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10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA

13 JOSEPH P. GOODMAN, an individual; )  
14 JAMES B. MASON, an individual; )  
15 GREGORY CONLEY, an individual; )  
16 NICHOLAS RUSSELL, an individual; )  
17 CAMERON DONNAHOO, an )  
18 individual; WILLIAM SANDER, III, an )  
19 individual; SERGIO VALDEZ, an )  
20 individual; and TERRY VALDEZ, an )  
21 individual, )

22 Plaintiffs, )

23 v. )

24 FRESNO COUNTY FIRE )  
25 PROTECTION DISTRICT, and DOES 1 )  
26 through 10, inclusive, )

27 Defendants. )  
28

Case No.

**COMPLAINT FOR:**

- 1) RETALIATORY DISMISSAL (29 U.S.C. §215(a)(3))
- 2) DEPRIVATION OF FIRST AMENDMENT RIGHT TO FREE SPEECH (42 U.S.C. §1983)
- 3) MINIMUM WAGES (29 U.S.C. §206)
- 4) UNPAID OVERTIME (29 U.S.C. §§207)
- 5) LIQUIDATED DAMAGES AND INTEREST (29 U.S.C. §216)
- 6) REASONABLE ATTORNEYS FEES AND COSTS (29 U.S.C. §216)
- 7) DECLARATORY AND INJUNCTIVE RELIEF

**DEMAND FOR JURY TRIAL**

## I. INTRODUCTION

1  
2 1. This is an action by eight individuals, Joseph P. Goodman, James B.  
3 Mason, Gregory Conley, Nicholas Russell, Cameron Donnahoo, William Sander III,  
4 Sergio Valdez and Terry Valdez, against the Fresno County Fire Protection District  
5 based on the District's retaliatory dismissal of each of these individuals for raising their  
6 good faith concerns that the act which the District demanded they take was coerced, was  
7 fraudulent, and quite simply was not factually or legally correct. Specifically, the  
8 District, without cause or any legitimate purpose, demanded that each Plaintiff sign a  
9 letter declaring that as Paid Call Firefighters (or "PCFs") they were acting as  
10 "volunteers" to the District. The District made this demand with the threat of  
11 terminating each Plaintiff if they did not sign this letter/declaration. The District made  
12 this demand/threat even though the Plaintiffs had worked for the District as PCFs for  
13 years and had never been categorized or treated as 'volunteers'. Upon receiving this  
14 demand/threat, each of the Plaintiffs questioned their supervisors, and ultimately the  
15 District's Fire Chief Keith A. Larkin about the validity of this letter/declaration, based on  
16 the fact that the District had never referred to them as 'volunteers', on the associated  
17 facts that they had been paid for their time and that many aspects of their work as PCFs  
18 were mandatory, and on the fact that a Department of Labor ("DOL") investigator had  
19 told them as part of an investigation on the District that he could find no evidence that  
20 the PCFs were volunteers. Each of the Plaintiffs persisted further and asked the District  
21 to provide the factual and/or legal information supporting the alleged conclusion that  
22 they qualified as 'volunteers' for in the District. The District refused to provide any such  
23 information and instead, as threatened, dismissed each of the Plaintiffs from their  
24 positions as active PCFs on April 26, 2012. In doing so, the District violated the federal  
25 Fair Labor Standards Act ("FLSA") prohibition against retaliation for raising wage-  
26 related concerns, as well as the protection under the First Amendment to the United  
27 States Constitution for free speech. After the Plaintiffs obtained representation by legal  
28 counsel experienced with the FLSA and appealed their dismissals, the District upheld the

1 dismissals on June 19, 2012, finalizing their violation of the FLSA and the right to free  
2 speech. For these violations, Plaintiffs seek reinstatement as PCFs with the District, lost  
3 pay, future pay, and monetary damages for the severe emotional pain and suffering  
4 incurred (and still being incurred) by each of the Plaintiffs. Plaintiffs also seek the  
5 minimum wages, overtime pay, liquidated damages and interest associated with the  
6 FLSA violations. Finally, Plaintiffs seek reasonable attorney's fees and costs for the  
7 litigation of this action - - made necessary by the District's malicious and baseless acts  
8 against the Plaintiffs.

## 9 II. PARTIES

10 2. The individual named as Plaintiff Joseph P. Goodman (hereafter "Plaintiff"  
11 or "Plaintiff Goodman"), at all times pertinent to this action, was employed by Defendant  
12 Fresno County Fire Protection District (hereafter "Defendant" or "the District") as a Paid  
13 Call Firefighter ("PCF"), rising through the ranks to become a PCF Fire Apparatus  
14 Operator ("FAO"), until April 26, 2012 when Plaintiff Goodman was dismissed by the  
15 District for expressing concern that the Volunteer Status Form which the District had  
16 demanded he sign incorrectly forced him to declare he was a "volunteer" to the District,  
17 contrary to his status as a part-time "employee" of the District.

18 3. The individual named as Plaintiff James B. Mason (hereafter "Plaintiff" or  
19 Plaintiff Mason"), at all times pertinent to this action, was employed by the District as a  
20 PCF, rising through the ranks to become a PCF Company Officer, until April 26, 2012  
21 when Plaintiff Mason was dismissed by the District for expressing concern that the  
22 Volunteer Status Form which the District had demanded he sign incorrectly forced him  
23 to declare he was a "volunteer" to the District, contrary to his status as a part-time  
24 "employee" of the District.

25 4. The individual named as Plaintiff Gregory Conley, (hereafter "Plaintiff" or  
26 Plaintiff Conley"), at all times pertinent to this action, was employed by the District as a  
27 PCF Firefighter until April 26, 2012 when Plaintiff Conley was dismissed by the District  
28 for expressing concern that the Volunteer Status Form which the District had demanded

1 he sign incorrectly forced him to declare he was a “volunteer” to the District, contrary to  
2 his status as a part-time “employee” of the District.

3         5.       The individual named as Plaintiff Nicholas Russell, (hereafter “Plaintiff” or  
4 Plaintiff Russell”), at all times pertinent to this action, was employed by the District as a  
5 PCF Firefighter until April 26, 2012 when Plaintiff Russell was dismissed by the District  
6 for expressing concern that the Volunteer Status Form which the District had demanded  
7 he sign incorrectly forced him to declare he was a “volunteer” to the District, contrary to  
8 his status as a part-time “employee” of the District.

9         6.       The individual named as Plaintiff Cameron Donnahoo (hereafter “Plaintiff”  
10 or “Plaintiff Donahoo”), at all times pertinent to this action, was employed by the  
11 District as a PCF, rising through the ranks to become a PCF Company Officer , until  
12 April 26, 2012 when Plaintiff Donnahoo was dismissed by the District for expressing  
13 concern that the Volunteer Status Form which the District had demanded he sign  
14 incorrectly forced him to declare he was a “volunteer” to the District, contrary to his  
15 status as a part-time “employee” of the District.

16         7.       The individual named as Plaintiff William Sander III (hereafter “Plaintiff”  
17 or “Plaintiff Sander”), at all times pertinent to this action, was employed by the District  
18 as a PCF, rising through the ranks to become a PCF Fire Apparatus Operator (“FAO”),  
19 until April 26, 2012 when Plaintiff Sander was dismissed by the District for expressing  
20 concern that the Volunteer Status Form which the District had demanded he sign  
21 incorrectly forced him to declare he was a “volunteer” to the District, contrary to his  
22 status as a part-time “employee” of the District.

