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

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JR., DAVID G. ABRAMS, SABIN M.
14 ABRAMS, KRISTEN B. ADAMS, LORI M.
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ELIZABETH ADDINGTON, ARMANDO R.
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27 BARNETT, SUZIE K. BARNEY, CHARLES R.
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28 C. BASSETT, TOD E. BASSETT, DAVID R.

CASE NOS. 05-CV-1629 DMS (RBB)
06-CV-0538

**CONSOLIDATED FIFTH AMENDED
COMPLAINT FOR DAMAGES AND
OTHER RELIEF BASED ON:**

1. **FLSA §7(a) VIOLATIONS [29
U.S.C. §207(a)]**
2. **BREACH OF CONTRACT**
3. **FLSA §7(a) VIOLATIONS FOR
LATE PAYMENT OF OVERTIME
[29 U.S.C. §207(a)]**
4. **FLSA §7(o) VIOLATIONS [29
U.S.C. §207(o)]**

DEMAND FOR JURY TRIAL

Complaint Filed: August 16, 2005
Trial Date: September 22, 2008

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PIDGEON, ERNEST J. PIERCE, GREG A.
5 PINARELLI, CARL P. PIRA, DAN R. PLEIN,
ERIC L. POLLOM, MARCELO POPULIN,
6 LANCE E. POUND, JASON L. POWERS,
CHRISTOPHER M. POZNANSKI, WAYNE J.
7 PRATT, MICHAEL L. PRIDEMORE, SELIZA
PRODIGALIDAD, BOB T. PRUTZMAN,
8 MICHAEL J. PRUTZMAN, DUANE D.
PUDGIL, JESUS W. PUENTE, BRETTON J.
9 PUNCHES, DALANA S. PURSEL, JOHN A.
QUEEN, COLLEEN L. QUENTIN-KING,
10 TASHA K. QUEST, MAY B. QUINTANILLA,
YESENIA P. QUINTOS, CHRIS J. RAAGAS,
11 MICHAEL J. RABELL, FERNANDO
RAMIREZ, MINERVA RAMOS, CARLOS R.
12 REAL, ROBERT M. REDDING, JR., CRAIG R.
REESOR, RICHARD H. REICHNER II,
13 JAMES H. RENWICK, RODOLFO V. REYES,
JULIAN M. RICO, STEVEN L. RIDDLE,
14 JUAN RIVERA III, BRYAN A. ROBERTS,
ELIAS RODRIGUEZ, MANUEL
15 RODRIGUEZ, RAMIRO O. RODRIGUEZ,
GARY A. ROESINK, DANIEL G. ROMAN,
16 LUIS A. ROMAN, CARLOS RONQUILLO,
JORGE A. ROSALES, ANGEL D. ROSARIO,
17 MIGUEL ROSARIO, STEPHANIE J. ROSE,
EDWARD L. ROSENBLOOM, ANGELA N.
18 ROZSA, LAMAR J. ROZSA JR., JEFFREY R.
RUCKLE, RENEE D. RUFF, MARIAM
19 SADRI, JOHN J. SAFLAR, LEM
SAINSAHOY, ALFONSO SALVATIERRA,
20 JORGE SANCHEZ, JUAN SANCHEZ, SCOTT
A. SANTAGATA, WILLIAM J.
21 SANTARSIERO, EDWIN SANTIAGO,
LAURA J. SANTIAGO, TITO L. SANTOS,
22 ALEJANDRINO C. SANTOS III,
CHRISTOPHER M. SAROT, DENNIS
23 SAVAGE, JADE R. SAWYER, JASON A.
SCALLY, CODY K. SCHAFF, JACK D.
24 SCHAEFFER, MICHAEL J. SCHALDACH,
MARGARET M. SCHAUFELBERGER,
25 ROBERT M. SCHENKELBERG, GLEN R.
SCHERER, CHERYL J. SCHLACK, JOEL A.
26 SCHMID, PHILLIP E. SCHNEIDER, STEVE
D. SCHNICK, PAUL W. SCHWENN, JASON
27 A. SCOTT, ERIC P. SEITER, THOMAS G.
SEIVER, LLOYD A. SENTINELLA, ROBERT
28

1 C. SHANDS, PATRICK J. SHANLEY,
ARTHUR H. SHANNON, CHRISTIAN T.
2 SHARP, MARVIN L. SHAW, STEVEN M.
SHAW, DANIEL K. SHEPHERD, DAMON E.
3 SHERMAN, MARK G. SHERMAN, MICHAEL
S. SHIRAISHI, SCOTT W. SHIVELY, DALE
4 T. SHOCKLEY SR., DANIEL L. SHORE,
AMALIA K. SIDHU, JESSE D. SIMEROTH,
5 THOMAS G. SIMONDS, ROBERT E.
SIMPSON, RANDALL J. SKINN, CHARLES
6 A. SLEEPER, ALLEN T. SLUSS, JAMES
SMITH, JAMES F. SMITH, JOHN C. SMITH,
7 JOSEPH SMITH, ROBERT W. SMITH,
TIMOTHY M. SMITH, WILLIAM T. SMITH,
8 DANIEL J. SMYTH, JOSEPH G. SNARPONIS,
ROBERT W. SNEAD, CESAR A. SOLIS,
9 DAVID L. SOLIVEN, ANDREW SORBIE,
BRANDY A. SORBIE, MARK T. SOULIA,
10 ANDREW J. SPAGNOLO, ANDREW E.
SPEAR, DAVID P. SPECK, EDWIN P. SPEER,
11 WAYNE R. SPEES, SCOTT C. SPILLANE,
DAVID E. SPITZER, MICHAEL L. STACY,
12 JOHN STADLER, ERIC A. STAFFORD,
DAVID W. STAFFORD JR., DANIEL
13 STANLEY, PHILIP J. STANLEY, STEVEN
STATON, NEAL A. STEFFEN, BLAIR A.
14 STEPHENS, CYNDI L. STETSON, WILLIAM
S. STETSON, JAMES A. STEWART,
15 KENNETH P. STEWART, ELLIOT S.
STIASNY, ROBERT F. STINSON, ROBERT
16 G. STITES, ROSS E. STONE, ROGER A.
STONIER, JR., JERRY G. STRATTON, JOHN
17 J. STRICKLIN, SPENCER E. STURM,
WILLIAM F. STUTZ, MARK C. SULLIVAN,
18 PATRICK L. SULLIVAN, THOMAS A.
SULLIVAN, ROBERT R. SUMMERS,
19 VALARI C. SUMMERS, COLONEL F.
SURRETT, DAVID M. SURWILO, ALEKSEI
20 E. SVIRIDOV, MICHAEL J. SWANSON,
WILLIAM S. SWEENEY, MICHAEL A.
21 SWEET, JAMES SWEETSER, JEFFREY D.
SWETT, JOHN E. SZAKARA, ESMERALDA
22 TAGABAN, WILLIAM D. TAITANO, LOUIS
A. TAMAGNI, MICHAEL T. TANSEY, JOHN
23 H. TATE, DANA D. TAYLOR, JAMES T.
TEER, VICTOR J. TEJEDA, KAREN-ANNE
24 TENNEY, MARVIN E. TERRY,
CHRISTOPHER M. TEWS, ALVIN THACH,
25 JOSEPH I.T. THOMAS, JOYCELYN S.
THOMAS, GEORGE R. THOMAS III,
26 FREDDIE B. THORNTON, JR., JOHANNA M.
THRASHER, LINDA H. TIBBETTS, LEE D.
27 TIMMERMAN, LINDA L. TOUSLEY,
MERRIT M. TOWNSEND, JOHN M. TRACY,
28

