

ORIGINAL

1 McNICHOLAS & McNICHOLAS LLP
2 Matthew S. McNicholas (State Bar No. 190249)
3 Courtney C. McNicholas (State Bar No. 130358)
4 10866 Wilshire Boulevard, Suite 1400
5 Los Angeles, CA 90024-4338
6 Tel: (310) 474-1582
7 Fax: (310) 475-7871

8 Attorneys for Plaintiff
9 Richard Romney

James R. Duff

FILED
LOS ANGELES SUPERIOR COURT

APR -9 2009
JOHN A. CLARKE, CLERK
BY RUGENA LOPEZ, DEPUTY

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF LOS ANGELES

12 RICHARD ROMNEY,

13 Plaintiff,

14 v.

15 CHIEF WILLIAM BRATTON,
16 COMMANDER STUART MAISLIN,
17 CAPTAIN KELLY MULLDORFER,
18 SERGEANT KINARD MOFFATT,
19 CITY OF LOS ANGELES, LOS
20 ANGELES POLICE DEPARTMENT,
21 AND DOES 1 THROUGH 100,
22 INCLUSIVE,

23 Defendants.

Case No.:

BC411532

COMPLAINT FOR DAMAGES FOR

1. RETALIATION IN VIOLATION OF THE FAIR LABOR STANDARDS ACT; and
2. INJUNCTION

DEMAND FOR JURY TRIAL

24 Plaintiff Richard Romney ("Romney") demands a trial by jury and based on information
25 and belief complains and alleges as follows:

THE PARTIES

1. Romney is an individual residing in Los Angeles County, State of California.
2. Defendant City of Los Angeles ("City") is a municipal corporation organized under charter law city and existing by virtue of the laws of the State of California.

CITY/PAGE: BC411532 LEA/NEH;
 RECEIPT #: CM47723166
 DATE PAID: 04/27/09 02:37:06 PM
 PAYMENT: \$350.00
 RECEIVED: 0310
 CHECK #: 350.00
 CASH:
 CHANGE:
 CARD:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Defendant Los Angeles Police Department ("LAPD") is a municipal agency existing by virtue of the laws of the State of California.

4. Chief William Bratton ("Bratton") is, and at all relevant times was, employed as the Chief of the LAPD and a member of the Board of Police Commissioners and has held other positions within the City. In conjunction with his employment and positions within the City, Bratton has now, and at all relevant times had, the authority and responsibility of setting and implementing the official policy and custom of the LAPD, including, but not limited to the LAPD policy with respect to the investigation of and retaliation against employees who opposed unlawful employment practices and/or made charges, testified, assisted or otherwise participated in any investigation, proceeding or and/or hearing (i.e., "protected activity") of employee claims brought pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (the "FLSA"). In conjunction with his employment and position with the City, Bratton was further delegated with the authority and responsibility of executing training, supervisory and disciplinary functions of the LAPD, and at all relevant times herein was acting in the course and scope of his employment and under color of law.

5. Commander Stuart Maislin ("Maislin") is, and at all relevant times was, the Commanding Officer of the Risk Management Unit of the LAPD and was delegated with the authority and responsibility of setting and implementing the policy and custom of the LAPD, including but not limited to, the LAPD policy with respect to the investigation of and retaliation against employees who opposed unlawful employment practices and/or made charges, testified, assisted or otherwise participated in any investigation, proceeding or and/or hearing (i.e., "protected activity") of employee claims brought pursuant to the FLSA. In conjunction with his employment and position with the City, Maislin was further delegated with the authority and responsibility of executing training, supervisory and disciplinary functions of the City of Los Angeles Police Department, and at all relevant times herein was acting in the course and scope of his employment and under color of law.