23         8.       The individual named as Plaintiff Sergio Valdez (hereafter “Plaintiff” or  
24 Plaintiff S. Valdez”), at all times pertinent to this action, was employed by the District  
25 as a PCF, rising through the ranks to become a PCF Company Officer, until April 26,  
26 2012 when Plaintiff S. Valdez was dismissed by the District for expressing concern that  
27 the Volunteer Status Form which the District had demanded he sign incorrectly forced  
28

1 him to declare he was a “volunteer” to the District, contrary to his status as a part-time  
2 “employee” of the District.

3 9. The individual named as Plaintiff Terry Valdez (hereafter “Plaintiff” or  
4 Plaintiff T. Valdez”), at all times pertinent to this action, was employed by the District  
5 as a PCF, rising through the ranks to become a PCF Fire Apparatus Operator (“FAO”),  
6 until April 26, 2012 when Plaintiff T. Valdez was dismissed by the District for  
7 expressing concern that the Volunteer Status Form which the District had demanded she  
8 sign incorrectly forced her to declare she was a “volunteer” to the District, contrary to  
9 her status as a part-time “employee of the District.

10 10. Defendant Fresno County Fire Protection District (hereafter “Defendant” or  
11 the District”) is, and at all times mentioned herein was, a local government subdivision  
12 of the State of California, governed by the Meyers-Milias-Brown Act (“MMBA”) as a  
13 public agency as defined at CA Gov. Code § 3501(c). The District is duly organized,  
14 validly existing, and administered under the laws of the State of California. For the  
15 purposes of this action and as a Defendant to this action, the District includes all agents,  
16 employees, attorneys, accountants, investigators, officers, directors, representatives, and  
17 anyone else acting on behalf of the District.

18 11. At all times herein mentioned each of DOES 1 through 10, inclusive, was  
19 the agent, servant, and employee of each of the remaining co-defendants, and in doing  
20 the things herein alleged was acting in the scope of his or her authority as such agent,  
21 servant, and employment, and with the permission and consent of each co-defendant.

22 12. The true names and capacities, whether individual, corporate, associate or  
23 otherwise of Defendants DOES 1 through 10, are unknown to Plaintiffs who therefore  
24 sue said Defendants by such fictitious names, and Plaintiffs will amend this Complaint to  
25 show their true names and capacities when the same have been ascertained. Plaintiffs are  
26 informed and believe and thereon allege that each of the Defendants, DOES 1 through  
27 10, inclusive, are responsible in negligence, warranty, strictly, or otherwise, for the  
28

1 events and happenings herein referred to and proximately thereby caused and continue to  
2 cause the violation of the rights of the Plaintiff as herein alleged.

### 3 4 **III. JURISDICTION**

5 13. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 12 as  
6 though fully set forth herein.

7 14. Plaintiffs in this action bring causes of action for retaliatory dismissal and  
8 related lost wages, future wages and damages for emotional pain and suffering, as well  
9 as for overtime pay and minimum wages, based on the federal Fair Labor Standards Act  
10 (“FLSA”) pursuant to 29 U.S.C. §§ 201 et seq., for liquidated damages, interest,  
11 attorneys fees and costs pursuant to 29 U.S.C. §§ 216, for damages associated with  
12 intentional conduct pursuant to 29 U.S.C. § 255 and for the deprivation of the First  
13 Amendment right to free speech pursuant to 42 U.S.C. § 1983. Since the causes of  
14 action are based only on federal statutes, jurisdiction in Eastern District Federal Court is  
15 proper pursuant to 28 U.S.C. § 1331.

### 16 **IV. VENUE**

17 15. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 14 as  
18 though fully set forth herein.

19 16. Venue for this action in the Eastern District of California Federal Court in  
20 Fresno is proper pursuant to 28 U.S.C. §1391(b) since Defendant resides within the  
21 County of Fresno and since the majority of events if not all events giving rise to the  
22 claims in this complaint, namely the retaliatory dismissal of the Plaintiffs, as well as the  
23 associated overtime pay and minimum wage violations, and the deprivation of free  
24 speech occurred and continue occur within the Eastern District Court’s Fresno judicial  
25 district.

### 26 **V. FACTUAL ALLEGATIONS**

27 17. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 16 as  
28 though fully set forth herein.

1           18.    At all times pertinent to this action, including the period commencing three  
2 years prior to the filing of this action, beginning on November 28, 2009, each of the  
3 Plaintiffs worked as a Paid Call Firefighter (“PCF”) for the District:

- 4           a)    Plaintiff Goodman began work as a PCF for the District in July of  
5                    2009, and has worked at District Fire Station Nos. 72, 73, 74, 75, 85,  
6                    86, 87, 90, 95 & 96 and Cal-Fire Fire Stations Blasingame, Hurley  
7                    and Millerton under the supervision of Captain Cary Williams,  
8                    Captain Allison McAdams, and PCF Captain Bruce Russell, and  
9                    Battalion Chief Mark Watkins, until being placed by the District on  
10                   inactive status on March 22, 2012, followed by being dismissed on  
11                   April 26, 2012.
- 12           b)    Plaintiff Mason began work as a PCF for the District in March of  
13                    1989, and has worked at District Fire Station Nos. 72, 73, 74, 75, 85,  
14                    86, 87, 90, 95 & 96 and Cal-Fire Fire Stations Blasingame, Hurley  
15                    and Millerton under the supervision of Captain Cary Williams,  
16                    Captain Allison McAdams, and PCF Captain Bruce Russell, and  
17                    Battalion Chief Mark Watkins, until being placed by the District on  
18                   inactive status on March 22, 2012, followed by being dismissed on  
19                   April 26, 2012.
- 20           c)    Plaintiff Conley began work as a PCF for the District in 2009, and  
21                    has worked at District Fire Station Nos. 72, 73, 74, 75, 85, 86, 87,  
22                    90, 95 & 96 and Cal-Fire Fire Stations Blasingame, Hurley and  
23                    Millerton under the supervision of Captain Cary Williams, Captain  
24                    Allison McAdams, and PCF Captain Bruce Russell, and Battalion  
25                    Chief Mark Watkins, until being placed by the District on inactive  
26                    status on March 22, 2012, followed by being dismissed on April 26,  
27                    2012.

- 1 d) Plaintiff Russell began work as a PCF for the District in February of  
2 2009, and worked at District Fire Station Nos. 72, 73, 74 & 75 in  
3 Hurley, and at Station Nos. 85 & 86, under the supervision of  
4 Captain Cary Williams, Captain Allison McAdams, and PCF  
5 Captain Bruce Russell, until being placed by the District on inactive  
6 status on March 22, 2012, followed by being dismissed on April 26,  
7 2012.
- 8 e) Plaintiff Donnahoo began work as a PCF for the District in May of  
9 2008, and worked primarily at District Fire Station No. 75 in Hurley.  
10 Plaintiff Donnahoo also worked at the stations in Blasingame and  
11 Millerton. Plaintiff Donnahoo worked under the supervision of  
12 Captain Tracy Nuter, Captain Dennis Smith, and Battalion Chief  
13 Mark Johnson, until being placed by the District on inactive status  
14 on March 22, 2012, followed by being dismissed on April 26, 2012.
- 15 f) Plaintiff Sander began work as a PCF for the District in March of  
16 2001, and has worked at District Fire Station Nos. 72, 73, 74, 75, 85,  
17 86, 87, 90, 95 & 96 and Cal-Fire Fire Stations Blasingame, Hurley  
18 and Millerton under the supervision of Captain Cary Williams,  
19 Captain Allison McAdams, and PCF Captain Bruce Russell, and  
20 Battalion Chief Mark Watkins, until being placed by the District on  
21 inactive status on March 22, 2012, followed by being dismissed on  
22 April 26, 2012.
- 23 g) Plaintiff S. Valdez began work as a PCF for the District in October  
24 of 1991, and worked at District Fire Station Nos. 95 in Tranquility  
25 and 96 in Mendota, along with other 'water tender' assignments,  
26 under the supervision of Battalion Chief Vince Burgland, Captains  
27 Benny Lozano, Shawn Knight and Doug Johnson, and Engineers  
28 Ralph Duran, Ryan Wallace and Tray Barr, until being placed by the



1 District on inactive status on March 22, 2012, followed by being  
2 dismissed on April 26, 2012.

3 h) Plaintiff T. Valdez began work as a PCF for the District in August of  
4 1992, and worked at District Fire Station Nos. 95 in Tranquility and  
5 96 in Mendota, along with other 'water tender' assignments, under  
6 the supervision of Battalion Chief Vince Burgland, Captains Benny  
7 Lozano, Shawn Knight and Doug Johnson, and Engineers Ralph  
8 Duran, Ryan Wallace and Tray Barr, until being placed by the  
9 District on inactive status on March 22, 2012, followed by being  
10 dismissed on April 26, 2012.