1 JOHN A. TRENT, JAMES F. TULUMELLO,
MEGHAN R. TURI, KIMBERLY K.
2 UKUZATO EASTO, THOMAS G.
UNDERWOOD, EDWIN VALENTIN,
3 RAMON VALENTIN, WENDY J. VALENTIN,
LOUIS E. VALENZUELA, MARK A. VAN
4 ABEL, JANINE A. VAN ANTWERP,
EDWARD F. VAN LANINGHAM, RODNEY
5 L. VANDIVER, JAMES G. VARONFAKIS,
KEVIN G. VASQUEZ, LINDA G. VASQUEZ,
6 CHRISTOPHER M. VELOVICH, MICHELLE
R. VELOVICH, KENNETH J. VERDONE,
7 EDWARD M. VERDUZCO, RICHARD
VERGARA, DANIEL R. VILE, PATRICK T.
8 VINSON, JOHN B. VIVOLI, DUANE A.
VOSS, GARY R. VOSS, GERARD M.
9 WACLAWEK, SYLVESTER WADE, JR.,
KEVIN L. WADHAMS, ELYSE S. WAGNER,
10 GAYE D. WAGNER, THOMAS WAGNER,
KRISTOPHER M. WALB, CURTIS J.
11 WALDECKER, STEVEN R. WALDHEIM,
DAVID R. WALKER, DANIEL K. WALL,
12 MITCHELL B. WALLACE, GREGORY H.
WALTON, SEAN J. WATERMAN, DONALD
13 E. WATKINS, MARK S. WATKINS,
VICTORIA D. WATKINS, DEAN C. WAY,
14 MATTHEW E. WEATHERSBY, SEDONIA B.
WEATHERSBY, STEPHEN E. WEBB,
15 ELIZABETH D. WEBER, CARL W. WEBER
III, JORDAN V. WELLS, ROBERT D. WELLS,
16 DIANE WENDELL, DANIEL B. WESTNEY,
TEOFILO WESTON, RAYMOND J.
17 WETZEL, SCOTT S. WILKINSON,
ALPHONSO WILLIAMS, BRENT L.
18 WILLIAMS, DAVID W. WILLIAMS,
DONALD C. WILLIAMS, MICHAEL D.
19 WILLIAMS, MICHAEL R. WILLIAMS,
MICHAEL S. WILLIAMS, TIMOTHY R.
20 WILLIAMS, DARRYL L. WILLIS, JEFF D.
WILLKOMM, ROBERT E. WILLS, DAN M.
21 WILSON, FREDERICK L. WILSON,
LAWRENCE E. WILSON, DAVID J.
22 WINANS, ERIC A. WISEMAN, DAWN E.
WOLFE, KARIN D. WONG, KEVIN G.
23 WONG, THOMAS A. WOOD, STEVEN M.
WOODROW, JUDITH L. WOODS, WILLIAM
24 H. WOODS IV, JOHN M. WRAY, STEPHEN
W. WRIGHT, JEFFREY J. WUEHLER,
25 MICHAEL V. YAPTANGCO, GEORGE A.
YOUKHANNA, ADAM G. YOUNG, BRYAN
26 V. YOUNG, MATHEW T. ZAITZ, PETER J.
ZAJDA, STEVEN S. ZASUETA, FELIX
27 ZAVALA, JASON P. ZDUNICH, MATTHEW
T. ZDUNICH, ANGELA M. ZDUNICH-
28

1 GOLDMAN, MONICA ZEPEDA, TIMOTHY
P. ZETTERLUND, EVAN B. ZIEGLER,
2 JEFFREY P. ZIEGLER, JAMES A. ZIRPOLO,
LAURA M. ZIZZO, LOUIS M. ZIZZO,
3 EDWARD M. ZWIBEL, DAVID P.
ACHENBACH, ROBERT C. ACOSTA, JULIE
4 M. ADAMS, ROBERT H. ADAMS, JASON D.
AGUILAR, RICHARD A. AGUILAR,
5 WESLEY T. ALBERS, MELVIN C. ALLEN,
KAREN A. ALMOS, KAREN A. ALMOS,
6 MARK C. AMANCIO, PETER A. AMANCIO,
KEVIN M. AMMON, PEGGY A. ANDERSON,
7 THOMAS J. ANDREWS, JOSE J.
ARGUELLES, WESLEY R. ASHCRAFT,
8 JOHN B. BAILEY, RONALD W. BAILIFF,
ROBERT BANUELOS, DEBBIE K. BECKER,
9 CHARLES J. BELLETTI, JOE A.
BENAVIDES, KELLY L. BESKER, DANIEL
10 A. BINKERD, VICTORIA M. BINKERD,
DEAN R BISHOP, CARLTON F. BLACK,
11 BRIAN R. BLAGG, EDWARD L. BLUM,
STEVEN B. BOURASA, CHRISTOPHER P.
12 BOWERS, DOUGLAS M. BRACA, CINDY L.
BRADY, PAUL D. BRINKERHOFF, JAMES
13 A. BROOKS, JAMES R. BROWN, ROBERT D.
BROWN, WILLIAM M. BROWN, THOMAS J.
14 BROXTERMANN, RICHARD J. BULETTE,
DAVID W. BURKE, CHRISTOPHER G.
15 BUXTON, LAURIE CAIRNCROSS, FRANCIS
M. CALI, JOHN L. CALL, JANET M.
16 CAMPBELL, HECTOR S. CARLOS, JOHN D.
CARPENTER, JOHN J. CARROLL, C. D'ANN
17 CARTER, JEFFERY S. CARTER, PETER J.
CARUSO, NYDIA M. CASTRO, JESUS G.
18 CESENA, YEZENIA E. CHAVEZ, ROBERT
CHRISTANO, GREGORY D. CLARK, JAMES
19 C. CLARK, JOHN R. CLEAVINGER,
WILLIAM L. CLEM, JAMES R. CLIFT,
20 GARRY COLLINS, PAUL D. CONLEY, PAUL
J. CONNELLY, LISA M. COOK, TIMOTHY S.
21 COYLE, CLINT J. CROCKETT, PETER H.
CRUZ, JR., JOSHUA T. DA FOE, DARBY L.
22 DARROW, ROBERT W. DAUN, LISA K.
DAVIES, CHARLES R. DAVIS, KELLY R.
23 DAVIS, TERRI L. DAVIS-COLE, COLIN K.
DAY, WILLIAM G. DAY, JEFFREY A.
24 DEAN, BRUCE C. DEBORD, MARIA I.
DELGADILLO, ALEJANDRO DIAZ, STEVE
25 P. DICKINSON, DANIEL W. DIERDORFF,
JR., FELICISIMO M. DIZON III, STEPHEN C.
26 DOUGLAS, ERIC T. DRILLING, DAVID P.
DUNHOFF, MITCHELL L. DUNHOFF,
27 CRAIG T. EASTEP, DONNA EASTEP,
ELMER NEM. EDWARDS, CHAD W.
28

