

9/1/05

LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
6033 W. Century Boulevard, Suite 500
Los Angeles, CA 90045

1 Brian P. Walter, Bar No. 171429
bwalter@lcwlegal.com
2 Geoffrey S. Sheldon, Bar No. 185560
gsheldon@lcwlegal.com
3 Jolina A. Abrena, Bar No. 198683
jabrena@lcwlegal.com
4 LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
5 6033 W. Century Boulevard, Suite 500
Los Angeles, CA 90045
6 Telephone: (310) 981-2000
Facsimile: (310) 337-0837

7 Rockard Delgadillo, City Attorney, Bar No. 125465
8 Angel Manzano, Jr., Deputy City Attorney, Bar No.
73889
9 200 North Main Street, Room 800, City Hall East
Los Angeles, CA 90012-4131
10 Telephone: (213) 978-8384
Facsimile: (213) 978-8787

11 Attorneys for Defendant
12 CITY OF LOS ANGELES

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

16 ROBERTO ALANIZ, an individual;
17 for himself on behalf of all others
18 similarly situated and on behalf of the
general public,

19 Plaintiff,

20 v.

21 CITY OF LOS ANGELES and DOES
22 1 through 10,

23 Defendant.

Case No. CV 04-8592-GHK(JWJx)

**ANSWER OF DEFENDANT CITY OF
LOS ANGELES TO FIRST
AMENDED COMPLAINT**

24 TO PLAINTIFFS AND TO THEIR ATTORNEYS OF RECORD:

25 Defendant CITY OF LOS ANGELES ("City") answers the First Amended
26 Complaint ("FAC") of Plaintiffs ROBERTO ALANIZ, *et al.*, as follows:

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1 1. Answering paragraph 1 of the FAC, Defendant City hereby admits that
2 the Court has subject matter jurisdiction to hear this action pursuant to Title 28
3 United States Code sections 1331 and 1343.

4 2. Answering paragraph 2 of the FAC, Defendant City admits that venue
5 is proper in the Central District of California pursuant to Title 28 United States
6 Code section 1391(b). Except as expressly admitted herein, the City denies
7 generally and specifically each and every remaining allegation contained in
8 paragraph 2 of the FAC.

9 3. Answering paragraph 3 of the FAC, Defendant City admits that
10 Roberto Alaniz is currently employed by the City, however, the City denies that
11 Alaniz remains a Plaintiff in this action. With respect to any remaining allegations,
12 the City denies generally and specifically any remaining allegations contained in
13 paragraph 3.

14 4. Answering paragraph 4 of the FAC, Defendant City admits that
15 Raymond L. Dorsey, Jr. is currently employed by the City, however, the City
16 denies that Dorsey remains a Plaintiff in this action. With respect to any remaining
17 allegations, the City denies generally and specifically any remaining allegations
18 contained in paragraph 4.

19 5. Answering paragraph 5 of the FAC, Defendant City admits the
20 allegations contained therein.

21 6. Answering paragraph 6 of the FAC, Defendant City admits the
22 allegations contained therein.

23 7. Answering paragraph 7 of the FAC, Defendant City admits the
24 allegations contained therein.

25 8. Answering paragraph 8 of the FAC, Defendant City is without
26 sufficient information and belief to admit or deny, and on that basis denies the
27 allegations.

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1 9. Answering paragraph 9 of the FAC, Defendant City is without
2 sufficient information and belief to admit or deny, and on that basis denies the
3 allegations.

4 10. Answering paragraph 10 of the FAC, Defendant City is without
5 sufficient information and belief to admit or deny, and on that basis denies the
6 allegations.

7 11. Answering paragraph 11 of the FAC, Defendant City is without
8 sufficient information and belief to admit or deny, and on that basis denies the
9 allegations.

10 12. Answering paragraph 12 of the FAC, Defendant City denies generally
11 and specifically each and every allegation contained therein.

12 13. Answering paragraph 13 of the FAC, Defendant City is without
13 sufficient information and belief to admit or deny, and on that basis denies the
14 allegations.

