

1 James Cunningham (CA Bar # 128974)  
2 Law Offices of James J Cunningham, A.P.C.  
3 10405 San Diego Mission Road, Ste. 201  
4 San Diego, California 92108-2174  
5 Tel. (858) 693-8833  
6 [JJC@jimcunninghamlaw.com](mailto:JJC@jimcunninghamlaw.com)

7  
8 William B. Aitchison (OR Bar # 770095)  
9 (*admitted pro hac vice*)  
10 Public Safety Labor Group  
11 3021 NE Broadway Street  
12 Portland, Oregon 97232  
13 Tel. (866) 486-5556  
14 [Will@PSLGlawyers.com](mailto:Will@PSLGlawyers.com)

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16 *Attorneys for Plaintiff*

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18 **UNITED STATES DISTRICT COURT**  
19 **SOUTHERN DISTRICT OF CALIFORNIA**

20 PERRY PEAKE on behalf of himself and other  
21 similarly situated individuals,  
22 Plaintiff,  
23 v.  
24 CITY OF CORONADO,  
25 Defendant.

Case No.: '21CV0820 AJB KSC

**COMPLAINT FOR VIOLATIONS OF THE  
FAIR LABOR STANDARDS ACT**

**COLLECTIVE ACTION - 29 U.S.C. § 216**

1 **PRELIMINARY STATEMENT**

2 1. Plaintiff is or was employed by Defendant City of Coronado (“Defendant” or “the City”)  
3 and brings this action pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. Section 201  
4 *et seq.* to recover unpaid overtime and other compensation, interest thereon, liquidated damages,  
5 costs of suit, reasonable attorney fees, and other relief.

6 2. This action arises from Defendant’s failure to properly compensate Plaintiff at the rate of  
7 time and one-half the regular rate of pay for overtime hours worked under the FLSA.

8 **JURISDICTION AND VENUE**

9 3. Jurisdiction of this action is conferred on this Court by 28 U.S.C. Section 1331 and 29  
10 U.S.C. Section 216(b). This Court has subject matter jurisdiction pursuant to 29 U.S.C. Sections  
11 207 *et seq.* Venue lies within this district pursuant to 28 U.S.C. Section 1391.

12 **PARTIES**

13 4. Plaintiff is current employee of Defendant. Plaintiff is, or was, an “employee” within the  
14 meaning of 29 U.S.C. Section 203(e) and entitled to the rights, protections, and benefits of the  
15 FLSA.

16 5. Defendant is a political subdivision of the State of California. Defendant is an  
17 “employer” within the meaning of 29 U.S.C. Section 203(d), an “enterprise” under 29 U.S.C.  
18 Section 203(r), and a “public agency” within the meaning of 29 U.S.C. Section 203(x).  
19 Defendant employs or employed the Plaintiff.

20 **COLLECTIVE ACTION**

21 6. Plaintiff brings this action on behalf of himself and other similarly situated individuals  
22 who are or were non-exempt employees in Defendant’s Fire Department at any time during the  
23 three years preceding the filing of this action and were deprived of their complete statutorily  
24 required overtime compensation as described in this Complaint.

25 7. Pursuant to 29 U.S.C. Sections 216(b) and 256, the named Plaintiff has executed and  
26 hereby file with the Court his consent in writing to become party Plaintiff in this action. (Exhibit  
27 A) When other similarly situated individuals join this action, their consents will be filed with the  
28

1 Court. The written consent forms identify each Plaintiff by name and reflect their intent to be a  
2 party to this lawsuit.

3 **FACTUAL ALLEGATIONS**

4 8. Plaintiff and all similarly situated individuals are or were non-exempt employees of  
5 Defendant during the three years preceding the filing of this action.

6 9. Plaintiff and all similarly situated individuals regularly respond to, and participate in,  
7 calls for service that include preventing, controlling, or extinguishing fires, (fire suppression).

8 10. Plaintiff and all similarly situated individuals regularly respond to, and participate in,  
9 calls for rescuing fire and accident victims.

10 11. Plaintiff and all similarly situated individuals regularly respond to calls for responding to,  
11 and participating in, medical calls for service, (as fully certified Paramedics and/or EMT's).

