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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY ABOUDARA, JR.;)
JONATHAN AARSHEIM; JON ABERS;)
AJ ALCO CER; MICHAEL ALCO CER;)
VANCE ALKIRE; ALBERT ARMANINI;)
CODY BAGLEY; ROBERT BANKS;)
JENNIFER BARTHOLOMEW; BEN)
BASQUE; TRAVIS BERG; DEAN)
BOURDAGE; SCOTT BRISTOW;)
RACHELLE BROOKE; JUDAS ZANE)
BROWN; JEFF BROWN; BRIAN)
BUCHANAN; KYLE BUNCH; SCOTT)
BYRN; ANTHONY CAMILLERI; JASON)
CLINKENBEARD; JASON CLOUGH;)
TRAVERS COLLINS; CAMERON)
CORNELSSEN; MATTHEW COX;)
MATTHEW DACUNHA; DOUG)
DAHME; STEPHEN DALPORTO;)
FRANK DAMANTE; WESLEY DAVID;)
THEODORE DAY; DEAN GUNNAR;)
MATTHEW DEVINE; EARL DUNCKEL;)
JAMES ECKHOFF; MIA EMERSON;)
JAMES FEIGE; KEVIN FLEMMING;)
JOSHUA GAGNEBIN; THOMAS)
GALLAGHER; ROBERT GILES;)
TIMOTHY GLASS; MATTHEW)
GLOECKNER; CHAD GOFF; JAIMIE)
HARCOS; IAN HARDAGE; MICHAEL)
HARRISON; IAN HODGES; SAMUEL)
HOEL; SAGE HOWELL; JOSEPH)
HUGHES; ANDREW IHLENFELDT;)

Case No.
COLLECTIVE ACTION - 29 U.S.C. § 216
COMPLAINT FOR VIOLATIONS OF THE
FAIR LABOR STANDARDS ACT

1 JOE IMBODEN; MARK JACKSON)
 KEITH JEFFUS; JASON JENKINS;)
 2 MICHAEL JOHNSON; STAVROS)
 KALOGIROU; ROY KEEGAN; JEFFREY)
 3 KELLY; RICK KERRIGAN; DAVID)
 KIM;)
 4 MARC LAGOURGUE; KEENAN LEE;)
 MICHAEL LELLIS; CRAIG LOCKETT;)
 5 GUERRERO LOPEZ; PAUL)
 6 LOWENTHAL; CHRIS MATTHIES;)
 GREGORY MCCOLLUM; MICHAEL)
 7 MCGAHAN;)
 GIULIETTA MILLER; JOHNNY MIU;)
 8 STEVE MONTOYA; STEPHEN)
 MORIKAWA; MICHAEL MUSGROVE;)
 9 MICHAEL NEALON; TONY NIEL;)
 BRANDON PALMER; ROBERT)
 10 PANACCI; DAMON PEARSON; DREW)
 PETERSEN; LARRY PETERSEN;)
 11 MARITA PETERSEN; JEFF PETERSON;)
 TIMOTHY POLACEK; BRYON REID;)
 12 TOBY REY; DONALD RICCI; PAUL)
 RICCI; CHASE RICHARDSON;)
 13 CORINNE RICKERT; JAMES RITCHIE;)
 14 KEMPLEN ROBBINS; CHRISTOPHER)
 ROBERTS; DARYL SAGER;)
 15 ALEJANDRO SERRANO; MICHAEL)
 SIEGEL; ALAN SIMPSON; JASON)
 16 SINCLAIR; CHRIS SKYE; STEPHEN)
 SMOKER; RAYMOND SPRADLIN;)
 17 BRIAN STABY; ROBERT STRATTON;)
 STEVE SUTER; VINCENT TA; JESSIE)
 18 TAINTOR; MELVIN TAUA;)
 JACK THOMAS; NATHAN VAGT;)
 19 ANDREW VALLELY; MICHAEL)
 20 WEISS; ANTHONY WESTERGAARD;)
 BRIAN WHITE; PETER WOOD;)
 21 KONSTANTIN ZHEREBNENKOV,)
 on behalf of themselves and all similarly)
 22 situated individuals,)
)
 23 Plaintiffs,)
 v.)
 24)
 25 CITY OF SANTA ROSA,)
)
 26 Defendant.)
)
 27)
 28)

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I.