15 14. Answering paragraph 14 of the FAC, Defendant City admits that
16 Plaintiffs are members of the Los Angeles Police Protective League (“LAPPL” or
17 “League”) and subject to all the terms of the collective bargaining agreements
18 (“CBAs” or “Memoranda of Understanding” or “MOUs”) agreed upon by the City
19 and the LAPPL.

20 15. Answering paragraph 15 of the FAC, Defendant City admits that one
21 or more of the Plaintiffs have worked “overtime” during his or her employment
22 with the City. The City further admits that it had knowledge of some of the
23 overtime that one or more of the Plaintiffs have worked during their employment to
24 the extent those Plaintiffs followed the City’s overtime policies and practices by
25 reporting the overtime in an overtime report. The City denies generally and
26 specifically each and every remaining allegation contained in paragraph 15.

27 16. Answering paragraph 16 of the FAC, Defendant City denies generally
28 and specifically each and every allegation contained therein.

1 17. Answering paragraph 17 of the FAC, Defendant City denies generally
2 and specifically each and every allegation contained therein.

3 18. Answering paragraph 18 of the FAC, Defendant City denies generally
4 and specifically each and every allegation contained therein.

5 19. Answering paragraph 19 of the FAC, Defendant City denies generally
6 and specifically each and every allegation contained therein.

7 20. Answering paragraph 20 of the FAC, Defendant City denies generally
8 and specifically each and every allegation contained therein.

9 21. Answering paragraph 21 of the FAC, Defendant City hereby
10 incorporates paragraphs 1 through 16 of this Answer, inclusive, as though set forth
11 fully herein, and similarly denies each and every allegation that was denied therein.

12 22. Answering paragraph 22 of the FAC, Defendant City denies generally
13 and specifically each and every allegation contained therein.

14 23. Answering paragraph 23 of the FAC, Defendant City admits it is
15 aware of its obligations under the Fair Labor Standards Act of 1938 (“FLSA”), and
16 the City further admits that the collective bargaining agreement(s) for the LAPPL
17 contains provision(s) concerning compensatory time off. With respect to the
18 remaining allegations, the City denies generally and specifically each and every
19 other allegation contained therein.

20 24. Answering paragraph 24 of the FAC, Defendant City denies generally
21 and specifically each and every allegation contained therein.

22 25. Answering paragraph 25 of the FAC, Defendant City hereby
23 incorporates paragraphs 1 through 24 of this Answer, inclusive, as though set forth
24 fully herein, and similarly denies each and every allegation that was denied therein.

25 26. Answering paragraph 26 of the FAC, Defendant City denies generally
26 and specifically each and every allegation contained therein.

27 27. Answering paragraph 27 of the FAC, Defendant City denies generally
28 and specifically each and every allegation contained therein.

1 28. Answering paragraph 28 of the FAC, Defendant City admits that it is
2 aware of its obligations under the FLSA and has made a good faith effort to comply
3 with said obligations. With respect to the remaining allegations, the City denies
4 generally and specifically each and every other allegation contained in paragraph
5 28.

6 29. Answering paragraph 29 of the FAC, Defendant City denies generally
7 and specifically each and every allegation contained therein.

8 30. Answering paragraph 30 of the FAC, Defendant City denies generally
9 and specifically each and every allegation contained therein.

10 31. Answering paragraph 31 of the FAC, Defendant City need not answer
11 this paragraph as Plaintiffs' third claim for relief (breach of contract) was dismissed
12 pursuant to the District Court's August 24, 2005 Order. Nevertheless, the City
13 hereby incorporates paragraphs 1 through 30 of this Answer, inclusive, as though
14 set forth fully herein and similarly denies each and every allegation that was denied
15 therein.