1 ELLIOTT, HECTOR J. EMERSON, JAMES D.
ENGLISH, WALTER M. ESCOBAR, IRVING
2 A. ESCOBEDO, ROBERT C. FABREGAS,
BILL FARRAR, MICHAEL W. FARRELL,
3 DONALD L. FASCHING, SUE E. FASCHING,
JUNAR FERNANDEZ, RITER J. FLORES,
4 RICHARD A. FOX, BRIAN S. FRENCH,
DAVID A. GARCIA, GEORGE E. GARVEY,
5 DAVID K. GIBSON, CORY E. GILMORE,
RONALD D. GLASS, STEVEN T. GLASSER,
6 JUAN R. GONZALES, HILDA GONZALEZ-
REED, SCOTT T. GOSNELL, MICHAEL J.
7 GOTTFRIED, JARVIS J. GRESHAM,
MICHAEL GROFF, JEFFREY G. GROSS,
8 PERRY J. GROSSMANN DANIEL L.
GRUBBS, KURT L. GRUBE, MARTIN T.
9 GUERRA, MICHAEL A. HALEY, DANIEL G.
HALL, ROBERT J. HAWKINS, ALAN J.
10 HAYWARD, GEORGE A. HEAD,
FREDERICK J. HELM, III, CRYSTAL A.
11 HERNANDEZ, CARLTON R. HERSHMAN,
DAVID A. HICKEY, DANIEL J. HIGDON,
12 ROGER E. HIGGINS, JR., STEVEN G.
HOBBS, GEORGE A. HOFFMAN, JOHN F.
13 HOGARTH, LARRY D. HOLLOWAY,
DARRYL A. HOOVER, HECTOR E. HOYTE,
14 KENNETH L. HUBBS, KENNETH E.
IMPELLIZERI, JAY M. JACOB, JEROME O.
15 JOAQUIN, RICHARD L. JOHNSON, JR.,
DAVID H. JONES, PEPPER L. KELLY, ANNA
16 M. KNUTH, ASSIE L. KRAMER, GERRY M.
KRAMER, DENNY K. KREMER, RICHARD
17 G. KRUEGER, JR., DARRELL D. KYLER,
HOWARD A. LABORE, CARLOS D.
18 LACARRA, JOSE V. LAGUDA, JOSE V.
LAGUDA, CHRISTOPHER C. LARSON,
19 FARRELL K. LAYTON, GORDON R. LEEK,
JOHN LETTERI, JACK T. LILLY, JAIME
20 LIMON, DARRELL K. LITTLE, JESSE W.
LOPEZ, ROBERT C. LOPEZ, JONATHAN
21 LOWE, MARK S. LUCCHESI, ERNESTO
LUNA, SHANE A. LYNN, RICHARD
22 MALER, RONALD A. MANAIGRE, JEFFREY
S. MARTINEZ, PHILLIP A. MARTZ, JR.,
23 MICHAEL MASCHMEIER, RALPH C.
MAUZY, PERRY L. MCIVOR, PATRICK J.
24 MCLARNEY, MICHAEL D. MCLEOD,
SHARON K. MCNAIR, JOSE M. MENDEZ,
25 MICHAEL J. MENDEZ, KERRY A.
MENSOR, RUDOLPH S. MERHAR,
26 RICHARD D. METZ, JR., CINDY L. MEYER,
PETER R. MILLS, BRIAN D. MOORE,
27 MIGUEL P. MORALES, PETER A.
MORALES, SCOTT A. MORRISON,
28

1 EDWARD D. MURPHY II, CRAIG L.
2 MYROM, ANGELICA NAVARRO-MORAN,
3 GORDON R. NIKKOLA, MATTHEW E.
4 NOVAK, EDWARD GARRICK NUGENT, JR.,
5 JAY R. ODOM, HAROLD J. OLIVER, JR.,
6 JASON P. OMUNDSON, SANDRA S.
7 OPLINGER, LEE A. ORSINO, WILLIAM T.
8 ORVOSH, RAUL R. PADILLA, DENISE R.
9 PAGE, RICHARD C. PARPART, JAMAL X.
10 PASHA III, PAUL E. PAXTON, JACK R.
11 PEARSON, CHARLES J. PECK III,
12 VANTHOEUN PEN, JOSE P. PEREZ, MARCO
13 L. PEREZ, RICHARD PERKINS, VERNON J.
14 PETERSON, SCOTT M. PICKARD, KEVIN W.
15 PIERCE, ERNESTO PINEDO, JR., JOHN R.
16 PINER, MARC A. PITUCCI, JOSE L. RAMOS,
17 JOSEPH A. RAMOS, RALPH RAMOS,
18 MARCUS RAMSEY, KEVIN C. RAUSIS,
19 DWIGHT P. REECE, ROY E. REED,
20 ANTHONY REESE, JR., JOHN J. REIF,
21 WENDY S. RENO, JACOB M. RESCH,
22 ROBERT L. REX, ROLANDA M. RICARDEZ,
23 RONALD L. RICE, PHILLIP H. RICE IV,
24 BENDA T. RICHMOND, WARD A.
25 RICKMAN, DARIN J. RIES, ANDRES H.
26 RIOS, CARMELIN RIVERA, FRANCISCO
27 RIVERA, MARIA D. RIVERA, GARY V.
28 RIVERS, THOMAS A. RIZZO, TODD J.
ROBERTSON, LARRY J. ROBERTSON II,
STEVE R. ROBINSON, JASON P. ROCHA,
ANA B. RODRIGUEZ, JAIME R.
RODRIGUEZ, BOBBY D. ROLLINS, MARIO
I. ROMANO, FAUSTO W. ROMERO, DAVID
L. ROOT, PAUL R. RORRISON, STEVEN M.
ROSENBLOOM, RAYMOND H. ROWE, JR.,
MICHAEL RUBIO, ROBERT S. RUDE, BRAD
D. RUFF, JOHN S. RUSSELL, JOSEPH L.
RUVIDO, JAMES W. RYAN, LYNN D.
RYDALCH, IVAN A. SABLAN, ARTEMIS D.
SADLIER, ALAN J. SAMUELSON, TRISTAN
T. SCHMOTTLACH, JAMES C. SCHORR,
ERNESTO SERVIN, STEPHEN SHEBLOSKI,
LORI A. SINCLAIR, STEVEN E. SKINNER,
GEORGE D. SMITH, SANDRA P. SMULLEN,
GINA M. SPADACINI, ANTHONY J.
SPAGNOLO, HOWARD W. SPETTER,
JOSEPH R. STEFFEN, JOSEPH R. STEFFEN,
MARC A. STEPHENS, JEFFREY J.
STERLING, LESLIE W. STEWART,
NATALIE A. STONE, DANIEL T. STUBER,
BRIAN J. SZYMONIK, RUDOLPH G. TAI,
JR., MARK A. TALLMAN, PHILIP J.
TERHAAR, SCOTT A. THOMPSON, DANIEL
D. TONECK, TERENCE N. TORGENSEN,

1 FRANCISCO J. TORRES, SCOTT A.
TOWNSEND, LARRY D. TRIPLETT, JR.,
2 BERNARD P. UPDIKE, JR., DOMINIC L.
VALAILE, JIMMY I. VALLE, RON W. VAN
3 CLEAVE, DALE VAN HORN, ROBERT J.
VAN WULVEN, MICHAEL E. VARGAS,
4 DANNY VEGA, SYLVIA A. VELLA,
STEVEN D. VILLALOBOS, JOSEPH T.
5 WAGGAMAN, GAYE D. WAGNER, JAMES
M. WATKINS, JR., ROSS M. WEAVER,
6 DIANNA M. WEBB, MICHAEL J. WEBB,
MURDOCK J E. WELTZIEN, DAVID A.
7 WEST, DAVID L. WHITFIELD, RICHARD A.
WIDNER, JONATHAN D. WIESE, MARK A.
8 WILLHELM, DARRELL L. WILLIAMS,
DONNA L. WILLIAMS, GARRETT N.
9 WILLIAMS, TINA M. WILLIAMS, HOWARD
C. WILLIAMS, JR., FRANK H. WILSON,
10 ROGER K. WONG, JOHN R. YOUNG,
ANTHONY ZELJEZNIK, HANS S.
11 ZINGHEIM, SIMON V. TY, THOMAS M.
RHODES, SUZANNE HUNTINGTON,
12 JERRILYN SOBER, DONNA WESCOTT,
HEIDI HAWLEY, MAX G. VERDUZCO,
13 DANNY W. HOLLISTER, BRETT H.
BURKETT, ROBERT C. BURLISON,
14 RICHARD J. CARLSON, HENRY L. CASTRO,
MARTIN G. CASTRO, JOHN COCHRAN JR.,
15 ARTHUR D. DOHERTY III, ANTOINE N. EL-
ASSIS, DALE A. FLAMAND, MIGUEL A.
16 GARCIA, RYAN P. GAULT, KENNETH S.
HARGROVE, ROBERT W. HERZIG,
17 CHARLES M. HUDGINS, ROY B. HULBERT,
PIA A. IVERSEN, SANDRA L.
18 LACHAPELLE, BRIAN P. LUCCHESI,
SCOTT D. NALIBOFF, ALAN M. NICHOLAS,
19 CHRISTOPHER D. O'QUINN, FREDERICK
PARENTI, DOUGLAS L. PICKETT,
20 MICHAEL J. PRUTZMAN, SANDRA I.
RAPALEE, BRET A. RIGHTHOUSE, SUSAN
21 M. RIGHTHOUSE, JEFFREY SALINAS,
DORINDA K. DODD, RICHARD GARCIA,
22 DAVID G. MALEY, BRIAN MARVEL,
MICHAEL S. MORAN, ALLEN R. BAYLOR,
23 ALI D. CAMPBELL, ELSA L. CASTILLO,
JAIME D. CONTI, LARRY W. DARWENT,
24 JORGE DURAN, JEREMY M. DURRANT,
STEVEN W. DYER, SARAH FOSTER,
25 RICHARD G. FREEDMAN, RALPH
GALANGUE, LOUIS PAUL GALANTE III,
26 MARK J. GASTEIGER, FLORANTE E.
GONZALES JR., TRISTAN GONZALEZ,
27 LEVI B. HARBIN, ERIC B. HAYS, DANA R.
HOOVER, GREGG M. HUMPHREY,
28

