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21 PAUL EDWARDS and A.G. MEGAS, for and
22 on behalf of themselves, other employees
23 similarly situated and the general public

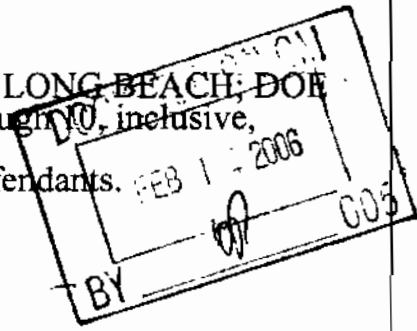
24 UNITED STATES DISTRICT COURT
25 CENTRAL DISTRICT OF CALIFORNIA

26 MICHAEL KENNETH PAUL
27 EDWARDS, for and on behalf of
28 himself, other employees similarly
situated and the general public;
A.G. MEGAS, for and on behalf of
himself, other employees similarly
situated and the general public,

Plaintiffs,

vs.

CITY OF LONG BEACH; DOE
ONE through 100, inclusive,
Defendants.



CASE NO. CV05-8990 ABC (PLAx)

CLASS ACTION

FIRST AMENDED COMPLAINT FOR DAMAGES AND OTHER RELIEF, AND DEMAND FOR JURY TRIAL, BASED ON:

1. FAIR LABOR STANDARDS ACT §7(a) VIOLATIONS [29 U.S.C. §207(a)]
2. LABOR CODE §226.7 VIOLATIONS
3. LABOR CODE §512 VIOLATIONS
4. LABOR CODE §2802 VIOLATIONS
5. UNFAIR COMPETITION [Cal. Bus. & Prof. Code §17200]

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1 Plaintiffs allege:

2 1. ~~F~~ederal question jurisdiction exists under 28 U.S.C. §1331 and 29 U.S.C.
3 §216. Supplemental jurisdiction may be exercised under 28 U.S.C. §1367(a). Venue
4 is proper under 28 U.S.C. §1391(b) because a substantial part of the acts, events or
5 omissions giving rise to the action occurred in the present District.

6 2. At all times relevant to this Complaint, Plaintiffs Michael Kenneth Paul
7 Edwards and A.G. Megas ("*Plaintiffs*") have been employed by Defendant City of
8 Long Beach as sworn peace officers.

9 3. Defendant City of Long Beach ("*City*") is a political subdivision of the State
10 of California.

11 4. Plaintiffs are ignorant of the names and capacities of the individuals or
12 entities sued herein as Doe One through 10, inclusive, and therefore sue these
13 Defendants by such fictitious names. Plaintiffs will amend this Complaint to allege
14 the true names and capacities of the same when ascertained, whom the former allege
15 are responsible in some manner for the occurrences, acts, omissions, losses, damages
16 and injuries alleged in this Complaint.

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

25 6. At all times relevant to this Complaint, Defendants required Plaintiffs and
26 other employees similarly situated ("*peace officers*") to work, perform duties and
27 spend time, which they did, that constituted time and hours worked, for which
28 Defendants wilfully, voluntarily, deliberately and intentionally failed and refused to

1 compensate peace officers at their regular and/or overtime rate, based on all forms of
2 compensation, for time spent and hours worked performing or engaging in the
3 following activities for Defendants' benefit ("*Common Overtime Practices*"): (a)
4 Preshift briefings; (b) Post-shift briefings; (c) Shift change briefings; (d) Preparing
5 arrest reports; (e) Traveling to court and giving and/or waiting to give testimony; (f)
6 Attending classes required after a chargeable accident; (g) Collecting or depositing
7 keys, radio or other gear or equipment; (h) Donning, doffing, dressing-up and/or
8 dressing-down of protective, safety and/or other specialized equipment, gear,
9 outfitting and/or uniform that is integral and indispensable to the work and principal
10 activities of peace officers; (i) Maintaining weapons, protective or safety gear,
11 equipment and/or uniforms; and (j) Walking to and/or from pre-shift and post-shift
12 activities, work areas, stations, locker room, roll-call, briefing room, equipment room,
13 posts and/or patrol vehicle.

14 7. At all times relevant to this Complaint, Defendants required Plaintiffs and
15 other peace officers to work, perform duties and spend time working through meal,
16 break, clean-up or free-time periods during which time he or she was not completely
17 relieved of duty, which they did, that constituted time and hours worked, for which
18 Defendants wilfully, voluntarily, deliberately and intentionally failed and refused to
19 compensate peace officers at their regular and/or overtime rate ("*Common Meal and*
20 *Rest Period Practices*").