16 32. Answering paragraph 32 of the FAC, Defendant City need not answer
17 this paragraph as Plaintiffs' third claim for relief (breach of contract) was dismissed
18 pursuant to the District Court's August 24, 2005 Order. Nevertheless, the City
19 admits that on or about August 1, 2003 a Memorandum of Understanding ("MOU")
20 was entered into by and between the City and Plaintiffs' union, the Los Angeles
21 Police Protective League ("League"), for the term of July 1, 2003 through June 30,
22 2006. The City further admits that Plaintiffs' FAC accurately quotes a part of the
23 August 1, 2003 MOU. With respect to any remaining allegations, the City is
24 without sufficient information or belief to admit or deny, and on that basis denies
25 the remaining allegations.

26 33. Answering paragraph 33 of the FAC, Defendant City need not answer
27 this paragraph as Plaintiffs' third claim for relief (breach of contract) was dismissed
28 pursuant to the District Court's August 24, 2005 Order. Nevertheless, the City

1 admits that on or about July 31, 2000 an MOU was entered into by and between the
2 City and Plaintiffs' union, the Los Angeles Police Protective League ("League"),
3 for the term of July 1, 2000 through June 30, 2003. The City further admits that
4 Plaintiffs' FAC accurately quotes a part of the July 31, 2000 MOU, however,
5 Plaintiffs cited to the wrong page of the MOU in their FAC. With respect to any
6 remaining allegations, the City is without sufficient information or belief to admit
7 or deny, and on that basis denies the remaining allegations.

8 34. Answering paragraph 34 of the FAC, Defendant City need not answer
9 this paragraph as Plaintiffs' third claim for relief (breach of contract) was dismissed
10 pursuant to the District Court's August 24, 2005 Order. Nevertheless, the City is
11 without sufficient information or belief to admit or deny, and on that basis denies
12 the allegations.

13 35. Answering paragraph 35 of the FAC, Defendant City need not answer
14 this paragraph as Plaintiffs' third claim for relief (breach of contract) was dismissed
15 pursuant to the District Court's August 24, 2005 Order. Nevertheless, the City
16 denies generally and specifically each and every allegation contained in paragraph
17 35.

18 36. Answering paragraph 36 of the FAC, Defendant City need not answer
19 this paragraph as Plaintiffs' third claim for relief (breach of contract) was dismissed
20 pursuant to the District Court's August 24, 2005 Order. Nevertheless, the City
21 denies generally and specifically each and every allegation contained in paragraph
22 36.

23 37. Answering Plaintiffs' prayer for relief, Defendant City denies
24 generally and specifically that Plaintiffs are entitled to any of the relief requested in
25 paragraphs 1 through 4 (first and second causes of action) and 1 through 3 (third
26 cause of action) on page 9 of the FAC.

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FIRST AFFIRMATIVE DEFENSE
TO FIRST AMENDED COMPLAINT
(ESTOPPEL)

38. As an affirmative defense, Defendant City avers that it relied to its detriment on Plaintiffs' submission of overtime reports which did not set forth the overtime for which compensation is now sought and/or on other acts and omissions of Plaintiffs, including their knowledge, acquiescence, consent, approval, ratification, participation and/or failure to notify Defendant of the acts complained of in this action. (*Lindow v. United States*, 738 F.2d 1057 (9th Cir. 1984); *Forrester v. Roth's I.G.A. Foodliner, Inc.*, 646 F.2d 413 (9th Cir. 1981); *Newton v. City of Henderson*, 47 F.3d 746 (5th Cir. 1995); *Davis v. Food Lion*, 792 F.2d 1274 (4th Cir. 1986).) Plaintiffs are therefore estopped under principles of equity from asserting or recovering from any overtime compensation claims and/or have waived their right to assert or recover from such claims.

SECOND AFFIRMATIVE DEFENSE TO
FIRST AMENDED COMPLAINT
(PLAINTIFFS ARE PARTIALLY EXEMPT FROM
FLSA OVERTIME REQUIREMENTS)

39. As an affirmative defense, Defendant City avers that at all relevant times, Plaintiffs were police officers empowered by State statute or local ordinance to enforce laws designed to maintain public peace and order and to protect life and property from injury, and prevent and detect crimes, had the power to arrest, and were undergoing, have undergone or will undergo on-the-job training and/or a course of law enforcement related instruction and study. Defendant further avers that Plaintiffs are partially exempt from the overtime requirements of the FLSA because at all relevant times, Defendant adopted a 7(k) work schedule of twenty-eight (28) days for employees involved in law enforcement activities pursuant to Title 29 United States Code section 207(k) and the regulations and interpretive

1 bulletins of the Department of Labor set forth at Title 29 Code of Federal
2 Regulations sections 553.201 and 553.211.