11 19. Plaintiffs were not hired by the District as "volunteers", and until February  
12 of 2012 as described herein were unaware that the District believed they were anything  
13 other than part-time "employees", titled "Paid Call Firefighters" or "PCFs". For  
14 example, as recently as 2009 the District's explicit treatment of PCFs as "employees" is  
15 clear from the District's May 14, 2009 letter acknowledging receipt of Plaintiff  
16 Goodman's application for "employment" as a "Paid-Call Firefighter", sent by Fire  
17 Chief Keith A. Larkin and signed by Administrative Officer II Michelle Martinez,  
18 followed by the District's July 9, 2009 letter congratulating Plaintiff Goodman for being  
19 hired as a PCF (Both letters are attached hereto as "**Exhibit 1**"); nowhere do either of  
20 these letters refer to the position being applied for or the position Plaintiff Goodman was  
21 hired into as a "volunteer" position. Consistent with this practice of hiring PCFs as  
22 "employees", the District issued each of the Plaintiffs an Identification Card declaring  
23 their title as "Paid Call Firefighter" and declaring the classification as an "Employee",  
24 with an associated "Employee" number (As an example, attached hereto as "**Exhibit 13**"  
25 is the Identification Card for Plaintiff Sanders, declaring such "Employee" status as  
26 approved by Fire Chief Keith Larkin who signed the "Employee" Identification Card).

27 20. The only "volunteer" firefighters who have provided fire protection and  
28 related services in Fresno County in the past had/have no connection to the District;

1 instead such volunteer firefighters belonged/belong to true 'Volunteer companies' (such  
2 as the Auberry Volunteer Fire Company, the Bald Mountain Volunteer Fire Department,  
3 the Big Creek Volunteer Fire Department, the Huntington Lake Volunteer Fire  
4 Department, the Laton Volunteer Fire Department, the Pine Ridge Volunteer Fire  
5 Department, the Riverdale Volunteer Fire Department, and the Shaver Lake Volunteer  
6 Fire Department) which were (and are) no part of the District. Unlike the District, on  
7 information and belief none of these true volunteer fire departments in Fresno County  
8 provide any pay or stipends to the individuals who respond to emergency calls for these  
9 departments.

10 21. Until recently, the only references by the District to the term "volunteer"  
11 were either to individuals within the Volunteer Fire Departments just described (which  
12 are no part of and are not under the control of the District), or were in association with  
13 state of California training forms which at times include the term "volunteer" but which  
14 establish no basis for PCFs qualifying as volunteers since even full-time, paid Cal-Fire  
15 (state) firefighters working for/with the District use and maintain such state training  
16 forms.

17 22. Since the District retaliated against the Plaintiffs by dismissing each of  
18 them for raising valid questions and concerns over the alleged, newly asserted  
19 'volunteer' status of PCFs, the District has, for the first time, added the terms "volunteer"  
20 or "volunteers" to various pages of the District's internet web site at  
21 [www.fresnocountyfire.org](http://www.fresnocountyfire.org); none of the uses of the terms "volunteer" or "volunteers"  
22 presently found on the District web site existed prior to 2012.

23 23. Prior to September 2010, each Plaintiff was paid for their work as a PCF  
24 for the District at an hourly rate of pay for all time worked responding to emergency  
25 calls as follows: \$8.00 (firefighter), \$9.00 (apparatus operator), and/or \$10.00 (Captain).

26 24. Since September 2010 until being dismissed on April 26, 2012, each  
27 Plaintiff received stipends for their work responding to emergency calls under the  
28 following schedule: \$20.00 for 0-3 hours, \$40.00 for 3-6 hours, \$60.00 for 6-10 hours;

1 additional stipends are provided for rank (set monthly amounts for Company Officers),  
2 for training, and for Water Tender operators (*See* District's PCF Policy No. 200-16), as  
3 well as for State Responsibility Area (SRA) emergency calls (\$ 9.94/hour for PCF  
4 Firefighters and \$ 11.72/hour for PCF FAOs and PCF Company Officers).

5       25. Both the hourly pay provided to PCFs by the District prior to September of  
6 2010 and the stipend pay provided after that time served/serve as substitutes for  
7 compensation. The hourly pay, obviously, provided compensation for all time worked.  
8 The stipend pay, however, serves the same purpose since PCFs are not allowed to go  
9 home 'early' if they respond to an emergency call and that emergency call is completed,  
10 for example, in less than three hours; instead each PCF must 'finish out' the three hour  
11 segment by returning to the assigned station until such segment of time expires. This  
12 requirement to 'finish' each three hour segment - - regardless of when the incident being  
13 responded to is concluded - - was routinely, verbally emphasized by Battalion Chief  
14 Mark Watkins and the PCF Advisory Council Chairman, Battalion Chief Vince  
15 Bergland. Therefore the stipends are simply a lower hourly rate of pay for hours worked.  
16 The stipends *are not*, as the term may imply, amounts provided for reimbursement of gas  
17 or any other costs incurred.

18       26. Both the hourly pay provided to PCFs by the District prior to September of  
19 2010 and the stipend pay provided after that time for responding to emergency calls  
20 exceed the "nominal fee" allowed under federal law to be provided to "volunteers";  
21 specifically, volunteers may not receive more than twenty percent (20%) of the pay  
22 provided to a comparable, full- time employee *for the same work. See* 29 CFR  
23 553.106(e); *See also* the December 18, 2008 Department of Labor (DOL) Opinion Letter  
24 (DOL No. FLSA2008-15) addressing 29 CFR 553.106(e) for Firefighters (concluding  
25 that the 'nominal fee' allowed for volunteer firefighters cannot exceed 20 percent of the  
26 approximate prevailing wage in the area *for the same work performed*).

27       27. Since the comparable rate of pay for full-time firefighters in the District is,  
28 at most (counting both base salary and the monetary value of benefits received),

1 approximately \$88,000 per year (or \$ 23.50/hour, based on the annual amount covering  
2 288 scheduled hours per 28 days), and since Plaintiffs were paid between \$ 8.00/hour  
3 and \$10.00/hour prior to September, 2010, Plaintiffs received between thirty-four percent  
4 (34%) and forty-three percent (43%) of comparable prevailing wages for the same work,  
5 *well in excess* of the 20% nominal fee limitation for volunteers.

6 28. Even after the stipend pay was instituted after September of 2010, Plaintiffs  
7 received \$ 20 per three hours, or \$ 6.66/hour, which is still 28.3 % of the comparable  
8 full-time pay, *still well in excess* of the allowable 20% limit for nominal fees which can  
9 be paid to volunteers.