12 12. Plaintiff and all similarly situated individuals regularly carry and use fire suppression and  
13 medical equipment kept and maintained in their Department vehicles.

14 13. At all times relevant herein, Defendant required or suffered or permitted Plaintiff to work  
15 overtime hours under 29 U.S.C. Section 207.

16 14. At all times relevant herein, Defendant improperly treated employees of its Fire  
17 Department who held the rank of battalion chief as exempt from overtime compensation under  
18 the FLSA. For that reason, Defendant failed to compensate Plaintiff for all overtime hours  
19 worked at time and one-half their regular rates of pay.

20 **Liquidated Damages and Willfulness**

21 15. Defendant's failure to properly compensate Plaintiff for overtime hours worked was  
22 neither reasonable nor in good faith.

23 16. Defendant's failure to properly compensate Plaintiff and all similarly situated individuals  
24 for overtime hours worked was a willful violation of the FLSA.

**FIRST COUNT**

**Violation of 29 U.S.C. Section 207(a)-The Failure To Compensate Plaintiff For Overtime Hours Worked.**

17. Plaintiff incorporates by reference paragraphs 1 through 16, inclusive, as though set forth herein.

18. Defendant required, suffered or permitted Plaintiff and all similarly situated individuals to work overtime, but failed to properly compensate Plaintiff and similarly situated individuals at time and one-half the “regular rate” of pay.

19. Defendant’s failure to compensate Plaintiff and all similarly situated individuals as required by the FLSA was neither reasonable nor in good faith.

20. Defendant’s failure to compensate Plaintiff and all similarly situated individuals as required by the FLSA was a willful violation of the FLSA. Based on Defendant’s willful violation of the FLSA, Plaintiff and all similarly situated individuals are entitled to damages and liquidated damages as allowed by the FLSA for a period of three years immediately preceding the filing of this action.

21. The employment and work records for Plaintiff and similarly situated individuals are in the exclusive possession, custody and control of the City, and Plaintiff are unable to state at this time the exact amounts owing to them. The City is under a duty imposed by the FLSA, 29 U.S.C. Section 211(c), and the regulations of the United States Department of Labor, to maintain and preserve payroll and other employment records.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and all similarly situated individuals pray for judgment as follows:

1. Recovery of monetary damages in the form of unpaid overtime compensation, liquidated damages equal to the amount of unpaid overtime compensation, plus prejudgment and post-judgment interest;


2. A determination that Defendant willfully violated the FLSA thereby entitling Plaintiff and all similarly situated individuals to recover monetary damages for a three-year period preceding the filing of this action;

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- 3. A complete and accurate accounting of all compensation to which Plaintiff and all similarly situated individuals are entitled;
- 4. For reasonable attorneys' fees pursuant to 29 U.S.C. Section 216(b);
- 5. For costs of suit incurred herein, and
- 6. For such other and further relief as the Court deems just and proper.

Dated: April 27, 2021

Respectfully submitted,  
**Law Offices of James J. Cunningham, A.P.C.**

  
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James J. Cunningham  
10405 San Diego Mission Road, Ste. 200  
San Diego, California 92108  
*Attorney for Plaintiff*

**EXHIBIT A**

**CONSENT TO JOIN ACTION**  
**(FAIR LABOR STANDARDS ACT, 29 U.S.C. § 216(b))**  
**LITIGATION ENTITLED:**  
**PEAKE, ET AL. v. CITY OF CORONADO**

I, Perry Peake, of San Diego County, State of California, hereby consent to become a party to the litigation action entitled *Perry Peake, et al. v. City of Coronado* filed on April 27, 2021 in the Southern District Court of California under the Fair Labor Standards Act (FLSA). The lawsuit alleges that the City of Coronado 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 City of Coronado during some or all of the period in the three years preceding the signing of this Consent. This action has been brought on my behalf and on the behalf of similarly situated employees of the City of Coronado pursuant 29 U.S.C. § 216 (b) of the FLSA. Unpaid overtime compensation, liquidated damages, attorney's fees, costs and other relief are sought in the action.

I hereby designate the Law Offices of James J. Cunningham, APC and the Public Safety Law Group PC as legal counsel to represent me for all purposes in this action.

Signature 

Printed Name Perry A. Peake

Email Address perrypeake@gmail.com

Date 4/27/2021