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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

11 JEFFREY L. ALLEN, JON ALPER, YVETTE
 BLOUNT, MATTHEW BOUCHARD, BRET
 12 BURGER, CHARLES CASALNUOVO,
 MICHAEL COLEMAN, BRIAN COMAN,
 13 ROBERT DELONG, PETER FALK, MARK
 FISCHER, TRAVIS FOX, JOE V. FRAZIER,
 14 DANIEL J. GEMMA, CARY GLOECKNER,
 JASON GOLDEN, PETER GUNDOLFF, IAN
 15 HANSON, GEORGE EARL HART, DAVID
 LLOYD, MICHAEL A. MARTINEZ, JOHN
 16 C. MCHUGH, BRUNO MISSIO, ADAM
 MONTE, JAMES D. MOORE, THOMAS R.
 17 MORAN, JAMES O'CONNOR, KENNY
 O'REILLY, KAI PASQUALE, DOUGLAS
 18 PATERSON, BENJAMIN POPE, BEN
 POWERS, TIM PRATT, DEAN RAFFAINI,
 19 RONALD R. ROSSER, JEFF SMILEY,
 BRETT STONE, CORDI SULLIVAN, RYAN
 20 TOKUDA, BRANDON TREAT, TONY
 VITALIE, ADAM VOLLMER, LAURENCE
 21 V. YOELL III, DENNIS P. YOUNG,

22 Plaintiffs,

23 v.

24 SOUTHERN MARIN FIRE PROTECTION
 DISTRICT,

25 Defendant.
26

Case No.

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

[29 U.S.C. § 201 *ET SEQ.*]

JURY TRIAL DEMANDED

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PRELIMINARY STATEMENT

1. The Plaintiffs are employees of Defendant Southern Marin Fire Protection District (“the District”) and they bring this action on behalf of themselves and other employees similarly situated. This is an action for a declaratory judgment under 28 U.S.C. sections 2201 and 2202 and for compensation and other relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. section 201, *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this action is conferred on this Court by 29 U.S.C. section 216(b), 28 U.S.C. section 1331, and 28 U.S.C. section 1337. Venue lies within this district pursuant to 28 U.S.C. section 1391.

PARTIES

3. Plaintiffs are current and former employees of the District.
4. Pursuant to 29 U.S.C. sections 216(b) and 256, the named Plaintiffs herein have each executed and hereby file with the Court their respective consents in writing to become a party Plaintiff in this action, which are appended hereto as Exhibit A. Should other individuals similarly situated seek to join this action, their consents will be filed with the Court. These written consent forms set forth each Plaintiff’s name and intent to be party to this lawsuit.

5. The District is a “special district” of the State of California within the meaning of California Government Code section 16271(d), an “employer” within the meaning of 29 U.S.C. section 203(d), an “enterprise” under 29 U.S.C. section 203(r), and a “public agency” within the meaning of 29 U.S.C. section 203(x).

FACTS

6. Each of the Plaintiffs in this action, while employed by the District, has been an “employee” within the meaning of 29 U.S.C. section 203(e)(1) and, thus, entitled to the rights, protections, and benefits provided under the FLSA.

7. The District has adopted a 24-day FLSA work period requiring the Plaintiffs to work 182 hours in a work period before the District pays them overtime, as permitted by 29 U.S.C. section 207(k). This work period is known as a “7k schedule.”

1 8. When a Plaintiff works additional hours beyond the 7k work period, the District
2 is required to compensate each additional hour or fraction thereof at one and one-half times the
3 regular rate of pay, pursuant to 29 U.S.C. section 207.

4 9. Plaintiffs receive hourly wages set by position within the District to compensate
5 them for 182 regularly-scheduled hours worked within the 7k schedule.

6 10. In addition to the hourly wages for regularly-scheduled hours within the 7k
7 schedule, the District provides Plaintiffs with additional compensation including, but not limited
8 to, holiday pay, out-of-class pay, longevity pay, and housing allowances.

9 11. At all times relevant, Plaintiffs are assigned to work a 2-day shift (48 hours),
10 followed by 4 days off. This cycle, known as a 2-4 schedule repeats 4 times per 24-day work
11 period, which results in 192 hours of work per pay period. Because the hours worked exceeds
12 the 182-hour 7k schedule by 10 hours, 10 hours of overtime pay is automatically required each
13 pay period.