INTRODUCTION

1. This action is brought pursuant to the provisions of the Fair Labor Standards Act (“FLSA”) 29 U.S.C. sections 201, *et seq.*, to recover from Defendant CITY OF SANTA ROSA (hereinafter “Defendant”) unpaid overtime and other compensation, interest thereon, liquidated damages, costs of suit and reasonable attorney fees.
2. This action arises from Defendant’s failure to include all statutorily required forms of compensation in the “regular rate” used to calculate Plaintiffs’ overtime compensation.

II.

PARTIES

3. Plaintiffs are employed as firefighters by the City of Santa Rosa. Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals. Defendant deprived Plaintiffs and similarly situated individuals of their full statutorily required compensation for hours worked.
4. Defendant implemented an illegal compensation computation method, which undercounts Plaintiffs’ “regular rate” of pay. Defendant’s method of calculating Plaintiffs’ and other similarly situated individuals’ “regular rate” of pay results, and has resulted in under-payment for overtime hours worked. Defendant suffered or permitted Plaintiffs and similarly situated individuals to perform overtime work without proper compensation.
5. Defendant is a political subdivision of the State of California and employed the Plaintiffs.
6. Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals. Those individuals constitute a well-defined community of interest in the questions of law and fact at issue in this case. The claims of the represented Plaintiffs are typical of the claims of those similarly situated.
7. The named Plaintiffs will fairly and adequately reflect and represent the interests of those similarly situated. There is no conflict as to the individually named Plaintiffs and other

1 members of the class with respect to this action or with respect to the claims for relief herein
2 set forth.

3 **III.**

4 **JURISDICTION**

5 8. This action is brought pursuant to the provisions of the FLSA, 29 U.S.C. sections 201, *et seq.*,
6 to recover from Defendant unpaid overtime compensation, interest thereon, liquidated damages,
7 costs of suit and reasonable attorney fees. This Court has jurisdiction over this action pursuant
8 to 28 U.S.C. section 1331 and 29 U.S.C. section 216(b), because this action is based on the
9 FLSA. This Court has subject matter jurisdiction of this action pursuant to 29 U.S.C. sections
10 207, *et seq.*

11 **IV.**

12 **COLLECTIVE ACTION ALLEGATIONS**

13 9. Plaintiffs bring this action on behalf of themselves and all similarly situated current and former
14 employees of the City of Santa Rosa who worked overtime and received holiday in lieu or sick
15 leave incentive program payments at any time from June 30, 2013 to the present. For example,
16 members of Bargaining Unit 5, comprised primarily of police officers, also receive holiday pay
17 in lieu that was not included in the “regular rate” used to calculate their overtime compensation.
18 Those individuals are similarly situated and constitute a well-defined community of interest in
19 their respective questions of law and fact relevant to this action. The claims of the Plaintiffs are
20 typical of those of other individuals similarly situated. The Plaintiffs will fairly and adequately
21 represent the interests of those similarly situated.

22 10. On or about November 30, 2016, Plaintiff TIMOTHY ABOUDARA, JR., in his capacity as
23 President for the International Association of Firefighters, Local 1401 (“Local 1401”), and
24 Defendant’s City Manager entered into a written agreement tolling the statute of limitations for
25 Plaintiffs’ FLSA claims.

26 11. This action is brought by Plaintiffs as a collective action, on his own behalf and on behalf of all
27 others similarly situated, under the provisions of 29 U.S.C. section 216, for damages, liquidated
28

1 damages, a three-year statute of limitations, and relief incident and subordinate thereto,
2 including costs and attorney fees.

3 12. The exact number of members similarly situated in the collective group, as herein above
4 identified and described, is estimated to consist of over one hundred individuals.

5 13. There are common questions of law and fact in this action relating to and affecting the rights
6 of each member of the collective group, including whether Defendant failed to fully compensate
7 Plaintiffs and other similarly situated individuals for all overtime worked by excluding
8 compensation in lieu of holidays and sick leave attendance incentives from the “regular rate”
9 of pay used to calculate overtime compensation. The relief sought is common to the entire
10 class.

