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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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12 ROSS ANDERSON, JOHN BAGALA,
13 RYAN BRACKETT, ESTEBAN CESPEDES,
14 CESAR CORREA, BRAD DAVENPORT,
15 SEAN DAY, STEPHEN HEINE, KEITH
16 LARSON, JOHN PAPANIKOLAOU,
17 BRANDON SELVITELLA, BRIAN SMITH,
18 JEFF SMITH, JOHN WHITE, ALEXANDER
19 WILHELM, on behalf of themselves and all
20 similarly situated individuals,

Plaintiffs,

19 v.

20 MARINWOOD COMMUNITY SERVICES
21 DISTRICT,

Defendant.

Case No.

**COMPLAINT FOR DECLARATORY JUDGMENT
AND UNPAID COMPENSATION UNDER THE
FAIR LABOR STANDARDS ACT**

COLLECTIVE ACTION

[29 U.S.C. § 201 *ET SEQ.*]

JURY TRIAL DEMANDED

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PRELIMINARY STATEMENT

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1. Plaintiffs are current or former employees of Defendant Marinwood Community Services District (“Defendant” or “the District”) and bring this action on behalf of themselves and other individuals similarly situated. This is an action for a declaratory judgment under 28 U.S.C. sections 2201 and 2202 and for unpaid overtime and other compensation, interest thereon, liquidated

1 damages, costs of suit and reasonable attorney fees, and other relief under the Fair Labor Standards
2 Act, 29 U.S.C. section 201, *et seq.* (“FLSA”).

3 JURISDICTION AND VENUE

4 2. Jurisdiction of this action is conferred on this Court by 28 U.S.C. section 1331, 29
5 U.S.C. section 216(b), and 28 U.S.C. section 1337. This Court has subject matter jurisdiction
6 pursuant to 29 U.S.C. sections 207, *et seq.* Venue lies within this district pursuant to 28 U.S.C.
7 section 1391.

8 PARTIES

9 3. Plaintiffs are current or former employees of the District.

10 4. Plaintiffs bring this action on behalf of themselves and other similarly situated
11 individuals who are or were non-exempt District employees due compensation under the FLSA on
12 a variety of schedules including a partial overtime exemption under 29 U.S.C section 207(k) for fire
13 protection and non-207(k) schedules. The amount of payments due may vary by employee.

14 5. These individuals constitute a well-defined community of interest in the questions of
15 law and fact in this case. The claims of the named Plaintiffs are typical of the claims of those
16 similarly situated. Thus, the named Plaintiffs will fairly and adequately reflect and represent the
17 interests of those similarly situated and have retained counsel competent and experienced in class
18 action and FLSA litigation.

19 6. There is no conflict as to the individually named Plaintiffs and other members of the
20 class with respect to this action or with respect to the claims for relief set forth herein.

21 7. Pursuant to 29 U.S.C. sections 216(b) and 256, the named Plaintiffs herein have
22 executed and hereby file with the Court their consents in writing to become party Plaintiffs in this
23 action, which are appended hereto as **Exhibit A**. These written consent forms set forth each
24 Plaintiff’s name and intent to be party to this lawsuit. When other individuals similarly situated join
25 this action, their consents will be filed with the Court.

26 8. Defendant District is a political subdivision of the State of California, an “employer”
27 within the meaning of 29 U.S.C. section 203(d), an “enterprise” under 29 U.S.C. section 203(r), and
28

1 a “public agency” within the meaning of 29 U.S.C. section 203(x), and employs or employed the
2 Plaintiffs.

3 9. Defendant implemented an illegal compensation computation method, which
4 undercounts Plaintiffs’ “regular rate” of pay. Defendant’s method of calculating Plaintiffs’ “regular
5 rate” of pay has resulted and continues to result in under-payment for overtime hours worked.
6 Defendant permitted Plaintiffs to perform overtime work without proper compensation.

7 FACTS

8 10. Plaintiffs in this action, while employed by the District, have been “employees”
9 within the meaning of 29 U.S.C. section 203(e)(1) within the last three years and, thus, entitled to
10 the rights, protections, and benefits provided under the FLSA.

