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17 *Attorneys for Plaintiffs Daniel Gonzalez,*
18 *John Frye, and Tony Ortiz*
19 *And all others similarly situated*

20 UNITED STATES DISTRICT COURT
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 DANIEL GONZALEZ, JOHN FRYE,
23 and TONY ORTIZ, individually and
24 on behalf of all others similarly
25 situated;

26 Plaintiffs,

27 vs.

28 CITY OF LOS ANGELES, a public
entity; and DOES 1 through 100,
inclusive

Defendant.

Case No.:

**COLLECTIVE ACTION
COMPLAINT FOR DAMAGES**

**Failure to Pay Overtime
Violation of the Fair Labor
Standards Act (29 U.S.C. § 201, et
seq.)**

JURY TRIAL DEMANDED

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PRELIMINARY STATEMENT

1
2 1. Plaintiffs Daniel Gonzalez, John Frye, and Tony Ortiz on behalf of
3 themselves and all other similarly situated employees of the City of Los Angeles
4 (hereinafter “Plaintiffs”), bring this collective action to recover unpaid overtime
5 compensation, liquidated damages, and attorney’s fees and costs from Defendant City
6 of Los Angeles (“City” or “Defendant”), pursuant to the Fair Labor Standards Act
7 (“FLSA”) 29 U.S.C. § 201, *et seq.* Defendant has a policy and practice of employing
8 Plaintiffs and other similarly situated individuals for up to an hour and a half, and
9 sometimes more, past the end of their shift, without paying them any wages for that
10 work time. Defendant’s failure to pay proper overtime pay constitutes a willful
11 violation of the FLSA.

12 2. Plaintiffs and others similarly situated were employed by Defendant in the
13 Los Angeles Fire Department (“LAFD”) and were denied proper compensation under
14 the FLSA. The FLSA Collective is comprised of all persons who were employed by
15 the City of Los Angeles in the Los Angeles Fire Department at any time within three
16 years prior to this action’s filing date through the trial of this action (the “Collective
17 Period”), in the following job positions: Firefighter III, Paramedic, Firefighter III
18 Paramedic, Apparatus Op., Engineer, Fire Captain I, Fire Captain II, Fireboat Pilot,
19 Fireboat Mate, Helicopter Pilot I, Helicopter Pilot II, Helicopter Pilot III, Helicopter
20 Pilot IV, and Helicopter Pilot V.

21 3. During the Collective Period, Defendant failed to pay overtime
22 compensation to Plaintiffs and each member of the FLSA Collective as required by
23 federal law. Plaintiffs seek relief for themselves and for the FLSA Collective under the
24 FLSA to remedy Defendant’s failure to pay appropriate overtime compensation.

THE PARTIES

25
26 4. Plaintiff Daniel Gonzalez (“Gonzalez”) is a resident of Los Angeles
27 County, California. He is employed by the City of Los Angeles as a Firefighter III
28

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1 Paramedic in the LAFD. Plaintiff Gonzalez has been employed by the City with LAFD
2 since December 3, 2003.

3 5. Plaintiff John Frye (“Frye”) is a resident of Riverside County, California.
4 He is employed by the City of Los Angeles as a Firefighter III in the LAFD. Plaintiff
5 Frye has been employed by the City with LAFD since September 2008.

6 6. Plaintiff Tony Ortiz (“Ortiz”) is a resident of Riverside County,
7 California. He started working for the City with the LAFD on June 8, 1989. Plaintiff
8 Ortiz retired from his position of Fire Captain I on January 31, 2023.

9 7. Defendant City of Los Angeles is and at all relevant times was a
10 government entity organized under the laws of the State of California.

11 8. Defendant City of Los Angeles is a public agency within the meaning of
12 29 U.S.C. §203(x) and an employer as defined by 29 U.S.C. § 203(d), which, at the
13 times relevant hereto, employed Plaintiffs and others similarly situated. Upon
14 information and belief, Defendant at all relevant times has been aware of the
15 provisions of the FLSA.

16 9. Defendant is an “enterprise” as defined by 29 U.S.C. § 203(r), including
17 as defined by 29 U.S.C. § 203(r)(2)(C).