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

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

20 16. Plaintiffs’ lawyers are experienced and capable in the field of FLSA and labor/employment
21 litigation and have successfully represented thousands of claimants in other litigation of this
22 nature.

23 17. Plaintiffs’ counsel, Mastagni Holstedt, APC, will conduct and be responsible for Plaintiffs’ case
24 herein. David E. Mastagni and Isaac S. Stevens, who will be primarily responsible for litigating
25 this matter, have represented thousands of employees pursuing wage and hour claims
26 throughout the State of California, and have recovered millions of dollars on their behalf.

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1 18. This action is appropriate for conditional certification as a collective action because Defendant
2 subjected Plaintiffs and the other members of the class to the same practice of excluding certain
3 remunerations from the regular rate of pay in violation of 29 U.S.C. section 207.

4 19. This factual nexus is sufficient to justify the Court to exercise its discretion to ensure that
5 accurate and timely notice is given to all similarly situated former and current employees of
6 Defendant so that they may make an informed decision about whether to join this action.

7 **V.**

8 **FACTUAL ASSERTIONS**

9 20. Plaintiffs are or were employed as firefighters for the City of Santa Rosa.

10 21. At all times relevant hereto, Plaintiffs' terms and conditions of employment, including their
11 compensation, was governed by a collective bargaining agreement between the City of Santa
12 Rosa and Local 1401.

13 22. At all times relevant hereto, Defendant suffered or permitted Plaintiffs and other similarly
14 situated individuals to work hours beyond statutory thresholds for overtime compensation
15 required by the FLSA.

16 23. At all times relevant hereto, Defendant impermissibly excluded certain remunerations or
17 undervalued the regular rate of pay, upon which all forms of Plaintiffs' overtime compensation
18 are based.

19 24. Pursuant to 29 U.S.C. section 207(e), the "regular rate" must include all remuneration received
20 by an employee unless it is explicitly excluded. The burden is on an employer to demonstrate
21 that a payment is excludable from the regular rate. (*Madison v. Resources for Human*
22 *Development* (3rd. Cir. 2000) 233 F.3d 175, 187.)

23 25. Defendant's past and current practice of computing Plaintiffs' overtime has impermissibly
24 reduced the amount being paid to Plaintiffs by failing to compute all statutorily required
25 amounts into Plaintiffs' "regular rate" of pay as defined by 29 U.S.C. section 207(e).

26 26. Defendant provides Plaintiffs and similarly situated individuals a lump sum payment equal
27 to 168 hours of pay in lieu of taking holidays each year. Defendant provides this compensation
28 in a lump sum payment each December, and treats it as taxable wages.

1 27. Defendant excluded Plaintiffs' holiday in lieu pay from the "regular rate" used to calculate their
2 overtime. On information and belief, Defendant excluded holiday in lieu pay from the "regular
3 rate" used to calculate overtime for all similarly situated individuals.

4 28. Pursuant to Defendant's collective bargaining agreement with Bargaining Unit 5, Defendant
5 provides police employees a similar holiday in lieu payment that is not included in their "regular
6 rate" used to calculate their overtime compensation.

7 29. Defendant also provides Plaintiffs and similarly situated individuals pay equivalent to a shift's
8 worth of work for using less than fifty-six hours of sick leave each year. Defendant treats
9 payments for this sick leave incentive as taxable wages.

10 30. Defendant excluded sick leave incentive pay from the "regular rate" used to calculate Plaintiffs'
11 overtime compensation during the relevant time period. On information and belief, Defendant
12 excluded sick leave incentive pay from the "regular rate" used to calculate similarly situated
13 individuals' overtime compensation.

14 31. Pursuant to 29 U.S.C. section 207(e), Defendant is statutorily required to include all forms of
15 remuneration in Plaintiffs' "regular rate" of pay.