6. Captain Kelly Muldorfer ("Muldorfer") is, and at all relevant times was, a Commanding Officer of Southeast Division of the LAPD and was delegated with the authority and

1 responsibility of setting and implementing the policy and custom of the LAPD, including but not
2 limited to, the LAPD policy with respect to the investigation of and retaliation against employees
3 who opposed unlawful employment practices and/or made charges, testified, assisted or otherwise
4 participated in any investigation, proceeding or and/or hearing (*i.e.*, "protected activity") of
5 employee claims brought pursuant to the FLSA. In conjunction with her employment and position
6 with the City, Muldorfer was further delegated with the authority and responsibility of executing
7 training, supervisory and disciplinary functions of the LAPD, and at all relevant times herein was
8 acting in the course and scope of her employment and under color of law.

9 7. Sergeant Kinard Moffatt ("Moffatt") is and at all relevant times was, a supervisor at
10 Southeast Division of the LAPD and was delegated with the authority and responsibility of setting
11 and implementing the policy and custom of the LAPD, including but not limited to, the LAPD
12 policy with respect to the investigation of and retaliation against employees who opposed unlawful
13 employment practices and/or made charges, testified, assisted or otherwise participated in any
14 investigation, proceeding or and/or hearing (*i.e.*, "protected activity") of employee claims brought
15 pursuant to the Fair Labor Standards Act ("FLSA"). In conjunction with his employment and
16 position with the City, Moffatt was further delegated with the authority and responsibility of
17 executing training, supervisory and disciplinary functions of the LAPD, and at all relevant times
18 herein was acting in the course and scope of her employment and under color of law.

19 8. Plaintiff does not know the true names and capacities of the defendants sued herein
20 as DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
21 Plaintiff will amend this Complaint to allege their true names and capacities when the same have
22 been ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously
23 named defendants is responsible in some manner for the acts and occurrences herein alleged,
24 whether such acts and occurrences were committed intentionally, negligently, recklessly or
25 otherwise and that each said DOE defendant is liable to plaintiff for the damages claimed herein.

26 9. At all times herein mentioned, each Defendant was the agent, servant and employee
27 of each of the remaining Defendants, and in doing the things hereinafter mentioned, each
28

1 Defendant was acting within the course and scope of their employment and authority as such agent,
2 servant and employee and with the consent of their co-Defendants.

3 10. The conduct of each Defendant combined and cooperated with the conduct of each
4 of the remaining Defendants so as to cause the incidents and the resulting injuries and damages to
5 plaintiff described in this Complaint.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 11. Romney is, and at all relevant times was, a sworn peace officer employed with the
8 LAPD; he currently holds the rank of Police Officer III.

9 12. Romney has been continuously employed with the City as a police officer with the
10 LAPD since approximately 1990. At all times herein mentioned, Romney was qualified for the
11 position of a police officer by reason of his education and training.

12 13. During the course of his employment with the City, Romney performed his various
13 responsibilities in an exemplary fashion and otherwise capably performed each and every condition
14 of his employment agreement.

15 14. Prior to joining the LAPD, in June 1990, Romney graduated from California State
16 University, Long Beach, with a Bachelor of Science degree in Criminal Justice Administration.

17 15. Romney then applied for and was accepted to the Los Angeles Police Academy. He
18 graduated from the Academy in April 1991.

19 16. In April 1992, after successfully completing his probationary period at Wilshire
20 Division, Romney promoted to the rank of Police Officer II. Romney was selected by Detective III
21 Dave Manlove (Ret.) for a long-term special loan to the Narcotics Bureau Undercover "Buy Team"
22 from 1994 to 1996.

23 17. In or around March 1998, Romney successfully passed the written examination and
24 oral interview process to promote to the rank of Police Officer III. As a result, Romney's rank
25 became Police Officer III and he was entitled to additional monetary compensation and other
26 benefits and privileges that accompanied the rank of Police Officer III.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

18. From March 1998 until March 20, 2008, Romney remained an active member of Southeast Division and held the rank of Police Officer III. All of his ensuing performance evaluations were positive and Romney received commendations from both private citizens and the LAPD for his outstanding contributions and achievements in the LAPD.