18 10. Defendant is an “enterprise engaged in commerce or in the production of
19 goods for commerce” as defined in 29 U.S.C. § 203(s), including in 29 U.S.C. §
20 203(s)(1)(C).

21 **JURISDICTION AND VENUE**

22 11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as
23 this case is brought under the FLSA, 29 U.S.C. §§ 201 *et seq.* Plaintiffs have signed
24 consent forms to join this lawsuit, which are attached as Exhibit A. As this case
25 proceeds, it is likely that other individuals will file consent forms and join as opt-in
26 plaintiffs.

27 12. Venue is proper in the United States District Court, Central District of
28 California pursuant to 28 U.S.C. § 1391, because Defendant operated in the City of

1 Los Angeles and because a substantial part of the events giving rise to the claims
2 occurred in this district. This case is properly assigned to the Western Division of the
3 Central District.

4 **FACTUAL ALLEGATIONS**

5 13. During the applicable statutory period, Plaintiffs and others similarly
6 situated worked for the City in the LAFD and in the following job positions:
7 Firefighter III, Paramedic, Firefighter III Paramedic, Apparatus Op., Engineer, Fire
8 Captain I, Fire Captain II, Fireboat Pilot, Fireboat Mate, Helicopter Pilot I, Helicopter
9 Pilot II, Helicopter Pilot III, Helicopter Pilot IV, and Helicopter Pilot V. The City
10 employed Plaintiffs and other similarly situated individuals.

11 14. Plaintiffs and others similarly situated are covered by the FLSA and are
12 therefore entitled to overtime compensation at the rate of one and one-half times their
13 regular rates of pay for all hours worked in excess of the maximum hours provided in
14 29 U.S.C. § 207.

15 15. Plaintiffs and others similarly situated work on a “platoon shift,” which is
16 a 24 hour shift.

17 16. Defendant has declared a Section 7(k) partial overtime exemption for
18 Firefighters engaged in fire protection activities pursuant to 29 U.S.C. § 207(k).

19 17. Employees Defendant deems covered by the 7(k) exemption are typically
20 scheduled for nine (9) twenty-four (24) hour shifts in each twenty-seven (27) day work
21 period. For these employees, hours worked in excess of two hundred four (204) hours,
22 whether or not included in the regular schedule, are to be compensated at one and one
23 half (1½) times the regular rate, as defined by the FLSA. This pay structure is referred
24 to in this complaint as the “27 Day FLSA Schedule.”

25 18. During the past 3 years Plaintiffs Frye and Ortiz worked platoon shifts
26 under the 27 Day FLSA Schedule as employees of Defendant in the LAFD.

27 19. LAFD employees who are not primarily engaged in fire protection
28 activities, and are therefore not subject to the 7(k) exemption, are eligible for overtime

1 after working in excess of forty (40) hours in a week. This pay structure is referred to
2 in this complaint as the “FLSA 40 Schedule.”

3 20. LAFD employees who work under the FLSA 40 Schedule are assigned to
4 twenty-four (24) hour platoon shifts, just like employees working under the 27 Day
5 FLSA Schedule.

6 21. Plaintiff Gonzalez works platoon shifts under the FLSA 40 Schedule as an
7 employee of Defendant in the LAFD.

8 22. The stated start time for platoon shifts in the LAFD is 8:00 a.m., meaning
9 that a twenty-four hour shift would start and end at 8:00 a.m.

10 23. However, LAFD has an “early relief” policy and practice. Under LAFD’s
11 early relief policy and practice, employees arrive at or before 6:30 am to relieve their
12 counterpart from the previous shift. The process of relieving a counterpart employee is
13 called “Making Relief.”

14 24. When Plaintiffs and others similarly situated Make Relief at 6:30 a.m.,
15 they put their own personal protective equipment on the fire truck, or “rig,” and
16 perform a complete check of the rig to ensure it is ready for any calls. If a call comes
17 to the fire department at or after 6:30 a.m., the employee who has Made Relief takes
18 the call.

19 25. This has resulted in employees across the entire Department working a
20 twenty-four (24) hour shift from 6:30 a.m. until 6:30 a.m. the following day.

