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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

SCANNED

Case No. CV 03-2190 GAF (AJWx) Date January 23, 2007  
Title Nolan, et al. v. City of Los Angeles

Present: The Honorable	<b>GARY ALLEN FEESS</b>	
Marilynn Morris	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: (In Chambers)

**ORDER RE: MOTIONS FOR SUMMARY JUDGMENT**

The parties submit cross-motions for summary judgment in this Fair Labor Standards Act ("FLSA") case. As the Court discusses in greater detail below, it finds that genuine issues of material fact exist regarding: (1) whether Plaintiffs in fact worked overtime hours for which they were not compensated; (2) if so, whether the Los Angeles Police Department ("LAPD") had an "unwritten policy" discouraging the reporting of overtime work less than one hour in a work day; and (3) whether LAPD knew or had reason to know that Plaintiffs were working uncompensated overtime hours. Accordingly, Plaintiffs' motion is **DENIED**. Defendant's motion is also **DENIED** as to Plaintiffs' claims for pre-shift work, post-shift work, and missed meal periods. As to overtime claims for off-duty work at home, only Plaintiff Martha Moran proffers evidence that her supervisor had knowledge of such work. The other Plaintiffs with similar overtime claims have failed to create genuine issues of material fact regarding their supervisors' knowledge. Accordingly, Defendant's motion as to Moran's overtime claims for off-duty work at home is **DENIED**, but the motion as to the other Plaintiffs' overtime claims for off-duty work at home is **GRANTED**. The hearing scheduled for Monday, February 5, 2007 is hereby **VACATED**. Fed. R. Civ. P. 78; Local Rule 7-15.

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**I. BACKGROUND**

Plaintiffs – 36 Los Angeles Police Sergeants, Lieutenants, and Detectives, sue LAPD for violation of the FLSA. Although the individual claims vary somewhat, in substance Plaintiffs contend that LAPD has required them to work overtime without compensation in violation of the FLSA. The alleged uncompensated overtime hours fall into four general categories: (1) pre-shift overtime; (2) post-shift overtime; (3) missed meal periods; and (4) overtime hours worked at home.

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Both sides now move for summary judgment. Plaintiffs contend that the undisputed facts

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establish that they worked overtime hours for which they were not compensated, and that LAPD knew or had reason to know that they had worked those hours. They acknowledge that LAPD published written policy statements obligating employees to submit claims for overtime hours, but assert, through evidence of numerous statements made by supervisory personnel, that LAPD had an unwritten policy of not paying overtime for less than an hour's work. For those reasons, Plaintiffs contend that their motion for summary judgment should be granted. Defendant focuses its argument principally on the knowledge element and contends that, whether or not Plaintiffs in fact worked the uncompensated overtime hours, the undisputed facts establish that it repeatedly gave notice that officers should claim overtime worked in .10 hour increments and that it neither knew nor had reason to know that employees were working overtime without pay in violation of established LAPD policy. For these reasons, and because Plaintiffs allegedly have no evidence of an unwritten LAPD policy of paying for overtime only in amounts of one hour or more, Defendant contends that its motion should be granted.

## II. DISCUSSION

### A. LEGAL STANDARDS

#### 1. Motion for Summary Judgment

Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). When the parties file cross-motions for summary judgment, the Court is not required to grant either motion, but rather must consider each motion individually to determine whether any genuine issue of material fact exists. Starsky v. Williams, 512 F.2d 109, 112 (9th Cir. 1975); William W. Schwarzer, et al., California Practice Guide: Federal Civil Procedure Before Trial § 14:121, at 14-36 (2005). Thus, in an appropriate case, the Court may properly deny both motions. Starsky, 512 F.2d at 112.

#### 2. Applicable FLSA Law

To recover for uncompensated overtime work, a plaintiff must establish (1) that he worked overtime hours without compensation, and (2) that the employer knew or should have known of his overtime work. 29 U.S.C. § 207(a), (o); Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 687 (1946), superseded by statute on other grounds by 29 U.S.C. § 251(a); Forrester v. Roth's I.G.A. Foodliner, Inc., 646 F.2d 413, 414 (9th Cir. 1981).

If an employer's conduct embodies a "willful violation" of the FLSA, the statute of limitations is increased from two to three years. 29 U.S.C. § 255(a); Alvarez v. IBP, Inc., 339 F.3d 894, 908 (9th Cir. 2003). To prove willfulness, an employee bears the burden of demonstrating that an employer either "knew or showed reckless disregard for the matter of whether its conduct was prohibited by the FLSA."

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McLaughlin v. Richland Shoe Co., 486 U.S. 128, 130, 135 (1988). The FLSA also entitles a plaintiff to liquidated damages in the full amount of unpaid wages unless the defendant demonstrates (1) that it acted in good faith, and (2) that it had reasonable grounds for believing that its act or omission was not a violation of the FLSA. 29 U.S.C. §§ 216, 260; Local 246 Util. Workers Union v. S. Cal. Edison Co., 83 F.3d 292, 297 (9th Cir. 1996).