21 8. At all times relevant to this Complaint, Plaintiff and other employees
22 similarly situated have incurred necessary expenditures in direct consequence of the
23 discharge of his or her duties and/or in obedience to the directions of Defendants,
24 who systematically, knowingly and wilfully or otherwise failed and refused to fully
25 reimburse and/or indemnify Plaintiffs and other employees similarly situated, for
26 expenditures incurred in purchasing, maintaining and/or cleaning protective gear,
27 weapons, ammunition, uniforms, gear, safety equipment, cleaning and lubricating
28 supplies, and mileage and parking fees associated with traveling to court ("*Common*

1 *Work Expense Reimbursement Practices*”).

2 9. ~~At~~ At all times relevant to this Complaint, the City reached a tentative labor-
3 management agreement with the employee-organization representing peace officers,
4 which was reduced to a memorandum of understanding that became a binding upon
5 the City after its governing body adopted the same (“MOU”), in accordance with the
6 Meyers-Milias-Brown Act [Cal. Gov. Code §§ 3500-3510] (“MMBA”). At all times
7 relevant to this Complaint, Defendants’ Common Overtime Practices violated the
8 rights of Plaintiffs and similarly situated employees arising from the MOU (“*Common*
9 *MOU Overtime Practices*”).

10 10. The MOU contains an internal grievance procedure which the parties
11 intended, as to peace officers, be permissive, limited in scope and exclusive of
12 statutory rights and claims. Plaintiffs and other employees similarly situated are not
13 parties to the MOU and entered into separate hiring agreements with the City.

14 11. Plaintiffs and other employees similarly situated are not required to submit
15 any of the claims under this action to the internal grievance procedure under the
16 MOU because, among other reasons, (a) it is neither binding on peace officers nor
17 mandatory for them, (b) it is not an administrative remedy under the MMBA, (c) it
18 is inadequate because (i) it is limited in scope and excludes the resolution of claims
19 under the California Labor Code, (ii) is limited to addressing minor disputes under
20 the terms of the MOU and/or (iii) cannot provide an adequate individual and/or class
21 action remedy, (d) it is futile because the outcome is already known, and/or (e) is
22 inappropriate because this matter concerns a matter of important public policy.

23 12. At all times relevant to this Complaint, Defendants adopted, followed and
24 promoted policies and procedures that have resulted in their refusal and/or failure to
25 accurately record, keep and maintain time and wage records required by federal and
26 state law (“*Common Record Keeping Practices*”).

27 **COLLECTIVE ACTION ALLEGATIONS**

28 13. The First Claim for Relief for violations of §7(a) of the Fair Labor

1 Standards Act (“FLSA”) [29 U.S.C. §207(a)] is brought by Plaintiffs for and on
2 behalf of themselves and other employees similarly situated who join this collective
3 action pursuant to 29 U.S.C. §216(b) (“*FLSA Collective Action*”).

4 14. Each Defendant’s Common Overtime Practices have been systematically
5 applied to Plaintiffs and other employees similarly situated thereby creating common
6 questions of law and fact that have impacted numerous individuals, which justifies
7 an order granting Plaintiffs the right to facilitated notice in contacting other
8 employees similarly situated, through direct mail and work-site postings, informing
9 them of the right to affirmatively join this action as an FLSA Collective Action
10 Plaintiff by filing their written consent in accordance with 29 U.S.C. §216(b).

11 CLASS ACTION ALLEGATIONS

12 15. The Second through Fifth Claims for Relief for California Labor Code
13 (“*Labor Code*”) §226.7 violations, Labor Code §512 violations, Labor Code § 2802
14 violations, and unfair competition [California Business & Professions (“*Business &*
15 *Professions*”) Code §17200 et seq.], respectively, is each brought by Plaintiffs for and
16 on behalf of themselves, other employees similarly situated, and as the putative
17 representatives of a class action, pursuant to Rule 26 of the Federal Rules of Civil
18 Procedure (“FRCP”) (except the Fifth Claim for Relief is also brought as a
19 representative suit), on behalf of the following classes of individuals:

20 (a) *Class definition.* Each peace officer employed by the City at any time
21 during the applicable time limitations period who has been subjected to any of
22 Defendants’ Common Overtime Practices, Common Meal and Rest Period Practices,
23 Common Work Expense Reimbursement Practices, and/or Common Record Keeping
24 Practices; and

25 (b) *Sub-Class definition.* Each peace officer employed by the City at any
26 time during the applicable time limitations period who has been subjected to any of
27 Defendants’ Common MOU Overtime Practices who has not attempted to pursue a
28 an overtime claim under the MOU internal grievance.

