



## \*\*\* MEMBER BULLETIN \*\*\*

### OVERTIME LAWSUIT IS MOVING FORWARD

The overtime lawsuit against the County is moving forward. The California Association of Professional Employees (CAPE) encourages all of its members to join the lawsuit in order to protect their overtime rights. Here's the information you need about the lawsuit and how to join.

**What is the lawsuit about?** CAPE believes the County has been underpaying employees' overtime. In its *Flores* decision two years ago, the Ninth Circuit held that "cashback" payments from health care plans had to be included in the overtime rate under the Fair Labor Standards Act. The County has failed to comply with *Flores*. In addition, CAPE has reason to believe that the County's basic overtime calculations have been wrong.

**Are employees automatically part of the lawsuit?** No. To be covered by the lawsuit, employees have to sign a document known as a Consent to Join that will be filed with the court.

**Who is eligible to join the lawsuit?** Any employee who has worked any overtime hours for Los Angeles County at any time since August 9, 2015, is eligible to join the lawsuit. This includes retirees, provided they worked overtime in the last three years.

**How Does the Lawsuit Relate To The Extra Overtime Payments The County Will Be Making?** Clearly spurred by the preparations to file a lawsuit, the County has announced that it will now be paying employees extra overtime retroactive over the last three years. However, the County will not be paying employees the "liquidated damages" the lawsuit is seeking. "Liquidated damages" are an amount equivalent to back pay, which is why the FLSA is known as a double-damages law. The lawsuit will also examine whether the County's payments are accurate.

**How to Join the Lawsuit.** Employees must complete two forms to join the lawsuit: (1) A consent to join the lawsuit; and (2) An attorney-client agreement. Employees can either download the two forms here, <https://www.laovertimelawsuit.com/>, or pick them up from the CAPE office or at one of the regular CAPE tables at Hall of Administration and Department of Public Works Headquarters. The signed forms can either be returned to Nicole Castronovo, Attorney, 1428 2nd Street, Suite 200, Santa Monica, CA 90401.

**Who Are The Attorneys And How Are They Being Paid?** The team of attorneys handling the case include attorneys from the Rains Lucia Stern St. Phalle and Silver law firm and the Public Safety Labor Group. The attorneys are handling the case on a 25% contingent fee basis, meaning that the attorneys only get paid if they make a recovery. The attorneys' fees will only be charged on the additional amounts they recover beyond what the County will be paying employees in the extra overtime payments.

**Who Should Employees Call If They Have Questions?** If you have any questions, call attorney Nicole Castronovo at 310.393.1486.

## OVERTIME LAWSUIT AGAINST THE COUNTY

### FAQs

**Am I eligible to join if I don't receive cashback?** Yes, you are. One of the things the lawsuit will examine is whether the County is correctly paying the basic overtime rate. If you've received any overtime over the last three years, you're eligible to join.

**Are retirees eligible to join the lawsuit?** Yes, any current or former County employee who has worked overtime in the last three years is eligible to join.

**Do I have to mail in the paperwork?** You either need to mail the completed paperwork to the attorneys or stop by the CAPE office to drop off the paperwork.

**What's the deadline for joining the lawsuit?** There's no deadline set yet, though it's likely the Court will establish one. However, it's best to join the lawsuit as soon as possible, as every day that goes by without you joining is another day of damages you've lost on the "tail" end of the statute of limitations. Joining the lawsuit "freezes" your statute of limitations as of the date you join.

**What if I was involved in a previous FLSA lawsuit against the County? Am I eligible to join this lawsuit?** Yes, you are eligible, provided you've worked overtime in the last three years.

**How much can I expect to recover?** It's too early to answer. Each member's recovery will depend upon how much overtime they worked and how much cashback they received from the health insurance plan.

**Will the attorneys be accepting the County's calculations of how much I am owed?** The attorneys have retained an expert economist who has worked on numerous FLSA cases. The electronic payroll files for each employee joining the lawsuit will be obtained from the County and forwarded to the expert, who will do an independent calculation of how much each employee is owed.

**Will I have to pay taxes on the extra overtime the County pays me or anything I recover in the lawsuit?** Yes, both types of payments are taxable income under IRS rules. There's a rumor that either the extra overtime or a lawsuit settlement will flag members for an IRS audit. That rumor is incorrect.

**Will the 25% attorney fees be taken on the amounts the County is already paying?** No. The attorney fees will be calculated only on the additional amounts the attorneys are able to recover.