10 29. The hourly pay provided by the District to PCFs for responding to SRA  
11 emergency calls exceeds the 20 % limit for the nominal fee allowed to be paid to  
12 volunteers by even a greater degree; since Plaintiffs were paid between \$ 9.94/hour and  
13 \$11.72/hour for responding to such calls, Plaintiffs received between forty-two percent  
14 (42%) and fifty percent (50 %) of comparable prevailing wages for the same work.

15 30. If for any reason the stipend pay could qualify as the ‘nominal fee’ allowed  
16 for volunteers, the District still may not classify the Plaintiffs as volunteers, since the  
17 hourly pay provided prior to September of 2010 indisputably renders them “employees”  
18 of the District, and since an employer cannot ‘transform’ part-time firefighter employees  
19 into volunteers simply by instituting a stipend pay scheme. *See Krause v. Cherry Hill*  
20 *Fire Dist.* 13, 969 F.Supp. 270 (D.N.J. 1997).

21 31. Separate and apart from the 20% ‘nominal fee’ limitation on the amount of  
22 pay which can be provided to volunteers, individuals cannot qualify as “volunteers”  
23 under the applicable federal law unless the work they perform is truly voluntary, such  
24 that they get to decide *if* they come to work, *when* they come to work, *how* they perform  
25 their work, *and when they go home* from work. Conversely, individuals cannot qualify  
26 as “volunteers” under the applicable federal law if the employer maintains control over  
27 the work performed by the individual. *See Mendel v. City of Gibraltar*, (E.D. Michigan,  
28 2012) 842 F. Supp. 2d 1045.

1           32. Plaintiffs work as PCFs for the District was anything but voluntary;  
2 instead, the mandatory aspects of the PCFs' work and the controls/requirements exerted  
3 by the District over such work are established by many facts, and include:

- 4           a) The District's long-held position that PCFs are the equivalent of full-  
5 time District firefighters;
- 6           b) The fact that some stations, including some of the stations the  
7 Plaintiffs worked at, are staffed by PCFs *alone*;
- 8           c) The fact that the District's stated written policy for PCF staffing  
9 declares that PCFs will provide the staffing pool "which will enable  
10 the Fire District to accomplish its primary mission" (*See* District's  
11 PCF Policy No. 300-06, attached hereto as "**Exhibit 2**"), which  
12 explicitly is the opposite of a policy describing 'volunteers' who  
13 must be allowed to come and go as they please;
- 14           d) The fact that PCFs are required to attend training 2 - 3 times/month,  
15 and face dismissal if they miss four or more required training  
16 sessions per year (*See* District's PCF Policy No. 300-01, attached  
17 hereto as "**Exhibit 3**");
- 18           e) The fact that PCFs *are required* to respond to emergency calls  
19 during 'cover assignments' (either State Responsibility Area  
20 ("SRA") incidents or Local Responsibility Area ("LRA") incidents),  
21 when the full-time firefighters are engaged in service elsewhere.  
22 Further, the District's Emergency Incident Response policy for PCFs  
23 is filled with mandates, directives and requirements for PCFs to  
24 respond to emergency calls (such as, for First Alarm Fire  
25 Assignments, PCF "will respond to the incident on an automatic  
26 basis") and/or for PCFs *not being allowed to go home* after  
27 responding to emergency calls "until such time as the Incident  
28

1 Commander deems their use to be concluded” (See District’s PCF  
2 Policy No. 300-05, attached hereto as “**Exhibit 4**”);

- 3 f) The fact that PCFs serving as water tender operators must respond to  
4 all emergency calls to perform their duties;
- 5 g) The fact that PCFs may be disciplined or dismissed for “unexcused  
6 absences” when failing to respond to emergency calls (per the  
7 District’s PCF Policy No. 300-06, attached hereto as “**Exhibit 2**”);
- 8 h) The fact that District commanders repeatedly page, then call the cell  
9 phones of PCFs, such that responses to emergency calls are not  
10 voluntary; and
- 11 i) The fact that PCFs, having responded to an emergency call, are not  
12 allowed to go home whenever they want to, but must be granted  
13 permission by the commander in charge of that emergency call to go  
14 home.

15 33. These controls exerted by the District over PCFs recently formed part of  
16 the basis for decisions by *two different* California Unemployment Insurance Appeals  
17 Board (CUIAB) Administrative Law Judges (ALJs), ruling respectively that Plaintiff  
18 Mason and Plaintiff Goodman were “employees” of the District, *not* volunteers” to the  
19 District.

20 34. The decision for Plaintiff Mason by ALJ Joshua Daniels specifically  
21 concluded that Plaintiff Mason “had good cause to refuse executing the [Volunteer  
22 Status Form] and agreeing he was not an employee. The employer historically treated  
23 [Plaintiff Mason] as if he were an employee throughout his services from 1989.” (See  
24 page 4 of this decision, attached hereto as “**Exhibit 5**”).

25 35. The decision for Plaintiff Goodman by ALJ Anthony T. Ross specifically  
26 concluded that Plaintiff Goodman was an “employee” of the District, not a volunteer,  
27 because the District “had total control of the details of the work in regards to fighting  
28 fires. . . . [Plaintiff Goodman] reported to a fire and was directed to how to perform his

1 duties by his direct supervisor.” (See page 5 of this decision, attached hereto as “**Exhibit**  
2 **6**”).

3         36. On February 21, 2012 District Fire Chief Keith A. Larkin sent a letter to all  
4 District PCFs, including the Plaintiffs, stating that the attached ‘Volunteer Status Form’  
5 had to be signed by each PCF in order for the PCF to remain employed by the District.  
6 The attached Volunteer Status Form alleged a “past practice” of PCFs being treated as  
7 volunteers, declared that PCFs were not employees of the District, and concluded with a  
8 signature line and text establishing a declaration by the signatory that “I understand I am  
9 serving as a Volunteer . . . .” No part of the Volunteer Status Form or the cover letter  
10 from Chief Larkin explained how or why PCFs qualified as “volunteers” under the  
11 applicable law, or provided any information on the ‘legal test’ for “volunteers.” (The  
12 cover letter and the Volunteer Status Form are attached hereto as “**Exhibit 7**”).

13         37. The District’s posture regarding this ‘sign or be fired’ declaratory form was  
14 made clear immediately by Battalion Chief Mark Watkins in the email he sent to PCFs  
15 two days later, on February 23, 2012, in which he referred to the letter from Chief Larkin  
16 and the Volunteer Status Form as “simply a clarification of legal terminology” (despite  
17 the fact that no legal explanation or information of any kind was contained in the letter or  
18 the form) before preaching “I trust that everyone will remain professional and not get  
19 worked up about it.” Chief Watkins concluded his email with “Let’s press on with the  
20 business of serving the public.” - - apparently concluding that any PCF unwilling to  
21 blindly declare their alleged legal ‘volunteer’ status without knowing anything about  
22 how an individual legally qualifies as a volunteer is no longer concerned with ‘serving  
23 the public’ in Fresno County. (The February 23, 2012 email from Battalion Chief Mark  
24 Watkins to PCFs is attached hereto as “**Exhibit 8**”). Chief Watkin’s email ended up  
25 accurately reflecting the unwillingness by the District to provide any answers to the  
26 Plaintiffs concerns that they did not qualify as volunteers.

