IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Norma Lynch)
Edith Adams)
Dorethea Andrews)
Linda Brisbane)
Horace Brown)
Colin Chang)
Janice Chase)
Dianne Clarke)
Debra Coleman)
Tonya Crawford)
Chivon Daniels)
Nicole Dorsey)
Joyce Fields)
Juan German)
Patricia Gordon)
Tabatha Heckstall)
Chaya Kearse)
Cymah Lovell)
Diane Mamet)
Marcella McMurrin)
Diane McPhatter)
Donald Mercado)
Kenneth Miller)
Elizabeth Murchison)
Jannette Nyack)
Ahmed Omer)
Carol Perdue)
Desirie Price)
Jeanette Rodriguez)
Maria Rodriguez)
Natisha Smith)
Adrian Straker)
Carolyn Walters)
Veronica White)
Sylvia Williams)
Euadne Wilson)
Maxine Wilson)

Tamyra Winningham-Hyppolite

Plaintiffs,

vs.

THE CITY OF NEW YORK,

Defendants.

COMPLAINT

INTRODUCTION

Plaintiffs, by and through their counsel, the law firms of Woodley & McGillivary LLP, and Spivak Lipton LLP, for their complaint against the City of New York ("New York City"), state as follows:

PARTIES

1. Plaintiffs have given their written consent to be party plaintiffs in this action pursuant to 29 U.S.C. § 216(b). Such written consents are appended to this Complaint in the attached Appendix. These written consent forms set forth each plaintiff's name and address. The plaintiffs bring this action as a collective action in accordance with 29 U.S.C. § 216(b) of the Fair Labor Standards Act (FLSA) against the defendant on behalf of themselves and all others similarly situated because of defendant's unlawful deprivation of plaintiffs' rights to overtime compensation under the FLSA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

FACTS

4. Plaintiffs are, and at all times material herein have been, employed by the Department of Homeless Services (DHS), City of New York, as a Principal Administrative Associate I or Principal Administrative Associate II.

5. For example, at times material herein, plaintiff Norma Lynch has worked as a Principal Administrative Associate I at DHS headquarters office located at 33 Beaver Street, New York, NY 10004. At times material herein, plaintiff Linda Brisbane has worked as a Principal Administrative Associate II at DHS headquarters located at 33 Beaver Street, New York, NY 10004. At times material herein, plaintiff Cymah Lovell has worked as a Principal Administrative Associate II at DHS headquarters located at 33 Beaver Street, New York, NY 10004. At times material herein, plaintiff Chivon Daniels has worked as a Principal Administrative Associate I at 33 Beaver Street, New York, NY 10004. These plaintiffs bring this action on behalf of themselves and the other Principal Administrative Associate I's and II's who work or have worked for defendant at all times material herein.

6. Plaintiffs bring this action for a declaratory judgment, back pay and other relief pursuant to 29 U.S.C. § 207, 29 U.S.C. § 216(b), and 28 U.S.C. § 1331 to remedy the defendant's willful and unlawful violations of federal law complained of herein.

7. Each of the plaintiffs in this action while employed by defendant has been an "employee" within the meaning of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 203(e)(1).

8. Defendant New York City is, among other things, a juridical entity amenable to suit under the FLSA in that it is, and was at all times material hereto, a public agency

within the meaning of Section 3(x) of the FLSA, 29 U.S.C. § 203(x). New York City has a principal office and place of business located at Broadway and Park Row, New York, New York, 10007, and may be served with process by serving the Office of Corporation Counsel, 100 Church Street, New York, 10007.

9. Within the last three years and continuing to date, while working in the position of Principal Administrative Associate I or Principal Administrative Associate II on behalf of defendant, plaintiffs' job duties include but are not limited to the payment of bills from shelters on behalf of DHS, the payment of food and rent bills for DHS clients, the purchase of goods and services for shelter sites, and the performance of administrative and related tasks to support the work of DHS and to serve the homeless population of New York.