**If the County has already agreed to pay what it owes, why the lawsuit?** To begin with, the County has yet to produce the formulas it used to calculate what it thinks it owes, and there's good reason to think the County's formula for calculating basic overtime may be wrong. More importantly, the FLSA entitles employees to liquidated (or double) damages when the employer violates the law. The County's payments don't include liquidated damages.

**What was that website where I can find the forms?** It's <https://www.laovertimelawsuit.com/>.

**CONSENT TO JOIN ACTION**  
**(FAIR LABOR STANDARDS ACT, 29 U.S.C. § 216(b))**

I, \_\_\_\_\_, hereby consent to become a party to litigation in the United States District Court under the Fair Labor Standards Act (FLSA). The lawsuit alleges that my employer failed to properly compensate its employees for overtime hours worked and failed to make timely payments to its employees for overtime hours worked. I am, or was, employed by the County of Los Angeles, State of California, during some or all of the period from three years prior to the filing of the lawsuit to the date of signing of this consent. This action has been brought on my behalf and on the behalf of similarly situated employees of the County of Los Angeles pursuant to Section 16(b) of the Fair Labor Standards Act (29 U.S.C. § 216(b)).

I hereby designate Rains Lucia Stern St. Phalle & Silver, P.C. and the Public Safety Law Group, LLP as legal counsel to represent me for all purposes in this action.

Unpaid overtime compensation, liquidated damages, attorneys' fees, costs, and other relief are sought in the action.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

# ***AUTHORIZATION AND RETAINER AGREEMENT***

## ***FLSA CLAIM AGAINST LOS ANGELES COUNTY***

**THIS IS A CONTRACT FOR THE RETENTION OF THE SERVICES OF RAINS LUCIA STERN ST. PHALLE & SILVER, PC, AND PUBLIC SAFETY LABOR GROUP,** hereinafter referred to as “Attorneys.” Attorneys will represent \_\_\_\_\_, hereinafter “Client,” in prosecuting a claim for damages as a result of the failure of Los Angeles County to pay overtime as required by the Fair Labor Standards Act.

This agreement is required by California Business and Professions Code sections 6147 and 6148 and is intended to fulfill the requirements of those sections.

### **A. Scope of Representation**

This Agreement is for Attorneys’ pre-litigation claim negotiation and settlement, prosecution of civil litigation, and trial legal services arising from the above incident only, including, but not limited to, any ancillary proceedings such as mediations or arbitrations. Any other services that Attorneys agree to perform will require a separate retention agreement and will result in additional costs and attorneys’ fees as set forth in the separate agreement.

Attorneys may withdraw at any time upon giving reasonable notice.

Attorneys make no guarantee about the outcome of the representation of Client.

### **B. Case Costs and Expenses**

Client’s claim will be litigated as part of a collective action under the FLSA. Client understands that Client is ultimately responsible for Client’s pro-rata share of all case costs and expenses necessary for the successful prosecution of the case. These case costs and expenses do not include office operational costs, i.e., office overhead. A list of typical costs and expenses are listed later in this Agreement.

The case costs and expenses advanced will be deducted from any settlement, judgment, or award.

The case costs and expenses advanced may include appellate costs and appellate attorneys’ fees incurred in the prosecution of the case, at the discretion of Attorneys.

Client also understands that Client’s labor organization may advance Client’s pro-rata share of case costs and expenses to Attorneys. If this advance occurs, Attorneys will repay to Client’s labor organization out of any settlement, judgment, or award Client’s pro-rata advanced case costs and expenses.

### **C. Attorneys’ Fees**

Attorneys’ fees for prosecution of civil litigation and trial legal services arising from the above incident will be **twenty-five percent (25%)** of the gross sum recovered. The above fee is not set by law, but is negotiable between Attorneys and Client.

The amount or value of any monetary award or settlement for purposes of the calculation of the **twenty-five percent (25%)** shall not include the gross amounts paid by the County on August 15, 2018, August 30, 2018, September 15, 2018 and September 30, 2018 pursuant to the July 13, 2018 and August 10, 2018, letters from Maryanne Keene to Blaine Meek announcing the County's intention to pay some funds to employees in recognition of the County's non-compliance with the court's decision in *Flores v. City of San Gabriel*, 824 F. 3d 890 (9th Cir. 2016).

In the event that payment of any part of the amount to be received will be deferred (such as in the case of an annuity, a structured settlement, or periodic payments), the "total amount received," for the purposes of calculating the attorneys' fees, will be the initial lump-sum payment plus the present value, as of the time of the settlement, final arbitration award, or final judgment, of the payment to be received thereafter. The attorneys' fees will be paid out on a pro-rata basis from each periodic payment.