27         38. Following receipt of Chief Larkin’s February 21, 2012 letter and the  
28 attached Volunteer Status Form, each Plaintiff became concerned that signing the form

1 was illegal and dishonest because they may not properly qualify as “volunteers” under  
2 the applicable law; these concerns stemmed from the fact that there was no ‘past  
3 practice’ of PCFs being characterized by the District as volunteers, from the fact that  
4 they had received hourly pay for all time worked prior to September 2010, and the fact  
5 that even the stipends amounted to pay for hours worked, from the fact that very little  
6 about their PCF duties was voluntary, and finally from the fact that in February of 2012,  
7 the Department of Labor (“DOL”) investigator from the Fresno DOL office who was  
8 conducting an investigation on the District interviewed a portion of the Plaintiffs, and  
9 stated at the close of these interviews to the Plaintiffs interviewed that he had found no  
10 documents or any other evidence supporting the idea that PCFs were volunteers to the  
11 District.

12         39. Following receipt of Chief Larkin’s letter and the attached Volunteer Status  
13 Form, the Plaintiffs - -both collectively and separately - - raised their concerns to their  
14 supervisors and multiple District commanders that they were not “volunteers” to the  
15 District, but were “employees”, and therefore signing the Volunteer Status Form would  
16 amount to dishonesty if not fraud. These concerns were raised to many District  
17 supervisors and commanders, including Fire Chief Keith Larkin, Battalion Chief Mark  
18 Watkins, Division Chief Mark Johnson, Division Chief Craig Tolmie, Chief Vince  
19 Bergland, and District Board members Dan Guice, John Arabian and Francisco Chavez.

20         40. Based on these serious concerns, three of the Plaintiffs (Plaintiff Goodman,  
21 Plaintiff Mason and Plaintiff Donnahoo) met with Division Chief Mark Johnson and  
22 Battalion Chief Mark Watkins at the Hurley Fire Station on March 18, 2012 to raise their  
23 concerns; Mr. Johnson and Mr. Watkins refused, however, to provide any reasons or any  
24 information at all as to why the District suddenly believed PCFs qualified as  
25 “volunteers” under the law. Instead Mr. Johnson and Mr. Watkins simply repeated the  
26 demand made in the letters issued by the District/Chief Larkin: sign the form or you will  
27 be fired.



1           41.     Several days later, the PCFs attempted to bring their concerns over the  
2 dishonest declaration they were being threatened to sign to the District Board directly.  
3 At the close of the open session of the Board meeting on March 21, 2012, through their  
4 civilian representative Bruce Russell (a former PCF Captain for the District), the Board  
5 was informed of their position; that PCFs had never been treated as “volunteers” by the  
6 District, and that the recent letters from Fire Chief Larkin which threatened termination  
7 unless the volunteer status form was signed, despite the District not providing any  
8 information as to when, how or why PCFs qualified as “volunteers”, were therefore  
9 inappropriate. While each of the seven Board members were present at this meeting,  
10 along with Fire Chief Larkin and Division Chief Mark Johnson, *none of them spoke to*  
11 *provide any answers* after Mr. Russell finishing speaking.

12           42.     The Plaintiffs persisted in their efforts to receive an explanation justifying  
13 the change from treating PCFs as “employees” to “volunteers”, and on April 9, 2012, a  
14 PCF Advisory meeting was held at the Hurley fire station to discuss the volunteer status  
15 form. For the District, Division Chief Craig Tolmie, Division Chief Mark Johnson,  
16 Battalion Chief Mark Watkins and District Board members Dan Guice, Francisco  
17 Chavez and John Arabian attended this meeting. The Plaintiffs reiterated their questions  
18 as to how and why the District suddenly believed the PCFs were “volunteers”; the  
19 Plaintiffs even prepared and showed the District commanders and Board members  
20 present a power point presentation showing their concerns. The commanders and Board  
21 members present for the District refused, however, to provide any answers or  
22 information addressing the Plaintiffs’ concerns, and instead made only the rote,  
23 unsupported statements that ‘PCFs have always been volunteers’ and ‘we were told by  
24 DOL to issue the volunteer status form’ followed by the declaration ‘the volunteer status  
25 form is not being changed.’

26           43.     Despite the repeated requests by the Plaintiffs for an explanation from the  
27 District as to how and why PCFs allegedly qualified as “volunteers” under the law  
28 (which may have relieved their concerns about committing dishonesty and/or violating

1 the FLSA by signing the volunteer status form), the District provided no information to  
2 address their FLSA concerns, and instead terminated each of the PCFs via letters from  
3 Fire Chief Larkin dated April 26, 2012. (The termination letter issued to Plaintiff  
4 Goodman is attached hereto as “**Exhibit 9**”; the termination letters issued to the other  
5 seven Plaintiffs are identical except for the name).

6 44. Following the District’s PCF Policy No. 200-13, each Plaintiff appealed  
7 their termination, after obtaining legal representation, via the May 16, 2012 letter from  
8 their counsel to the District’s Administrative Officer Michelle Martinez (attached hereto  
9 as “**Exhibit 10**”).

10 45. This appeal letter succinctly notified the District that the dismissals  
11 constituted retaliation under 29 U.S.C. § 215, that the Volunteer Status Letter improperly  
12 forced PCFs to make false statements (since the District’s pay provided to PCFs and the  
13 District’s many mandates applicable to PCFs established that PCF could not meet the  
14 legal test for ‘volunteers’), and that the Volunteer Status Form served no purpose  
15 whatsoever, since an employee’s declaration (or opinion) as to whether or not he or she  
16 is a ‘volunteer’ versus an ‘employee’ plays no part in satisfying the legal ‘test’ for  
17 volunteers under applicable federal law.

18 46. Despite the factual and legal points made in this appeal for each Plaintiff,  
19 the District upheld the dismissal of each Plaintiff by issuing a June 19, 2012 Decision by  
20 the District’s Executive Committee comprised of Mike Del Puppo, the District Board  
21 President, Jim Kerns, the District Board Vice President, and Mark Johnson, District  
22 Division Chief.

23 47. The District acted maliciously in issuing the ‘sign or be fired’ demand  
24 regarding the Volunteer Status Form to each Plaintiff for multiple reasons, including: the  
25 fact that this form forced the Plaintiffs to make false declarations, if signed; the fact that  
26 the District refused to provide any factual or legal information to the Plaintiffs in  
27 response to their requests for such information which may have answered their questions  
28 as to how PCFs might qualify as volunteers to the District; the fact that the District

1 followed through with the threatened terminations after refusing to provide any  
2 information; and the fact that, when given the chance to reverse their retaliatory acts  
3 against the Plaintiffs, the District chose not to.

4 48. The District's adverse acts against the Plaintiffs are particularly offensive,  
5 and are equally unexplained and without basis, given that the Volunteer Status Form  
6 serves no purpose under the legal 'test' for whether an individual is a "volunteer" or is an  
7 "employee" providing services to a public entity; Whether any PCF 'believes' he or she  
8 is or is not a volunteer is irrelevant to satisfying "volunteer" status under the FLSA.

9 49. Instead, an individual qualifies as a 'volunteer' under the FLSA only if the  
10 pay received satisfies the 'nominal fee' limitation (is no more than 20% of the pay  
11 received by comparable full time employees *for the same work performed - - ie, total pay*  
12 *received is not compared but instead equivalent hourly rates of pay are compared, as*  
13 *done in DOL Opinion Letter No. FLSA2008-15), and if the individual is not under the*  
14 *control of the employer, but instead is free to decide if and when to come to work, and*  
15 *when to leave work.*

16 50. While the February 21, 2012 letter from Fire Chief Larkin to the Plaintiffs,  
17 along with subsequent comments by Chief Larkin and other District commanders imply  
18 that a Department of Labor (DOL) investigation of the District was the basis for issuing  
19 the Volunteer Status Form and demanding that it be signed, the District has provided the  
20 Plaintiffs with zero evidence or information showing DOL made any recommendation to  
21 issue the Volunteer Status Form, or to terminate any PCF not willing to sign such form;  
22 instead, as pled herein, the investigator from the DOL Fresno office who interviewed a  
23 portion of the Plaintiffs stated the opposite - - that there was no evidence that PCFs were  
24 "volunteers" to the District.

