

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

GEORGE KROUSTALLIS, ANTHONY ALMOJERA,
DONALD BROWNE, BARRET HIRSCH, VINCENT
VARIABLE, individually and on behalf of all other persons
similarly situated who were employed by The City of New
York Fire Department

Plaintiffs,

-against-

THE CITY OF NEW YORK, THE CITY OF NEW YORK
FIRE DEPARTMENT, Daniel A. Nigro, as Commissioner of
the New York City Fire Department,

Defendants.

CIVIL ACTION
FILE NO:

**ACTION UNDER
29 U.S.C. § 203 et seq.**

**COLLECTIVE ACTION
COMPLAINT**

Named Plaintiffs, GEORGE KROUSTALLIS, ANTHONY ALMOJERA, DONALD BROWNE, BARRET HIRSCH, and VINCENT VARIABLE, individually and on behalf of all other persons similarly situated (collectively “Plaintiffs”) who were employed by The City of New York Fire Department, The City of New York, and Daniel A. Nigro (collectively “Defendants”), by and through their attorneys, Virginia & Ambinder, LLP, allege as follows:

NATURE OF ACTION

1. This action is brought pursuant to the Fair Labor Standards Act (hereinafter referred to as “FLSA”), 29 U.S.C. §§ 207 and 216(b) to recover earned but unpaid overtime compensation owed to the Named Plaintiffs and members of the putative class for services performed while employed by Defendants.

2. Plaintiffs allege that they are entitled to declaratory judgment, back wages for unpaid overtime compensation, and other relief from Defendants for all work performed, liquidated damages pursuant to 29 U.S.C. §§ 201 et. seq., and attorneys’ fees and costs to remedy Defendants’ willful violations of the FLSA.

3. Beginning in approximately October of 2013 and continuing to the present, Defendants engaged in a policy and practice of requiring Plaintiffs to regularly work pre-shift and post-shift without compensation, depriving them of overtime compensation for hours worked in excess of forty (40) hours per week.

4. The Named Plaintiffs have initiated this action on behalf of themselves all persons similarly situated to recover the overtime compensation that they were deprived of, plus interest, damages, attorneys' fees, and costs.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the claims in this action, pursuant to the provisions of 28 U.S.C. §§ 1331, 1337, and 1343.

6. This Court has subject matter jurisdiction over Plaintiffs' claims under the FLSA, pursuant to 29 U.S.C. § 216(b).

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as the Defendants' respective principal places of business are in this district.

8. The Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

9. At all relevant times, Plaintiffs were Emergency Medical Service Specialists employed by The City of New York Fire Department, who worked as Lieutenants or Captains.

10. Each individual Plaintiff who worked for Defendants is an "employee" as contemplated by the FLSA, 29 U.S.C. § 203(e).

11. Defendant, The City of New York, is a municipal corporation duly organized and existing under the Constitution and laws of the State and City of New York.

12. Defendant, The City of New York, is a judicial entity amenable to suit under the FLSA as it is, and was at all relevant times, a public agency within the meaning of Section 3(x) of the FLSA, 29 U.S.C. §203(x).

13. Defendant, The City of New York Fire Department (“FDNY”), is an agency of the City of New York authorized and existing, pursuant to New York City Charter §§481 et seq., and the New York City Administrative Code, Title 15, §§ 15-101, et seq.

14. Defendant FDNY is an administrative division of Defendant The City of New York and is a judicial entity amenable to suit under the FLSA as it is, and was at all relevant times, a public agency within the meaning of Section 3(x) of the FLSA, 29 U.S.C. §203(x).

15. Defendant, Daniel A. Nigro, is the Commissioner of the FDNY and has the powers and duties set forth in the New York City Charter, Chapter §§ 481, et seq., and the New York City Administrative Code, Title 15, §§15-101, et seq.

16. During all times that Plaintiffs worked as SEMSS’, The City of New York, the FDNY, and Daniel A. Nigro (herein referred to collectively as “Defendants”) were all Plaintiffs’ “employer[s]” as contemplated by the FLSA, 29 U.S.C. § 203(d).

FLSA COLLECTIVE ACTION ALLEGATIONS

17. This action is properly maintainable as a collective action pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b).

18. This action is brought on behalf of Plaintiffs and a putative collective consisting of similarly situated employees who performed work or have worked for Defendants at any time since October of 2013, to the entry of judgment in this case, who were non-exempt employees within the meaning of the FLSA and who were not paid wages for work performed and who were not paid overtime wages (the “Putative Collective”).