14 12. In addition to this schedule, Plaintiffs routinely work additional hours causing
15 them to work in excess of their regularly-scheduled 192 hours per 24 days, resulting in
16 additional overtime pay obligations for the District.

17 The District Has Violated 29 U.S.C. Section 207 by Failing to Accurately
18 Calculate Plaintiffs’ Regular Rate and Overtime Rate of Compensation

19 13. Plaintiffs hereby incorporate by reference paragraphs 1 through 12 in their
20 entirety and restate them here.

21 14. At all times material herein, Plaintiffs have been entitled to the rights, protections
22 and benefits provided under the FLSA, 29 U.S.C. § 201, *et seq.*

23 15. During the times where Plaintiffs have worked hours in excess of the 7k
24 schedule, they have been entitled to overtime compensation at a rate of one and one-half times
25 their regular rate of pay for each additional hour or fraction thereof worked. 29 U.S.C. § 207(k);
26 29 C.F.R. § 553.230.

27 16. Plaintiffs’ “regular rate” of pay from which the premium overtime rate of pay is
28 derived must include “all remuneration for employment.” 29 U.S.C. § 207(e). Such

1 remuneration includes not only Plaintiffs’ agreed hourly rates, but also pay premiums such as
2 holiday pay, out-of-class pay, longevity pay, and housing allowances.

3 17. At all times material prior to the April 2, 2105 payroll, the District failed and
4 refused to provide Plaintiffs with overtime compensation at a rate of one and one-half times the
5 statutory regular rate of pay by failing to include such remuneration in calculating the required
6 regular rate.

7 18. The District’s refusal to provide overtime pay at the proper rate to Plaintiffs for
8 the hours they have worked in excess of the 7k schedule wrongly deprives Plaintiffs of the
9 FLSA overtime compensation that is due to them at times material herein.

10 19. At all relevant times, the District has been aware of the provisions of the FLSA.
11 The District’s actions and omissions as alleged herein were knowing, willful, bad faith, and
12 reckless violations of 29 U.S.C. section 207 within the meaning of 29 U.S.C. section 255(a).

13 20. As a result of the aforesaid willful violations of the FLSA, overtime
14 compensation has been unlawfully withheld by the District from Plaintiffs for which the District
15 is liable pursuant to 29 U.S.C. sections 216(b) and 255, together with an additional equal
16 amount as liquidated damages, interest, reasonable attorneys’ fees and the costs of this action.

17 21. The employment and work records for the Plaintiffs are in the exclusive
18 possession, custody and control of the District, and the Plaintiffs are unable to state at this time
19 the exact amounts owing to them. The District is under a duty imposed by the FLSA, 29 U.S.C.
20 section 211(c), and the regulations of the United States Department of Labor to maintain and
21 preserve payroll and other employment records.

22 PRAYER FOR RELIEF

23 WHEREFORE, each Plaintiff requests from the Court the following relief:

24 A. A declaratory judgment declaring that the District has willfully, unreasonably,
25 wrongfully, and without good faith, violated its statutory and legal obligations, and deprived each
26 Plaintiff of his/her rights, protections and entitlements under federal law, as alleged herein;

27 B. An order for a complete and accurate accounting of all the compensation to which
28 each Plaintiff is entitled;

- 1 C. Judgment against the District awarding each Plaintiff monetary damages in the form
- 2 of back pay compensation, liquidated damages equal to his/her unpaid compensation, plus pre-
- 3 judgment and post-judgment interest;
- 4 D. An award of reasonable attorneys' fees, as well as costs and disbursement of this
- 5 action; and
- 6 E. An award granting such other further relief as the Court deems proper.

7 JURY TRIAL DEMAND

8 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiffs hereby respectfully
9 request a trial by jury on all claims presented in this Complaint.

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11 Dated: February 16, 2016

MESSING ADAM & JASMINE LLP

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13 By /s/ Gregg McLean Adam
14 Gregg McLean Adam
15 Jonathan Yank
16 Jennifer S. Stoughton
17 Attorneys for Plaintiff Consenters
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