19. Pursuant to the policy and custom of the LAPD, Romney regularly prepared written Daily Field Activity Reports that documented, among other things, his basic activities including, but not limited to, his start of on-duty watch, his end of on-duty watch, his "Code 7" (*i.e.*, lunch hour), and other incidents related to his employment as an LAPD officer. Pursuant to the custom and policy of the LAPD, the Daily Field Activity Reports were submitted for approval to LAPD supervisors.

20. Pursuant to the custom and policy of the LAPD, Romney had been trained not to submit any request for overtime and/or missed "Code 7" lunch breaks for intervals of fewer than 60 minutes.

21. On numerous occasions between 1998 and 2008, Romney submitted Daily Field Activity Reports that specifically reflected "No Code 7" and/or that included overtime for the corresponding date. On other occasions, Romney submitted his written Daily Field Activity Reports with no mention of "Code 7" whatsoever.

22. On several occasions over the course of his employment with the LAPD, supervisors acknowledged Romney's "No Code 7" entries in his Daily Field Activity Reports. When asked about the "No Code 7" entries, Romney explained he did not have an opportunity to take Code 7 during his shift. Pursuant to the policy and custom of the LAPD, the Daily Field Activity Reports were consistently approved without change by the sergeants, submitted to Watch Commanders and Captains who also signed the Daily Field Activity Reports with the "No Code 7" entries.

23. As was the policy and custom of the LAPD, Romney was dissuaded from taking "Code 7". Supervisors at the LAPD repeatedly told Romney that if he had eaten anything during his ten-to twelve-hour shift, he had taken "Code 7". Romney documented his activities, including

1 the absence of Code 7, and submitted them to his supervisors pursuant to the policy of the LAPD.
2 Romney's written Daily Field Activity Reports were accepted, approved, signed and kept in the
3 course of the regular practices and policy of the LAPD.

4 24. Beginning in approximately 1998 and continuing up to 2008, Romney followed the
5 policy and custom in place at the LAPD by foregoing Code 7 and excluding from his Daily Field
6 Activity Reports overtime for periods that did not exceed 60 minutes.

7 25. Each of his Daily Field Activity Reports was submitted to a duly trained and
8 experienced supervisor who followed the policy and custom of the LAPD and reviewed the Daily
9 Field Activity Reports. In further adherence to the policy and custom of the LAPD, Romney's
10 supervisors approved the Daily Field Activity Reports, including but not limited to, the Daily Field
11 Activity Reports that did not reflect Code 7 and/or overtime worked for the watch completed by
12 Romney. LAPD policy and custom required Romney's supervisors to examine his Daily Field
13 Activity Reports for errors, accuracy and/or mistakes. After a thorough review of the Daily Field
14 Activity Reports, Romney's supervising sergeants, lieutenants and captains regularly accepted and
15 processed them without change in a manner consistent with the LAPD policy.

16 26. Romney was never requested to re-write a Daily Field Activity Report to include
17 overtime actually worked but not reflected in the document. To the contrary, Romney was
18 specifically directed not to "put in" for any hours actually worked that exceeded the posted
19 schedule, including, but not limited to, end of watch duties. On at least one occasion, Romney
20 submitted an LAPD Overtime Request Form to the Acting Watch Commander for Day Watch,
21 Southeast Area Sergeant II Henry Quan. Sergeant Quan ripped up the Overtime Request Form and
22 discarded it in the trash.

23 27. After submitting Daily Field Activity Reports with entries stating "No Code 7",
24 Romney was never counseled or instructed by any supervisor to take "Code 7". Romney's Daily
25 Field Activity Reports were not returned to him or rejected by his supervisors due to
26 undocumented overtime and/or failure to take his "Code 7".
27
28

1 28. In or about 2006, fellow LAPD Officer Edward Maciel filed a lawsuit in the United
2 States District Court for the Central District of California. In that case, entitled *Edward Maciel v.*
3 *City of Los Angeles*, Case No. CV 06-00249 RSWL, Officer Maciel alleged that the City and the
4 LAPD violated the FLSA (the "Maciel Case").