**B. MATERIAL FACTUAL DISPUTES**

**1. Overtime Work**

First, genuine issues of material fact exist as to whether Plaintiffs actually worked overtime during the relevant statutory period. In their declarations and deposition testimony, Plaintiffs contend that they worked pre-shift and post-shift overtime, worked through their meal periods, and worked overtime while off duty at home. Plaintiffs admit they never reported this overtime to their supervisors. Defendant challenges the assertion that overtime was worked but not reported by presenting evidence that Plaintiffs were aware of LAPD's overtime reporting policies, as they collectively have submitted over 10,000 overtime reports from the years 2001 through 2006, some of which included reports for overtime less than an hour. (See Def.'s Exs. 40, 41 [Charts of Overtime Reports].) This evidence alone creates genuine issues of fact, as a rational trier of fact could conclude that Plaintiffs understood LAPD's overtime reporting system, knew how to claim overtime, and in fact claimed overtime (on more than 10,000 occasions) when it was appropriate, and therefore that they did not, in fact, work any overtime that was not reported.

**2. "Unwritten Policy"**

If Plaintiffs did work the uncompensated overtime as they claim, then the next material factual dispute involves whether there was an "unwritten policy" discouraging them from reporting overtime work for less than an hour's time. Plaintiffs state in their declarations and their deposition testimony that despite the official policies requiring reporting all overtime worked, LAPD "frowned upon" the reporting of any overtime for less than an hour. They claim that they would be ridiculed or labeled not a team player for submitting overtime reports for such a short amount of time. Though many of Plaintiffs' declarations do not provide foundational support for their belief that there existed such an "unwritten policy," a number of Plaintiffs describe specific events where supervisors became angry or actively discouraged the reporting of overtime. As just one example, Plaintiff James Nolan describes an incident in which a fellow officer complained to his supervisor about not being paid overtime for work done before and after his regular shift. His supervisor then became angry and told him not to say anything more about the issue, or else he would file a personnel complaint against that officer. (Nolan Decl. ¶¶ 19, 38; see also Ballesteros Decl. ¶ 16 (recalls incident in which fellow officer submitted overtime slip for 20 minutes, and supervisor said, "What the f\*\*\* is this. . . . If these guys are going to put in for overtime, it had better not be under one (1) hour."); Cox Decl. ¶ 10 ("Captain III Carreri laughed at me when I tried to submit a greenie for under one hour and made comments such as 'you gotta be kidding me. You're requesting overtime for that?"), ¶ 18 (in response to seeing overtime slips for less than an hour, Captain Carreri would say that "this is chicken shit" and "do you really want to do this?"); C.

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Danzek Decl. ¶ 14 (recalls time when supervisor held up overtime slip and said, "No Code 7, what is this?" and then "rolled his eyes"); T. Danzek Decl. ¶ 14 (told to "suck it up" when attempting to submit overtime slip for less than an hour); Mark Decl. ¶¶ 9, 18 (witnessed supervisors scold a fellow officer who attempted to submit an overtime slip for missing his Code 7); Mathews Decl. ¶ 25 (after approving missed Code 7 slips for subordinate officers, his supervisor returned the slips and remarked that "we should have made time for that officer to take Code 7"); Nino Decl. ¶ 15 (supervisor got upset after Nino put in overtime slips for working past his normal shift and said, "I don't want you being an overtime whore."), ¶ 18 (observed supervisor physically remove the sign-in/sign-out log and sign officers out, as though it were the end of their watch for the day, even though they were still working.)

A rational trier of fact could infer from these numerous incidents that LAPD sanctioned an "unwritten policy" pursuant to which supervising officers pressured their subordinates not to report overtime for less than an hour. This evidence also tends to establish a foundation for the testimony of other officers who more generally testified to the feeling of being pressured not to report their overtime.

Defendant, on the other hand, contends that its commanding officers were not aware of such an "unwritten policy" at LAPD and did nothing to enforce such a policy. Defendant submits declarations of supervisors who directly refute Plaintiffs' contentions that they had discouraged the reporting of short amounts of overtime. For example, the supervisor who allegedly threatened an officer with a personnel complaint, as described in Nolan's declaration, declares that that incident never occurred. (Second M. Smith Decl. ¶ 4.) Furthermore, Defendant's declarations state that supervisors did not discourage their subordinates from reporting all overtime worked. At this point, the Court cannot resolve these disputes through a ruling on motions for summary judgment. These factual matters, which are material to a resolution of the lawsuit, can only be resolved at trial.

### 3. Knowledge of Supervisors

Finally, even if there were no "informal policy" being enforced at LAPD, material factual disputes exist as to whether Defendant knew or should have known that Plaintiffs worked uncompensated overtime. Plaintiffs present evidence in their declarations that their supervisors saw them working and regularly briefed them on work-related matters – before and after their shifts and during their meal periods – and that they did not submit overtime slips for such work. Defendant objects to this evidence, largely contending that they contradict Plaintiffs' prior deposition testimony. However, a close examination of Plaintiffs' deposition testimony reveals that they merely testified that they did not have conversations with their supervisors about whether they worked uncompensated overtime, or in some cases, they did not know whether their supervisors were aware of their unpaid overtime work. This does not contradict their declarations, in which they state that their supervisors were present at the same time, saw them engaged in work activities, or relayed assignments to them outside of their shifts. To the extent that these declarations contain conclusions about what their supervisors in fact knew or did not know, such statements are not admissible and are not being considered. However, the officers are percipient witnesses to what overtime they allegedly worked, to the presence of supervising officers when the work was being performed, and, in some cases, the involvement of the supervising officers in

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the work (e.g., involvement in pre-shift briefings). A rational trier of fact could conclude from these statements that Plaintiffs' supervisors knew or should have known that Plaintiffs were working unpaid overtime.

