known.

12 8. The plaintiffs are informed and believe and thereon allege that each defendant
13 named in this action, including DOE defendants, at all relevant times, was the agent, ostensible
14 agent, servant, employee, representative, assistant, joint venturer, and/or co-conspirator of each
15 of the other defendants, and was at all times acting within the course and scope of his, her, or its
16 authority as agent, ostensible agent, servant, employee, representative, joint venturer, and/or
17 co-conspirator, and with the same authorization, consent, permission or ratification of each of the
18 other defendants.

19 9. Jurisdiction is proper because this case presents a federal question.

20 10. Venue is proper because the City of San Diego is in this federal district.

21 **II**

22 **COUNT ONE**

23 **(Against the City of San Diego Under 29 U.S.C. § 216(b))**

24 11. During the period relevant to this Complaint, Defendant City has failed to
25 correctly calculate the “regular rate” of pay (29 U.S.C. § 207(e) of the plaintiffs and others
26 similarly situated.

27 12. The City’s failure to correctly calculate the regular rate was caused by, among
28 other things, failing to include cash paid to the plaintiffs, and other similarly situated, in lieu of

1 providing or paying medical and related insurance premiums under the City's flexible benefits
2 plan. See *Flores v. City of San Gabriel* (9th Cir. 2016) 824 F.3d 890 (requiring such payments
3 to be included in the "regular rate").

4 13. The plaintiffs, and others similarly situated, worked overtime for the City in the
5 three-year period before the filing of this complaint.

6 14. The amount paid by the City for this overtime was too low because the City had
7 failed to properly calculate the regular rate of pay on which the overtime rate was calculated.

8 15. The City's violation of the Fair Labor Standards Act set forth herein was "willful"
9 because, based on information and belief, the City took no affirmative action to assure
10 compliance with the FLSA requirements.

11 WHEREFORE, Plaintiffs pray for the following:

12 1. That Notice be given to present and former employees of the City informing them
13 of their right to join -- without retaliation -- in that portion of this action brought pursuant to 29
14 U.S.C. §§ 215(a)(3) and 216(b);

15 2. That judgment be entered against the City in the amounts respectively due the
16 plaintiffs and other employees and former employees of the City similarly situated for unpaid
17 overtime compensation, liquidated damages, and interest as the Court may determine pursuant to
18 29 U.S.C. §216(b);

19 3. That pursuant to 29 U.S.C. § 217 a permanent injunction be entered against the
20 City restraining further violations of the Fair Labor Standards Act, among others;

21 4. Attorney's fees, costs and prejudgment interest pursuant to 29 U.S.C. § 216(b);

22 5. For such additional and further relief as this Court may deem just.

23
24 Dated: July 19, 2017

s/Michael A. Conger
Attorney for Plaintiffs
E-Mail: congermike@aol.com

25
26
27 **JURY TRIAL DEMANDED**

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

DAVID K. KRIES, and GARY MONDESIR, 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)

Michael A. Conger
Law Office of Michael A. Conger
P.O. Box 9374, Rancho Santa Fe, CA 92067; (858) 759-0200

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)

'17CV1464 BEN BGS

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)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, 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. Section 207
Brief description of cause:
Complaint for Overtime Wages

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 SIGNATURE OF ATTORNEY OF RECORD

07/20/2017 s/Michael A. Conger

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.

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10 **UNITED STATES DISTRICT COURT**
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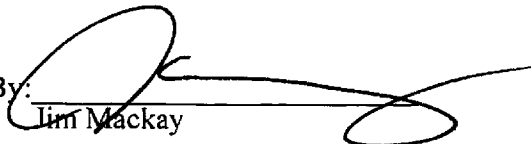
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15 Plaintiffs,)
16 vs.)
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18 inclusive,)
19 Defendants.)

CASE NO: **'17CV1464 BEN BGS**

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

20 I, Jim Mackay, hereby authorize and consent to become a party plaintiff to this action
21 pursuant to 29 U.S.C. 216(b).

22 Dated: July 19, 2017

23 By: 
24 Jim Mackay

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Employees File Suit Against City of San Diego Over Allegedly Improper OT Wages](#)