10. While working as Principal Administrative Associates I or II, plaintiffs routinely work over 40 hours a week and do not receive overtime compensation at the rate of one and one-half times their regular rate of pay for all hours worked over 40 in a week. Principal Administrative Associates I and II are scheduled to work 40 hours a week, Monday through Friday, as their regular schedule, with one hour each day automatically deducted for meal periods. In addition, they frequently work overtime.

11. As Principal Administrative Associates I or II, plaintiffs come into work before the official start time of their shifts and perform work for which they are not compensated. Plaintiff Principal Administrative Associates I or II also work through their one-hour meal periods for which they are not compensated. Plaintiff Principal Administrative Associates I or II also are not compensated for time that they work after the official end time of their shifts.

12. For example, plaintiff Norma Lynch is a Principal Administrative Associate Level I in DHS's Office of Finance and routinely works over 40 hours in a workweek without receiving compensation at the rate of one and one-half times her regular rate of pay for each hour of overtime worked over 40 hours. When plaintiff Lynch works over 40 hours in a week, defendant fails to compensate her in accordance with the FLSA for work performed before the official time that her shift starts even though the work she performs before her official start time is recorded by the defendant's timekeeping system. Similarly, when plaintiff Lynch works over 40 hours in a workweek, defendant fails to compensate her in accordance with the FLSA with respect to work she performs after the official end time of her shift even though the work she performs after official end time of her shift is recorded on defendant's timekeeping system. For example, during the week of March 23 to 28, 2015, Plaintiff Lynch worked a total of 44 hours and 45 minutes, excluding her meal periods, but was not compensated for 4 hours and 45 minutes of this recorded work time. Similarly, plaintiff Lynch worked 44 hours the week of March 14 to 19, 2016, excluding her meal periods, but was not compensated for 4 hours of this recorded work time. In addition, during these weeks, plaintiff Lynch worked during her meal periods for which she received no compensation.

13. Plaintiff Cymah Lovell is a Principal Administrative Associate II in DHS's Office of Budget and routinely works over 40 hours in a workweek without receiving compensation at the rate of one and one-half times her regular rate of pay for each hour of overtime worked over 40 hours a week. When plaintiff Lovell works over 40 hours in a week, defendant fails to properly compensate her for work performed before the official start time of her shift, after the official end of her shift or during her meal periods.

For example, during the week of February 9 to 14, 2015, plaintiff Lovell worked a total of 48 hours, excluding her meal periods, and was not compensated for 8 hours of this recorded work time. Similarly, during the week of July 8 to 13, 2013, plaintiff Lovell worked a total of 56 hours and 45 minutes, excluding her meal periods, but was not compensated for 10 hours and 15 minutes of this recorded work time. In addition, during these weeks, plaintiff Lovell worked during her meal periods for which she received no compensation.

14. Plaintiff Linda Brisbane is a Principal Administrative Associate II in DHS's Office of Finance and routinely works over 40 hours in a workweek without receiving compensation at the rate of one and one-half times her regular rate of pay for each hour of overtime worked over 40 hours a week. When plaintiff Brisbane works over 40 hours in a week, defendant fails to properly compensate her for work performed before the official start time of her shift, after the shift officially ended, and during her meal periods. For example, during the week of January 12 to 17, 2015, plaintiff Brisbane worked a total of 47 hours, excluding her meal periods, but was not compensated for 1 hour and 15 minutes of this recorded work time. Similarly, during the week of February 8 to 14, 2015, plaintiff Brisbane worked a total of 46 hours and 30 minutes, excluding her meal periods, but was not compensated for 1 hour and 15 minutes of this recorded work time. During these weeks, plaintiff Brisbane also worked during her meal periods for which plaintiff Brisbane received no compensation.

15. Plaintiff Chivon Daniels worked as a Principal Administrative Associate I in DHS's Family Services Division and routinely works over 40 hours in a work week without receiving compensation at the rate of one and one-half times her regular rate of

pay for each hour of overtime worked over 40 hours a week. When plaintiff Daniels works over 40 hours in a week, defendant fails to properly compensate her for work performed before the official start time of her shift, after the shift officially ended, and during her meal periods. For example, during the week of March 10 to 15, 2014, plaintiff Daniels worked a total of 49 hours and 15 minutes, excluding her meal periods, but was not compensated for one hour and 15 minutes of this recorded work time. Similarly, during the week of August 3 to 9, 2014, plaintiff Daniels worked a total of 48 hours and 45 minutes, excluding her meal periods, but was not compensated for 30 minutes of this recorded work time.

