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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

PETER DEPEW, as an individual;
RAFAEL GUTIERREZ, as an individual,
and on behalf of all others similarly
situated,

Plaintiff,

vs.

COUNTY OF SANTA BARBARA, and
DOES 2 through 10,

Defendants.

CASE NO.

**COLLECTIVE ACTION
COMPLAINT:**

**(1) FAIR LABOR STANDARDS
ACT, (29 U.S.C. § 201 et seq.);**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiffs Peter Depew (“Depew”) and Rafael Gutierrez (“Gutierrez”)
(collectively “Plaintiffs”) on their own behalf and on behalf of all other similarly
situated individuals, hereby bring this Collective Action Complaint against
Defendant County of Santa Barbara (“Defendant”) and DOES 2 to 10 inclusive

(the County of Santa Barbara and Does 2 to 10 are collectively referred to herein as “Defendants”), and on information and belief allege as follows:

JURISDICTION

1. Plaintiffs hereby bring this collective action for recovery of unpaid overtime wages under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq. (“FLSA”).

2. This Court has jurisdiction over Defendants’ violations of the FLSA pursuant to 29 U.S.C. § 216 and 28 U.S.C. § 1331 because the action asserts rights arising under federal law.

VENUE

3. Venue is proper under 28 U.S.C. §1391 because Defendants employed Plaintiffs within the County of Santa Barbara, and the acts alleged herein took place in Santa Barbara County, California, located within the Central District of California. Defendants are also subject to the personal jurisdiction of this Court pursuant to 28 U.S.C. 1391(c), because they employed Plaintiffs within the Central District of California.

PARTIES

4. Plaintiff Peter Depew (“Depew”) is, and at all relevant times was, a competent individual residing in San Luis Obispo County, California. During all times relevant herein, he was employed by Defendant in its Office of the Public Defender. While so employed, Depew performed services for Defendant in Santa Maria and Lompoc, California.

5. Plaintiff Rafael Gutierrez (“Gutierrez”) is, and at all relevant times was, a competent individual residing in Santa Barbara County, California. During all times relevant herein, he was employed by Defendant in its Office of the Public Defender. While so employed, Gutierrez performed services for Defendant in Santa Maria, California.

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1 6. Depew and Gutierrez bring this action on behalf of themselves and
2 all other similarly situated individuals ("FLSA Collective") pursuant to 29 U.S.C.
3 § 216(b). Plaintiffs and the FLSA Collective were, or are, employed by
4 Defendants as hourly-paid extra-help Deputy Public Defenders during the
5 applicable statutory period.

6 7. Depew and Gutierrez and the FLSA Collective are current and
7 former employees of Defendants and were/are employed by Defendants within
8 three years of the date on which this action was filed.

9 8. At all material times herein mentioned the defendants named in the
10 caption and each DOE Defendant was an agent, employee, and/or partner of the
11 remaining defendants and, in doing the things herein alleged, was acting within
12 the scope of such agency, employment and/or partnership with the permission,
13 authority and/or consent of his or her co-defendants.

14 9. Plaintiffs are ignorant of the true names and capacities of defendants
15 sued herein as DOES 2 through 10, inclusive, and therefore sues these defendants
16 by such fictitious names. Plaintiffs will amend this complaint to allege the true
17 names and capacities of said defendants when the same has been ascertained.
18 Plaintiffs are informed and believe, and based thereon allege, that each of the
19 fictitiously named defendants is responsible in some manner for the acts
20 complained of herein. All references in this Complaint to "Defendants" shall be
21 deemed to include all DOE Defendants.

22 10. Defendant County of Santa Barbara was, at all relevant times
23 mentioned herein, the employer of Depew and Gutierrez. Defendant County of
24 Santa Barbara is a political subdivision of the State of California. Defendant
25 County of Santa Barbara is an employer as defined in 29 U.S.C. §§203(d) and
26 203(e)(2)(C).

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GENERAL FACTUAL ALLEGATIONS

11. Defendant employs attorneys as Deputy Public Defenders I, Step A, in its Office of the Public Defender in an extra-help capacity (“extra-help Deputy Public Defenders”), pays them an hourly rate of pay, but unlawfully fails to pay them overtime wages. Extra-help Deputy Public Defenders, such as Plaintiffs, routinely work more than 40 hours in a workweek but are not paid at time and one-half of their respective regular rates of pay for any of their overtime hours.

12. Defendant hired Depew on or about March 28, 2016 as an extra-help Deputy Public Defender at the rate of pay of \$34.075 per hour. As an extra-help Deputy Public Defender, Depew did not qualify for Defendant’s benefit package available to permanent employees, which includes vacation and holiday pay and health insurance. Depew remained employed by Defendant until he was terminated on or about August 15, 2016. During his employment, Depew routinely worked more than 40 hours per work week and was regularly responsible for up to 200 open case files for which he was the sole assigned legal counsel. Despite regularly working hours in excess of 40 per workweek, Depew was paid no overtime wages (at the rate of time and a half the regular rate of pay) during his employment with Defendant.