On the other hand, Defendant presents declarations of supervisors who state that they did not know that Plaintiffs were working unpaid overtime. Plaintiffs contend that these supervisors' declarations are not the "stronger" evidence because most of them were not Plaintiffs' direct supervisors, and thus are less likely to know whether Plaintiffs indeed worked unpaid overtime. Contrary to Plaintiffs' assertion that the Court should rule in Plaintiffs' favor because the declarations are not the stronger evidence, this is a question reserved for the trier of fact, not the Court at the summary judgment stage. See Underwriters Labs. Inc. v. NLRB, 147 F.3d 1048, 1054 (9th Cir. 1998) (adverse inference "may be drawn" when party fails to call witness who may be favorably disposed to other party). Because Defendant does present evidence controverting Plaintiffs' evidence of knowledge, the Court cannot properly resolve these factual issues at this stage.

Defendant also seeks summary judgment as to Plaintiffs Jones, May, and Quan because they were previously plaintiffs in earlier FLSA actions and had agreed not to work uncompensated overtime in exchange for settlement money. Defendant claims their present claims for unpaid overtime, despite their earlier settlement agreement, suggest that these Plaintiffs "deliberately prevented" Defendant from knowing of the overtime work. See Forrester, 646 F.2d at 414. However, these Plaintiffs present evidence that their supervisors saw them or were present when they were working off the clock, which, if true, would negate the suggestion of deliberate concealment. Due to these factual issues, Defendant's motion on this ground cannot be granted.

Thus, the Court concludes that due to the prevalence of several material factual disputes, Plaintiffs' and Defendant's motions for summary judgment as to the overtime compensation claims for pre-shift work, post-shift work, and missed meal periods are **DENIED**.

### C. OFF-DUTY WORK AT HOME

Though the Court denies Plaintiffs' and Defendant's motions for overtime claims with respect to pre-shift work, post-shift work, and missed meal periods, the Court concludes that, with the exception of Plaintiff Moran, no genuine issues of fact exist as to whether Defendant knew that Plaintiffs worked overtime while off duty at home. The only Plaintiff claiming overtime compensation for work done at home who presents evidence that her supervisors were aware of such work is Moran, who testified that she told her supervisor that she was working at home without submitting overtime reports, and he responded that she was "expected to give of [her]self." (Def.'s Ex. 153 [Moran Dep.] 26:1-28:2.) Other than Moran, Plaintiffs claiming overtime compensation for work at home fail to present any evidence to suggest that their supervisors were aware of their work at home, such as whether they told their supervisors of this work or whether their supervisors were somehow present while Plaintiffs were

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working at home. Thus, except as to Moran's claims for off-duty work, because there is no evidence Defendant had actual or constructive knowledge of this work, Defendant's motion as to the other Plaintiffs' overtime claims for off-duty work at home is **GRANTED**. Defendant is to prepare and submit proposed findings, conclusions, and an order effectuating this ruling.

**D. WILLFULNESS AND LIQUIDATED DAMAGES**

Because genuine issues exist as to whether Defendant knew or should have known of Plaintiffs' uncompensated overtime, the Court cannot conclude at this stage whether Defendant's actions were willful. Defendant's motion for summary adjudication on this ground is thus **DENIED**. Likewise, whether Defendant acted in good faith cannot be decided at this stage. The Court acknowledges that LAPD has taken many steps to ensure compliance with the FLSA, such as reiterating its written policies in collective bargaining agreements and written notices from the Chief of Police. But Plaintiffs present evidence suggesting that supervisors have continued to discourage the reporting of overtime, despite the proliferation of written policies to the contrary. Plaintiffs also declare that they were not trained about LAPD's overtime reporting policies, contrary to Defendant's assertions that its supervisors repeatedly held training meetings about its overtime reporting policies. Thus, because genuine issues regarding Defendant's good faith exist, Defendant's motion on the liquidated damages ground is **DENIED**.

**III. CONCLUSION**

In sum, the Court concludes that Plaintiffs' motion is **DENIED** in its entirety. Defendant's motion is also **DENIED** as to Plaintiffs' claims for pre-shift overtime, post-shift overtime, and missed meal periods, and as to willfulness and liquidated damages. Defendant's motion as to Plaintiff Moran's overtime for off-duty work at home is also **DENIED**, but its motion as to the other Plaintiffs' claims for overtime for work performed off duty while at home is **GRANTED** because the other Plaintiffs have not proffered sufficient evidence to suggest that their supervisors knew or should have known of overtime work at home.

IT IS SO ORDERED.