16. The amounts of uncompensated work time that each Principal Administrative Associate I or II works before his or her official start time and the amount of uncompensated time that each plaintiff works at the end of each of their shifts is recorded on defendant's timekeeping system, which is called “CityTime” or “CitiTime,” as "uncompensated hours" or “noncompensable hours.” The amount of uncompensated time that each plaintiff performs during each plaintiff’s meal periods is either captured on defendant's computers on which each plaintiff Principal Administrative Associate I or II works and through other work records. Therefore, the amount of uncompensated time each plaintiff Principal Administrative Associate I or II has worked in excess of 40 hours a week can be determined through an analysis of defendant's own records and on its computers.

17. Similar to the Principal Administrative Associate I or II plaintiffs identified above, each of the other Principal Administrative Associate I or II plaintiffs who have filed consents in this case routinely work more than 40 hours in a workweek and are

denied compensation at the rate of one and one-half times their regular rate of pay for each hour of overtime worked over 40 hours a week in a workweek for work performed before the official start time of their shifts, during meal periods and after their shifts. The precise amount of uncompensated work time each Principal Administrative Associate I or II plaintiff performs can be identified through CityTime, through defendant's computers on which plaintiffs work and through other work records.

Nightshift Differential Pay, Meal Payments and the Rate At Which Overtime is Paid

18. When plaintiffs work in the evenings beyond their regular shift times, they are entitled to receive night shift differential pay of ten percent (10%) of their basic rate of pay. When plaintiffs work overtime, they are entitled to receive a meal allowance payment in various amounts based on the number of continuous overtime hours worked; this allowance is not an expense reimbursement. For example, if plaintiffs work for two continuous hours of overtime they are entitled to a meal allowance payment of $8.25 and for five continuous hours of overtime entitled to a payment of $8.75. In calculating cash overtime payments for plaintiffs, defendant fails to include night shift differential pay and so-called meal allowance payments in the regular rate of pay at which overtime is paid to the plaintiffs.

Payment of Compensatory Time at the Rate of One Hour for One Hour of Overtime Worked

19. Plaintiffs who work over 40 hours a week who work what the defendant considers to be "approved overtime" that the defendant classifies as "voluntary" are paid in compensatory time rather than cash. When the plaintiffs are paid in compensatory time rather than cash for overtime work, they are paid one hour of compensatory time

for each hour of overtime that is worked during weeks in which plaintiffs work more than 40 hours a week.

Late Payment of Overtime Worked

20. When plaintiffs are paid for overtime compensation in cash, defendant delays the payment of overtime beyond the next pay period for which the plaintiffs are paid for their regular work hours and in compensatory time for their overtime hours. The delay in payment is done either because the defendant's managerial staff has simply failed to transmit purportedly necessary information to payroll that defendant likes to have to pay overtime to plaintiffs, because defendant simply does not want to incur the cost for budgetary reasons in that particular financial quarter (e.g., when employees' pay exceeds a predetermined cap), or for other reasons that are unrelated to defendant's ability to determine the amount of overtime compensation that is owed to the plaintiffs.

COUNT I

FAILURE TO PAY OVERTIME FOR ALL HOURS PLAINTIFFS ARE SUFFERED OR PERMITTED TO WORK IN VIOLATION OF SECTION 7(a) OF THE FLSA, 29 U.S.C. § 207(a)

21. Plaintiffs hereby incorporate by reference paragraphs 1 through 20 in their entirety and restate them herein.

22. At all times material herein, during those work weeks in which the Principal Administrative Associate I or II plaintiffs have worked hours in excess of 40 hours a week, they have performed work activities without compensation before the start of their shifts and after their shifts, all of which is recorded on defendant's timekeeping system CityTime, and during their meal periods, which is recorded on their assigned computers

or through other work records. Accordingly, as a result of these pay practices, defendant has failed to provide plaintiffs with the rights and protections provided under section 7(a) of the FLSA, 29 U.S.C. § 207(a).

