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11 Attorneys for Plaintiffs on behalf of themselves and all others similarly situated

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13 **UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
15

16 RICHARD DUPLESSE and TOM
FAHRNY, on their own behalf and as a
17 collective action on behalf of all others
similarly situated,

18 Plaintiffs,

19 vs.

20 COUNTY OF LOS ANGELES, a
21 political subdivision of the State of
California,

22 Defendant
23
24

Case No.

**COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF;
DEMAND FOR JURY TRIAL**

**[COLLECTIVE ACTION UNDER
FLSA- FAILURE TO PAY
OVERTIME 29 U.S.C. §216(B)]**

25 Plaintiffs Richard Duplesse and Tom Fahrny (hereinafter “Named Plaintiffs”),
26 on behalf of themselves and all other similarly situated employees of the Los Angeles
27 County Fire Department, bring this collective action under the Fair Labor Standards
28 Act, 29 U.S.C. §216(b), (“FLSA”) against Defendant County of Los Angeles (“the

1 County” or “Defendant”) for overtime compensation, liquidated damages, attorneys
2 fees and costs and for declaratory relief as follows:

3 **JURISDICTION AND VENUE**

4 **1.** This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
5 §§1331 and 1343(3) as the controversy arises under the laws of the United States. This
6 claim arises under the Fair Labor Standards Act of 1938, 29 U.S.C. §§201 *et seq.*
7 (“FLSA”).

8 **2.** Venue is proper in the Central District of California pursuant to 29 U.S.C
9 §216(b) and 28 U.S.C. §1391, as Plaintiffs’ claims arise out of Defendant’s acts and
10 omissions which occurred in the County of Los Angeles, California.

11 **PARTIES**

12 **3.** Named Plaintiff Richard Duplesse is, and during the relevant time period was,
13 employed as a Firefighter for Defendant in the Los Angeles County Fire Department
14 (“LACOFD”) and who, within the last three years, has worked overtime hours for
15 Defendant.

16 **4.** Named Plaintiff Tom Fahrny is, and during the relevant time period was,
17 employed as a Firefighter for Defendant in the LACOFD and who, within the last three
18 years, has worked overtime hours for Defendant.

19 **5.** Named Plaintiffs have each given their written consent to be a party plaintiff in
20 this action pursuant to 29 USC §§216(b) and 256, which consents are attached hereto
21 collectively as Exhibit A.

22 **6.** Named Plaintiffs bring this action on their own behalf and as a collective action
23 pursuant to the FLSA, 29 U.S.C. §216(b), on behalf of all others similarly situated,
24 described as all individuals employed at LACOFD as Firefighters (“Firefighter”
25 includes all Firefighter classifications, including but not limited to Fire Fighter and Fire
26 Fighter Specialist of all ranks and certifications), who, within the applicable statute of
27 limitations, have worked hours entitling the employee to overtime compensation under
28

1 the FLSA. Hereinafter Named Plaintiffs and all other similarly situated individuals
2 shall be referred to collectively as “Plaintiffs”.

3 **7.** Defendant County of Los Angeles is, and at all relevant times was, a political
4 subdivision of the State of California, duly organized and existing under the laws of the
5 State of California. Defendant County of Los Angeles is named as a defendant herein
6 as the legal employer of all persons employed and working in LACOFD.

7 **8.** Defendant is a public agency within 29 U.S.C. §203(x), is an employer as
8 defined by 29 U.S.C. 203(d), and is an “enterprise” as defined by 29 U.S.C. §203(r).

9 **CLAIM FOR RELIEF**

10 **9.** At all times Plaintiffs have been entitled to the rights, protections and benefits
11 provided under the FLSA, including the right and entitlement to overtime
12 compensation at the rate of one and one-half (1.5) times their “regular rate” of pay for
13 all overtime hours worked.

14 **10.** Defendant, through agreement between it and Firefighters Local 1014 (the
15 designating bargaining unit for LACOFD Firefighters) has declared a partial exemption
16 under 29 U.S.C. § 207(k) for Firefighters. At all relevant times, Defendant and Local
17 1014 have agreed and memorialized in applicable Memoranda of Understanding
18 (“MOU”) that the declared FLSA work period for employees regularly assigned to a
19 platoon schedule is 8 shifts in a 24 consecutive day period and that all employees
20 assigned to a platoon schedule shall be paid overtime for all hours worked in excess of
21 182 hours in a 24 consecutive day period. As such, all hours worked by Firefighters,
22 including Plaintiffs, assigned to platoon schedules and who work excess of 182 hours
23 in the designated 24-consecutive day period must be paid 1.5 times their “regular rate”
24 of pay for all hours in excess of 182 hours.

25 **11.** Section 207(e) of the FLSA provides, in relevant part, that “all remuneration for
26 employment paid to, or on behalf of, the employee” must be included in the employee's
27 regular rate of pay for calculation of overtime. Thus, for calculation of an employee’s
28 “regular rate” for purposes of calculating overtime, the employer must include all non-

1 discretionary bonuses included in the employee's compensation, which in the case of
2 LACOFD would include all non-discretionary bonuses such as any longevity bonus,
3 EMT bonus, post and non-post paramedic bonus, hazardous material bonus, USAR
4 (urban search and rescue) bonus, etc.)

5 **12.** Each of the Named Plaintiffs is a Firefighter who has earned additional non-
6 discretionary bonuses which are part of their regular rate of pay and which should be
7 included in their regular rate when overtime rates are calculated.