13. Defendant hired Gutierrez on or about May 23, 2016 as an extra-help Deputy Public Defender at the rate of pay of \$34.75 per hour. As an extra-help Deputy Public Defender, Gutierrez did not qualify for Defendant’s benefit package available to permanent employees, which includes vacation and holiday pay and health insurance. Gutierrez remained employed by Defendants until he was terminated on or about May 3, 2017. During his employment, Gutierrez routinely worked more than 40 hours per work week and was responsible for up to 230 open case files for which he was the sole assigned legal counsel. Despite regularly working hours in excess of 40 per workweek, Gutierrez was paid no

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1 overtime wages (at the rate of time and a half the regular rate of pay) during his
2 employment with Defendant.

3 **COLLECTIVE ACTION ALLEGATIONS**

4 14. Plaintiffs bring this action on behalf of themselves and all similarly
5 situated individuals. The proposed FLSA Collective Class is defined as follows:

6 All persons employed by the County of Santa Barbara as extra-help
7 Deputy Public Defenders who (1) were not paid a predetermined and
8 fixed salary that is or was not subject to reduction because of
9 variations in the quantity of the work performed, and (2) who were
10 not paid overtime wages for weekly hours worked in excess of forty,
11 during the three years prior to the filing of this Complaint.

12 15. Plaintiffs have consented in writing to be a part of this action
13 pursuant to 29 U.S.C. §216(b). Their signed consent forms are attached hereto as
14 Exhibits "A" and Exhibit "B."

15 16. As this case proceeds, it is likely that other similarly situated
16 individuals will file consent forms and join this action as "opt-in" plaintiffs.

17 17. As described in the preceding paragraphs, Plaintiffs and members of
18 the proposed FLSA Collective were paid an hourly rate of pay and who routinely
19 worked in excess of 40 hours in a workweek without receiving overtime
20 compensation for their overtime hours worked.

21 18. Plaintiffs are informed and believe, and thereon allege, that
22 Defendants have wilfully engaged in a pattern of violating the FLSA by
23 knowingly failing to pay its hourly-paid extra-help Deputy Public Defenders
24 overtime compensation and by misclassifying them as exempt from FLSA
25 overtime pay provisions despite knowing that they did not meet the salary basis
26 test under 29 C.F.R. §541, *et seq.* Defendants were further aware that the extra-
27 help Deputy Public Defenders employed by them routinely worked in excess of 40
28 hours in a workweek, yet Defendants wilfully failed to pay them the overtime

1 compensation to which they were entitled. Such conduct on the part of
2 Defendants constitutes a willful violation of the FLSA within the meaning of 29
3 U.S.C. §255.

4 19. Defendants are liable under the FLSA for failing to pay overtime
5 wages to Plaintiffs and the FLSA Collective for their hours worked in excess of 40
6 per workweek. Accordingly, notice of the action should be sent to the FLSA
7 Collective. There are numerous similarly situated current and former employees
8 of the Defendant who have suffered from its practices described above and who
9 would benefit from the issuance of court-supervised notice of this lawsuit and the
10 opportunity to join. Those similarly situated current and former employees are
11 known to Defendants and are readily identifiable through Defendants' records.

12 **FIRST CLAIM**

13 **FLSA VIOLATION**

14 **(AGAINST ALL DEFENDANTS)**

15 20. Plaintiffs re-allege and incorporate by reference paragraphs 1
16 through 19 as though fully set forth herein.

17 21. This cause of action is brought pursuant to 29 U.S.C. § 207, which
18 requires employers to pay all non-exempt employees one and one-half times the
19 regular rate of pay for all hours worked in excess of 40 per workweek.

20 22. As described in the preceding paragraphs, Defendant suffered and
21 permitted Plaintiffs and the FLSA Collective to routinely work in excess of 40
22 hours per workweek without paying them overtime compensation.

23 23. Plaintiffs and the FLSA Collective are/were not exempt from the
24 overtime requirements of the FLSA because they were paid on an hourly basis and
25 did not meet the FLSA's salary basis test per the U.S. Department of Labor's
26 Regulations. Specifically, 29 C.F.R. §541.602 provides, in pertinent part, that in
27 order for the professional exemption to apply, the employee must be paid each pay
28 period, on a weekly or less frequent basis, a predetermined and fixed salary that is

1 not subject to reduction because of variations in the quality or quantity of the work
2 performed (known as the “salary basis test”).

3 24. Plaintiffs and the FLSA Collective were not paid a predetermined
4 and fixed salary that is/was not subject to reduction because of variations in the
5 quality or quantity of the work performed; instead they were paid an hourly rate of
6 pay that was subject to reduction because of variations in the quantity of the work
7 they performed.

8 25. Defendants’ policy and practice of requiring overtime work and
9 not paying Plaintiff and the FLSA Collective at the proper overtime rates for said
10 work violates the FLSA’s overtime requirements including, but not limited to 29
11 U.S.C. §207.