3 **THIRD AFFIRMATIVE DEFENSE TO**
4 **FIRST AMENDED COMPLAINT**
5 **(RELIEF FROM LIABILITY FOR PRELIMINARY**
6 **OR POSTLIMINARY ACTIVITIES)**

7 40. As an affirmative defense, Defendant City avers that Plaintiffs are
8 barred from seeking compensation for travel to or from the principal activity and
9 preliminary or postliminary activities engaged in either prior to or subsequent to the
10 principal activities for which they are employed to perform, pursuant to Title 29
11 United States Code section 254(a).

12 **FOURTH AFFIRMATIVE DEFENSE TO**
13 **FIRST AMENDED COMPLAINT**
14 **(RESTRICTION ON ACTIVITIES COMPENSABLE**
15 **UNDER CONTRACT OR CUSTOM)**

16 41. As an affirmative defense, Defendant City avers that Plaintiffs' claims
17 are barred in whole or in part by the provisions of Title 29 United States Code
18 sections 254(b)-(c). Any activity deemed compensable under contract, custom or
19 practice is only compensable when engaged in during the portion of the day with
20 respect to which it is so made compensable.

21 **FIFTH AFFIRMATIVE DEFENSE TO**
22 **FIRST AMENDED COMPLAINT**
23 **(STATUTE OF LIMITATIONS)**

24 42. As an affirmative defense, Defendant City avers that Plaintiffs are
25 barred by the applicable statute of limitations for each claim. Title 29 United States
26 Code section 255(a) bars Plaintiffs from seeking damages more than two years
27 prior to the filing of this lawsuit, as any alleged violation by Defendant was not
28 willful.

LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
6033 W. Century Boulevard, Suite 500
Los Angeles, CA 90045

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NINTH AFFIRMATIVE DEFENSE TO
FIRST AMENDED COMPLAINT

**(PLAINTIFFS' REQUEST FOR EQUITABLE RELIEF IS BARRED
BECAUSE AN ADEQUATE REMEDY EXISTS AT LAW)**

46. As an affirmative defense, Defendant City avers that Plaintiffs are barred from receiving any form of equitable relief by reason of their FAC because an adequate remedy exists at law.

TENTH AFFIRMATIVE DEFENSE TO
FIRST AMENDED COMPLAINT

**(PLAINTIFFS' REQUEST FOR EQUITABLE RELIEF IS BARRED BY
THE DOCTRINE OF LACHES)**

48. As an affirmative defense, Defendant avers that Plaintiffs have unreasonably delayed commencement of this action such that their recovery, if any, should be barred or reduced under the doctrine of laches according to proof at the time of trial.

ELEVENTH AFFIRMATIVE DEFENSE TO
FIRST AMENDED COMPLAINT

**(FLSA DOES NOT APPLY TO
LOCAL GOVERNMENT AGENCIES)**

49. As an affirmative defense, Defendant City avers that the FLSA's application to Defendant, as a municipality, is an impermissible and unconstitutional interference with the functions of Defendant as a local government body in contravention of the Tenth Amendment to the United States Constitution.

