

US District Court Forces City of San Diego to Produce Key Documents in Police Overtime Lawsuit and Allows Plaintiffs to Select Best Representative Sample to Proceed on Summary Judgment

IRVINE, Calif. May 25, 2007 – Jackson | DeMarco | Tidus | Petersen | Peckenpaugh (“J|D|T|P|P”) announced today that in the case of *Abbe, et al. v. City of San Diego*, the U.S. District Court for the Southern District of California issued two rulings, which followed hearings held on May 22, 2007 and May 23, 2007. On May 22, 2007, Magistrate Judge Ruben B. Brooks ordered the City of San Diego to produce all overtime slips, including slips of non-Plaintiffs, and non-sworn personnel or civilian employees by June 1, 2007 to the Plaintiffs. Additionally, the Magistrate Judge directed that both parties must provide all documents to be referenced in a deposition to their counterpart at least 36 hours in advance of the deposition.

On May 23, 2007, the presiding judge in the *Abbe* lawsuit, Judge Dana Sabraw, ruled on how the case should proceed on the Plaintiffs’ 504 Motions for Summary Judgment. Both sides agreed that in the interest of timeliness, a representative sample should be used from the 504 motions. The Court ordered the Plaintiffs and the City to provide recommendations on the size of the sample and manner in which the Summary Judgment should be adjudicated. The Court ordered the attorneys for the Plaintiffs to select 110 officers, such that each job type and each department is equally represented. The Court ruled that the sample of 110 will be determined at the discretion of the Plaintiffs’ counsel to best present the City’s liability, over objections by the City. The hearing on the summary adjudication of the liability issues is set for September 14, 2007.

Gregory G. Petersen, Chair of the Complex Litigation Group at J|D|T|P|P, commented, “Judge Sabraw’s ruling on how the representative sample is selected is a significant victory in our effort to demonstrate the City’s liability for unpaid wages and knowledge that these failures were willful. The Order allows us to select the 110 officers that best demonstrate the City’s liability in willfully failing to properly pay the Police Officers of San Diego for all of their hours worked, as required by Federal and State law.” Mr. Petersen continued, “The Magistrate’s ruling, establishing the manner in which documents are shared prior to a deposition, is an equitable ruling and one that ensures that the defense will no longer delay the delivery of key documents to the point where they are essentially delivered in tandem with the witness at deposition. We’re encouraged that the court will no longer allow this inappropriate tactic on the part of the defense. We are also quite pleased that next week we will have the documents, approximately twenty thousand in all, that will allow us to further show that the officers were denied full compensation for their hours worked. Additionally, we expect that in providing ‘all of documents’ the City will in fact show that it has failed to keep full and complete records, as required by Federal law.”

The *Abbe* lawsuit asserts that the San Diego Police Department required the Officers to work before and after their regular shifts and through “Code 7” meal periods for the benefit of the City of San Diego without compensation in violation of the Fair Labor Standards Act (“FLSA”). The required activities include performing pre- and post-shift responsibilities (including the donning and doffing of protective gear); preparing for court appearances; completing arrest and investigation reports; and various other required tasks.

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