21 26. When an employee’s counterpart does not arrive at 6:30 a.m., Defendant
22 requires that the employee keep working until the employee’s counterpart arrives for
23 work.

24 27. Also, Defendant frequently orders a “recall.” When Defendant orders a
25 “recall,” no employees may leave at 6:30 a.m. Instead, all employees must stay on
26 until 8:00 a.m., or until released by Defendant. Between 6:30 a.m. and 8:00 a.m.,
27 Defendant determines which of the employees will be required to work the entire
28

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1 following shift. At 8:00 a.m., or when that decision is made, those employees who are
2 not required to work the following shift are allowed to go home.

3 28. Defendant does not pay Plaintiffs or others similarly situated for
4 additional work hours after 6:30 a.m., even though Defendant requires that the
5 employees remain on their shift until relieved, or until 8:00 a.m.

6 29. Based on this policy and practice, Defendant has routinely required,
7 suffered, or permitted Plaintiffs and others similarly situated to work longer than their
8 24 hour shift without proper overtime pay.

9 30. Plaintiff Gonzalez has been held over past 6:30 a.m., without pay,
10 consistently and repeatedly over the last three years while waiting for relief or as a
11 result of a recall.

12 31. By way of example, Plaintiff Gonzalez worked the morning of December
13 28 through the morning of December 31, 2022. Plaintiff Gonzalez began working at
14 6:30 a.m. on December 28. On December 30, 2022, Defendant announced a recall for
15 the C shift for the next day. Accordingly, on December 31, 2022, Plaintiff Gonzalez
16 and similarly situated employees on the C shift were held over from 6:30 a.m. until
17 8:00 a.m. Defendant paid Plaintiff Gonzalez for 72 hours of work for these three shifts,
18 even though he worked 73.5 hours (6:30 a.m. on December 28 through 8:00 a.m. on
19 December 31).

20 32. On January 2, 2023, Plaintiff Gonzalez began a 24 hour platoon shift at
21 6:30 a.m. On January 3, 2023, Plaintiff Gonzalez was held over until 8:00 a.m.,
22 because he was waiting for another Firefighter III Paramedic to travel from another
23 station to relieve him. Defendant paid Plaintiff Gonzalez for only 24 hours even
24 though he worked 25.5 hours.

25 33. On January 11, 2023, Plaintiff Gonzalez began a 24 hour platoon shift at
26 6:30 a.m. On January 12, 2023, Plaintiff Gonzalez was held over until 7:15 a.m.
27 because he was waiting for another Firefighter III Paramedic to travel from another
28

1 station to relieve him. Defendant paid Plaintiff Gonzalez for only 24 hours even
2 though he worked 24.75 hours.

3 34. Plaintiff Frye has also been held over past 6:30 a.m. many times over the
4 last three years while waiting for relief or because of a recall.

5 35. By way of example, Plaintiff Frye worked a 24 hour platoon shift from
6 the morning of September 30, 2022, to the morning of October 1, 2022. He began
7 working at 6:30 a.m. on September 30. At or around 5:00 p.m. on September 30, 2022,
8 Defendant announced a recall for the A shift for October 1, 2022. As a result,
9 Defendant required that Plaintiff Frye remain working past 6:30 a.m. Defendant only
10 paid Plaintiff Frye for 24 hours for this shift, even though he worked 25.5 hours.
11 Plaintiff Frye worked at least 9 platoon shifts during the 27-day work period that
12 included September 30, 2022, meaning that he was entitled to overtime pay for the 1.5
13 additional hours he worked on October 1, 2022.

14 36. By way of further example, Defendant announced recalls for the A shift,
15 while Plaintiff Frye was working, for October 30, 2022, November 19, 2022, and
16 December 2, 2022. On each of these occasions Plaintiff Frye had begun working at or
17 before 6:30 a.m. the prior day and Defendant required that he remained working past
18 6:30 a.m. at the end of his shift. Despite this additional work, Defendant only paid
19 Plaintiff Frye for 24 hours for each of these shifts. These shifts took place during 27
20 day work periods in which Plaintiff Frye worked at least 9 platoon shifts, meaning he
21 was eligible for overtime pay for these additional hours worked.