19. Plaintiffs and the Putative Collective were non-exempt employees eligible to be paid for every hour worked including overtime compensation for those hours worked over forty in a week.

20. Plaintiffs and potential plaintiffs who elect to opt-in as part of the collective action are all victims of the Defendants' common policy and/or plan to violate the FLSA by failing to provide overtime wages at the rate of one and one half times the regular rate of pay, for all time worked in excess of forty (40) hours in any given week pursuant to 29 U.S.C. § 207.

21. As part of its regular business practice, Defendants intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and members of the Putative Collective. This policy and pattern or practice includes willfully failing to pay Plaintiffs and members of the putative collective overtime wages for hours that they worked in excess of 40 hours per workweek.

22. Plaintiffs and members of the Putative Collective all perform or performed the same primary duties.

23. Upon information and belief, Defendants uniformly apply the same employment policies, practices, and procedures to all members of the Putative Collective.

24. The Putative Collective is so numerous that joinder of all members is impracticable. Although the precise number of Putative Collective members is unknown, upon information and belief, the size of the Putative Collective is believed to be in excess of 100 individuals. In addition, the names of all potential members of the Putative Collective are not known.

25. The questions of law and fact common to the Putative Collective predominate over any questions affecting only individual members. These questions of law and fact include, but are not limited to: whether Defendants employed Plaintiffs within the meaning of the FLSA; whether

Defendants failed to pay the Plaintiffs and members of the Putative Collective their earned overtime wages, at the rate of one and one half the times the regular rate of pay, for all hours worked in excess of forty (40) hours in any given week; whether Defendants failed to pay Plaintiffs for all the hours of work performed, in violation of the FLSA and the regulations promulgated thereunder; whether Defendants' violations of the FLSA are willful as that term is used within the meaning of the FLSA; whether Defendants are liable for all damages claimed hereunder including but not limited to compensatory, punitive and statutory damages, interest, costs and disbursements and attorneys' fees; and whether Defendants should be enjoined from such violations of the FLSA in the future.

26. The claims of Plaintiffs are typical of the claims of the Putative Collective.

27. The Plaintiffs and their counsel will fairly and adequately protect the interests of the putative class. The Plaintiffs have retained counsel experienced in complex wage and hour class action litigation.

28. A collective action is superior to other available methods for the fair and efficient adjudication of this controversy. The members of the Putative Collective lack the financial resources to adequately prosecute separate lawsuits against Defendants. A collective action will also prevent unduly duplicative litigation resulting from inconsistent judgments pertaining to the Defendants' policies and practices.

FACTS

29. Plaintiffs all work for Defendants in the position of Supervising Emergency Medical Services Specialist ("SEMSS").

30. Plaintiffs, in their capacity as SEMSS' have in-house job titles of either Lieutenant or Captain.

31. SEMSS is one of the four competitive service titles within the FDNY's Emergency Medical Services Division, which also includes Emergency Medical Technician ("EMT") and Paramedic.

32. The title SEMSS is covered by the FLSA pursuant to 29 C.F.R. §541.3(b).

33. In their capacity as SEMSS' Plaintiffs supervise EMTs and Paramedics.

34. Plaintiffs' SEMSS positions as Lieutenant or Captain require the performance of EMT, Paramedic, and other duties, including but not limited to rescuing medical emergency victims by acting as first responders, transporting medical emergency victims to the hospital, conducting investigations and/or inspections for violations of law, performing surveillances, interviewing witnesses, and preparing investigative reports.

35. EMTs work in basic life support units, which consist of two individuals.

36. Paramedics work in basic advanced life support units, which consist of two Paramedics.

37. The duties of EMTs and Paramedics include working in ambulances and providing rescue services to victims of medical emergencies by acting as first responders, providing emergency treatment, and transporting medical emergency victims to hospitals within the City of New York.

38. The FDNY's Emergency Medical Services operate 24-hours per day, 7-days per week.

39. SEMSS' may be assigned to work in one of three tours so as to provide emergency medical services 24-hour, 7-day per week.

40. Plaintiffs are assigned to work in one of five divisions, each of which are located in one of the five boroughs of the City of New York.

