

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 13 2007

Civil Action No. **07 - CV - 00753** -MSK-BNB
GREGORY C. LANGHAM
CLERK

ALEXANDER L. TRUJILLO,
DAVID HENRICHSEN,
GILBERT LUCERO,
ALAN ROMAN, and
COLBY DOOLITTLE,
on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

THE CITY OF COLORADO SPRINGS,
COLORADO SPRINGS POLICE DEPARTMENT,
and RICHARD MYERS, in his capacity as the
Chief of Police,

Defendants.

COMPLAINT

1. Plaintiffs are residents of the State of Colorado, and are currently employed as sworn police officers of Defendant, City of Colorado Springs ("City").
2. The City is a home rule city under the laws of the State of Colorado and is the official governmental authority responsible for the organization, provision, management and operation of law enforcement within its jurisdiction.
3. The Colorado Springs Police Department (the "Police Department" or "CSPD") is an official department or agency of the City authorized and established to provide the City's law enforcement.
4. Richard Myers is the Chief of Police for CSPD and the City.

5. The Defendants will be referred to herein collectively as “the City”.

6. The City is an employer within the meaning of 29 U.S.C. § 203(d) and has employed the Plaintiffs and all other similarly situated police officers, within the meaning of 29 U.S.C. § 203(e), at all times relevant to this action.

Factual Background

7. Plaintiffs bring this action for a declaratory judgment, back pay for unpaid wages and unpaid overtime compensation, liquidated damages and other relief under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq. (the “FLSA”) and for breach of contract, damages and equitable relief as supplemental claims under Colorado law.

8. Under the FLSA and the Portal-to-Portal Act of 1947, 29 U.S.C. §§ 201-219, 251-262 and applicable amendments, regulations and case law, including but not limited to IBP, Inc. v. Alvarez, 126 S.Ct. 514 (2005), each covered employer, such as Defendant City, is required compensate each non-exempt employee, such as each Plaintiff, for all hours worked, including time spent performing activities that are an integral and indispensable part of the employee’s principle activities, which are suffered or permitted by the City.

9. The City’s willful violations of the FLSA include failure to properly calculate the “regular rate”, and based thereon, failure to pay overtime compensation, and failure to pay for all off-the-clock work performed by Police Officers, all in violation of 29 U.S.C. § 207.

10. The City has also failed to pay Plaintiffs and similarly situated sworn police officer employees of the City for all hours “actually worked” pursuant to the contract or quasi contract between the Plaintiffs and the City.

Jurisdiction and Venue

11. Jurisdiction over the FLSA claims are based upon 28 U.S.C. § 1337(a) and 29 U.S.C. § 207 and 216 (b). Jurisdiction to provide declaratory relief and any relief as necessary to effectuate such declaration is authorized by 28 U.S.C. § 2201 and 2202. Jurisdiction over the remaining claims is based upon 28 U.S.C. § 1367(a).

12. Venue is proper in the United States District Court for the District of Colorado pursuant to 28 U.S.C. § 1391(b).

The Plaintiffs

13. Plaintiff Alexander L. Trujillo is a resident of Colorado Springs, Colorado and has been employed as a Police Officer by the City since 1981.

14. Plaintiff David Henrichsen is a resident of Wheat Ridge, Colorado and has been employed as a Police Officer by the City since 1991.

15. Plaintiff Gilbert Lucero is a resident of Colorado Springs, Colorado and has been employed as a Police Officer by the City since 1991.

16. Plaintiff Alan Roman is a resident of Colorado Springs, Colorado and has been employed as a Police Officer by the City since 1995.

17. Plaintiff Colby Doolittle is a resident of Woodland Park, Colorado and has been employed as a Police Officer by the City since 1997.

18. At all times material hereto, Plaintiffs have served as sworn police officers of the City of Colorado Springs. Collectively, Plaintiffs have served in patrol, traffic,

motor officer, airport services and other routine and similar assignments with the Police Department.

19. Collectively, Plaintiffs have performed required police work activities during each of the current (and prior) work shifts, and work periods at most or all of the stations, substations, and other work locations served by the Police Department.

20. Collectively and individually, Plaintiffs are bound and required to comply with all of the General Orders ("GO"), Standing Operating Procedures ("SOP"), the City's "Policies and Procedures, Sworn", demands, orders, policies and work activities dictated by the Police Department and by the City; all in the same fashion and to the same degree as other past and present police officers of the City.

21. Plaintiffs and each of them are scheduled to work a forty-hour work week consisting of four (4) ten (10) hour shifts per seven (7) day period.

22. Plaintiffs have worked on other hourly shifts in the past, depending on the policies of the Police Department then in effect.

23. The City has agreed to pay police officers for "all hours actually worked."

24. The City has agreed to pay police officers their regular or "straight" pay for hours worked up to eighty (80) hours per two week period, and overtime pay thereafter.

25. Plaintiffs reasonably rely and act, and have in the past reasonably relied and acted upon the City's agreement to pay for "all hours worked", including overtime pay for all hours worked over 80 hours per each two-week period.

26. The City's policy, practice and procedure mandates the recording of compensable time in quarter-hour increments.

27. According to City policy, practice and procedure, time worked less than 7.5 minutes "should not be submitted" to payroll as time worked.

28. According to City policy, practice and procedure, time worked in excess of 7.5 minutes is to be submitted as 15 minutes.

29. Police officers, including Plaintiffs, are required, and have been required at all times material hereto, to perform a number of tasks and activities as a part of their work and job duties, and for the benefit of the City, for which they are not paid, ("off-the-clock work").