23. Section 207 of the FLSA requires the payment of overtime compensation to employees who work in excess of the hourly standards set forth therein. In particular, Section 207(a) requires the payment of overtime compensation at the rate of one and one-half times each employee's regular rate of pay for all hours the employees are suffered or permitted to work in excess of forty hours per week. Defendant has failed to comply with the overtime pay requirements of the FLSA in the manner outlined herein by failing to compensate plaintiffs for work that they have been suffered or permitted to work before the official start time of their shifts, during their uncompensated meal periods and after the official end time of their shifts.

24. As a result of defendant's willful and purposeful violations of the FLSA, there have become due and owing to the plaintiffs an amount that has not yet been precisely determined. The employment and work records for the plaintiffs are in the exclusive possession, custody and control of the defendant and its public agencies and the plaintiffs are unable to state at this time the exact amount owing to them. Defendant is under a duty imposed by the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to the plaintiffs from which the amount of defendant's liability can be ascertained.

25. Pursuant to 29 U.S.C. § 216(b), plaintiffs are entitled to recover liquidated damages in an amount equal to their back pay damages for the defendant's failure to pay overtime compensation.

26. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

COUNT II

FAILURE TO PROPERLY CALCULATE THE REGULAR RATE OF PAY IN VIOLATION OF SECTION 7 OF THE FLSA

27. Plaintiffs hereby incorporate by reference paragraphs 1 through 26 in their entirety and restate them herein.

28. Section 207(a) of the FLSA, 29 U.S.C. § 207(a), as well as the regulations of the U.S. Department of Labor, 29 CFR Part 778, *et seq*., require that all forms of remuneration be included in the rate at which FLSA overtime is paid, with some limited exceptions. Defendant has failed to include certain premium payments such as night shift differential pay and meal allowance payments that are made in addition to employees' regular pay in the regular rates of pay at which overtime pay is calculated for the plaintiffs as required under the law.

29. Defendant's failure to include night shift differential pay and other forms of additional compensation, such as meal allowance payments, in plaintiffs' regular rates of pay violate section 7(a) of the FLSA. 29 U.S.C. § 207(a); 29 C.F.R. § 778.207(b). The failure to include night shift differential pay and meal allowance payments in plaintiffs' regular rates means that when plaintiffs receive paid overtime for working over 40 hours a week, they are paid at a rate that is below the rate mandated by the FLSA.

30. As a result of the defendant's willful and purposeful violations of the FLSA, there have become due and owing to the plaintiffs an amount that has not yet been precisely determined. The employment and work records for the plaintiffs are in the exclusive possession, custody and control of defendant and its public agencies and the plaintiffs are unable to state at this time the exact amount owing to them. Defendant is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions to maintain and preserve payroll and other employment records with respect to the plaintiffs and other employees similarly situated from which the amount of defendant's liability can be ascertained.

31. Pursuant to 29 U.S.C. § 216(b), plaintiffs are entitled to recover liquidated damages in an amount equal to their back pay damages for the defendant's failure to pay overtime compensation.

32. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

COUNT III

FAILURE TO PAY FLSA OVERTIME IN A TIMELY MANNER BY PAYING FOR OVERTIME WEEKS OR EVEN MONTHS AFTER THE OVERTIME HAS BEEN WORKED

33. Plaintiffs hereby incorporate by reference paragraphs 1 through 32 in their entirety and restate them herein.

34. The FLSA mandates that overtime compensation be paid on the regular pay day for the period in which such workweek ends. Overtime payments under the Act may not be delayed except as reasonably necessary to compute the amount owned and in no event shall such payments be delayed beyond the next payday after such

computation can be made. 29 C.F.R. § 778.106. Defendant has violated these basic principles by delaying plaintiffs' overtime payments for working in excess of 40 hours a week by weeks and in some cases months, with such delay not being reasonably necessary to compute calculating plaintiffs' overtime pay, but rather because of a failure by management personnel to approve overtime payments or due to management withholding such payments until the next budgetary quarter.

