

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**PEREZ, HENRY
BASELICE, RALPH
BAYRON, JUAN
CORDERO, JERRY
EASON, RONALD
KOONCE, DONALD
ORO, JOSEPH
RIOS, RUBEN JR.
ROSADO, PEDRO
WALTHER, DEREK G. on behalf
of themselves and others similarly situated,**

Plaintiffs,

v.

**THE CITY OF NEW YORK, MICHAEL R. BLOOMBERG,
AS MAYOR and THE NEW YORK CITY DEPARTMENT
OF PARKS & RECREATION, ADRIAN BENEPE,
AS COMMISSIONER,**

Defendants.

**PROPOSED
AMENDED COMPLAINT**

ECF CASE

Civil Action No: 12 CIV 4914 AJN

JURY TRIAL DEMANDED

INTRODUCTION

Plaintiffs, Henry Perez, Ralph Baselice, Juan Bayron, Jerry Cordero, Ronald Eason, Donald Koonce, Joseph Oro, Ruben Rios, Jr., Pedro Rosado, and Derek G. Walther, by and through their attorneys, Mary J. O’Connell, General Counsel, Steven E. Sykes and Jesse Gribben, of Counsel, complaining of defendants, the City of New York ("New York City"), Michael R. Bloomberg as Mayor and the New York City Department

of Parks & Recreation Commissioner, Veronica M. White (hereinafter collectively referred to as "defendants"), state as follows:

NATURE OF ACTION

1. Plaintiffs, and others similarly situated, are and at all times material herein, have been employed by defendants in the position of Associate Urban Park Ranger at the New York City Department of Parks & Recreation.

2. Plaintiffs seek declaratory judgment, the amount of their unpaid wages, unpaid overtime, punitive damages, liquidated damages, attorneys' fees, and other relief pursuant to 29 U.S.C. § 206, 29 U.S.C. § 207, 29 U.S.C. § 216(b), and 28 U.S.C. § 1331 to remedy the defendants' willful and unlawful violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*, complained of herein.

PARTIES

3. Plaintiffs are identified in the caption of the Complaint and have given their written consent to be party plaintiffs in this action pursuant to 29 U.S.C. § 216(b). These written consent forms set forth each plaintiff's name and home address.

4. Each of the plaintiffs in this action while employed by defendants in the position of Associate Urban Park Ranger has been an "employee" within the meaning of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 203(e)(1).

5. Defendant New York City is, among other things, an incorporated municipality of the State of New York 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, and may be served with process by serving the Office of Corporation Counsel, 100 Church Street, New York, New York 10007.

6. Defendant Michael Bloomberg is the mayor of the City of New York, and is named in this action in his official capacity as mayor of the City of New York.

7. Defendant New York City Department of Parks & Recreation is a mayoral agency duly organized and existing under the New York City Charter, and is 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). The New York City Department of Parks & Recreation has its principal office located at Arsenal North, 1234 Fifth Avenue, New York, New York 10029.

8. Defendant Veronica M. White¹ is the Commissioner of the New York City Department of Parks & Recreation, and is named in this action in his official capacity as Commissioner of the New York City Department of Parks & Recreation.

JURISDICTION AND VENUE

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

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

STATEMENT OF FACTS

The Associate Urban Park Ranger Position

11. As Associate Urban Park Rangers ("AUPRs"), the plaintiffs primarily perform a public safety function which includes such tasks as patrolling City Parks and

¹ Adrian Benepe, the former Commissioner resigned from his position on or about September 4, 2012 and was replaced by Veronica M. White.

facilities; implementing crowd control strategies; enforcing compliance with City park rules, regulations, and health and sanitary codes; issuing summonses; making arrests; and providing safety and educational services to the public, among other such duties that comprise the overwhelming majority of their AUPR position. The AUPR position is the second lowest-ranking park ranger title, above that of only Urban Park Rangers (“UPRs”)

12. In the performance of their job, the plaintiff AUPRs mostly work alone on patrol in the field, or alongside a handful (between one and four) of subordinate UPRs whom plaintiffs, under the direction of a Captain, may supervise in performing the same public safety function and duties described above.

13. The plaintiffs perform their AUPR job functions at parks facilities throughout the City, including facilities in Queens (plaintiffs Perez, Baselice, Oro), The Bronx (plaintiffs Cordero, Bayron), Manhattan (plaintiffs Eason, Koonce, Walther) and, Randall’s Island (plaintiffs Rios and Rosado).

14. Plaintiffs do not qualify as exempt executive workers pursuant to 29 U.S.C.A. § 213(a)(1) because their primary duty is not management. While at times the plaintiffs direct the work of subordinate rangers, such supervision is incidental in relation to the plaintiffs’ main duties. 29 CFR § 541.3(b)(1); 29 CFR § 541.3(b)(2).

15. Each of the plaintiffs has worked in their AUPR positions for at least three years preceding the filing of the complaint herein, and some plaintiffs have been park rangers for upwards of 25 years.

Collective action

16. In addition to the named plaintiffs in this action, fifty-seven (57) other individual AUPRs have indicated their desire to opt into this case under FLSA, and their consent forms have been filed with the Clerk's Office. Upon information and belief, there exists over 100 other AUPRs who have worked for defendants during the past three years, performing the same functions as plaintiffs, and being subject to the same policies of defendants under the FLSA complained of herein.

Overtime wage treatment of AUPRs by defendants under FLSA

17. The annual base salary of an Associate Urban Park Ranger currently is \$50,529 for a 40-hour workweek. Extrapolated at an hourly rate, an AUPR earns approximately \$24.20 per hour, straight time.

18. Upon information and belief, while AUPRs formerly are time and one half for all cash overtime over 40 hours in a workweek, AUPRs has been compensated at the straight time rate, hour for hour, for all compensation leave time ("comp time") for time worked over 40 hours in a workweek.