1 WILLIAM JACOBSON, KYLE KELLEY,
CHRISTOPHER W. KILBY, JOSEPH W.
2 LEHR, LEE C. MARTIN, DANIEL A. MEYER,
TONY C. NAPUTI, BRADLEY M.
3 O'DONNELL, MICHAEL A. RAMSAY,
KENNETH C. ROBBINS, JEFFREY B.
4 SCRUGGS, GAYLON W. SELLS, ADAM T.
SHARKI, JAMES E. STEVENS, MICHAEL
5 STIRK, DAWN SUMMERS, ROBERT J.
SYLVESTER, WILLIAM D. SNYDER, JOHN
6 THERIEN, STEVEN C. THORN, BRETT T.
TOOVEY, JAMES J. TROUSSEL, ROBERT S.
7 TRUDERUNG, TIMOTHY L. UNDERWOOD,
YVETTE R. VASQUEZ, ROXIE C. VIGIL,
8 DICK L. WARD, MICHAEL W. WEAVER,
RONALD M. WEISS, THOMAS S. WETZEL,
9 TRACEY D. WILLIAMS, STEVEN L. WITT,
RICHARD M. ZWEIFACH SR., LAURIE D.
10 AGNEW, AGUSTIN ASCENCIO, PETER E.
BROWN, THOMAS D. CARMODY, JORGE
11 CARRANZA, PATRICK R. DERNING,
EDUARDO E. ESCAMILLA, ALAN R.
12 FRAGOSO, LISA A. HARTMAN, DAVID F.
HIGHSMITH, GARY D. HILDRETH, NOEL L.
13 MCELFRESH, MICHAEL A. PADGETT,
ARTHUR L. SCOTT,

14
15 Plaintiffs,

16 vs.

17 CITY OF SAN DIEGO, DOES ONE
THROUGH TEN,

18 Defendants.

19
20 Plaintiffs, on behalf of themselves, by and through their attorneys, Jackson DeMarco Tidus
21 Petersen & Peckenpough, bring this action for damages and other relief against Defendant, City of
22 San Diego, for its violations of employment practices codified in 29 U.S.C. § 201, *et. seq* and
23 breach of contract, alleging the facts and claims as follows:

24 1. This action by active and retired San Diego peace officers seeks, among other things,
25 the recovery of unpaid overtime compensation for pre-shift, post-shift and off-site activities,
26 compensation due for improper premium rate calculations, damages and penalties for missed meal
27 break periods (“Code 7s”), reimbursements due for work-related expenses, and denial of earned
28

1 Compensatory Time Off.

2 **I. JURISDICTION AND VENUE**

3 2. This Court has jurisdiction to hear this Complaint and to adjudicate the claims alleged
4 herein by virtue of 28 U.S.C. §1331 because this is a civil action arising out of the laws of the
5 United States; supplemental jurisdiction may be exercised over the state law claims under 28
6 U.S.C. §1367(a). This action is brought pursuant to the Fair Labor Standards Act of 1938
7 ("FLSA"), 29 U.S.C. §201, *et seq.*

8 3. Venue is proper in the Southern District of California, pursuant to 28 U.S.C. §1391(b),
9 because a substantial part of the employment violations complained of occurred in the Southern
10 District and Defendant resides in the Southern District.

11 **II. THE PARTIES**

12 4. At all times relevant to this Complaint, the following individuals were employed by
13 Defendant City of San Diego: Marcus R. Abbe, Thomas E. Abbott, Jr., David G. Abrams, Sabin M.
14 Abrams, Kristen B. Adams, Lori M. Adams, Robert W. Adams, Simon Adams, Robert Aduato Jr.,
15 R. Elizabeth Addington, Armando R. Aguilar, Edward R. Aguirre, Michael A. Aiken, Leslie A.
16 Albrecht, Daniel T. Albright, Donald A. Albright, Richard Allen, Katherine E. Allison, Cathy N.
17 Allister, Karen A. Almos, Jesse R. Almos Jr, Alan R. Alvarez, Arnolfo B. Ambito, Carlos A.
18 Amezcua, Annette M. Anderson, Travis W. Anderson, Mark S. Annis, Robert W. Anschick,
19 Ricardo Apodaca, Oscar A. Armenta, Scott J. Armstrong, James W. Arthur, Christopher T. Asbell,
20 Frank Ashcraft, Anthony A. Atkins, Robert W. Atwood, Edward D. Austin, John W. Austin, John
21 Autolino, Gary Avalos III, Michael J. Baier, Teresa Bailey, Robert M. Baird Jr., Todd R. Baker,
22 James D. Baker Jr., Vincent J. Bales, Joseph P. Bane, Sean A. Bannan, Kevin S. Barnard, Scott T.
23 Barnes, Bridget P. Barnett, Suzie K. Barney, Charles R. Barrett, Scott D. Bartolomei, Tina C.
24 Bassett, Tod E. Bassett, David R. Bautista, Michael A. Beamesderfer, Jana M. Beard, Carole J.
25 Beason, David W. Beathard, Edward L. Becker, William F. Becker, Paul J. Becotte, Steven M.
26 Behrendt, Cynthia M. Beilstein, John P. Beilstein, Kevin P. Belland, Brigitta J. Belz, Michael W.
27 Belz, Michael R. Bendixen, Teryl L. Bernard, Gerald F. Berner Jr., David A. Bertrand, Rebecca E.

