

## ATTORNEY/CLIENT FEE AGREEMENT

This Attorney/Client Fee Agreement (the "Agreement") is made between the undersigned individual (hereinafter referred to as "Client") and Messing Adam & Jasmine LLP (hereinafter referred to as "Attorneys"). Client claims that the **City and County of San Francisco** (hereinafter referred to as the "Employer") has violated 29 U.S.C.A. §§ 201-219, the Fair Labor Standards Act ("FLSA"), by denying Client compensation for wages and/or overtime hours worked, by failing to pay client as required by the FLSA ("Client's Claim"). Specifically, the Client claims that prior to the April 7, 2018 pay period, and possibly thereafter, the Employer's compensation computation method was illegal in two ways. First, it under-calculated employee's "regular rate of pay" by cashing out Compensatory Time Off ("CTO") at a lower rate than required by law whenever the Employer cashed out CTO hours for the employee. Second, when employees exercised their option to use some or all of their CTO balances to take paid leave, the Employer under-calculated their "regular rate of pay" by paying those CTO hours at a lower rate than required by law. The Employer's method of calculating the Client's regular rate of pay resulted in under-payment for overtime hours worked. The Employer permitted the Client to perform overtime work without proper compensation.

**Client hereby retains Attorneys to enforce Client's Claim on the following terms:**

1. **Scope of Representation:** Attorneys will file a lawsuit (the "Lawsuit") on behalf of Client and other similarly-situated employees of the Employer to enforce similar claims under the FLSA. Client agrees to execute a Consent Form to participate as one of the Plaintiffs or Consenters in the Lawsuit, and hereby retains Attorneys to enforce Client's Claim in and through the Lawsuit. Attorneys shall represent Client in the prosecution of Client's Claim in and through the trial of the Lawsuit and, if necessary, through an appeal and retrial of the Lawsuit. Client understands that Attorneys will not provide any other legal services, except as described above, and that if Client wishes Attorneys to provide any additional legal services, a separate written agreement between Client and Attorneys will be required. The fees set forth below will cover all of Attorneys' services hereunder.
2. **Client's Consent:** Client understands that the class of Plaintiffs and Consenters in the Lawsuit may consist of many individual employees. Whenever an attorney represents a large class of participants in a lawsuit, it is possible that a conflict may develop between you as Client and other members of the Plaintiff class represented by Attorneys: if, for example, Client's goals differ from the goals set by the other individuals making up the class; or if Attorneys pursue goals of the majority of the class which are in conflict with the individual goals of Client. **By signing this Agreement, Client gives Client's consent to the following:**
  - 2.1 **Litigation Committee:** A committee charged with overseeing the prosecution and settlement of the Lawsuit (the "Committee") has been established, consisting of the **San Francisco Police Officers' Association's Executive Committee**. Attorneys shall only report to, and only take instructions from, the Committee with respect to prosecution and settlement of the Lawsuit. Any concerns Client has regarding the Lawsuit shall be addressed to the Committee, not to Attorneys. The Committee may or may not follow Client's individual instructions regarding prosecution and settlement of the Lawsuit.
  - 2.2 **Settlement of Lawsuit:** With respect to any settlement of the Lawsuit, Attorneys shall only consult with, and only take instructions from, the Committee. This may mean that Client may not get information regarding a

proposed or actual settlement directly from Attorneys. It also may mean that Client's Claim and the Lawsuit may be settled even though Client objects to or disagrees with the settlement terms, if the Committee approves such a settlement and instructs Attorneys to reach such a settlement, and if Client fails to give a timely written notice to Attorneys that Client wishes to withdraw from the Lawsuit. Further, if Client fails to timely execute a written release of Client's Claim in the Lawsuit when requested by Attorneys to do so as part of a settlement, Client shall be deemed to have withdrawn from participation in the Lawsuit, and Client shall not share in any settlement or judgment thereafter obtained. If Client voluntarily withdraws from, or is otherwise deemed to have withdrawn from, the Lawsuit for any reason, Client acknowledges that Client understands and has been told that, in order to then enforce Client's Claim, Client would be required to retain a new attorney at Client's sole expense, and to file a new lawsuit, and, further, that in such event Client's Claim may then be time-barred and not enforceable, and may be lost by Client.

**2.3 Communications:** All communications between Attorneys and Client, and between Attorneys and any member of the class of Plaintiffs and Consenters in the Lawsuit, are not privileged against disclosure to other members of the Plaintiff and Consenter class in the Lawsuit, and all such communications between Attorneys and Client may be disclosed to other members of the Plaintiff and Consenter class in the Lawsuit.

**2.4 Conflict of Interest:** Client agrees that mere participation in this Lawsuit will not be asserted by Client as a conflict of interest for the purpose of disqualifying Attorneys in any subsequent litigation or representation. This section shall in no way preclude Client from asserting any future conflict of interest that may arise between Client and Attorneys firm based on facts and circumstances other than those arising from Client's participation in this Lawsuit.