11 11. Plaintiffs and similarly situated individuals are employees of the District who are
12 non-exempt from overtime and have incurred some overtime during the time period in question.

13 12. Plaintiffs and similarly situated individuals routinely work hours above the
14 applicable FLSA threshold – whether subject to a 207(k) or non-207(k) schedule – and in excess of
15 their regularly scheduled hours, resulting in additional overtime pay obligations for the District.

16 13. Plaintiffs also work hours above their respective FLSA work period thresholds as
17 part of their regular schedules, resulting in overtime pay obligations for the District.

18 14. Pursuant to 29 U.S.C. section 207(e), the “regular rate” must include all remuneration
19 received by an employee unless it is explicitly excluded. The burden is on an employer to
20 demonstrate that a payment is excludable from the regular rate. (*Madison v. Resources for Human*
21 *Development* (3rd. Cir. 2000) 233 F.3d 175, 187.)

22 15. 29 U.S.C. section 207(e)(2) allows employers to exclude certain payments from the
23 “regular rate” of pay. However, employers are not allowed to exclude monetary compensation paid
24 to Plaintiffs *in lieu* of contributions for medical benefits from their “regular rate” of pay.

25 16. Employers are allowed to exclude from the “regular rate” contributions they
26 irrevocably make to a trustee or third person pursuant to a “bona fide plan” for providing health
27 insurance benefits.

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1 17. The Department of Labor’s interpretation of the term “bona fide plan” is set forth in
2 29 C.F.R. section 778.215(a)(5), which states, in part:

3 “The plan must not give an employee the right to assign his benefits
4 under the plan nor the option to receive any part of the employer’s
5 contributions in cash instead of the benefits under the plan: Provided,
6 however, that if a plan otherwise qualified as a bona fide benefit plan
7 under section 7(e)(4) of the Act, it will still be regarded as a bona fide
8 plan even though it provides, as an incidental part thereof, for the
9 payment to an employee in case of all or part of the amount standing
10 to his credit.”

11 18. In *Flores v. District of San Gabriel* (2016) 824 F.3d 890, the Ninth Circuit Court of
12 Appeals held that payments to employees *in lieu* of health benefits were not excludable from the
13 “regular rate” of pay under either 29 U.S.C. sections 207(e)(2) or (e)(4). With respect to the
14 exclusion codified in 207(e)(2) and its companion federal regulation, the court noted “Under
15 § 778.224(a), a payment may not be excluded from the ‘regular rate’ of pay pursuant to § 207(e)(2)
16 if it is generally understood as compensation for work, even though the payment is not directly tied
17 to specific hours worked by an employee.” (*Flores, supra*, 824 F.3d at pp. 898-899.) Further, the
18 Court held that cash payments *in lieu* of health benefits were not excludable from the “regular rate”
19 under 207(e)(4). (*Flores, supra*, 824 F.3d at p. 899.)

20 19. Defendant’s past and current practice of computing overtime has impermissibly
21 reduced the amount being paid to Plaintiffs and similarly situated individuals by failing to compute
22 all statutorily required amounts into the “regular rate” of pay as defined by 29 U.S.C. section 207(e).

23 20. As part of the compensation provided Plaintiffs and other similarly situated
24 individuals, Defendant has provided additional compensation including, but not limited to, cash *in*
25 *lieu* of medical benefits as set forth in the “Health Insurance” section of the “Binding Memorandum
26 of Understanding Between Marinwood Firefighters’ Local 1775 and Marinwood Community
27 Services District (Adopted October 9, 2012).” Such payments are provided to purchase benefits
28 under the Defendant’s Health Insurance Plan.

 21. Many such payments were made to Plaintiffs and similarly situated individual
employees (not to a trustee or third person).

1 22. Defendant treated some of these payments to Plaintiffs and similarly situated
2 individuals as wages for the purpose of tax withholdings.