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2 D. Blackford, Gifford D. Blakesley, Mark T. Blakesley, Thomas M. Boerum, Eugene H.
3 Bojorquez, Daniel W. Boldt, Donald J. Borinski, Thaddeus W. Borkowski, Nicolas Borrelli,
4 Thomas R. Bostedt, Matthew E. Botkin, Arthur O. Bowen, Gary L. Bowen, Jr., Clayton Bowers,
5 James W. Boyd, Phillip K. Bozarth, Frank P. Bradley, James M. Bradley, Julie M. Bradley, Tracy
6 D. Braun, Daniel G. Brent, Lisa L. Bressler, Robert R. Bressler, Daniel M. Brinkerhoff, Russell D.
7 Bristol, Frank J. Brito, Kevin M Brooks, Ronald Broussard, Neal N. Browder Jr., Douglas M.
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9 Joy M. Brugman, Christopher M. Brush, Terrance L. Bryan, Mark J. Bua, Deborah W. Burger,
10 Randy P. Burgess, Christina D. Burhans, Joshua P. Burkhardt, Timothy A. Burns, Daniel A.
11 Burow, John D. Buttle, Richard A. Butts, Bruce T. Byrd, Jeanne M. Byrd, Phillip D. Cady,
12 Lawrence B. Cahill, William D. Cahill, Jene L'Mont Calloway, Arthur L. Calvert, Christen M.
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15 L. Caropreso, Jr, Javier Carranza, Robert T. Carroll, Scott Carter, Tony B. Carter, William J.
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17 Ricky F. Castro, Rudy P. Castro, Jr., Arthur H. Cavada, Misty R. Cedrun, Daniel E. Cerar, George
18 Cesena, Carlos Chacon, John Chaney, Mark A. Chavez, Blake A. Cheary, Jonathan C. Cheng, Jon
19 P. Cherski, James H. Chiles, Jeffrey W. Chione, Raphael R. Cimmarrusti, Dolores M. Cirino, Brent
20 E. Cisneros, Dale L. Clark, John C. Clark, Joseph A. Clark, Lamont H. Clark, Robert D. Clark,
21 Raymond P. Clark Sr., Deborah A. Clem, James H. Clem, Michael A. Clippinger, Rex Cole, Jr.,
22 Christopher P. Collier, Kimberly A. Collier, James T. Collins, Bernie T. Colon, Luis M. Colon,
23 Victor S. Colvin, Donald R. Cone, Robert D. Connaughy, David Contreras, Sean R. Conway,
24 Lloyd E. Cook, Robert H. Cook, Patrick J. Cooley, Phil B. Cooper, Noe F. Cordero, Brian K.
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26 Cotellessa, Carol V. Council, Chad E. Crenshaw, Marco A. Crisostomo, Tyrone H. Crosby, Robert
27 P. Cruz, Vedasto A. Cruz, Jr., William L. Cuddy III, Celso G. Cueva, James P. Culligan, Ralph A.
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2 Czas, Denise F. Dailey, Leroy K. Dailey, Josephine I. Dains, Scott W. Daniels, Robert W. Dare,
3 Eric C. Davis, Garry R. Davis, John W. Davis, Michael J. Davis, Richard E. Davis, William T.
4 Davis Jr., Dean L. Davison, Jerome Dawson, Michael O. Day, William J. Day, Jr., Alexander De
5 Armas, Charles De la Cruz, Susan M. de la Pena, Deana E. De Los Reyes, Romeo C. De Los
6 Reyes, Michael J. Dean, Conrado V. Decastro, Geoffrey S. Decesari, Jonathan M. DeGuzman, Raul
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10 Ronald H. Dougherty, David F. Douglas, Samuel D. Douglas, Gregory T. Drilling, Arthur W.
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15 Ensign, Julie M. Epperson, Steven S. Epperson, Edward G. Erbe, Manuel Escalante, Christopher C.
16 Escudero, Christopher D. Everett, Christine M. Farmer, Debra L. Farrar, Jay P. Farrington,
17 Timothy K. Faubel, Paul J. Fay, David L. Felkins, Andrew L. Fellows, Jeffrey M. Fellows Sr.,
18 Michael J. Fender, Alejandro M. Fernandez, James D. Filley, Robert G. Filley, Rodney W. Fischer,
19 Lawanda M. Fisher, Larry E. Fixsen, Michael F. Flanagan, Gregory A. Flood, Miguel M. Flores,
20 Raul Flores, Steve T. Flores, Gilbert H. Flores, Jr., Anna M. Ford, James M. Ford, Mark E.
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25 Manuel M. Garcia, Ronald R. Garcia, Ralph J. Garcia Jr., Justin C. Garlow, Edwin R. Garrette,
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8 Roger E. Hatch, Daniel Hatfield, Daniel C. Hattler, John D. Haugland, Robin L. Hayes, David M.
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11 Matthew J. Henry, Shaun P. Henry, James K. Heppell, James F. Hergenroether, Daniel
12 Hernandez, Israel Hernandez, Manuel S. Hernandez, Nestor Hernandez, Ruben C. Hernandez,
13 Victor M. Herrera, Mark S. Herring, Larry R. Hesselgesser, Jr., Bryan W. Hewitt, Byron E.
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15 Hill, Richard A. Hinzo, Anne-Marie Hiskes, Diana L. Hodges, Mark S. Hodges, Kenneth P.
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22 Phillip D. Hubbs, Paul D. Hubka, Dona Hufford, Ty L. Hufford, James C. Hunter, David J. Hustad,
23 Steven Hutchinson, John J. Huys, John D. Iammarino, David M. Iorillo, Craig E. Isbell, Brian A.
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26 Donna L. Jennes, David E. Jennings, John W. Jillard, Alejandra D. Jimenez, Daniel H. Jimenez,
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2 Sarah A. Johnson, Timothy D. Johnson, Buddy L. Johnson II, Scott W. Johnston, Bennie L. Jolly,
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21 MacTiernan, Peter Madrid, Louis J. Maggi Jr., George N. Maglaras, Bryan W. Manning, Cory S.
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3 Maura J. Mekenas-Parga, Skip A. Melhorn, Leslie C. Merrill, Robert W. Metz, David R. Michalek,
4 Debra S. Michalek, Mark A. Michel, William Miles, Christina M. Miller, David W. Miller, Derek
5 T. Miller, Douglas D. Miller, Jeffrey L. Miller, Thomas P. Miller III, Catherine D. Millett, Jerald
6 E. Mills, Julie R. Mills, John W. Minto III, Robert D. Minton, Nicholas R. Minx, Ameilia L.
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9 Diann M. Moody, Roy D. Moody, Holly A. Moore, Robert Mora, Eric T. Morales, Ray A. Morales,
10 Anthony R. Morasco, Victor J. Morel, Mario Moreno, David L. Morris, Cynthia M. Morrison,
11 James D. Morrison, Jay V. Moser, Jacob R. Mosteller, David A. Moya, Kevin B. Moyna, Gregory
12 R. Mrvich, Galen L. Munholand, Cynthia L. Munoz, Juan M. Munoz, Kelene Munro, George T.
13 Muren, Sean H. Murphy, William P. Murphy, Gregory J. Myers, Clint J. Nafey, Steve W.
14 Nakanishi, Jeffrey T. Napier, Raymond A. Natal, James H. Needham, Adrian Negron, Richard B.
15 Nehrich, Kenneth E. Nelson, William M. Nemecek, Richard E. Nemetz, Timothy G. Neuhaus, Robert
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17 Michael C. Nigro, Gilbert L. Ninness, David S. Nisleit, Robert H. Nobbs, Patrick D. Norris,
18 Timothy G. Norris, Lee V. Norton, Regina Y. Norton, Amber G. Nygaard, Eric I. Oberndorfer,
19 Thomas K. O'Connell, Thomas A. Odaniell, Taerance Oh, Richard M. O'Hanlon, Gene F. Oliver,
20 Rene C. Oliver, Shelly K. Olson, Barney C. Olson III, James F. O'Neill, Thomas A. Orden, Danny
21 A. Orduno, George M. O'Rourke, Michael W. Ott, Jerry B. Owens, Jr., Troy P. Owens, Sr.,
22 Michael A. Pace, Javier Padilla, Nori T. Pappert, Michael L. Parga, Richard A. Parrella, Kevin S.
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24 Arthur A. Perea, Jennifer L. Perea, Jesus G. Perea, Efren Peregrina, Curtis E. Perkins, Jeffrey P.
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26 George A. Phillips, Bernie A. Piceno, E. Michael Pidgeon, Ernest J. Pierce, Greg A. Pinarelli, Carl
27 P. Pira, Dan R. Plein, Eric L. Pollom, Marcelo Populin, Lance E. Pound, Jason L. Powers,
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2 Prutzman, Michael J. Prutzman, Duane D. Pudgil, Jesus W. Puente, Bretton J. Punches, Dalana S.
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5 Robert M. Redding, Jr., Craig R. Reesor, Richard H. Reichner II, James H. Renwick, Rodolfo V.
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7 Manuel Rodriguez, Ramiro O. Rodriguez, Gary A. Roesink, Daniel G. Roman, Luis A. Roman,
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9 L. Rosenbloom, Angela N. Rozsa, Lamar J. Rozsa Jr., Jeffrey R. Ruckle, Renee D. Ruff, Mariam
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12 C. Santos III, Christopher M. Sarot, Dennis Savage, Jade R. Sawyer, Jason A. Scally, Cody K.
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21 William T. Smith, Daniel J. Smyth, Joseph G. Snarponis, Robert W. Snead, Cesar A. Solis, David
22 L. Soliven, Andrew Sorbie, Brandy A. Sorbie, Mark T. Soulia, Andrew J. Spagnolo, Andrew E.
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24 Michael L. Stacy, John Stadler, Eric A. Stafford, David W. Stafford Jr., Daniel Stanley, Philip J.
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26 James A. Stewart, Kenneth P. Stewart, Elliot S. Stiasny, Robert F. Stinson, Robert G. Stites, Ross
27 E. Stone, Roger A. Stonier, Jr., Jerry G. Stratton, John J. Stricklin, Spencer E. Sturm, William F.
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15 Thomas Wagner, Kristopher M. Walb, Curtis J. Waldecker, Steven R. Waldheim, David R. Walker,
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21 Michael D. Williams, Michael R. Williams, Michael S. Williams, Timothy R. Williams, Darryl L.
22 Willis, Jeff D. Willkomm, Robert E. Wills, Dan M. Wilson, Frederick L. Wilson, Lawrence E.
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27 Zdunich, Matthew T. Zdunich, Angela M. Zdunich-Goldman, Monica Zepeda, Timothy P.
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17 Pierce, Ernesto Pinedo, Jr., John R. Piner, Marc A. Pitucci, Jose L. Ramos, Joseph A. Ramos,
18 Ralph Ramos, Marcus Ramsey, Kevin C. Rausis, Dwight P. Reece, Roy E. Reed, Anthony Reese,
19 Jr., John J. Reif, Wendy S. Reno, Jacob M. Resch, Robert L. Rex, Rolanda M. Ricardez, Ronald L.
20 Rice, Phillip H. Rice IV, Benda T. Richmond, Ward A. Rickman, Darin J. Ries, Andres H. Rios,
21 Carmelin Rivera, Francisco Rivera, Maria D. Rivera, Gary V. Rivers, Thomas A. Rizzo, Todd J.
22 Robertson, Larry J. Robertson II, Steve R. Robinson, Jason P. Rocha, Ana B. Rodriguez, Jaime R.
23 Rodriguez, Bobby D. Rollins, Mario I. Romano, Fausto W. Romero, David L. Root, Paul R.
24 Rorrison, Steven M. Rosenbloom, Raymond H. Rowe, Jr., Michael Rubio, Robert S. Rude, Brad D.
25 Ruff, John S. Russell, Joseph L. Ruvido, James W. Ryan, Lynn D. Rydalch, Ivan A. Sablan,
26 Artemis D. Sadlier, Alan J. Samuelson, Tristan T. Schmottlach, James C. Schorr, Ernesto Servin,
27 Stephen Shebloski, Lori A. Sinclair, Steven E. Skinner, George D. Smith, Sandra P. Smullen, Gina
28