**3. Net Recovery:** For purposes of computing Attorneys' fees hereunder for which the Client is responsible, the term "Net Recovery" shall mean the total of any and all economic benefits conferred on Client as a result of the Lawsuit, including but not limited to the monetary value of any "comp" time awarded to Client, the fair market value of any property received by Client, and any and all damages and monetary payments awarded by the Court or agreed to be paid in settlement, less any amounts owed by Client to Attorneys for reimbursement of costs and expenses advanced or incurred by Attorneys with respect to the Lawsuit provided, however, that the term Net Recovery shall not include regular paychecks for wages and overtime already actually received by Client for the period of time covered by the Lawsuit; and provided, further, that the term Net Recovery shall not include any hourly statutory attorneys' fees awarded to Attorneys by the Court or agreed to be paid by the employer *unless* Attorneys receive only contingent fees, at which time statutory fees shall be considered part of the Net Recovery. In the event that settlement or judgment results in a benefit for which the economic value is not cash or readily reducible to a dollar figure, the Committee (as identified in Section 2.1, above) and Attorneys shall jointly appoint an economist to ascertain the value of such benefit conferred by the Lawsuit for the purpose of permitting the determination of contingent attorneys' fees pursuant to this Agreement. If the Net Recovery, including the present value of any benefit for which the economic value is not cash or readily reducible to a dollar figure, is greater than the "actual value" of which the case would have been valued had a full cash settlement been arrived at, an economist shall ascertain what the actual cash value of the underlying FLSA case should have been,

had a settlement been predicated upon that value, and that figure used in calculating the Net Recovery.

4. **Compensation:** Client shall compensate Attorneys for services rendered under this Agreement *only if* Attorneys obtain a recovery for Client by settlement or judgment. Attorneys are permitted to receive both reasonable statutory and reasonable contingency fees for obtaining a recovery for Client. Attorneys' fees shall be paid as a percentage of each individual's actual calculated damages after a *per capita* reduction for costs. Should Attorneys obtain hourly statutory attorneys' fees awarded to Attorneys by the Court and/or agreed to be paid by the Employer, Client agrees and understands that such recovery does not relieve Client of the obligation to pay Attorneys the full percentage of Client's Net Recovery. If, for whatever reason, the Court determines Attorneys may not receive both statutory and contingency fees, then Attorneys may choose how they are to be compensated: *i.e.*, whether by statutory fees or by contingency fees.

4.1 **Recovery of Both Statutory and Contingency Fees:** When awarded both statutory and contingency fees, the statutory fees will be awarded pursuant to 29 U.S.C.A. § 216 and the contingency fees will be calculated based on the Net Recovery (as defined in Section 3, above) remaining after reimbursement to Attorneys of any costs and expenses set forth herein. The amount of the contingency fees will depend on the stage the Lawsuit is in when recovery is obtained as follows:

- a. **20%** of the Client's Net Recovery, if it is received before the close of discovery; or
- b. **25%** of the Client's Net Recovery, if received before the close of proceedings in the trial court; or
- c. **33%** of the Client's Net Recovery, if received following the filing of an appeal and thereafter.

4.2 **Recovery of Contingency Fees Only:** As stated in Section 3, above, if Attorneys are awarded or elect to receive contingency fees, only, then statutory fees shall be considered part of the Net Recovery from which Attorneys will receive their contingency with any remaining statutory fees distributed *per capita* to each Plaintiff and Consenter receiving a recovery. Attorneys shall be paid a fee consisting of a percentage of the Net Recovery depending on the stage of the Lawsuit at which it is obtained as follows:

- a. **25%** of the Client's Net Recovery, if it is received before the close of discovery; or
- b. **33%** of the Client's Net Recovery, if received before the close of proceedings in the trial court; or
- c. **40%** of the Client's Net Recovery, if received following the filing of an appeal and thereafter.

5. **Costs:** Client shall not be required to pay for any costs arising from prosecution of Client's Claim. Attorneys shall advance costs and Attorneys shall have priority on recovery of costs advanced prior to distribution of any other recovery as set forth herein.