41. There are approximately four to nine Stations in each borough.

42. Each Plaintiff who work as a Lieutenant in one of the five divisions is assigned to a station.

43. Each Plaintiff who works as a Lieutenant in a station is required to supervise both EMTs and Paramedics, and is required to monitor a unit which contains two EMTs or Paramedics.

44. Each Plaintiff who works as a Captain at a station is required to supervise Lieutenants, EMTs, and Paramedics, and is required to monitor their assigned station.

45. The duties of Lieutenants include, but are not limited to, ensuring effective operation of their assigned station, efficient response times within their unit, and safe transfer of patients; monitoring 911 call assignments; rendering appropriate emergency medical services; supervising EMS units; managing resources and operations at the site of emergency medical incidents; monitoring, inspecting, and maintaining equipment, including vehicles, supplies, and controlled substances stored at the station; investigating complaints regarding services and other incidents; preparing reports for injured employees; supervising and evaluating employee performance; and, scheduling and assigning EMS personnel to their duties and vehicles.

46. The duties of Plaintiffs who are Captains include, but are not limited to, monitoring and ensuring the efficient and safe operation of their assigned station, including the assigned EMS units; supervising Lieutenants and subordinate staff, including evaluating, directing, and guiding Lieutenants and subordinate staff to ensure compliance with FDNY policies and procedures; assessing staffing needs; administering discipline to subordinate staff in compliance with disciplinary procedures; responding to multiple casualty incidents; monitoring their assigned station's response times; and providing emergency medical services including pre-hospital care.

47. Defendants required Plaintiffs to work before and after their scheduled shift time for the purpose of being briefed by the SEMSS that they were relieving, and for briefing the SEMSS that were relieving them of their shifts.

48. The briefing consisted of reporting the status of Plaintiffs' respective stations, including

matters regarding equipment or supplies, significant events, directives or orders, and any other relevant EMS operations.

49. The briefings were approximately fifteen (15) minutes each, for a combined post and pre-shift total of approximately thirty (30) minutes per day. The length of the briefings varies depending upon the size of the station that each Plaintiff was assigned to.

50. Defendants willfully violated the FLSA by refusing to compensate Plaintiffs for all pre-shift and post-shift briefing time.

51. Throughout the relevant period, Defendants have willfully refused to recognize Plaintiffs as employees under the FLSA.

52. Throughout the relevant period, Defendants failed to compensate Plaintiffs for time Plaintiffs were required to work before and after their scheduled shifts.

53. Throughout the relevant period, Defendants have undertaken a willful policy and practice of violating the FLSA by failing to pay Plaintiffs overtime compensation for hours worked in excess of forty (40) in a given workweek.

FIRST CAUSE OF ACTION
FAIR LABOR STANDARDS ACT

54. Plaintiffs repeat and re-allege the allegations set forth in the preceding paragraphs

55. The FLSA and its implementing regulations require compensation for all work performed, including overtime compensation.

56. Defendants did not compensate Plaintiffs at the rates required by the FLSA for all work Plaintiffs performed.

57. Pursuant to the FLSA, 29 U.S.C. § 207, “no employer shall employ any of their employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods

for commerce, for a workweek longer than forty hours unless such employee receives overtime compensation for their employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.”

58. Further, pursuant to 29 U.S.C. § 203(d), an “employer” includes “any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.”

59. Plaintiffs and other members of the Putative Collective are “employees,” within the meaning contemplated in the FLSA, 29 U.S.C. § 203(e).

60. Defendants are “employer[s],” within the meaning contemplated in the FLSA, 29 U.S.C. § 203(d), and consequently, are liable for violations of the FLSA.

61. Upon information and belief, Defendants failed to pay Plaintiffs and other members of the Putative Collective all earned overtime wages, at the rate of one and one half times the regular rate of pay, for the time in which they worked after the first forty (40) hours in any given workweek.

62. The failure of Defendants to pay Plaintiffs and members of the Putative Collective their rightfully owed wages and overtime compensation was willful.

63. By the foregoing reasons, Defendants are liable to Plaintiffs and members of the Putative Collective in an amount to be determined at trial, plus liquidated damages in the amount equal to the amount of unpaid wages, interest, attorneys’ fees and costs.

WHEREFORE, the Plaintiffs demand judgment:

(1) on their first cause of action in an amount to be determined at trial, plus liquidated damages as permitted under the FLSA in the amount equal to the amount of unpaid wages,