Attorneys may retain, associate, or otherwise remunerate outside licensed attorneys for the prosecution of civil litigation and for trial legal services arising from the above incident, under terms to be determined by Attorneys, so long as the total fee charged to Client is not in excess of the percentage stated here.

The above attorneys' fees are a lien against the cause of action and the recovery. Should there be no recovery in the action, Attorneys will receive nothing for the services they rendered during the course of the action.

#### **D. Client's Rights and Responsibilities**

Client will cooperate in the prosecution of the action by providing information and materials requested by Attorneys, by making appointments and depositions set for Client, and by attending any trial of the action if requested by Attorneys.

Client's claim cannot be settled without the consent of Client.

Attorneys do not provide any advice regarding the taxability of any sums recovered on behalf of Client as a result of the above incident. Client is directed to consult with an attorney who specializes in taxation with respect to any questions pertaining to the taxability of any sums recovered as a result of this agreement.

Pursuant to California Rules of Professional Conduct, rule 3-300, Client may seek the advice of an independent attorney of Client's choosing to review the provisions of this Agreement, in particular the sections which allow attorneys' fees, case costs, and expenses to be asserted as liens against any recovery in the action. Client, by signing below, agrees that Client has had a reasonable opportunity to seek such advice and consents to the terms of this Agreement.

### ***CASE COSTS AND EXPENSES***

The following are case costs billed directly to Client that are typically incurred in the prosecution of civil litigation and the performance of trial legal services:

- Postage
- Printing and Photocopying
- Facsimiles
- Messenger
- Database fees
- Filing, petitions, motion, and jury fees, including Fax and File services
- Court Call court appearance costs
- Juror costs, including selection, food and lodging
- Depositions costs, including taking, videotaping, and transcribing depositions and any associated travel expenses
- Deposition summaries
- Witness fees
- Expert witness fees and costs
- Mediation, arbitration, and discovery referee costs and fees
- Transcripts of court proceedings
- Court reporter fees
- Exhibits, models, and blow-ups of exhibits
- Outsourced duplication costs, including photocopying and CD/DVD/VHS duplication
- Service of process of court papers, subpoenas, and service by publication
- Investigation and research expenses
- Case-related travel expenses including food, lodging, transportation, and hotel space
- Case-related meals
- Duplication of medical, employment, and other records
- Jury consultant
- Appellate costs

If any provision of this Agreement is held to be invalid or unenforceable, all remaining provisions will continue in full force and effect.

By signing this agreement, Client hereby agrees to the terms and conditions set forth herein and acknowledges receipt of an executed copy of this agreement.

DATED: \_\_\_\_\_

**RAINS LUCIA STERN  
ST. PHALLE & SILVER, PC**

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Harry S. Stern  
On Behalf of Rains Lucia Stern St. Phalle & Silver, PC  
Attorneys for Plaintiff

DATED: \_\_\_\_\_

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Client

# FLSA Litigation Sign-Up Form

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First Name \_\_\_\_\_

Last Name \_\_\_\_\_

Cell Phone \_\_\_\_\_

Email \_\_\_\_\_

Address Line 1 \_\_\_\_\_

Address Line 2 \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

LA County Employee ID No. \_\_\_\_\_ Date you began work for LA County \_\_\_\_\_

Do you still work for LA County? YES / NO Date your employment ended with LA County \_\_\_\_\_

Checkmark the union/bargaining unit you belong to

\_\_\_\_\_ AFSCME, District Council 36 (AFL-CIO)

\_\_\_\_\_ AFSCME Local 685 (AFL-CIO)

\_\_\_\_\_ ALADS, MEBA, (AFL-CIO)

\_\_\_\_\_ CAPE, MEBA, (AFL-CIO)

\_\_\_\_\_ CIR Local 1957 (SEIU)

\_\_\_\_\_ Los Angeles County Firefighters Local 1014 (AFL-CIO)

\_\_\_\_\_ Los Angeles County Lifeguard Association, MEBA (AFL-CIO)

\_\_\_\_\_ Los Angeles/Orange Counties Building & Construction Trades Council (AFL-CIO)

\_\_\_\_\_ International Union of Operating Engineers, Local 501 (AFL-CIO)

\_\_\_\_\_ Professional Police Officers Association

\_\_\_\_\_ Union of American Physicians and Dentists, AFSCME (AFL-CIO)

\_\_\_\_\_ I don't know