12 26. Defendants’ failure to pay required overtime wages constitutes a
13 wilful violation of the FLSA, within the meaning of 29 U.S.C. § 255. Defendants
14 knew or showed reckless disregard for the fact that their compensation practices
15 as they applied to Plaintiffs and the FLSA Collective were in violation of the
16 FLSA.

17 27. Defendants’ policy and practice of failing to pay required overtime
18 wages creates an entitlement to recovery by Plaintiffs in a civil action for the
19 unpaid amount of overtime premiums owing, including liquidated damages,
20 attorneys’ fees and costs, per 29 U.S.C. § 216, and interest thereon.

21 **PRAYER**

22 WHEREFORE, Plaintiffs pray for judgment for themselves, and each of
23 them, against Defendants, jointly and severally, as follows:

24 1. For designation of this action as a collective action on behalf of
25 Plaintiffs and those similarly situated, and prompt issuance of notice pursuant to
26 all those similarly situated apprising them of the pendency of this action and
27 permitting them to assert timely FLSA claims in this action by filing individual
28 consent forms;

1 2. Judgment that Plaintiffs and those similarly situated are non-exempt
2 employees entitled to protection under the FLSA;

3 3. Judgment against Defendants for violation of the overtime provisions
4 of the FLSA;

5 4. An award to Plaintiffs and those similarly situated for the amount of
6 unpaid overtime compensations owed, liquidated damages and prejudgment
7 interest on any unpaid overtime wages upon which liquidated damages were not
8 assessed;

9 5. An award of reasonable attorney's fees and costs;

10 6. Leave to add additional plaintiffs by the filing of written consent
11 forms, or any other method approved by the Court; and

12 7. Upon the First Claim, for compensatory, consequential, liquidated,
13 general and special damages pursuant to 29 U.S.C. §§ 207 and 216;

14 8. For such other and further relief the Court may deem just and proper.

15
16 Dated: May 8, 2017

Respectfully submitted,
BALTODANO & BALTODANO LLP

17
18 By:



Hernaldo J. Baltodano

Matthew K. Moen

Attorneys for Plaintiffs and all
others similarly situated

21
22 LAW OFFICE OF LISA BOUTELLE
LAZZARA

23
24 By:


Lisa Boutelle Lazzara

Attorneys for Plaintiffs and all
others similarly situated

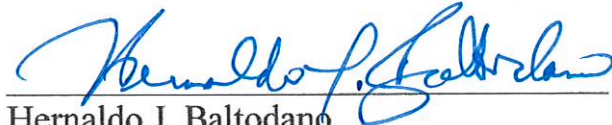
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial with respect to all issues triable by jury.

Dated: May 8, 2017

BALTODANO & BALTODANO LLP

By:



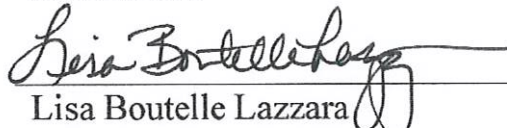
Hernaldo J. Baltodano

Matthew K. Moen

Attorneys for Plaintiffs and all
others similarly situated

LAW OFFICE OF LISA BOUTELLE
LAZZARA

By:



Lisa Boutelle Lazzara

Attorneys for Plaintiffs and all
others similarly situated

**PLAINTIFF PETER DEPEW'S
CONSENT TO SUE**

I, Peter Depew, declare:

1. I am a Plaintiff in the above-captioned action. The following is of my own personal knowledge and, if called as a witness, I could and would testify competently thereto.

2. I hereby consent to be joined in this suit against the County of Santa Barbara and DOES 2 to 10 (collectively "Defendants") under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, for unpaid overtime wages and other relief available under the Act.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 8, 2017 in San Luis Obispo, California.


Peter Depew

**PLAINTIFF RAFAEL GUTIERREZ'S
CONSENT TO SUE**

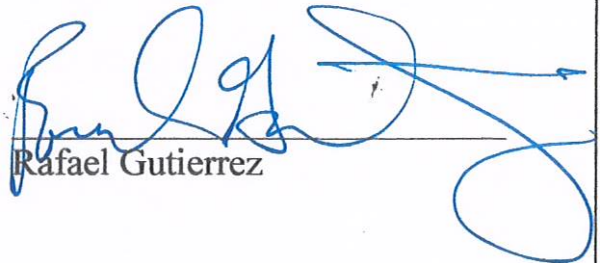
I, Rafael Gutierrez, declare:

1. I am a Plaintiff in the above-captioned action. The following is of my own personal knowledge and, if called as a witness, I could and would testify competently thereto.

2. I hereby consent to be joined in this suit against the County of Santa Barbara and DOES 2 to 10 (collectively "Defendants") under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, for unpaid overtime wages and other relief available under the Act.

3. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 5, 2017 in San Luis Obispo, California.


Rafael Gutierrez