8 **13.** Under information and belief Named Plaintiffs allege that during the relevant
9 time period, and as part of a common policy and practice, Defendant County of Los
10 Angeles has not included, and does not include, the proper amounts when calculating
11 the "regular rate" of pay for purposes of calculating overtime compensation for
12 Firefighters. Specifically, Defendant fails to include all non-discretionary bonuses in
13 the calculation of the "regular rate" for purposes of calculating the hourly rate for
14 overtime. As a result, Named Plaintiffs have been denied their full overtime
15 compensation required under the FLSA.

16 **14.** Under information and belief, Named Plaintiffs allege that the payroll practices
17 used Defendant to calculate Named Plaintiffs' regular rate of pay for purposes of
18 overtime is the common and typical method by which Defendant calculates overtime
19 for all Firefighters. Named Plaintiffs, under information and belief, further allege that
20 the practices as set forth above have been uniform, regular and consistent in the payroll
21 practices of Defendant in the LACOFD, across all stations, squads and platoons for at
22 least the preceding three years and that as result all Firefighters with non-discretionary
23 bonuses have been denied their full overtime compensation.

24 **15.** Named Plaintiffs further allege under information and belief that Defendant is a
25 sophisticated public entity, knowledgeable of the requirements of the FLSA.

26 **16.** Under information and belief, Named Plaintiffs allege that managers and
27 supervisors at LACOFD have known about, approved and, in effect, ratified the
28 foregoing practices to the point where it has become the policy of the LACOFD to

1 calculate Firefighter overtime compensation without including all non-discretionary
2 bonuses in the regular rate of pay. Under information and belief, Defendant is fully
3 cognizant of its violations of the FLSA in calculating overtime compensation to
4 Firefighters. As such, the failure of Defendant to properly calculate the regular rate of
5 pay in calculating overtime compensation for Firefighters is a knowing, willful or
6 reckless violation of the FLSA 29 U.S.C. §207, within the meaning of 29 U.S.C.
7 §255(a).

8 **17.** Each Plaintiff is entitled to his/her unpaid overtime compensation, liquidated
9 damages, penalties, interest, and attorneys' fees and costs, under the FLSA, 29 U.S.C.
10 §207 and 216(b).

11 **18.** Plaintiffs' Claims for Relief for violations of the FLSA may be brought and
12 maintained as an "opt-in" collective action pursuant to Section 16(b) of the FLSA, for
13 all claims asserted by the Plaintiffs because the claims of the Named Plaintiffs are
14 similar to the claims of the Plaintiffs.

15 **19.** Plaintiffs are similarly situated with the Named Plaintiffs because they are or
16 were employed as a Firefighter (as previously defined in paragraph 6) by Defendant,
17 they earned non-discretionary bonuses and/or certifications, and were subject to the
18 same or similar unlawful practices as the individually-named Plaintiffs, as described
19 above. The number and identity of all Plaintiffs yet to opt-in may be determined from
20 the records of the LACOFD, and potential Plaintiffs may be notified of the pendency of
21 this action utilizing the records of Defendant.

22 **20.** Pursuant to 29 U.S.C. §207 and §216(b), Defendant is liable to the Plaintiffs for
23 the full amount of all unpaid overtime compensation, plus an additional equal amount
24 as liquidated damages, plus reasonable attorneys fees, together with the costs and
25 disbursements of this action. Each Plaintiff is entitled to the unpaid compensation and
26 liquidated damages owed to him/her, and other relief available under the FLSA
27 beginning three years immediately preceding commencement of this action as provided
28 by 29 U.S.C. §§216(b) and 255.

1 **21.** In addition, pursuant to applicable authority, the Court may toll the look-back
2 period beyond three years and extend the statute of limitations back to a point to
3 provide full compensation for all Firefighters who have been subject to Defendant's
4 unlawful policy and practices, as set forth above.

5 **22.** The employment and payroll records for the Plaintiffs are in the exclusive
6 possession, custody and control of Defendant, who is under a duty to maintain the
7 records. The amount of unpaid overtime compensation owed to Plaintiffs is unable to
8 be calculated precisely at this time in the exact amount, however such amounts may be
9 ascertained with respect to each Plaintiff from such records.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs respectfully request that this Court grant the following:

12 A. Designation of this action as a collective action on behalf of the Plaintiffs
13 pursuant to 29 U.S.C. §216(b).

14 B. Tolling the look-back period beyond three years and extending the statute of
15 limitations back to a point to provide full compensation for all current and former
16 persons employed as Firefighters by Defendant who have been subject to Defendant's
17 unlawful policy and practices, as set forth above

18 C. Providing notice to Plaintiffs, informing them of the pendency of this action,
19 and permitting them to join the action by submission of individual consent forms
20 pursuant to 29 U.S.C. §216(b).

21 D. A declaratory judgment declaring that Defendant has willfully, recklessly
22 and wrongfully violated its statutory and legal obligations and deprived Plaintiffs of
23 his/her rights, protections and entitlements under federal law, as alleged herein;

24 E. An order for a complete and accurate accounting of all the compensation to
25 which each Plaintiff is entitled;

26 F. Judgment against the Defendant awarding each Plaintiff monetary damages
27 in the form of back pay compensation, liquidated damages equal to his/her unpaid
28 compensation, plus interest as allowed by law;

- 1 G. Reasonable attorneys fees;
2 H. Costs and disbursements of this action; and
3 I. Such other and further legal and equitable relief as this Court deems
4 necessary, just and proper.

5
6 **DEMAND FOR JURY TRIAL**

7 Plaintiffs hereby demand a jury trial on all causes of action and claims with
8 respect to which they have a right to a jury trial.

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10 DATED: September 7, 2008

**DONAHOO & ASSOCIATES
FOLEY BEZEK BEHLE & CURTIS, LLP**

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Others Similarly Situated