1 16. - There are questions of law and fact common to each putative Class and/or
2 sub-Class member, including but not limited to Defendants systematically, knowingly
3 and wilfully or otherwise failing and refusing to compensate and/or fully reimburse
4 or indemnify Plaintiffs and similarly situated employees for time, hours worked and
5 expenses incurred in relation to Defendants' Common Overtime Practices, Common
6 Meal and Rest Period Practices, and/or Common Work Expense Reimbursement
7 Practices, and whether Defendants unlawfully profited from their Common Record
8 Keeping Practices, and whether Defendants' Common MOU Overtime Practices
9 violated peace officers legal rights arising from the MOU.

10 17. Plaintiffs are members of the Class and/or sub-Class whose claims are
11 typical of the Class and/or sub-Class members. Plaintiffs will fairly and adequately
12 represent and protect the interests of the Class and/or sub-Class members, with whom
13 they have no conflict of interest.

14 18. Class certification is appropriate because the prosecution of separate actions
15 by individual Class and/or sub-Class members would create a risk of inconsistent or
16 varying adjudications that would establish incompatible standards of conduct for
17 Defendants, or because adjudications with respect to individual Class and/or sub-
18 Class members would, as a practical matter, be dispositive of the interests of nonparty
19 Class and/or sub-Class members [FRCP Rule 23(b)(1)].

20 19. Class certification is also appropriate because Defendants have acted or
21 refused to act based on the grounds generally applicable to the Class and/or sub-
22 Class, making appropriate declaratory and injunctive relief with respect to the
23 Plaintiff and the Class and/or sub-Class [FRCP Rule 23(b)(2)].

24 20. Class certification is also appropriate because common questions of law and
25 fact predominate over any questions affecting only individual members of the Class
26 and/or sub-Class and because a class action is superior to other available methods for
27 the fair and efficient adjudication of this litigation in as much as the conduct and
28 policies of Defendants are systematic, common and uniform as to all Class and/or

1 sub-Class members, the damages suffered by Class and/or sub-Class members are
2 minor relative to the expense and burden of individual prosecution of this litigation,
3 and Class and/or sub-Class certification is superior because it will obviate the need
4 for unduly duplicative litigation, which might result in inconsistent judgments [FRCP
5 Rule 23(b)(3)].

6 21. Plaintiffs have retained counsel who are competent and experienced in
7 successfully handling complex class actions in wage and hour law and have been
8 certified as class counsel by motion and stipulation in the Ninth Circuit. Plaintiffs
9 have incurred and during the pendency of this action will continue to incur expenses
10 for attorney fees and costs necessary to the prosecution of this action for the benefit
11 of the Class/sub-Class members.

12 22. Notice will be mailed to the Class and sub-Class by First-Class, U.S. mail
13 or by the use of techniques customarily used in class actions.

14 **FIRST CLAIM FOR RELIEF**

15 **FLSA §7(a) Violations**

16 *Individual/FLSA Collective Action against all Defendants*

17 23. Plaintiffs incorporate here by reference the preceding paragraphs.

18 24. Under the Fair Labor Standards Act of 1938 and the Portal to Portal Act of
19 1947 [29 U.S.C. §§201-219, 251-262], and applicable amendments, regulations and
20 case law, including but not limited to *IBP, Inc. v. Alvarez*, 126 S. Ct. 514 (2005)
21 (“FLSA”), covered employers such as the City are required to compensate employees
22 such as Plaintiffs and the FLSA Collective Action Plaintiffs for, among other things,
23 all time spent and activities that are an integral and indispensable part of his or her
24 principle work activities, and all time spent that is suffered or permitted by the
25 employer.

26 25. Each Defendant’s acts, omissions and Common Overtime Practices
27 constitute wilful, voluntary, deliberate or intentional violations of FLSA §7(a) [29
28 U.S.C. §207(a)] by failing and refusing to count all time and hours actually worked

1 by peace officer, for which they were not compensated at their regular, premium or
2 overtime wage rate.

3 26. As a result of each Defendant's FLSA violations, each Plaintiff, for and on
4 behalf of himself and the FLSA Collective Action Plaintiffs, seeks and is entitled to
5 an order and judgment as follows: (a) For the recovery of unpaid overtime
6 compensation and an additional equal amount as liquidated damages under 29 U.S.C.
7 §216(b); (b) For an award of costs and reasonable attorney fees under 29 U.S.C.
8 §216(b); (c) For an award of prejudgment interest; and (d) For other relief deemed
9 just and proper.