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1 **TWELFTH AFFIRMATIVE DEFENSE TO**
2 **FIRST AMENDED COMPLAINT**
3 **(CLAIMS DO NOT CONSTITUTE**
4 **A REPRESENTATIVE CLASS)**

5 50. As an affirmative defense, Defendant City avers that Plaintiffs' claims
6 are not representative of a class of similarly related employees and as such, this
7 action cannot be properly brought as an FLSA collective action.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**
9 **TO FIRST AMENDED COMPLAINT**
10 **(PLAINTIFFS' REQUEST FOR EQUITABLE RELIEF IS**
11 **BARRED BY THE DOCTRINE OF UNCLEAN HANDS)**

12 51. As an affirmative defense, Defendant avers that Plaintiffs' request for
13 equitable relief is barred in whole or in part under the doctrine of unclean hands.
14 Plaintiffs' submission of overtime reports did not set forth the overtime for which
15 compensation is now sought. Plaintiffs' claims are barred due to Plaintiffs' other
16 acts and omissions, including but not limited to their knowledge, acquiescence,
17 consent, approval, ratification, participation and/or failure to notify Defendant of
18 the acts complained of in this action.

19 **FOURTEENTH AFFIRMATIVE DEFENSE**
20 **TO FIRST AMENDED COMPLAINT**
21 **(RES JUDICATA/WAIVER)**

22 52. As an affirmative defense, Defendant avers that the claims of those
23 Plaintiffs who have opted-in or may opt-in to this action pursuant to Title 29 United
24 States Code section 216(b) are barred from recovery of damages by the principles
25 of res judicata, collateral estoppel and waiver due to their settlement and release of
26 claims prior to that date in the lawsuits entitled *Edward Brehm v. City of Los*
27 *Angeles*, CV-02-4979-JFW (JWJx) and *Stella Lara v. City of Los Angeles*, CV-02-
28 2185-GHK (Rcx). Additionally, as an affirmative defense to Plaintiff's claims

LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
6033 W. Century Boulevard, Suite 500
Los Angeles, CA 90045

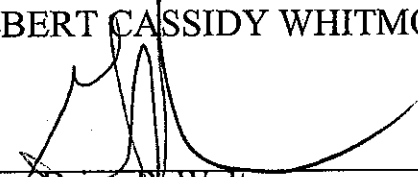
1 relating to timely payment of overtime, Defendant City avers that these claims are
2 barred by the principles of res judicata, collateral estoppel and waiver based on
3 *Kimpel v. Williams, et al.*, U.S.D.C., Central District Case No. CV 93-3441 GHK
4 (RNBx) and *Huff v. Parks, et al.*, U.S.D.C., Central District Case No. CV 98-10245
5 GHK (RNBx)

6 WHEREFORE, Defendant prays as follows:

- 7 1. That Plaintiffs take nothing by reason of their FIRST AMENDED
8 COMPLAINT and that judgment be rendered in favor of Defendant;
9 2. That Defendant be awarded its costs of suit incurred in defense of this
10 Action;
11 3. That Defendant be awarded reasonable attorneys' fees as may be
12 determined by the Court; and
13 4. That Defendant be awarded such other and further relief as the Court
14 may deem just and proper.

15 DATED: September 1, 2005

LIEBERT CASSIDY WHITMORE

16
17 By: 
18 Brian J. Walter
19 Geoffrey S. Sheldon
20 Jolina A. Abrena
21 Attorneys for Defendant
22 CITY OF LOS ANGELES
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 6033 W. Century Boulevard, Suite 500, Los Angeles, California 90045.

On September 1, 2005, I served the foregoing document described as **ANSWER OF DEFENDANT CITY OF LOS ANGELES TO FIRST AMENDED COMPLAINT** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Gregory Petersen
Tuyet-Van Tran
Castle, Petersen & Krause
4675 MacArthur Court, Ste. 1250
Newport Beach, CA 92660

X BY MAIL

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY OVERNIGHT By overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service, By Mail, for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.

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BY FACSIMILE I arranged for the above-entitled document(s) to be sent by facsimile from facsimile number (310) 337-0837 to the above-listed facsimile number(s) prior to 5:00 p.m. The facsimile machine I used complied with the applicable rules of court. Pursuant to the applicable rules, I caused the machine to print a transmission record of the transmission, to the above facsimile number(s) and no error was reported by the machine. A copy of this transmission is attached hereto.

Executed on September 1, 2005, at Los Angeles, California.

I declare that I am employed by the office of a member of the bar of this Court at whose direction the service was made.

Jill J. Wambua
Type or Print Name


Signature