1 M. Spadacini, Anthony J. Spagnolo, Howard W. Spetter, Joseph R. Steffen, Joseph R. Steffen,
2 Marc A. Stephens, Jeffrey J. Sterling, Leslie W. Stewart, Natalie A. Stone, Daniel T. Stuber, Brian
3 J. Szymonik, Rudolph G. Tai, Jr., Mark A. Tallman, Philip J. Terhaar, Scott A. Thompson, Daniel
4 D. Toneck, Terence N. Torgersen, Francisco J. Torres, Scott A. Townsend, Larry D. Triplett, Jr.,
5 Bernard P. Updike, Jr., Dominic L. Valaile, Jimmy I. Valle, Ron W. Van Cleave, Dale Van Horn,
6 Robert J. Van Wulven, Michael E. Vargas, Danny Vega, Sylvia A. Vella, Steven D. Villalobos,
7 Joseph T. Waggaman, Gaye D. Wagner, James M. Watkins, Jr., Ross M. Weaver, Dianna M.
8 Webb, Michael J. Webb, Murdock J E. Weltzien, David A. West, David L. Whitfield, Richard A.
9 Widner, Jonathan D. Wiese, Mark A. Wilhelm, Darrell L. Williams, Donna L. Williams, Garrett
10 N. Williams, Tina M. Williams, Howard C. Williams, Jr., Frank H. Wilson, Roger K. Wong, John
11 R. Young, Anthony Zeljeznjak, Hans S. Zingheim, Simon V. Ty, Thomas M. Rhodes, Suzanne
12 Huntington, Jerrilyn Sober, Donna Wescott, Heidi Hawley, Max G. Verduzco, Danny W. Hollister,
13 Brett H. Burkett, Robert C. Burlison, Richard J. Carlson, Henry L. Castro, Martin G. Castro, John
14 Cochran Jr., Arthur D. Doherty III, Antoine N. El-Assis, Dale A. Flamand, Miguel A. Garcia, Ryan
15 P. Gault, Kenneth S. Hargrove, Robert W. Herzig, Charles M. Hudgins, Roy B. Hulbert, Pia A.
16 Iversen, Sandra I. Lachapelle, Brian P. Lucchesi, Scott D. Naliboff, Alan M. Nicholas, Christopher
17 D. O'Quinn, Frederick Parenti, Douglas L. Pickett, Michael J. Prutzman, Sandra I. Rapalee, Bret A.
18 Righthouse, Susan M. Righthouse, Jeffrey Salinas, Dorinda K. Dodd, Richard Garcia, David G.
19 Maley, Brian Marvel, Michael S. Moran, Allen R. Baylor, Ali D. Campbell, Elsa L. Castillo, Jaime
20 D. Conti, Larry W. Darwent, Jorge Duran, Jeremy M. Durrant, Steven W. Dyer, Sarah Foster,
21 Richard G. Freedman, Ralph Galangue, Louis Paul Galante III, Mark J. Gasteiger, Florante E.
22 Gonzales Jr., Tristan Gonzalez, Levi B. Harbin, Eric B. Hays, Dana R. Hoover, Gregg M.
23 Humphrey, William Jacobson, Kyle Kelley, Christopher W. Kilby, Joseph W. Lehr, Lee C. Martin,
24 Daniel A. Meyer, Tony C. Naputi, Bradley M. O'Donnell, Michael A. Ramsay, Kenneth C.
25 Robbins, Jeffrey B. Scruggs, Gaylon W. Sells, Adam T. Sharki, James E. Stevens, Michael Stirk,
26 Dawn Summers, Robert J. Sylvester, William D. Snyder, John Therien, Steven C. Thorn, Brett T.
27 Toovey, James J. Troussel, Robert S. Truderung, Timothy L. Underwood, Yvette R. Vasquez,
28

1 Roxie C. Vigil, Dick L. Ward, Michael W. Weaver, Ronald M. Weiss, Thomas S. Wetzel, Tracey
2 D. Williams, Steven L. Witt, Richard M. Zweifach Sr., Laurie D. Agnew, Agustin Ascencio, Peter
3 E. Brown, Thomas D. Carmody, Jorge Carranza, Patrick R. Dering, Eduardo E. Escamilla, Alan
4 R. Fragoso, Lisa A. Hartman, David F. Highsmith, Gary D. Hildreth, Noel L. McElfresh, Michael
5 A. Padgett, and Arthur L. Scott (“Plaintiffs”).

6 5. Defendant, City of San Diego (“Defendant City”) is a political subdivision of the State
7 of California, a local government “employer” under 29 U.S.C. § 203(r) & (s).

8 6. Plaintiffs are ignorant of the names and capacities of the individuals or entities sued
9 herein as Does One through Ten, inclusive, and therefore sue these Defendants by these fictitious
10 names. Plaintiffs will amend this Complaint to allege the true names and capacities when they have
11 been ascertained. Plaintiffs are informed and believe, and thereon allege, that each of the
12 fictitiously named Defendants is in breach of contract and/or legally responsible in some manner
13 for the occurrences, losses and injuries alleged in this Complaint and for Plaintiffs’ damages.