25 51. If any evidence of any 'advice' from DOL to the District regarding the  
26 Volunteer Status Form surfaces during the litigation of this action, however, any such  
27 evidence is irrelevant to the District's retaliatory dismissals of the Plaintiffs, since advice  
28 from a regulatory agency does not change the applicable, established law.

1           52. As a result of the retaliatory dismissals by the District, each Plaintiff has  
2 suffered, and continues to suffer, extreme emotional pain, since each Plaintiff was  
3 suddenly rendered unable to serve their neighbors and community by responding to  
4 emergency calls for service, as they had done routinely for years as District PCFs, since  
5 they were given no explanation whatsoever in response to their good faith concerns that  
6 their work for the District as PCFs did not qualify as ‘volunteer’ work under the  
7 applicable law, since their years of commitment and service to the District were  
8 apparently wiped away by an unexplained position taken by the District, and since their  
9 dismissal called into question whether they would ever be able to provide fire protection  
10 services for any employer, ever.

11           53. The sudden end to their roles as active PCFs for the District, and the  
12 associated questions, doubt and frustration which has followed has caused adverse  
13 physical symptoms for each Plaintiff, including stress, anxiety, depression, difficulty  
14 dealing with family and friends, sleeplessness, and overall discomfort. Specific pain and  
15 suffering experienced by the Plaintiffs are as follows:

- 16           a) Plaintiff Goodman has experienced and continues to experience  
17 significant emotional pain since, just after deciding on a career  
18 change to work as a PCF and give more to his community, and just  
19 after being promoted to Company Officer last year, he was faced  
20 with the stress of being pressured to sign a declaration he believed  
21 would create a false statement, and then was not provided any  
22 answers to his questions , but instead was ‘shown the door’, causing  
23 extreme worry, pressure, difficulty relating to his family members,  
24 separation anxiety over not seeing his co-workers, severe and lasting  
25 headaches and increased blood pressure.
- 26           b) Plaintiff Mason has experienced and continues to experience  
27 significant emotional pain, including anxiety: over not receiving  
28 emergency calls for service and over potentially running into District

1 management in the community; missing his co-workers; doubt, stress  
2 and disbelief over being fired for the first time ever; sleeplessness;  
3 high blood pressure; listlessness; and depression over the feeling he  
4 has let his community down.

5 c) Plaintiff Conley has experienced and continues to experience  
6 significant emotional pain since he devoted time, money and energy  
7 for the past three years with a specific plan to obtain training and  
8 experience that may lead to a full-time career in firefighting, only to  
9 have that plan ruined by the District's retaliatory dismissal of him,  
10 all because he refused to sign a document he honestly believed  
11 contained a false declaration. Now the sudden and baseless  
12 termination has not only destroyed a possible career as a full-time  
13 firefighter, but is generally affecting his chances of being hired for  
14 any work.

15 d) Plaintiff Russell has experienced and continues to experience  
16 significant emotional pain since he applied and began work as a PCF  
17 for the District with the intention of obtaining training and  
18 experience that may lead to a full-time career in firefighting; now,  
19 after the retaliatory dismissal by the District, all his work as a PCF  
20 for the District appears to have been for nothing. Not only can he no  
21 longer have an expectation of working as a full-time firefighter, but  
22 the dismissal has led to a stressful environment at home, with greater  
23 uncertainty regarding his career path. The sudden dismissal is  
24 especially frustrating for Plaintiff Russell since the District refused  
25 to provide any answers as to how or why PCF may or may not  
26 qualify as "volunteers" under the law.

27 e) Plaintiff Donnahoo has experienced and continues to experience  
28 significant emotional pain, including: disbelief, stress and frustration

1 by being fired after extensive hard work, time and money was  
2 expended in the pursuit of a full-time firefighting career, and after  
3 his wife accommodated this pursuit by taking care of most family  
4 matters, only to have it amount to nothing; anxiety and stress over  
5 letting his subordinates down and/or over his subordinates being  
6 adversely affected by his absences; stress over running into District  
7 management in the community; and both self-doubt and frustration  
8 over how other District supervisors could blindly follow a  
9 declaration which most likely was false;

10 f) Plaintiff Sander has experienced and continues to experience  
11 significant emotional pain, including: disbelief, stress and frustration  
12 by being fired after extensive hard work, time and money was  
13 expended in the pursuit of a full-time firefighting career, and after  
14 his spouse accommodated this pursuit by taking care of most family  
15 matters, only to have it amount to nothing; depression and some  
16 paranoia based on the belief that District management may be  
17 following or stalking him; anxiety and stress over running into  
18 District management in the community; agitation leading to a bad  
19 attitude and fighting with family members; guilt over feeling like he  
20 is not serving his community; disbelief and frustration over being  
21 fired after never having a single corrective counseling session or any  
22 forms of adverse action in his file in his entire working career; and  
23 stress over the potentially fatal effect the termination will likely have  
24 on his career and earning ability from this point forward. Plaintiff  
25 Sander has also obtained all of the necessary certifications from the  
26 State Fire Marshal's Office needed to be employed by Cal Fire full  
27 time as a Fire Apparatus Engineer or Firefighter II with the state.  
28 Mr. Sander scored a ninety-eight percent on his exams with the State

1 Personnel Board and is currently on an active list to be hired for  
2 the two previously above mentioned positions. He was also  
3 a Seasonal Firefighter with Cal Fire for three seasons and has also  
4 obtained other agency time for the purposes of advancing his career  
5 in the Fire Service. The retaliatory dismissal of Plaintiff Sander after  
6 an eleven year history being employed with the District will certainly  
7 impact his chances of ever getting hired with another agency since it  
8 has already negatively impacted him in his search for employment  
9 elsewhere.

10 g) Plaintiff S. Valdez has experienced and continues to experience  
11 significant emotional pain since being dismissed and having to turn  
12 in all his District gear. On April 26, 2012, Plaintiff S. Valdez was  
13 ordered by Captain Lozano to turn all of his gear per the directive by  
14 Battalion Chief Vince Burgland. On April 29, 2012, Plaintiff S.  
15 Valdez was forced to turn in all of his gear, per this directive, even  
16 though he had declared his intention to appeal his dismissal. After  
17 receiving the June 19, 2012 decision by the District to reject his  
18 appeal and uphold the termination, Plaintiff S. Valdez found out that  
19 he and Plaintiff T. Valdez were the only PCFs who had turned in  
20 their gear, making him feel even more targeted. Plaintiff S. Valdez  
21 has been significantly emotionally hurt by the retaliatory dismissal  
22 and the District's decision to target him and Plaintiff T. Valdez,  
23 since after serving his community as a PCF for so long he is now  
24 only being laughed at for being terminated. After serving his  
25 community for so long Plaintiff S. Valdez always believed he would  
26 walk away proud of what he had done as a PCF for the District, but  
27 instead feels only that he is being laughed at by both District staff  
28 and members of the community.

1 h) Plaintiff T. Valdez has experienced and continues to experience  
2 significant emotional pain since being dismissed and having to turn  
3 in all her District gear. On April 26, 2012, Plaintiff T. Valdez was  
4 ordered by Captain Lozano to turn all of her gear per the directive by  
5 Battalion Chief Vince Burgland. On April 29, 2012, Plaintiff T.  
6 Valdez was forced to turn in all of her gear, per this directive, even  
7 though she had declared her intention to appeal his dismissal. After  
8 receiving the June 19, 2012 decision by the District to reject her  
9 appeal and uphold the termination, Plaintiff T. Valdez found out that  
10 she and Plaintiff S. Valdez were the only PCFs who had turned in  
11 their gear, making her feel even more targeted. Plaintiff T. Valdez  
12 has been significantly emotionally hurt by the retaliatory dismissal  
13 and the District's decision to target her and Plaintiff S. Valdez, since  
14 after serving her community as a PCF for so long she is now only  
15 being laughed at for being terminated. After serving her community  
16 for so long Plaintiff T. Valdez always believed she would walk away  
17 proud of what she had done as a PCF for the District, but instead  
18 feels only that she is being laughed at by both District staff and  
19 members of the community.