5 29. On or about January 24, 2008, Romney was served with a subpoena to appear on
6 January 26, 2008 to testify in the Maciel Case.

7 30. On January 26, 2008, Romney appeared in federal court pursuant to the subpoena
8 and provided testimony in the Maciel Case. A true and correct copy of the transcript of Romney's
9 testimony is attached hereto as Exhibit A.

10 31. Under penalty of perjury, Romney's testified, *inter alia*, that:

- 11 a. LAPD officers regularly skipped their "Code 7" (*i.e.*, lunch break) with the
12 full knowledge and encouragement of the supervisors;
- 13 b. LAPD supervisors specifically instructed Romney and the other officers not
14 to submit overtime slips for intervals of fewer than 60 minutes;
- 15 c. Any time spent preparing for official duties as a sworn LAPD officer that
16 occurred before roll call, such as dressing in uniform, completing P-1
17 ratings, and other paperwork, etc. was identified by supervisors as "off the
18 clock" and not compensable;
- 19 d. Any time spent in completing official LAPD duties and activities after the
20 posted end of watch was identified by supervisors as "off the clock" and not
21 compensable overtime;
- 22 e. He submitted Daily Field Activity Reports documenting numerous occasions
23 where he did not take Code 7 and was not compensated for his time, and
24 those Daily Field Activity Reports were reviewed and approved by
25 sergeants, lieutenants and captains; and
- 26 f. Sergeant II Henry Quan ripped up Romney's Request for Overtime Form,
27 which requested overtime for a period of 30 minutes.
- 28

1 32. On January 26, 2008, while Romney was testifying in the Maciel Case, he observed
2 Detective II Yvette Bass in the gallery. Detective Bass is, and at all relevant times was, a
3 supervisor assigned to the Risk Management Unit at LAPD. Detective Bass reports directly to
4 Commander Stuart Maislin, the Commanding Officer and Officer-in-Charge of the Risk
5 Management Group. Detective Bass remained in the gallery of the courtroom for the duration of
6 Romney's testimony.

7 33. On January 25, 2008, the day before Romney provided his testimony, Sgt. David
8 Kowalski, signed Romney's Annual Performance Evaluation. Romney is informed and believes,
9 and on that basis alleges, that Sgt. Kowalski was unaware that Romney – pursuant to a subpoena
10 from a federal court – would have no choice but to provide honest testimony that was adverse to
11 the City's position in the Maciel Case. As a result, Romney's Annual Performance Evaluation was
12 positive; his skills were noted to be proficient and there was no negative criticism of his abilities as
13 a police officer. To the contrary, the Annual Performance Evaluation included at least four
14 commendations.

15 34. On January 31, 2008, unbeknownst to Romney, Commander Maislin obtained a
16 transcript of proceedings of Romney's testimony in the Maciel Case.

17 35. On January 31, 2008 – one week after Romney testified – Commander Maislin
18 initiated a formal Internal Affairs complaint investigation for insubordination against Romney
19 specifically based upon Romney's sworn testimony in the Maciel Case. A true and correct copy of
20 the Internal Affairs Complaint initiated against Romney by Commander Maislin is attached hereto
21 as Exhibit B.

22 36. Commander Maislin's report to Internal Affairs cited the testimony given on
23 January 26, 2008, as the basis for the requested investigation. See Exhibit B at 3. Maislin reported
24 to Internal Affairs that Officer Romney was insubordinate because he failed to submit overtime
25 slips for overtime worked. See Exhibit B at 1, 3.