14 7. At all times relevant to this Complaint, the acts and omissions of a natural person-
15 Defendant who is or may be identified as an official, employee or agent of an entity-Defendant,
16 was undertaken in accordance with and represents the official policies of the latter or was
17 undertaken and represents the official policies or procedures of the same, for which the former is
18 sued in both his or her individual and official capacity. At all times relevant to this Complaint,
19 each Defendant conspired, committed, ordered, directed, supervised, allowed, planned, ratified,
20 concealed, organized, or otherwise participated in one or more of the acts alleged below.

21 **III. ALLEGATIONS**

22 **A. Collective Bargaining Agreements**

23 8. It is the pattern and practice of Defendant City to address employment concerns specific
24 to San Diego peace officers through the collective bargaining process and the Plaintiffs’
25 representative employee organization, San Diego Police Officers’ Association.

26 9. Defendant City and Plaintiffs’ bargaining unit routinely enter into collective bargaining
27 negotiations during which labor-management agreements are created for a specific, limited term.

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1 These labor-management agreements are employment contracts for the specified term and are
2 known individually as a Memorandum Of Understanding (“MOU”). While MOUs govern the
3 employment agreement between the individual Plaintiff and Defendant City, an operative MOU
4 supplements the minimum standards set forth under FLSA.

5 10. The current labor-management agreement between Defendant City and the employee
6 organization representing Plaintiffs, is an enforceable contract after adoption by Defendant City’s
7 legislative body, and will come into effect July 1, 2007 through June 30, 2008 (‘07-‘08 MOU), a
8 true and correct copy of which is attached as Exhibit A and incorporated by reference herein. The
9 last labor-agreement was in effect from July 1, 2003 to June 30, 2005 and is now expired (“‘03-‘05
10 MOU”), a true and correct copy of which is attached as Exhibit B and incorporated by reference
11 herein. The prior labor-management agreement between Defendant City and the employee
12 organization representing Plaintiffs, that became an enforceable contract after being adopted by
13 Defendant City’s legislative body, was in effect from July 1, 2000 to June 30, 2001 (“‘00-‘01
14 MOU”), a true and correct copy of which is attached as Exhibit C and incorporated by reference
15 herein. (Collectively referred to as “MOUs”, incorporated herein by each reference thereto).

16 11. The MOUs are put into effect by acts of legislative counsel through ordinances. The
17 specific salary terms of the MOUs are approved and put into effect through a separate and distinct
18 ordinance or resolution. The relevant salary ordinances are attached as true and correct copies, and
19 incorporated by reference herein, as Exhibit D (2000 Salary Ordinance, O- 18806), Exhibit E (2001
20 Salary Ordinance, O-18943), Exhibit F (2002 Salary Ordinance, O-19068), 2003 Salary Ordinance,
21 2004 Salary Ordinances, Exhibit G (2005 Salary Ordinance, O-19384), Exhibit H (2006 Salary
22 Ordinance, O-19384), Exhibit I (2007 Salary Ordinance, O-2007-124, presented to council on April
23 16, 2007 - finalization still pending). Plaintiffs are informed and believe that there exists Salary
24 Ordinances for 2003 and 2004; however, Plaintiffs have been unable to locate these ordinances on
25 the Defendant City’s website.

26 12. At times the collective bargaining process fails to result in an MOU. During the
27 intermittent times between collective bargaining agreements, specifically 2001-2003 and 2005-

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1 2007, Defendant City imposed Last, Best, Final Offers (“LBFO”) upon the employee organization
2 representing the Plaintiffs, true and correct copies of which are attached as Exhibits J & K,
3 respectively, and incorporated by reference herein. The LBFO is not an agreement, rather it is a
4 government imposition of terms for a one year period. During the years in which there is not an
5 MOU (i.e. there is a LBFO) the same pay rates and allowances applied during the periods of the
6 last operative MOU remain in effect (unless modified by the LBFO).

7 13. Plaintiffs’ representative bargaining unit and Defendant City are parties to the MOUs.
8 Plaintiffs are not parties to the MOUs, but are the intended beneficiaries of the terms contained in
9 the MOUs. Each peace officer entered into a separate hiring agreement with the City, which does
10 not contain a provision that mandates use of the optional grievance procedure under the MOUs.

11 14. The intent of the parties to the MOUs was that the internal grievance procedure under
12 the MOUs is optional and limited in scope to the interpretation or application of a particular term of
13 the MOUs. Plaintiffs are otherwise excepted from the internal grievance procedure because (1) the
14 subject of this controversy lies outside the City's authority, (2) pursuit of a grievance would result
15 in irreparable harm, (3) the grievance remedy would be inadequate, (4) the outcome of the
16 grievance remedy is already known, rendering the grievance procedure futile, (5) this controversy
17 involves constitutional rights and matters of important public policy, and/or (6) this controversy
18 involves a class action.

19 15. Plaintiffs have complied with the California Government Tort Claims Act (“CGTA”),
20 although Plaintiffs’ maintain the CGTA not apply to any claims in these consolidated cases. A true
21 and correct copy of the notice is attached as Exhibit L, and incorporated by reference herein.

22 **B. Custom, Policy, Pattern and Practice of City Of San Diego**

23 16. Local government may develop a custom, policy, pattern and/or practice of policy
24 and/or procedure that is understood to govern the behavior of the people that are employed. This
25 custom, policy, pattern and/or local practice may or may not be codified in a policy or procedure
26 manual. The customs, patterns and/or local practice are the result of typical behaviors, common
27 adoption, habit or understandings of the personnel and have the force and effect of law. 29 U.S.C.

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1 §207(o)(2)(A)(ii) & (B); 29 C.F.R. § 553.23(c); *Wilson v. City of Charlotte, North Carolina*, 964
2 F.2d 1391 (4th Cir. 1992).

3 17. Compensatory Time Off (“CTO”) is a day off work paid to the employee as a regular
4 work day without the employee having to take vacation or illness time. CTO developed as a
5 response to the highly stressful nature of safety personnel’s work. CTO is an *earned* benefit
6 granted upon completion of work in lieu of wages. ’00-’01 MOU, Ex. C, Art. 32(5)&(6), p. 43;
7 03-’05 MOU, Ex. B, Art. 32(5)&(6), p. 42-43; ’07-’08 MOU, Ex. A, Art. 32(6), p. 7-9; 2006
8 LBFO, Ex. L, p. 2. At all times relevant to this Complaint, Defendant City has provided the peace
9 officers a choice between CTO or overtime. It is understood that should the peace officer choose
10 CTO, the officer will be allowed to take the *earned* paid days off.

11 18. Effective July 1, 2007, the election of CTO will shift from the discretion of the
12 individual peace officer to the Police Chief. ’07-’08 MOU, Ex. A, Art. 32(6), p. 7.

13 19. At all times relevant to this Complaint, Defendant City has offered, guaranteed, and will
14 allow San Diego safety employees to use their CTO either through specific MOU agreements or
15 because of local custom, policy, pattern and practice during periods in which there is no operative
16 MOU in effect.

17 20. At all times relevant to this Complaint, Defendant City adopted, followed and promoted
18 policies and procedures that resulted in its refusal and/or failure to accurately record, keep and
19 maintain time and wage records required by law.

20
21 **21. Common Overtime Violations:** At all times relevant to this Complaint, Defendant City
22 required Plaintiffs to work, perform duties and spend time that constituted time and hours worked,
23 for which Defendant City willfully, voluntarily, deliberately and intentionally failed and refused to
24 count as time and hours actually worked by peace officers, who in turn were not compensated at
25 their regular, premium or overtime wage rate for, including but not limited to, the following time
26 and hours worked—

27 a. Time spent preparing for, participating in and performing pre-shift and post-shift
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1 activities that are required, integral and an indispensable part of the work and
2 principal activities of peace officers, including but not limited to pre-shift, post-shift
3 and shift change briefings and related activities, preparation for roll-call, inspections,
4 preparation, review and/or finalization of arrest and/or investigation reports,
5 preparing, traveling and making court appearances, deployment related activities,
6 collecting, returning, cleaning and/or maintaining equipment and/or uniforms;

7 b. Time spent donning, doffing, dressing-up and dressing-down of protective and/or
8 other specialized equipment, gear and outfitting that is integral and indispensable to
9 the work and principal activities of peace officers, including but not limited to
10 getting dressed into uniform and vest, checking all equipment attached to their belt
11 to insure that all safety equipment was functioning properly;

12 c. Time spent walking to and from pre-shift and post-shift activities, work areas,
13 stations, the locker room, roll-call, the briefing room, the equipment room, posts and
14 patrol vehicles; and,

15 d. Failing to properly calculate paid and unpaid overtime compensation based on a
16 formula that includes all compensation, including but not limited to specialty pay,
17 education incentive pay, advanced and intermediate Police Officer Standards
18 Training certificates, and other wage enhancements, and uniform allowances treated
19 by Defendant City as wages.