20 54. At all times pertinent to this action, Defendant has intentionally chosen not  
21 to comply with the FLSA minimum wage rate of pay (since September of 2010 when the  
22 District started to use the stipend pay schedule) or to provide any overtime compensation  
23 to the Plaintiffs for FLSA overtime hours, but instead has provided only straight-time  
24 hourly rates of pay and/or pay under the stipend schedule; accordingly a three year  
25 statute of limitations and recovery period applies to this action for the minimum wages  
26 and overtime pay sought, pursuant to 29 U.S.C. §255.

27 55. At all times pertinent to this action, Defendant knowingly chose not to  
28 comply with the FLSA minimum wage rate and/or overtime pay requirement.



1 Accordingly, the District cannot show any good faith belief that minimum wages and/or  
2 overtime compensation should not have been provided, and therefore the District owes  
3 liquidated damages pursuant to 29 U.S.C. §216 and U.S.C. §260 in an amount equal to  
4 all the minimum wages and/or overtime compensation owed to Plaintiffs.

5 **VI. GOVERNMENT DAMAGES CLAIM COMPLIANCE**

6 56. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 55 as  
7 though fully set forth herein.

8 57. Plaintiffs have filed Claims for Damages against Defendant pursuant to CA  
9 Gov. Code §§ 905 et. seq. for the claims alleged herein.

10 58. Plaintiffs filed their claims for damages against Defendant on June 12,  
11 2012 via a cover letter from their legal counsel and the completed District Letterhead/  
12 format provided by the District for such claims, with an accompanying attachment.  
13 (Attached hereto as “**Exhibit 11**”).

14 59. Defendant never responded to these claims for damages filed on June 12,  
15 2012.

16 60. Pursuant to CA Gov. Code § 912.4, since the District did not respond to the  
17 claims for damages within forty-five (45) days, the claims were effectively rejected by  
18 the District, allowing Plaintiffs to proceed with the present action.

19  
20 **VII. FIRST CAUSE OF ACTION  
RETALIATORY DISMISSAL**

21 **(Violation of the FLSA, 29 U.S.C. § 201 et seq., including § 215(a)(3))**

22 61. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 60 as  
23 though fully set forth herein.

24 62. The provision of the FLSA which prohibits retaliation against employees  
25 who raise wage-related concerns states that it shall be unlawful to discharge or in any  
26 other manner discriminate against any employee because such employee has filed a  
27 complaint  
28

1           63. The ‘complaint’ necessary to trigger the protections of 29 U.S.C. §  
2 215(a)(3) does not have to be a written complaint; rather, verbal complaints are  
3 sufficient. *See Kasten v. Saint Gobain Performance Plastics Corporation*, (2011) 131  
4 S.Ct. 1325.

5           64. Further, internal complaints to supervisors, as opposed to complaints to  
6 governmental agencies, are also sufficient to trigger the protections under 29 U.S.C. §  
7 215 (a)(3). *See Lambert v. Ackerley* (9<sup>th</sup> Cir. 1999) 180 F.3d 997, 1004.

8           65. Based on the factual allegations pled herein, the complaints raised by each  
9 Plaintiff, prior to being terminated by the District on April 26, 2012, to their supervisors  
10 and to various other commanders in the District, sufficiently activated the protections  
11 against retaliation set forth in the FLSA at 29 U.S.C. § 215 (a)(3).

12           66. The May 16, 2012 letter submitted by Goyette & Associates on behalf of  
13 each of the Plaintiffs to the District to appeal their terminations constitutes ongoing  
14 ‘complaints’ filed under 29 U.S.C. § 215(a)(3).

15           67. Each Plaintiff experienced an adverse action, namely dismissal, by the  
16 District.

17           68. The causal connection between the complaints made by Plaintiffs and the  
18 adverse actions by the District against the Plaintiffs is undisputed; each Plaintiff was  
19 dismissed specifically for questioning the truthfulness, accuracy, validity and legality of  
20 the declaration they were asked to make by signing the Volunteer Status Form and, after  
21 Defendant refused to provide any information or explanation as to how or why the  
22 Volunteer Status Form may be valid, legal and/or truthful, for refusing to sign the form  
23 and make the false declaration that they were volunteers to the District.

24           69. As a result of the prohibited, retaliatory dismissals by the District, each  
25 Plaintiff has lost the wages they would have earned as PCFs, and continues to lose such  
26 wages going forward, since the dismissal have affected and are affecting Plaintiffs  
27 firefighting careers or employment generally going forward.

28

1 70. As a result of the prohibited, retaliatory dismissals by the District, each  
2 Plaintiff has suffered, and continues to suffer, extreme emotional pain and associated  
3 adverse physical conditions, as pled herein.

4 71. To the extent this cause of action may be affected by the evaluation of  
5 Plaintiffs status as “employees” of the District versus “volunteers” to the District, the  
6 District’s own policy for PCFs prohibiting retaliation clearly demonstrates that the  
7 District concedes that anti-retaliation provisions apply to the Plaintiffs, either as  
8 employees or as volunteers. The District’s anti-retaliation policy *for* PCFs states that  
9 that the District has ‘zero tolerance’ for “any form of retaliation . . . for participating in  
10 protected activities, including but not limited to good faith reporting of workplace  
11 wrongdoing, making a protected claim . . . .” (District PCF Policy No.200-12, revised as  
12 of February, 2012 attached hereto as “**Exhibit12**”).

13  
14 **VIII. SECOND CAUSE OF ACTION**  
15 **SUPPRESSION OF FREE SPEECH**  
16 **(Violation of 42 U.S.C. § 1983)**

17 72. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 71 as  
18 though fully set forth herein.

19 73. Plaintiffs’ complaints to the District, as pled herein, regarding the wage-  
20 related ‘employee’ versus ‘volunteer’ issue inherent in the District’s demand for PCFs to  
21 sign the Volunteer Status Form, concurrently serve to trigger the protections of 29 U.S.C.  
22 § 215 and constitute a matter of public concern.

23 74. Plaintiffs’ complaints constitute a matter of public concern since the  
24 classification and role of PCFs are - - as stated in Defendant’s own policies (and as pled  
25 herein) - - integral to the core mission of the District to adequately provide fire protection  
26 services to the residents of Fresno County. Whether PCFs are classified as ‘volunteers’  
27 or as ‘employees’, and the directly related issues concerning how and what the PCFs are  
28 paid and concerning the degree of truly voluntary choice left to the PCFs , versus the  
mandatory nature of PCF’s work for the District, affects how well the fire protection

1 services are provided by the District to the residents of Fresno County - - which is  
2 indisputably a matter of public concern.

3 75. As a matter of public concern, Plaintiffs' complaints qualify as  
4 constitutionally protected speech under the First Amendment to the United States  
5 Constitution.

6 76. The District's dismissal of the Plaintiffs amounts to prohibited suppression  
7 and/or deprivation of free speech by the District, and/or retaliation by the District for the  
8 attempted exercise of free speech by the Plaintiffs, since each Plaintiff suffered an  
9 adverse action, namely dismissal, for raising their complaints over the illegality of the  
10 Volunteer Status Form and then refusing to sign such form, and since the District  
11 dismissed each Plaintiff specifically for raising their complaints and refusing to sign the  
12 form.