35. Defendant's failure to pay plaintiffs FLSA overtime pay in a timely manner and its withholding of such overtime payments violates section 7(a) of the FLSA. 29 U.S.C. § 207(a); 29 C.F.R. § 778.106.

36. As a result of the defendant's willful and purposeful violations of the FLSA, there have become due and owing to the plaintiffs an amount that has not yet been precisely determined. The employment and work records for the plaintiffs are in the exclusive possession, custody and control of defendant and its public agencies and the plaintiffs are unable to state at this time the exact amount owing to them, but from these payroll records, plaintiffs will be able to ascertain the precise extent of these violations of section 7(a) of the FLSA, 29 U.S.C. § 207(a). Defendant is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions to maintain and preserve payroll and other employment records with respect to the plaintiffs and other employees similarly situated from which the amount of defendant's liability can be ascertained.

37. Pursuant to 29 U.S.C. § 216(b), plaintiffs are entitled to recover liquidated damages in an amount equal to their back pay damages for the defendant's failure to pay overtime compensation.

38. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

COUNT IV

FAILURE TO COMPLY WITH THE REQUIREMENT THAT FLSA OVERTIME BE PAID AT THE RATE OF ONE AND ONE-HALF TIMES THE PLAINTIFFS' REGULAR RATES OF PAY AND INSTEAD COMPENSATING PLAINTIFFS WITH STRAIGHT TIME, HOUR FOR HOUR COMPENSATORY TIME

39. Plaintiffs hereby incorporate by reference paragraphs 1 through 38 in their entirety and restate them herein.

40. During the times that plaintiffs have worked in excess of 40 hours in a week, defendant has mandated that all "voluntary overtime" be compensated in compensatory time. Defendant has provided compensatory time at the rate of one hour of compensatory time for each hour of "voluntary overtime" worked, and defendant has done so regardless of whether the overtime hours for which it was compensating the plaintiffs were for work in excess of 40 hours a week.

41. Section 207(o) of the FLSA, 29 U.S.C. § 207(o), permits public agency employers such as defendant to provide compensatory time in lieu of cash overtime to their employees as payment for overtime hours worked, but only provided that certain conditions are met. See 29 U.S.C. § 207(o); 29 C.F.R. §§ 553.20-28. One of the basic requirements is that employees receive compensatory time at the rate of one and one-half hours of compensatory time for each hour of overtime worked. 29 U.S.C. § 207(o)(1). Defendant has violated section 7(o) of the FLSA, 29 U.S.C. §§ 207(o) by failing and refusing to compensate plaintiffs for their overtime work at the rate of one and one-half hours of compensatory time for each overtime hour worked, and instead

compensating them at the rate of one hour of compensatory time for each hour of overtime worked.

42. As a result of the defendant's willful and purposeful violations of the FLSA, there have become due and owing to the plaintiffs an amount that has not yet been precisely determined. The employment and work records for the plaintiffs are in the exclusive possession, custody and control of defendant and its public agencies and the plaintiffs are unable to state at this time the exact amount owing to them, but from these payroll records, plaintiffs will be able to ascertain the precise extent of these violations of section 7(a) of the FLSA, 29 U.S.C. § 207(a). Defendant is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions to maintain and preserve payroll and other employment records with respect to the plaintiffs and other employees similarly situated from which the amount of defendant's liability can be ascertained.

43. Pursuant to 29 U.S.C. § 216(b), plaintiffs are entitled to recover liquidated damages in an amount equal to their back pay damages for the defendant's failure to pay overtime compensation.

44. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiffs hereby demand that their claims be tried before a jury.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray that this Court:

(a) Enter judgment declaring that the defendant has willfully and wrongfully violated their statutory obligations, and deprived each of the plaintiffs of his and her rights;

(b) Order a complete and accurate accounting of all the compensation to which the plaintiffs are entitled;

(c) Award plaintiffs monetary liquidated damages equal to their unpaid compensation;

(d) Award plaintiffs interest on their unpaid compensation;

(e) Award plaintiffs their reasonable attorneys' fees to be paid by the defendant, and the costs and disbursements of this action; and

(f) Grant such other relief as may be just and proper.

Respectfully submitted,

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