20 22. **Common Code 7 Violations:** At all times relevant to this Complaint, Defendant City
21 required Plaintiffs to work without meal break periods during every shift, in violation of their
22 MOUs and FLSA standards for paid meal breaks and law.

23 23. **Common Reimbursement Violations:** At all times relevant to this Complaint, each
24 Plaintiff has incurred necessary expenditures in direct consequence of the discharge of his or her
25 duties and/or in obedience to the directions of Defendant City. Furthermore, the uniform allowance
26 for all peace officers under the MOUs only applies to items covered by Article 26.II.A and Article
27 26.II.A, respectively. There are additional uniform allowances under the MOUs for Mounted
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1 32. Plaintiffs are employees of Defendant City and at all times relevant to this Complaint
2 have performed or stood ready to perform all the obligations to Defendant City as required by the
3 MOUs, LBFOs, separate employment agreements, and according to the custom, policy, pattern and
4 practice set by Defendant City.

5 33. Defendant City has failed and refused, and continue to refuse, to tender its performance
6 as required by the agreements. Defendant City's acts, omissions and Common overtime, Code 7,
7 Reimbursement, and CTO Violations constitute breaches of the MOUs, Defendant City's salary
8 ordinances, and implied employment agreements (as reflected by the LBFOs and custom, policy
9 and practice of the Defendant City).

10 34. Despite knowing of these contracts and existing employment relationship, Defendant
11 City knowingly and intentionally interfered with those contracts and employment relationships by
12 failing to support and pay the hours worked by Plaintiffs for pre-shift, post-shift and off-site
13 activities, compensation due for improper premium rate calculations, damages and penalties for
14 missed meal break periods ("Code 7s"), reimbursements due for work-related expenses, and denial
15 of earned Compensatory Time Off.

16 35. Defendant City's failure and refusal to perform its obligations under the contract has
17 directly damaged Plaintiffs through the loss of compensation at time earned according to proof,
18 accruing every pay period for continuing violations.

19
20 36. As a direct and proximate result of each Defendant City's breaches, Plaintiffs have
21 suffered injury, loss and damages, for which Plaintiffs seek and are entitled to the following: (a)
22 For the recovery of general and special damages, according to proof; (b) For an award of
23 prejudgment interest; (c) For an award of attorneys' fees and costs of suit; and, (d) For other relief
24 deemed just and proper.

25 37. Defendant City's actions were undertaken with fraud, malice or oppression, or with a
26 conscious disregard of the rights of the Plaintiffs, and therefore, Plaintiff is entitled to an award of
27 exemplary and punitive damages against Defendant, in an amount according to proof.

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1 compensation which was paid late for the three years preceding the date of this action as required
2 by 29 U.S.C. §216(b), plus reasonable attorneys' fees and costs.

3 WHEREFORE, Plaintiffs pray for judgment against Defendant City, as more fully set forth
4 below.

5 **FOURTH CLAIM FOR RELIEF**

6 **FLSA §7(o) VIOLATIONS**

7 **Against Defendant City of San Diego**

8 44. Plaintiffs allege and incorporate by reference, as though fully set forth, all preceding
9 paragraphs of this Complaint.

10 45. Defendant City has either recklessly or knowingly and intentionally failed and refused
11 to compensate Plaintiffs for overtime worked.

12 46. There is a valid or otherwise lawful agreement between the Plaintiffs' bargaining unit
13 and Defendant City, pursuant to 29 U.S.C. §207(o), to pay CTO in lieu of wages, as reflected by
14 the MOUs and the Defendant City's custom, policy, pattern and practice regarding CTO.
15 Defendant City does not comply with state or federal requirements for utilization or payment of
16 CTO as set forth herein.

17 47. Defendant City has failed and refused the peace officers' requests and ability to take
18 CTO as required by the 29 U.S.C. §207(o) and agreements.

19 48. Defendant City is in violation of the timely pay requirements of the FLSA and
20 agreements. At all times relevant to this Complaint, Defendant City has failed to pay compensatory
21 time off, at Plaintiffs sole discretion, at the lawful premium rate.

22 49. In doing all the things described and alleged above, Defendant City deprived Plaintiffs
23 of their rights, privileges and immunities secured to them by federal law which states that payment
24 for overtime hours worked with compensatory time is only lawful if paid pursuant to the terms of a
25 valid or otherwise lawful agreement between the Plaintiffs' representative bargaining unit and the
26 City, pursuant to 29 U.S.C. §207(o).

27 50. As a direct and proximate result of Defendant City's actions and inactions, Plaintiffs
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1 have been damaged, and seek and are entitled to judgment as follows: (a) Election, on an individual
2 basis, voiding any purported CTO agreement; (b) For the recovery of unpaid overtime at the lawful
3 premium rate; (c) For the recovery of liquidated damages; (d) For an award of attorneys' fees and
4 costs; (e) For an award of prejudgment interest; and, (f) For such further and other relief as deemed
5 just and proper.

6 WHEREFORE, Plaintiffs pray for judgment against Defendant City, as more fully set forth
7 below.

8 DEMAND FOR JURY TRIAL

9 51. Plaintiffs demand a trial by jury as provided by the Federal Rules of Civil Procedure,
10 Rule 38(a).

11 PRAYER FOR RELIEF

12 WHEREFORE, Plaintiffs pray for judgment and other relief against Defendants, jointly and
13 severally, on each claim for relief, as set forth below.

14 52. On the First Claim for Relief for FLSA §7(a) violations:

- 15 a. For recovery of unpaid overtime compensation and an additional equal amount as
- 16 liquidated damages, as set forth under 29 U.S.C. §216(b);
- 17 b. For an award of costs and reasonable attorney fees, as set forth under 29 U.S.C.
- 18 §216(b);
- 19 c. For prejudgment interest; and,
- 20 d. For other relief deemed just and proper.

21 53. On the Second Claim for Relief for breach of contract:

- 22 a. For the recovery of general and special damages, according to proof;
- 23 b. For an award of prejudgment interest;
- 24 c. For an award of reasonable attorney fees and costs of suit; and,
- 25 d. For other relief deemed just and proper.

26 54. On the Third Claim for FLSA §7(a) violations regarding late payment of overtime:

- 27 a. For actual, consequential, liquidated and incidental damages, according to
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- proof at trial;
 - b. For such other damages as may be allowed in accordance with Federal Rules of Civil Procedure, Rule 54 and 29 U.S.C. §216(b), according to proof at trial;
 - c. For liquidated damages, reasonable attorney fees and costs pursuant to 29 U.S.C. §216(b); and,
 - d. For such further and other relief deemed just and proper.
55. On the Fourth Claim for 29 U.S.C. §207(o) willful violations:
- a. Election, on an individual basis, voiding any purported CTO agreement;
 - b. For the recovery of unpaid overtime at the lawful premium rate;
 - c. For the recovery of liquidated damages;
 - d. For an award of reasonable attorney fees and costs;
 - e. For an award of prejudgment interest; and,
 - f. For such further and other relief as deemed just and proper.

Dated: June 8, 2007

Respectfully submitted.
**JACKSON | DEMARCO | TIDUS |
PETERSEN | PECKENPAUGH**

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