26 37. Romney's testimony in the Maciel Case constitutes protected activity under the
27 FLSA.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

38. As a direct consequence of Romney's engaging in protected activity, Defendants, and each of them, harassed Romney and engaged in retaliatory behavior, including, but not limited to, heightened scrutiny of his performance, unwarranted discipline, warnings that supervisors were "aware of the testimony" he had given, seeking out citizens to elicit unwarranted personnel complaints, and monitoring every detail of his daily duties.

39. As a result of engaging in protected activity, and in addition to the above, beginning on or about January 31, 2008, Romney was subjected to numerous adverse employment actions:

- a. Romney was threatened with demotion and loss of his rank of Police Officer III and the pay commensurate with that rank;
- b. Romney received unjustified Comment Cards;
- c. Romney was ordered to work in uniform without appropriate footwear;
- d. Captain Muldorfer openly chastised Romney for his testimony in the Maciel Case;
- e. Romney was warned he was being "watched";
- f. Sergeant Moffat solicited a citizen to file a baseless complaint against Romney;
- g. Romney was threatened with false personnel complaints;
- h. Sergeant Moffat told Romney that the Captain's Office instructed Moffat to "keep an eye on" Romney and that Romney was "under the microscope";
- i. Romney was nit-picked and micro-managed while his peers who had not given testimony were not;
- j. Romney was relieved of duty and stripped of his police powers;
- k. After two captains recommended a penalty of a 1-day suspension, Chief of Police Bratton wielded his power and imposed the greatest potential penalty of termination after a directed Board of Rights. A true and correct copy of the letter recommending terminating Romney is attached hereto as Exhibit C;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- l. Romney was forced to tender his badge and his LAPD identification card;
- m. Chief Bratton affirmatively stated that any person who was involved in the FLSA claims for Code 7 and/or overtime was stealing from the City;
- n. The Board of Rights to which Chief Bratton ordered Romney is a mandatory quasi-judicial proceeding at which the parties, *i.e.*, the City and Romney, are represented, present documentary evidence, call and cross-examine witnesses under oath, and argue their respective positions. The Board of Rights results in a final determination by a finder of fact on the merits of the claims.

40. The severe retaliatory acts were orchestrated against Romney because he spoke out against the unlawful employment practices at the LAPD and in support of the FLSA violations alleged in the Maciel Case. The retaliatory acts and adverse employment actions materially affected the terms, conditions and privileges of Romney's employment.

41. Romney lost significant income and benefits as a result of the adverse employment actions taken in retaliation for his engaging in protected activity when he testified to the FLSA violations in the LAPD and in support of Edward Maciel.

42. At all times herein mentioned, the FLSA was in full force and effect and was binding on the defendants, and each of them. The FLSA required Defendants, and each of them, to refrain from retaliating against employees for participating in protected activity, which includes speaking out against unlawful employment practices and for participating in the investigation of violations of the FLSA.

FIRST CAUSE OF ACTION

Unlawful Retaliation

(Against All Defendants and DOES 1 through 100, inclusive, and each of them)

43. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 42, inclusive, and incorporates each herein by reference.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

44. At all times herein mentioned, the FLSA was in full force and effect and was binding upon Defendants, and each of them. The FLSA required Defendants, and each of them, to refrain from discriminating against, harassing, and/or retaliating against any employee who engaged in protected activity (*i.e.*, testifying in an FLSA proceeding) and to provide each employee with a working environment free from discrimination, harassment, and retaliation.

45. At all times herein mentioned, Romney was in the protected class of persons who engaged in protected activities contemplated by the FLSA. Romney is informed and believes that Defendants, and each of them, retaliated against him for providing testimony in the Maciel Case and speaking out against unlawful LAPD employment practices that violated the FLSA.

46. As a consequence of engaging in such protected activities, Defendants and each of them retaliated against Romney and subjected Romney to severe adverse employment actions in violation of the FLSA.