3 23. Plaintiffs are informed and believe, and thereon allege, that payments Defendant
4 made to Plaintiffs and other similarly situated individuals through the Health Insurance Plan, and
5 attributable *inter alia* to medical and other health and welfare benefits, were not made pursuant to a
6 “bona fide plan” within the meaning of 29 U.S.C. section 207(e)(4) and 29 C.F.R. section 778.215.
7 Because the remunerations paid to Plaintiffs *in lieu* of health and welfare benefits and through the
8 Health Insurance Plan were compensation for work and were not made pursuant to a bona fide
9 benefit plan, they must be included in the “regular rate” of pay for determining overtime
10 compensation as required by the FLSA.

11 24. In addition to the hourly wages for regularly-scheduled hours, the District also
12 provides Plaintiffs with additional compensation including, but not limited to, call-back pay, college
13 incentive pay, out of class pay, special assignment pay, EMT-FS pay, reimbursement for benefit
14 costs, and holiday pay.

15 25. At all times material herein, the Defendant’s practices did not include all of the
16 required additional compensation in the calculation of the “regular rate” of pay for Plaintiffs and
17 similarly situated individuals for the purposes of determining overtime compensation as required by
18 the FLSA. The District has thus failed to appropriately calculate the applicable “regular rate” and
19 to pay Plaintiffs and similarly situated individuals the required premium overtime rates for all hours
20 of overtime they worked.

21 26. At all times relevant hereto, Defendant and its agents and representatives were aware
22 of their obligations to properly compute and use the correct “regular rate” of pay in calculating
23 overtime compensation owed to Plaintiffs and similarly situated individuals.

24 27. Plaintiffs are informed and believe, and thereon allege, that Defendant and its agents
25 and/or representatives willfully and knowingly violated FLSA by continuing to exclude
26 remunerations from the calculation of Plaintiffs’ and similarly situated individuals’ “regular rate”
27 of pay.

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1 28. Defendant's continuing failure to properly compensate Plaintiffs and similarly
2 situated individuals is not in good faith and is a willful violation of the FLSA as it applies to
3 employees of local governments.

4 29. As a result of the foregoing violations of FLSA, Plaintiffs seek damages for unpaid
5 overtime, interest thereon, liquidated damages, costs of suit and reasonable attorneys' fees pursuant
6 to 29 U.S.C. section 216(b).

7 FIRST COUNT

8 The District Has Violated 29 U.S.C. Section 207 by Failing to Accurately
9 Calculate Plaintiffs' Regular Rate and Overtime Rate of Compensation

10 30. Plaintiffs hereby incorporate by reference paragraphs 1 through 29 in their entirety
11 and restate them here.

12 31. At all times material herein, Plaintiffs and similarly situated individuals have been
13 entitled to the rights, protections and benefits provided under the FLSA, 29 U.S.C. § 201, *et seq.*

14 32. During the times when Plaintiffs and similarly situated individuals have worked
15 hours in excess of their regular schedules, they have been entitled to overtime compensation at a
16 rate of one and one-half times their regular rate of pay for each additional hour or fraction thereof
17 worked. 29 U.S.C. § 207; 29 C.F.R. § 553.230. Plaintiffs and similarly situated individuals may
18 also be entitled to overtime compensation under the MOU.

19 33. The "regular rate" of pay from which the premium overtime rate of pay for Plaintiffs
20 and similarly situated individuals is derived must include "all remuneration for employment." 29
21 U.S.C. § 207(e). Such remuneration includes not only Plaintiffs' agreed hourly rates, but also pay
22 premiums including, but not limited to, call-back pay, college incentive pay, out of class pay, special
23 assignment pay, EMT-FS pay, reimbursement for benefit costs, and holiday pay, as well as
24 compensation under District Insurance benefits plans that are not "bona-fide" plans or any cash
25 taken *in lieu* of receiving such benefits.

26 34. At all times material herein, the District has failed and refused to provide Plaintiffs
27 and similarly situated individuals with overtime compensation at a rate of one and one-half times
28 their regular rate of pay by failing to include such remuneration in calculating the regular rate.