22 37. Plaintiff Ortiz has been held over past 6:30 a.m., almost once a week or
23 more, frequently without pay, consistently and repeatedly over the last three years
24 while waiting for relief or as a result of a recall.

25 38. By way of example, on or about December 3, 2022, Plaintiff Ortiz began
26 a 24 hour platoon shift at 6:30 a.m. At or around 5:00 p.m. on December 3, 2022,
27 Defendant announced a recall for the C shift for December 4, 2022. On December 4,
28 2022, Defendant required Plaintiff Ortiz and similarly situated employees on the C

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1 shift to continue working until 8am because of the recall. This caused Plaintiff Ortiz to
2 work 25.5 hours. However, Defendant only paid Plaintiff Ortiz for 24 hours for that
3 shift. This shift took place during a 27 day work period in which Plaintiff Ortiz
4 worked at least 9 platoon shifts, meaning he was eligible for overtime pay the
5 additional time worked.

6 39. Defendant was previously sued for failing to pay firefighters for all hours
7 worked. *See Tomassi v. City of Los Angeles*, No. CV 08-1851 DSF (SSX), 2010 WL
8 11596646 (C.D. Cal. Apr. 2, 2010). Defendant was also sued several times for
9 improperly applying the 7(k) exemption to paramedics who are not engaged in fire
10 protection activities. Defendant therefore knows that failing to pay for all hours
11 worked violates the FLSA.

12 COLLECTIVE ACTION ALLEGATIONS

13 40. Plaintiff brings this action on behalf of himself and other similarly
14 situated employees as authorized under the FLSA, 29 U.S.C. § 216(b). The employees
15 similarly situated are as follows:

16 **FLSA Collective:** All Persons who have been employed by the City of Los
17 Angeles in the Los Angeles Fire Department at any time
18 within three years prior to this action’s filing date through
19 the trial of this action (the “Collective Period”), in the
20 following job positions: Firefighter III, Paramedic,
21 Firefighter III Paramedic, Apparatus Op., Engineer, Fire
22 Captain I, Fire Captain II, Fireboat Pilot, Fireboat Mate,
23 Helicopter Pilot I, Helicopter Pilot II, Helicopter Pilot III,
24 Helicopter Pilot IV, and Helicopter Pilot V.

25 41. Defendant knew that Plaintiffs and the FLSA Collective performed work
26 that required overtime pay. Defendant operated under a scheme to deprive these
27 employees of overtime compensation by failing to properly compensate them for all
28 hours worked.

1 42. Defendant is liable under the FLSA for failing to properly compensate
2 Plaintiffs and the FLSA Collective, and as such, notice should be sent to the FLSA
3 Collective. There are numerous similarly situated current and former employees of
4 Defendant who have been denied overtime pay in violation of the FLSA who would
5 benefit from the issuance of Court-supervised notice of this lawsuit and the
6 opportunity to join. Those similarly situated employees are known to Defendant and
7 are readily identifiable through Defendant’s records.

8 **CLAIM FOR RELIEF**

9 **FAILURE TO PAY OVERTIME UNDER THE FLSA**

10 29 U.S.C. §§ 201 et seq.

11 (On Behalf of Plaintiffs and the FLSA Collective)

12 43. Plaintiffs and the FLSA Collective allege and incorporate by reference the
13 allegations in the preceding paragraphs.

14 44. At all relevant times, Defendant was an “employer” that employed
15 employees, including Plaintiffs and each member of the FLSA Collective, within the
16 meaning of the FLSA, 29 U.S.C. § 203(d).

17 45. Defendant City of Los Angeles is a public agency within the meaning of
18 29 U.S.C. §203(x). Defendant is an “enterprise” as defined by 29 U.S.C. § 203(r),
19 including as defined by 29 U.S.C. § 203(r)(2)(C). Defendant is an “enterprise engaged
20 in commerce or in the production of goods for commerce” as defined in 29 U.S.C. §
21 203(s), including in 29 U.S.C. § 203(s)(1)(C).