19. Unlike UPRs who are paid time and a half for assigned overtime under the FLSA, irrespective of whether the UPR receives cash or comp tome, AUPRs are compensated by defendants at the straight time rate, hour for hour, when comp time is given for overtime t compensatory leave time ("comp time").

20. Defendants do not compensate AUPRs at all for time they spend in excess of their 40-hour workweek donning and doffing their uniforms, nor are they compensated for time spent in excess of their 40-hour workweek completing paperwork associated with their limited supervisory responsibilities.

21. Where defendants have earned comp time at the straight time rate for assigned overtime work in lieu of cash payouts, defendants have engaged in the practice of improperly converting such comp time into sick leave time at the conclusion of each fiscal year, and improperly designating such comp time as “non-FLSA” compensatory time, thereby failing to afford this earned comp time the protection of the FLSA.

22. For the past three years, the plaintiffs have each earned up to hundreds of hours’ worth of cash or comp time, paid by defendants at the straight time rate for overtime, with the exact amounts varying from individual to individual, depending upon the individual’s assignments and work locations. Upon information and belief, defendants may readily access the precise information for each plaintiff based upon defendant’s payroll and leave bank records maintained by them.

**CLAIMS FOR RELIEF FOR VIOLATIONS OF THE
FAIR LABOR STANDARDS ACT (FLSA)**

23. At all times material herein, and since at least January 2009, the plaintiffs have worked within the New York City Department of Parks and Recreation for the defendants in the position of Associate Urban Park Ranger.

24. Within the last three years while working in the position of Associate Urban Park Ranger, plaintiffs have worked in excess of forty hours per week.

25. During the times plaintiffs have worked in excess of 40 hours in a week, defendants failed to provide plaintiffs with the rights and protections provided under the FLSA. Moreover, defendants have violated the FLSA, 29 U.S.C. §§ 207(a) and (o) through such actions as (1) suffering or permitting plaintiffs to work before and after

their scheduled shifts and failing to compensate plaintiffs for such work activities (Ex. donning and doffing required uniform); (2) knowingly and willfully failing to pay plaintiffs overtime compensation when plaintiffs have worked beyond forty hours in any given workweek; (3) failing to pay the plaintiffs overtime compensation at time and a half, as opposed to straight time, when plaintiffs have worked beyond forty hours a week; (4) improperly converting plaintiffs' compensatory time off, earned in lieu of overtime compensation, into sick time at the conclusion of each fiscal year; and (5) improperly designating compensatory time as "non-FLSA" compensatory time and failing to afford this earned compensatory time the protections of the FLSA.

26. Plaintiffs hereby incorporate by reference all preceding paragraphs of this complaint and repeat the allegations set forth therein.

27. Section 206 of the FLSA requires that no less than minimum wage be paid at an hourly rate to each employee who is engaged in or employed in an enterprise engaged in commerce or in the production of goods for commerce in any workweek.

28. 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 work hours in excess of forty hours per week. Section 207(o) of the FLSA permits the limited use of compensatory time off as a substitute for cash compensation for overtime pay for public sector employees, but only under the terms and conditions prescribed by the FLSA, 29 U.S.C. § 207(o).

29. Section 207(o)(3)(A) of the FLSA provides that an employee performing a public safety activity, an emergency response activity, or a seasonal activity may not accrue more than 480 hours of compensatory time. Any employee who has accrued 480 hours shall be paid overtime compensation in cash for all additional overtime hours of work. 29 U.S.C. § 207(o)(3)(A).

30. Defendants willfully failed to compensate plaintiffs with at least the minimum wage hourly rate for the time they worked before and after their shifts, in violation of the FLSA, 29 U.S.C. § 206(a).

31. Defendants willfully failed to comply with the overtime pay requirements of the FLSA in the manners outlined herein and in particular in paragraph 15, in violation of the FLSA, 29 U.S.C. § 207.

32. By failing and refusing to pay the plaintiffs the overtime pay required under law, the defendants have violated, and are continuing to violate in a willful and intentional manner, the provisions of the FLSA. This action is brought to remedy the violations of the FLSA for the maximum period allowed under the law. At all times material herein, the plaintiffs have been unlawfully deprived of overtime compensation and other relief for the maximum statutory period allowed under federal law.

33. As a result of the defendants' willful and purposeful violations of the FLSA, the plaintiffs are entitled to recover from defendants 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 defendants, and the plaintiffs are unable to state at this time the exact amount owing to them. Defendants are under a

duty 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, from which the amount of defendants' liability can be ascertained.

34. 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 defendants' failure to pay overtime compensation. In addition, plaintiffs are entitled to an award of interest on their back pay damages until such damages are paid.

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

DEMAND FOR A JURY TRIAL

36. 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, on their own behalf and on behalf of others similarly situated, respectfully requests that this Court grant the following relief:

(a) Enter judgment declaring that the defendants have 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, including but not limited to time and one-half for a work on a 40-hour in a workweek met from which straight time was paid;


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

- (d) Award plaintiffs punitive damages consistent with the claims herein;
- (e) Award plaintiffs interest on their unpaid compensation;
- (f) Award plaintiffs their reasonable attorneys fees to be paid by the defendants, and the costs and disbursements of this action; and
- (g) Grant such other relief as may be just and proper.

Dated: September 10, 2012
New York, New York

Respectfully Submitted,

MARY J. O'CONNELL
General Counsel
District Council 37, AFSCME, AFL-CIO
Attorney for Petitioners
125 Barclay Street—Room 510
New York, NY 10007
(212) 815-1450

By: 
Steven E. Sykes (SS1637)
Senior Assistant General Counsel

By: /S/ _____
Jesse Gribben
Assistant General Counsel