10 **SECOND CLAIM FOR RELIEF**

11 **Labor Code §226.7 Violations**

12 *Individual/Class Action against all Defendants*

13 27. Plaintiffs incorporate here by reference the preceding paragraphs.

14 28. Under Labor Code §226.7, employers such as the City are prohibited from
15 requiring employees such as Plaintiff and the Class members to work during a meal
16 or rest period mandated by Wage Order 17-2001 [8 C.C.R. §11170] of the Industrial
17 Welfare Commission.

18 29. Each Defendant's Common Meal and Rest Period Practices constitute
19 violations of Labor Code §226.7, for which each Plaintiff, for and on behalf of
20 himself and the Class, seeks and is entitled to an order and judgment as follows: (a)
21 For the recovery of one additional hour of pay under Labor Code §226.7 for each
22 current or former employee for each work day that a meal or rest period was not
23 provided; (b) For an award of reasonable attorney fees under California Code of Civil
24 Procedure ("C.C.P.") §1021.5; (c) For an award of prejudgment interest; (d) For an
25 award for costs of suit; and (e) For other relief deemed just and proper.

26 **THIRD CLAIM FOR RELIEF**

27 **Labor Code §512 Violations**

28 *Individual/Class Action against all Defendants*

1 . 30. Plaintiffs incorporate here by reference the preceding paragraphs.

2 31. Under Labor Code §512, employers such as the City are prohibited from
3 requiring employees such as Plaintiff and Class members to work more than five
4 hours per day without providing the employee with a 30-minute meal period, or more
5 than 10 hours without providing a second 30-minute meal period.

6 32. Each Defendant's Common Meal and Rest Period Practices constitute
7 violations of Labor Code §512, for which each Plaintiff, for and on behalf of himself
8 and the Class, seeks and is entitled to an order and judgment as follows: (a) For
9 recovery of underpaid regular, overtime and premium rate wages; (b) For the recovery
10 of \$50 for each initial violation and \$100 for each subsequent violation under Labor
11 Code §558; (c) For an award of reasonable attorney fees under C.C.P. §1021.5; (d)
12 For an award of prejudgment interest; (e) For an award of costs of suit; and (f) For
13 other relief deemed just and proper.

14 **FOURTH CLAIM FOR RELIEF**

15 **Labor Code §2802 Violations**

16 *Individual/Class Action against all Defendants*

17 33. Plaintiffs incorporate here by reference the preceding paragraphs.

18 34. Under Labor Code §2802, employers such as the City are required to
19 reimburse or indemnify employees such as each Plaintiff and the Class members, for
20 expenditures incurred in direct consequence of the discharge of duties or in obedience
21 to the employer's directions.

22 35. Defendants' Common Work Expense Reimbursement Practices constitute
23 violations of Labor Code §2802, for which each Plaintiff, for and on behalf of himself
24 and the Class, seeks and is entitled to an order and judgment as follows: (a) For
25 reimbursement and indemnity for all expenditures under Labor Code §2802; (b) For
26 an award of reasonable attorney fees under Labor Code §2802 and C.C.P. §1021.5;
27 (c) For an award of prejudgment interest and costs of suit; and (d) For other relief
28 deemed just and proper.

1 **FIFTH CLAIM FOR RELIEF**

2 **Unfair Competition**

3 *Individual/Class Action against all Defendants*

4 36. Plaintiffs allege and incorporate by reference the preceding paragraphs as
5 if fully stated here.

6 37. Each Defendant's violations of Labor Code §226.7 and Labor Code §512
7 constitute unlawful and unfair competition and business practices prohibited under
8 Business & Professions Code §17200, *et seq.* (liability for which is *not* an
9 infringement upon the City's sovereign authority to provide public safety because
10 said unfair and unlawful business practices pertain to wage and hour related rules and
11 regulations governing employers within the State of California), for which each
12 Plaintiff, for and on behalf of himself and the Class, seeks and is entitled to an order
13 and judgment as follows: (a) For declaratory and injunctive relief under Bus. & Prof.
14 Code §17203; (b) For the recovery of restitution or disgorgement of monies
15 improperly withheld and profits unfairly obtained by Defendants; (c) For an award
16 of reasonable attorney fees under C.C.P. §1021.5; (d) For an award of prejudgment
17 interest and costs of suit; and (e) For other relief deemed just and proper.