16 32. 29 U.S.C. section 207(e)(2), which allows employers to exclude from the "regular rate"
17 payments for periods where no work is performed, reasonable payments for traveling expenses
18 or other expenses incurred by employees, and other similar payments which are not made as
19 compensation for employees' work does not allow Defendant to exclude monetary
20 compensation paid to Plaintiffs in lieu of holidays and sick leave incentives.

21 38. By excluding these holiday in-lieu and sick leave incentive payments from the "regular rate"
22 used to calculate overtime compensation paid to Plaintiffs and other similarly situated
23 individuals, Defendant failed to pay them one and one-half times their "regular rate" of pay for
24 all hours of overtime they worked.

25 39. Likewise, by failing to include all remuneration in employees' "regular rate" of pay, Defendant
26 failed to compensate Plaintiffs and similarly situated individuals for cashing out compensatory
27 time off ("CTO").
28

1 40. Defendant has a policy of cashing out Plaintiffs' unused CTO at less than the rate required by
2 29 U.S.C. section 207(o)(3) and (4).

3 41. 29 U.S.C. section 207(o)(3)(B) requires that, if "compensation is paid to an employee for
4 accrued compensatory time off, such compensation shall be paid at the regular rate earned by
5 the employee at the time the employee receives such payment."

6 42. 29 U.S.C. section 207(o)(4) requires that, upon termination of employment, employees must
7 be paid for their unused CTO at a rate of compensation not less than the greater of "(A) the
8 average regular rate received by such employee during the last 3 years of the employee's
9 employment, or (B) the final regular rate received by such employee."

10 43. Defendant has implemented and maintained an agency-wide practice of excluding certain
11 remunerations, including holiday in lieu and sick leave incentive payments, in the "regular rate"
12 of pay used to pay out CTO accruals.

13 44. At all times relevant hereto, Defendant and its agents and representatives were aware of their
14 obligations to properly compute and use the correct "regular rate" of pay in calculating overtime
15 compensation owed to Plaintiffs and similarly situated individuals.

16 45. Plaintiffs are informed and believes and thereon allege Defendant and its agents and/or
17 representatives willfully and knowingly violated the FLSA by continuing to exclude
18 remunerations from the calculation of Plaintiffs' and similarly situated individuals' "regular
19 rate" of pay.

20 46. Defendant's continuing failure to properly compensate Plaintiffs and similarly situated
21 individuals was not in good faith and is a willful violation of the FLSA as it applies to
22 employees of local governments. Defendant has continued its unlawful practices even after
23 Plaintiffs have raised their claims for backpay.

24 47. As a result of the foregoing violations of the FLSA alleged herein, Plaintiffs seek damages for
25 lost overtime compensation and undervalued cash outs of CTO, as well as liquidated damages.
26 Plaintiffs seek these damages for the entire period of time Defendant has engaged in said
27 unlawful and willful conduct, up to three years as prescribed by the FLSA.

28 48. Plaintiffs also seek reasonable attorney fees and costs pursuant to 29 U.S.C. section 216(b).

FIRST COUNT

(Fair Labor Standards Act - Failure to Pay All Overtime Compensation Earned)

1
2
3 49. Plaintiffs incorporate by reference each and every paragraph above inclusive as though set forth
4 fully herein.

5 50. Defendant suffered or permitted Plaintiffs, and on information and belief other similarly situated
6 individuals, to work overtime but failed to include all required forms of compensation into the
7 “regular rate” of pay used to calculate their overtime compensation, as well as amount of cash
8 paid to Plaintiffs and similarly situated individuals who cashed out CTO.

9 51. By failing to include all requisite forms of compensation in the “regular rate” of pay used to
10 calculate overtime compensation and CTO cash outs, Defendant failed to compensate Plaintiffs
11 and similarly situated individuals at one and one-half times the “regular rate” of pay for all
12 overtime hours as required by the FLSA.

13 52. At all times relevant hereto, Defendant and its agents and representatives were aware of their
14 obligations to pay Plaintiffs and similarly situated individuals for all hours worked at one and
15 half times the “regular rate” of pay as required by the FLSA.

16 53. At all times relevant hereto, Defendant and its agents and representatives knew or should have
17 known of their obligations to pay Plaintiffs and similarly situated individuals overtime
18 compensation at one and one-half of their regular rate of pay for all hours worked in excess of
19 the applicable maximum weekly hours established by section 207 of the FLSA.

