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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

EDWARD MACIEL Plaintiff, v. CITY OF LOS ANGELES, et al. Defendants.	No. CV 06-00249 RSWL (CWx) **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT** **ORDER STRIKING SUPPLEMENTAL DECLARATION OF STUART MAISLIN**

This case arises from Plaintiff Edward Maciel's claims against the City of Los Angeles for violations of the Fair Labor Standards Act.

On January 15, 2008, the above matter commenced in a seven-day bench trial before this Court. On March 21, 2008, this Court issued a Trial Order and Judgment finding in favor of Defendant on all claims.[1]

[1] See 2008 U.S. Dist. LEXIS 22623 (March 21 2008).

On April 4, 2008, Defendant moved to Alter or Amend the Judgment. Plaintiff opposed this Motion and Moved to Strike the supplemental declaration of Stuart Maislin. The matter came on for regular calendar before this Court on April 29, 2008. Plaintiff was represented by Miguel Caballero and Defendant was represented by Brian Walter and Geoffrey Sheldon. Both parties submitted the matter without oral argument.

Having considered all arguments submitted by the parties, as well as all the evidence presented at trial, **THE COURT NOW FINDS AND RULES AS FOLLOWS**:

I. <u>Motion to Strike Supplemental Declaration of Stuart Maislin</u>

In conjunction with the filing of its Motion to Alter or Amend the Judgment, Defendant submitted the supplemental declaration of Stuart Maislin. In essence, the declaration stated that a majority of officers choose to bring their weapon to their residence while not on duty.

The issue of what, if any, safety concerns exist for an officer dressing at home was adequately litigated by both sides. Defendant had the opportunity to present this same evidence during the trial. The presentation of additional evidence on this matter after the conclusion of the trial is neither proper nor necessary.

Therefore, the Court will not consider this additional evidence and **GRANTS** Plaintiff's Motion to Strike.

II. Motion to Alter or Amend Judgment

"On a party's motion . . . the court may amend its findings - or make additional findings - and may amend the judgment accordingly." USCS Fed. Rules Civ. Proc. 52.

A Court may also correct any mistake of fact or law under rule 52(b), including mistakes based on the Court's evaluation of the evidence. Jackson v. U.S., 156 F.3d 230, 234 (1st Cir. 1998).

The Court futher has the power to correct judicial errors under Federal Rules 59(e) and 60(a).

III. ANALYSIS

A. Alter or Amend De Minimis Analysis

Defendant argues that the Court's de minimis analysis should be altered. Specifically, Defendant argues that the conclusion that it takes between five and ten minutes per shift to don and doff the specialized safety equipment was unsupported by the evidence presented at trial. Defendant argues a per se de minimis rule. Finally, Defendant maintains that

contrary to the Court's finding, it is administratively difficult to account for the officer's donning and doffing time. The Court has reviewed both the evidence presented at trial and the law on these matters and addresses each below.

1. *Five to Ten Minute Estimate*

As an initial matter, the Court notes, and will address in the Amended Order, the Court severely limited the presentation of evidence at trial to only that evidence relevant to Plaintiff's individual claims against the City. This was not a class action, nor did the Court treat it as such. To that end, any estimate that the Court reached in this matter, based on the limited evidence presented, should have no preclusive effect on similar matters.

Defendant engages in a recitation of the evidence and argues that the Court's estimate of time spent donning and doffing should actually be "two to three minutes." While the Court does not agree with this conclusion, the argument caused the Court to revisit several aspects of its original analysis.

The evidence presented to the Court regarding the donning and doffing of the specialized safety equipment was never specifically separated from the donning and

doffing of the standard police uniform. Therefore, the Court made a reasonable estimate of how long it would take Maciel to separately don and doff his personalized safety equipment, including the time it would take to open the locker, remove any clothing preventing Maciel from donning his Kevlar vest, facially inspecting[2] the gear, and donning it. Doffing the gear involves a similar process, however, based on the evidence presented, it would take less time to doff than to don. Based on the evidence presented at trial, the Court declines to alter this original estimate.

The Court does, however, concede that Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 692 (U.S. 1946) states that the minimum time required to complete a given activity should guide the Court in determining whether an activity is de minimis. See id. ("compensable working time was limited to the *minimum* time necessarily spent [in completing the task]."(emphasis added). Based on the evidence at trial, the Court is unable to conclude what the "minimum time necessary" would be, nor is such a conclusion required based on the disposition of Plaintiff's claims. Nevertheless, assuming *arguendo* that Defendant's two to

[2] While Defendant is accurate that the Court ruled that Maciel was already compensated for the maintenance of his equipment through the stipend, the superficial inspection that Maciel engaged in prior to donning his Sam Browne belt, was shown to be part of the donning activity.

three minute estimate established the minimum time necessary, the Court's de minimis analysis would not change from the original order.

2. *Per Se De Minimis Rule*

Defendant takes the position that any time under ten minutes would be per se de minimis. The Court rejects this conclusion. Indeed, the existence of such a rule would negate the reasoning in Lindow. Lindow sets out a clear three prong factor test, stating that time is an important but not the only factor for consideration. Lindow v. U.S., 738 F.2d 1057, 1063-1064 (9th Cir. 1984). While Defendants are accurate that many subsequent district court decisions have seemingly ignored this factor test, compounding this oversight is unwarranted.

3. *Adminitrability of Donning and Doffing Activities*

Defendant argues that the Court's conclusion that it is not administratively difficult to record the donning and doffing activities is incorrect. Defendant reaches this conclusion by focusing on what it portrays as "wide variances" in the time spent by each officer on this activity. However, Defendant prior argument that only the "minimum time necessary" to perform the

activity should be compensable, defeats this argument. If the Department can reach a reasonable estimate of the minimum time necessary to perform the activity, then tracking the activity does not appear administratively difficult. Moreover, patrol officers are already required to account for all activities on a daily field activity report, which supports the conclusion that donning and doffing activities could be similarly accounted for. Because the Court reaches no conclusion on the *minimum* time required to don and doff the specialized safety equipment, it cannot analyze whether Defendant's assertion that its payroll system operating in six minute increments weighs in favor of finding the activity administratively difficult.

B. Safety Concerns Donning and Doffing

Defendant next argues that the Court was incorrect in holding that officers, including officer Maciel, dressing at the police station was not merely a convenience, but was attributable to the nature of the work and equipment. Defendant focuses on a single line of the Court's reasoning that *forcing* an officer to take a loaded weapon home may present a safety risk. Defendant however ignores the further evidence presented at trial, namely, that each officer dresses at the station, that officers do not want neighbors and other unknown individuals to identify where the officers live,

that lockers are provided at the station to use to store the equipment, that officers are not permitted to remain in uniform when off duty, finally that some of the equipment can pose a danger to the public or to the officer's family. When combined, this evidence demonstrates Plaintiff's satisfaction of his burden to prove that dressing at the station was more than a mere convenience.

C. Clerical Errors

Defendant finally addresses two clerical errors present in the original Order and Judgment. First, that the collective bargaining agreement covers all sworn officers at the ranks of Lieutenant and below rather than Sergeants and below as stated in the Order, and second, that Bruce Miyazaki possessed the rank of Captain rather than Sergeant as stated in the Order. Each of these inaccuracies will be corrected in the Amended Order.

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HONORABLE RONALD S.W. LEW
Senior, U.S. District Court Judge

DATE: May 29, 2008