6. **Assignment:** It is agreed that this Agreement shall operate as an assignment *pro tanto* to Attorneys of said claim, insofar as that is lawful, and of any monies and/or judgment received. Attorneys will have a lien for Attorneys' fees and costs advanced on all claims and causes of action that are the subject of this litigation and on all proceeds of any recovery obtained whether by settlement, or court judgment. Client agrees that if checks endorsed to both Client and Attorneys are issued, Client will endorse his/her check and return it to Attorneys for deposit in Attorneys' trust account. Attorneys may then deduct their contingent attorneys' fees and pay Client the balance due. Alternatively, Client authorizes the Employer to deduct from the amount due Client under any settlement or litigated decision, the contingency fees due to Attorneys and to pay such contingency fees directly to Attorneys. Client agrees to perform whatever acts are necessary to effect payment of attorneys' fees to Attorneys.
7. **Negotiation of Compensation:** Attorneys' fees set forth in this Agreement are not set or required by law, but have been negotiated between Client and Attorneys.
8. **Information from Client:** Client agrees to provide Attorneys with Client's social security number, all other information, and all signed documents requested by Attorneys. Client agrees that Client's social security number may be used as an identification number to facilitate payment to Client if a recovery is made in the Lawsuit. Attorneys will not make Client's home address public. Client understands and agrees that all information requested by Attorneys must be supplied by Client to Attorneys as a precondition to Client sharing in any recovery in the Lawsuit, and that fully signed documents as requested by Attorneys must also be supplied by Client to Attorneys. If Client does not timely provide all such information and fully signed documents as requested by Attorneys, Attorneys shall be under no obligation to, and will not, file a Consent for Client to participate in the Lawsuit, and, if a Consent has already been filed, Client shall be deemed to have withdrawn from further participation in the Lawsuit, and Attorneys shall have no further obligation to communicate in any way with Client.
  - 8.1 **Changes to Client's Information:** Client agrees to advise attorneys of any changes of address, particularly in the event of retirement or separation from service.
  - 8.2 **Communication with Attorneys:** Client agrees that if Client fails to communicate with Attorneys within one year of settlement or award of a recovery to Client, or if Client fails or refuses to take the necessary steps to claim a recovery, within one year of the settlement or award becoming final, Client agrees that Client's settlement or award will be subject to reversion to a charity selected by the Attorneys.
9. **Best Efforts:** Attorneys and Client shall use their best efforts to carry out this Agreement and to secure evidence pertaining to the Lawsuit.
10. **Termination of Attorneys' Services:** If Client terminates the services of Attorneys for any reason whatsoever, Client shall pay Attorneys for all costs and expenses incurred or paid by Attorneys with respect to the Lawsuit on behalf of Client, and Client shall also pay Attorneys the reasonable value of Attorneys' services rendered up to the date of termination, calculated as a *pro rata* percentage of Attorneys' fees due under Section 4, above, based on (i) Attorneys' percentage of the total legal work done in the Lawsuit, and (ii) the value of the results and size of the Net Recovery achieved in the Lawsuit in whole or in part by Attorneys' services.

11. **Right of Withdrawal:** Attorneys reserve the right to withdraw from this action, provided reasonable notice be given to Client.
12. **Malpractice Insurance:** Attorneys hereby advise Client that they maintain malpractice insurance as set forth in California Business and Professions Code Section 6147 and 6148.
13. **Updates on Lawsuit:** Client understands and agrees that all further information about the status or progress of the Lawsuit shall be provided to Client through the **San Francisco Police Officers' Association's** publications.
14. **Results not Guaranteed:** Although Attorneys may offer an opinion as to possible results regarding the subject matter of this Agreement, Attorneys cannot guarantee any particular result. Client acknowledges that Attorneys have made no promises about the outcome and that any opinion offered by Attorneys in the future will not constitute a guarantee.
15. **Right to Arbitrate Disputes:** If a dispute arises between Attorneys and Client regarding Attorneys' fees or Attorneys' malpractice or Client's failure to fulfill Client's obligations, either party has the right to arbitrate the dispute under California Business and Professions Code §§ 6200-6206 or with JAMS. The prevailing party in any action or proceeding to enforce any provision of this Agreement will be awarded reasonable attorneys' fees and costs incurred in that action or proceeding.

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**ATTORNEY/CLIENT FEE AGREEMENT SIGNATURE PAGE**

**Instructions:** To execute this agreement, sign and date below. Fill in the additional information and return this signature page to the Third Party Administrator in the envelope provided, along with your completed Consent to Join form.

**Dated:** 4-22-2019

  
**Gregg McLean Adam**  
MESSING ADAM & JASMINE LLP

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**Client Signature**

Client Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Home Phone Number: \_\_\_\_\_

Work Phone Number: \_\_\_\_\_

Cell Phone Number: \_\_\_\_\_

Home e-mail: \_\_\_\_\_

Employing Department: \_\_\_\_\_

Employing Division/District/Unit: \_\_\_\_\_

Job Classification: \_\_\_\_\_

Years Employed: \_\_\_\_\_

**Between July 31, 2015 and January 22, 2019, please list date(s)**

**You USED CTO** \_\_\_\_\_

and/or

**The City CASHED-OUT** your CTO \_\_\_\_\_

**OPTIONAL:**

For each time you used CTO or the City cashed out your CTO, please state:

Number of hours cashed out or used \_\_\_\_\_

Compensation received for hours cashed out or used \_\_\_\_\_

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