20 54. At all times relevant hereto Defendant’s failure to fully compensate Plaintiffs for all hours
21 worked was not in good faith, and was a willful violation of the FLSA.

22 55. As a result of the foregoing violations of the FLSA as herein enumerated, Plaintiffs seek
23 damages for three (3) years’ back pay of overtime compensation that was earned but unpaid, as
24 well as an equal amount in liquidated damages.

25 56. Plaintiffs also seek reasonable attorney fees and costs pursuant to 29 U.S.C. section 216(b).

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PRAYER

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For recovery of unpaid overtime compensation and interest thereon plus an equal amount of liquidated damages for all Plaintiffs pursuant to 29 U.S.C. section 216(b);
2. For a determination that Defendant’s conduct was reckless and/or an intentional, knowing, and willful violation of the FLSA, and therefore Plaintiffs are entitled to recover damages under a three (3) year statute of limitations;
3. For reasonable attorney fees pursuant to 29 U.S.C. section 216(b);
4. For costs incurred as a result of this proceeding;
5. For injunctive relief ordering the Defendant to cease and desist from engaging in said unlawful conduct, including but not limited to, excluding holiday in lieu and sick leave incentive payments from employees’ regular rate of pay;
6. For conditional certification of the class as plead;
7. For an order to timely notify all potential class members of this action; and,
8. For such other and further relief as the court deems just and proper.

Dated: March 27, 2017

MASTAGNI HOLSTEDT, APC

By: /s/ David E. Mastagni
DAVID E. MASTAGNI
ISAAC S. STEVENS
ACE T. TATE
Attorneys for Plaintiffs

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
TIMOTHY ABOUDARA, JR., et al., on behalf of themselves and all similarly situated individuals

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
David E. Mastagni
Mastagni Holstedt, APC
1912 I Street
Sacramento, California 95811
(916) 446-4692

DEFENDANTS
CITY OF SANTA ROSA

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

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in one box only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	X <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
		LABOR	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in one box only)

X 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

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. sections 201, et seq.

Brief description of cause:
Collective Action for unpaid overtime and other compensation, interest thereon, liquidated damages, costs of suit and reasonable attorney fees.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ Amount to be proven. CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)
(Place an "X" in one box only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE: March 27, 2017 SIGNATURE OF ATTORNEY OF RECORD: /s/ David E. Mastagni

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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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11
12 IN THE UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 TIMOTHY ABOUDARA, JR., et. al., on)
16 behalf of himself and all similarly situated)
17 individuals,)
18)
19 Plaintiffs,)
20 v.)
21)
22 CITY OF SANTA ROSA,)
23)
24 Defendant.)

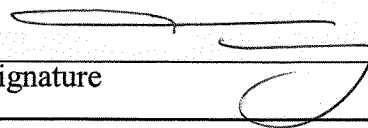
Case No.

**CONSENT TO BE INCLUDED AS AN
INDIVIDUAL PLAINTIFF [29 U.S.C. §
216(b)]**

25 I have been employed by the City of Santa Rosa within the last three years from the date
26 indicated below, and I am generally familiar with the above-captioned litigation. The City of Santa
27 Rosa has not fully compensated me for the hours of overtime I have worked in violation of the Fair
28 Labor Standards Act. The City of Santa Rosa failed to pay my overtime at the "regular rate of pay" as
defined by 29 U.S.C. § 207(e). I therefore consent to be included as a Plaintiff in the above-mentioned
litigation and to be awarded damages if any are recovered. I understand that the law offices of Mastagni
Holstedt, APC, will be representing me in this action and that this consent form will be filed with the
court pursuant to 29 U.S.C. § 216(b). I authorize said counsel to make all decisions with respect to the
conduct and handling of this case, including the settlement thereof as they deem appropriate and/or
necessary.

Dated: 9/14, 2016

TIMOTHY D ABOUDARA JR
Print name


Signature

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Santa Rosa, CA Firefighters Sue City Over 'Miscalculated' Overtime Pay](#)