13 77. The causal connection between the dismissal of each Plaintiff and each  
14 Plaintiff's attempted exercise of free speech regarding a matter of public concern is  
15 undisputed; the District dismissed each Plaintiff specifically for and solely for raising  
16 their concern that the Volunteer Status Form incorrectly set for a declaration that PCFs  
17 were volunteers to the District, and for their associated refusal to sign this form.

18 78. This deprivation of free speech is actionable under 42 U.S.C. § 1983, and  
19 as set forth in this statute, the District is, as a result of their retaliation against the  
20 Plaintiffs for their attempt at exercising their First Amendment right to free speech, liable  
21 "for redress"; accordingly the District is liable for all the relief prayed for herein as a  
22 result of the retaliatory dismissal of each Plaintiff .

23 79. This deprivation of free speech by the District is consistent with the  
24 District's view towards PCFs questioning or discussing any District operations or  
25 business; specifically, the District's policy for Rules of Conduct applicable to PCFs  
26 declares that PCFs "will refrain from discussing operational or internal business with  
27 dignitaries and/or elected officials." (District PCF Policy No. 200-01, item No. 23,  
28 effective November 1, 2009, attached hereto as "**Exhibit14**").

**IX. THIRD CAUSE OF ACTION  
MINIMUM WAGES**

**(Violation of the FLSA, 29 U.S.C. §§ 201 et seq., including § 206)**

1  
2  
3 80. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 79 as  
4 though fully set forth herein.

5 81. Since the required elements for “volunteer” work to public entities, namely  
6 that volunteers may not receive more than the allowed ‘nominal fee’ (more than 20% of  
7 the comparable full-time pay for the same work), and/or that volunteers cannot be  
8 controlled by the employer to the extent are not free to choose when to work, how to  
9 work, and when to stop working (when to go home) *are not satisfied* for Plaintiffs work  
10 as PCFs for the District, Plaintiffs were “employees” of the District for their work as  
11 PCFs, not “volunteers” to the District; accordingly the minimum wage rate of \$  
12 7.25/hour (effective July 24, 2009) required by 29 U.S.C. § 206 under the FLSA must be  
13 provided by the District to PCFs for all hours worked.

14 82. Since from September 2009 forward the District provided only \$ 6.66/hour  
15 to the Plaintiffs for their work as PCFs under the stipend schedule (\$ 20 per three hours),  
16 the District violated the FLSA minimum wage requirement from September, 2009 until  
17 the Plaintiffs were dismissed on April 26, 2012, for all work performed.

18 83. For these minimum wage violations, the District owes each Plaintiff \$  
19 0.59/hour (the difference between \$ 6.66/hour and the \$ 7.25/hour minimum wage rate)  
20 for all hours worked in the period of time from three years prior to the filing of this  
21 action up to the time each Plaintiff stopped working as a PCF for the District just prior to  
22 being dismissed by the District.

23 84. In addition, the District owes an equal amount of liquidated damages to  
24 each Plaintiff pursuant to 29 U.S.C. § 216.

25 ///

26 ///

27 ///

28 ///

**X. FOURTH CAUSE OF ACTION  
OVERTIME PAY**

**(Violation of the FLSA, 29 U.S.C. §§ 201 et seq., including § 207)**

1  
2  
3 85. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 84 as  
4 though fully set forth herein.

5 86. Since the required elements for “volunteer” work to public entities, namely  
6 that volunteers may not receive more than the allowed ‘nominal fee’ (more than 20% of  
7 the comparable full-time pay for the same work), and/or that volunteers cannot be  
8 controlled by the employer to the extent are not free to choose when to work, how to  
9 work, and when to stop working (when to go home) *are not satisfied* for Plaintiffs’ work  
10 as PCFs for the District, Plaintiffs were “employees” of the District for their work as  
11 PCFs, not “volunteers” to the District; accordingly the overtime pay required by 29  
12 U.S.C. § 207 under the FLSA must be provided by the District to PCFs for all FLSA  
13 overtime hours worked.

14 87. Since during the period of time from three years prior to the filing of this  
15 action up to the time each Plaintiff stopped working as a PCF for the District (just prior  
16 to being dismissed by the District) Plaintiffs at times worked in excess of forty (40)  
17 hours per week, and in excess of fifty-three (53) hours per week, overtime pay at one and  
18 one half times the hourly rate of pay received by Plaintiffs for these overtime hours  
19 should have been provided by the District.

20 88. The District did not provide any such overtime pay, but provided only the  
21 hourly pay (prior to September of 2009) and the stipend pay (after September of 2009),  
22 and therefore violated the overtime pay provisions of the FLSA.

23 89. The District owes each Plaintiff the difference between the required  
24 overtime pay and the pay actually provided for all FLSA overtime hours worked by  
25 Plaintiffs since three years prior to this action being filed.

26 90. In addition, the District owes an equal amount of liquidated damages to  
27 each Plaintiff pursuant to 29 U.S.C. § 216.

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray that this Court enter an Order in favor of Plaintiffs  
3 and against Defendant awarding Plaintiffs relief as follows:

- 4 1) Declaratory and Injunctive relief in the form of a Court Order for the  
5 District to reinstate each Plaintiff as an active PCF, fully eligible to respond  
6 to emergency calls for the District, with no training or fitness-for-duty  
7 prerequisites (ie, as if Plaintiffs were never dismissed);
- 8 2) Declaratory and Injunctive relief in the form of a Court Order for the  
9 District to purge the personnel files for each Plaintiff from any and all  
10 documents or references to the dismissals (so the file appears as if no  
11 dismissals ever occurred);
- 12 3) Declaratory and Injunctive relief in the form of a Court Order for the  
13 District to classify Plaintiffs and all other PCFs as employees, not  
14 volunteers.
- 15 4) Payment of all pay lost by each Plaintiff since being improperly dismissed  
16 (based on 29 U.S.C. § 215(a)(3)) by the District;
- 17 5) Payment of all lost future pay for each Plaintiff (if an order for  
18 reinstatement of each Plaintiff is not made by the Court);
- 19 6) Payment of all overtime pay (based on 29 U.S.C. § 207) and an equal  
20 amount in liquidated damages (based on 29 U.S.C. § 216) to each Plaintiff  
21 for all FLSA overtime hours worked in the past three years by each  
22 Plaintiff;
- 23 7) Payment of all minimum wages (based on 29 U.S.C. § 206) and an equal  
24 amount in liquidated damages (based on 29 U.S.C. § 216) to each Plaintiff  
25 for FLSA minimum wage compliance for all hours worked in the past three  
26 years by each Plaintiff;
- 27 8) Pain and suffering damages for each Plaintiff in amounts appropriate for  
28 the significant emotional pain and suffering incurred and still being

1 incurred on an ongoing basis by each Plaintiff caused by the improper  
2 dismissals (based on 29 U.S.C. § 215(a)(3)) by the District;

3 9) Reasonable Attorneys fees and costs (pursuant to 29 U.S.C. § 216);

4 10) Interest at seven percent (7.0 %) per annum on all lost pay, overtime pay,  
5 and minimum wages due to each Plaintiff;

6 11) Any other relief deemed proper by the Court.  
7

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs, individually and collectively, hereby demand trial of their claims by  
10 jury as provided by Rule 38(a) of the Federal Rules of Civil Procedure and to the extent  
11 authorized by law.

12 Dated: November 29, 2012

GOYETTE & ASSOCIATES, INC.

A Professional Law Corporation

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15 By: \_\_\_\_\_/s/\_\_\_\_\_

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