22 46. Plaintiffs consent in writing to be a part of this action, pursuant to 29
23 U.S.C. § 216(b). As this case proceeds, it is likely that other individuals will sign
24 consent forms and join as plaintiffs.

25 47. The FLSA requires each covered employer, such as Defendant, to
26 compensate all non-exempt employees at a rate of not less than one and one-half times
27 the regular rate of pay for work performed in excess of forty hours per work week.
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1 48. The FLSA provides a partial exemption for employees engaged in fire
2 protection activities. *See* 29 U.S.C. § 207(k). When an employer establishes a 27 day
3 work period, as Defendant did here, the employer must pay employees subject to the
4 7(k) exemption overtime after 204 hours in a 27 day work period. *See* 29 U.S.C. §
5 207(k)(2).

6 49. Defendant repeatedly failed to pay Plaintiffs Frye and Ortiz proper
7 overtime pay when they worked without pay at the end of their shifts, during 27 day
8 work periods in which they worked more than 204 hours.

9 50. Defendant repeatedly failed to pay Plaintiff Gonzalez proper overtime pay
10 when he worked without pay at the end of his shifts, during weeks in which he worked
11 over 40 hours.

12 51. Plaintiffs and the FLSA Collective are entitled to be paid overtime
13 compensation for all hours worked. By failing to compensate Plaintiffs and the FLSA
14 Collective overtime compensation, Defendant violated the FLSA, 29 U.S.C. §§ 201 *et*
15 *seq.*

16 52. By failing to record, report, and/or preserve records of hours worked by
17 Plaintiff and the FLSA Collective, Defendant failed to make, keep, and preserve
18 records with respect to each of their employees sufficient to determine their wages,
19 hours, and other conditions and practice of employment, in violation of the FLSA, 29
20 U.S.C. §§ 201 *et seq.*

21 53. The foregoing conduct, as alleged, constitutes a willful violation of the
22 FLSA, within the meaning of 29 U.S.C. § 255(a).

23 54. Plaintiffs, on behalf of themselves and the FLSA Collective, seek
24 damages in the amount of all unpaid overtime compensation owed to themselves and
25 the FLSA Collective, liquidated damages as provided by the FLSA, 29 U.S.C. §
26 216(b), interest, and such other legal and equitable relief as the Court deems just and
27 proper.
28

1 55. Plaintiffs, on behalf of themselves and the FLSA Collective, seek
2 recovery of attorneys’ fees and costs to be paid by Defendant, as provided by the
3 FLSA, 29 U.S.C. § 216(b).

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, on behalf of themselves and all members of the
6 FLSA Collective, pray for relief as follows:

- 7 A. Designation of this action as a collective action on behalf of Plaintiffs
8 and those similarly situated and prompt issuance of notice pursuant to
9 29 U.S.C. § 216(b) to all those similarly situated apprising them of the
10 pendency of this action, and permitting them to assert timely FLSA
11 claims in this action by filing individual consent forms pursuant to 29
12 U.S.C. § 216(b);
- 13 B. Judgment against Defendant for violation of the overtime provisions of
14 the FLSA;
- 15 C. Judgment that Defendant’s violations as described above were willful;
- 16 D. An award in an amount equal to Plaintiffs’ and the Collective’s unpaid
17 back wages at the applicable overtime rate;
- 18 E. An award to Plaintiffs and those similarly situated for the amount of
19 unpaid wages owed, liquidated damages and penalties where provided
20 by law, and interest thereon, subject to proof at trial;
- 21 F. An award of reasonable attorneys’ fees and costs pursuant to 29 U.S.C.
22 § 216 and/or other applicable laws;
- 23 G. An award of prejudgment interest to the extent liquidated damages are
24 not awarded;
- 25 H. Leave to add additional plaintiffs by motion, the filing of written
26 consent forms, or any other method approved by the Court; and
- 27 I. For such other and further relief, in law or equity, as this Court may
28 deem appropriate and just.

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DEMAND FOR JURY

Plaintiffs and those similarly situated hereby demand a jury trial.

DATED: February 10, 2023

**PUBLIC EMPLOYEES LEGAL, LLP
NICHOLS KASTER, LLP**

By:  _____

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