18 **PRAYER FOR RELIEF**

19 38. Wherefore, Plaintiffs, on behalf of themselves, other employees similarly
20 situated, the FLSA Collective Action Plaintiffs, the Class and/or sub-Class, and the
21 general public, pray for judgment and other relief against Defendants, jointly and
22 severally, on each Claim for Relief, as follows:

23 39. On the First Claim for Relief for FLSA §7(a) violations:

24 (a) For an order granting Plaintiffs the right to facilitated notice in
25 informing other employees similarly situated of the right to join this action by filing
26 a written consent to become a plaintiff in this action maintained by the named
27 plaintiffs under 29 U.S.C. §216(b);

28 (b) For the recovery of unpaid overtime compensation and an additional

1 equal amount as liquidated damages under 29 U.S.C. §216(b);

2 (b) For an award of costs and reasonable attorney fees under 29 U.S.C.
3 §216(b);

4 (c) For an award of prejudgment interest; and

5 (d) For other relief deemed just and proper.

6 40. On the Second through Fifth Claims for Relief for Labor Code §226.7
7 violations, Labor Code §512 violations, and unfair competition, respectively:

8 (a) For an order certifying this action as a class action, and appointing
9 each Plaintiff as the representative of the Class/sub-Class and Plaintiffs' counsel as
10 Class/sub-Class counsel; and,

11 (b) For all orders necessary for maintaining the Fifth Claim for Relief as
12 a representative suit for the benefit of the general public;

13 41. On the Second Claim for Relief for Labor Code §226.7 violations:

14 (a) For the recovery of one additional hour of pay under Labor Code
15 §226.7 for each current or former employee for each work day that a meal or rest
16 period was not provided;

17 (b) For an award of reasonable attorney fees under C.C.P. §1021.5;

18 (c) For an award of prejudgment interest;

19 (d) For an award for costs of suit; and

20 (e) For other relief deemed just and proper.

21 42. On the Third Claim for Relief for Labor Code §512 violations:

22 (a) For recovery of underpaid regular, overtime and premium rate wages;

23 (b) For the recovery of \$50 for each initial violation and \$100 for each
24 subsequent violation under Labor Code §558;

25 (c) For an award of reasonable attorney fees under C.C.P. §1021.5;

26 (d) For an award of prejudgment interest;

27 (e) For an award of costs of suit; and

28 (f) For other relief deemed just and proper.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss

4 I am employed in the County of Los Angeles, State of California. I am over the age of eighteen
5 years and not a party to the within action; my business address is 269 W. Bonita Avenue,

6 On February 13, 2006, I served a copy of the foregoing document described as **FIRST**
7 **AMENDED COMPLAINT FOR DAMAGES AND OTHER RELIEF, AND DEMAND FOR**
8 **JURY TRIAL** on:

9 Robert E. Shannon, City Attorney
10 Belinda R. Mayes, Principal Deputy City Attorney
11 Christina A. L. Checel, Deputy City Attorney
12 333 West Ocean Boulevard
13 Long Beach, CA 90802-4664
14 Tele: (562) 570-2200
15 Fax: (562) 436-1579

16 Attorneys for Defendants:
17 CITY OF LONG BEACH

18 I caused such envelope to be deposited in the mail at Claremont, California. The envelope was
19 mailed with postage thereon fully prepaid.

20 I am "readily familiar" with my firm's practice of collection and processing of mail. It is
21 deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware
22 that on motion of party served, service is presumed invalid if postal cancellation date or postage matter
23 date is more than one day after day of deposit for mailing in affidavit.

24 I caused such envelope to be delivered by hand of the offices of the addressee.

25 I caused such documents to be transmitted overnight via Federal Express or other express service
26 to the offices of the addressee. As follows: I am "readily familiar" with the firm's practice for delivering
27 overnight envelopes or packages to an authorized courier or driver authorized by the express service
28 carrier to receive documents, in an envelope package designated by the express service carrier with
29 deliver fees paid or provided for, addressed to the person on whom it is to be served, at the address as
30 last given by that person on any document filed in the cause and served on the party making service.

31 I caused such documents to be transmitted by facsimile and placed in an envelope with postage
32 thereon fully prepared in the United States mail at Claremont, California.

1 I declare under penalty of perjury, pursuant to the laws of the State of California, that the
2 foregoing is true and correct.

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

5 Executed on February 13, 2006, at Claremont, California.

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8 TERESA DE PAZ
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