47. At all times herein mentioned, Defendants, and each of them, had actual and/or constructive knowledge of the harassing, retaliatory conduct levied against Romney by Defendants, fellow employees and superiors. Moreover, such retaliation was also conducted and/or condoned by Defendants, and each of them.

48. As a direct, foreseeable, and proximate result of Defendants' harassing, retaliatory conduct, Romney has suffered both general and special damages in the past and present and will continue to suffer such damages in the future for an unknown period of time. The exact amount of such damages is unknown to Romney at this time.

49. As a direct, foreseeable, and proximate result of Defendants' retaliatory conduct, Romney suffered and continues to suffer losses in earnings and other employment benefits all to his damage in an amount in excess of the minimum jurisdictional limits of this court, the precise amount of which will be proven at trial.

50. As a result of Defendants' conduct as alleged herein, Romney has been required to retain counsel to represent him. Romney is therefore entitled to an award based on the reasonable

1 attorneys' fees necessarily incurred in the preparation and prosecution of this action, pursuant to
2 California Government Code section 12965(b).

3 **SECOND CAUSE OF ACTION**

4 **Injunction**

5 **(Against all Defendants, and DOES 1 through 100, inclusive, and each of them)**

6 51. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1
7 through 50, inclusive, and incorporates each herein by reference.

8 52. Romney's faces discipline, including possible termination, at the mandatory Board
9 of Rights to which he has been ordered by defendant Bratton – Chief of the LAPD.

10 53. Romney's Board of Rights is scheduled for May 11, 2009.

11 54. Romney seeks an order from this Court enjoining Defendants from holding the
12 Board of Rights until after this case is adjudicated.

13 55. Romney alleges that he has been retaliated against in violation of the FLSA.

14 56. In the Maciel Case, Romney testified regarding the LAPD's custom and policy
15 regarding the taking of Code 7.

16 57. As a direct consequence of his testimony in support of a fellow officer, Romney
17 suffered discrimination and retaliation in violation of the FLSA.

18 58. Romney is likely to succeed on the merits of his FLSA retaliation claim.

19 59. If Romney is subjected to a Board of Rights prior to adjudication of the issues in
20 this case, he will be unfairly prejudiced.

21 60. Defendants will suffer no prejudice as a result of the requested injunction.

22 WHEREFORE, plaintiff Romney prays that judgment be entered in his favor and against
23 defendants as follows:


- 24 1. For general and special damages in an amount in excess of the minimum
- 25 jurisdictional limits of this Court;
- 26 2. For compensatory damages including lost wages and lost employee benefits,
- 27 together with interest on said amounts, according to proof;
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 3. For a money judgment for mental pain and anguish and emotional distress;
- 4. For a money judgment for physical pain, injury, anguish and distress, as the same have resulted from emotional stress and distress;
- 5. For reasonable attorney fees, as allowed by law;
- 6. For an award of interest, including prejudgment interest, at the legal rate, as allowed by law;
- 7. For costs of suit incurred herein, as allowed by law; and
- 8. For such other and further relief as the Court may deem just and proper.

Dated: April 9, 2009

McNICHOLAS & McNICHOLAS, LLP

By: 
Matthew S. McNicholas
Courtney C. McNicholas
Attorneys for Plaintiff
Richard Romney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE RONALD S.W. LEW, JUDGE PRESIDING

EDWARD MACIEL,)	
)	
Plaintiff,)	
)	
vs.)	No. CV 06-249-RSWL
)	
CITY OF LOS ANGELES,)	
)	
Defendant.)	

REPORTERS' TRANSCRIPT OF DAILY TRIAL PROCEEDINGS
LOS ANGELES, CALIFORNIA
FRIDAY, JANUARY 25, 2008
VOLUME VII

LYNNE SMITH
United States Courthouse
255 East Temple Street, Room 181-A
Los Angeles, California 90012

LYNNE SMITH, OFFICIAL COURT REPORTER

EX. A