30. The City and/or CSPD routinely discourages the Plaintiffs and similarly situated police officers from submitting requests for overtime compensation or overtime slips for compensation for the off-the-clock work activities described herein.

31. The City and/or CSPD has engaged in a pattern and/or practice of encouraging Plaintiffs and similarly situated police officers to work off-the-clock and not to report all of the time they work.

32. CSPD orders and requires police officers to complete work tasks and assignments that that it knows or should know the police officers cannot complete within their scheduled shift hours.

33. The City and/or CSPD knows or should have known that the Plaintiffs and similarly situated police officers have in the past and are presently working off-the-clock by virtue of the fact that (a) it requires work and assignments that cannot be completed during the regular 10-hour shift; (b) its supervisors have been present in, and have knowledge of, situations where off-the-clock work was occurring; (c) it discourages

officers from submitting overtime requests or slips; and (d) the Police Department has been understaffed.

34. The off-the-clock work performed by police officers, including Plaintiffs, includes the following work:

(a) donning and doffing of specialized protective gear (e.g., bullet proof vest, Sam Browne utility belt, belt keepers);

(b) donning, doffing, inspecting and affixing required specialized police equipment to the Sam Browne belt and uniform (e.g., firearms, weapons, handcuffs, radio, and flashlight);

(c) check out and return of specialized equipment (e.g., taser unit, rifle, less-lethal shotgun, etc.);

(d) administrative work, including review and response to work-related voice-mail and e-mail communications;

(e) vehicle inspection, preparation, loading, unloading, cleaning, washing and fueling;

(f) reading and reviewing written departmental communications, typically disseminated via departmental e-mail;

(g) completion of case reports, filing case reports, evidence disposition, review and response to police department communications and advisories;

(h) inspecting, maintaining and charging battery operated equipment; and

(i) inspecting, cleaning and maintaining specialized protective gear, firearms, and other mandatory police equipment, and uniform maintenance.

35. The City and CSPD have issued General Orders and Standard Operating Procedures requiring that all police officers perform these activities as part of their work.

36. Police officers are required to complete all of the off-the-clock work and are subject to disciplinary action if not completed.

37. The off-the-clock work required of police officers are principal activities or are an integral and indispensable part of the principal work activities of the job of a police officer.

38. The off-the-clock work totals and reasonably requires approximately four (4) hours per week, or seven (7) day period, from each police officer.

Collective Action Allegations

39. Plaintiffs are similarly situated to the other police officer employees of Defendant City, identified herein as "the Class", within the meaning of 29 U.S.C. § 216 (b).

40. Plaintiffs bring this action on their own behalf and on behalf of all such other similarly situated police officers, past and present.

Class Action Allegations

41. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all current and former Police Officers of the City of Colorado Springs who have been required to work "off-the-clock", and/or who have not received all due overtime compensation (the "Class").

42. The City/Police Department employs approximately 400 sworn police officers who perform off-the-clock work and who have not been paid all due overtime

compensation. A substantial, but unknown number of former officers also performed off-the-clock work and were not paid all due overtime compensation.

43. As such, the members of the Class are so numerous that joinder of all members is impracticable.

44. As is set forth in detail herein, there are questions of law and/or fact which are common to the Class.

45. The claims of the Plaintiffs are typical of the claims of members of the Class. The Plaintiffs are all sworn police officers, who, like members of the Class, have been required to perform off-the-clock work and who have not been paid all due overtime compensation. The off-the-clock work performed by the Plaintiffs is substantially the same as, or the same as those performed by the members of the Class.

46. The Class representatives will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel competent in complex, and multi-party litigation, and with past class action experience.

47. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

48. The City has acted or refused to act on grounds generally applicable to the Class, making declaratory relief appropriate with respect to the Class as a whole.

49. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members. As a result, a class

action is superior to other available methods for the just and efficient adjudication of the controversy.

**First Claim for Relief
(For Violation of the FLSA – Off-the-Clock Work)**

50. Plaintiffs incorporate the allegations of paragraphs 1 through 49.

51. Defendants have, for a period of more than three (3) years prior to the filing of this action, and continuing, required police officers to perform off-the-clock work without pay.

52. Defendant's past and present actions constitute a violation of 29 U.S.C. § 207.

53. Defendants have required police officers to perform off-the-clock work without pay with knowledge that such actions are/were in violation of the Fair Labor Standards Act. The Defendants' acts are therefore willful, within the meaning of 29 U.S.C. § 255 (a).

54. Plaintiffs, and those similarly situated, have been damaged by Defendants' acts.

WHEREFORE, Plaintiffs pray as hereinafter set forth.

**Second Claim for Relief
(For Violation of the FLSA –
Improper Calculation of the Regular Rate and Underpayment of Overtime)**

55. Plaintiffs incorporate the allegations of paragraphs 1 through 55.

56. The Defendants are required to include all remuneration in calculating the FLSA "regular rate" as an initial step before calculating the overtime rate, which is to be one and one-half times the regular rate.

57. The Defendants willfully fail to properly calculate the “regular rate” required by 29 U.S.C. § 207(e) because they do not include all remuneration paid to, or on behalf of the Plaintiffs or other similarly situated police officers, including but not limited to shift differential pay, longevity pay or annual uniform allowance, and hazardous duty pay.

58. By failing to properly calculate the “regular rate”, Defendants have paid overtime rates that are lower than required by the FLSA under 29 U.S.C. § 207 and 29 CFR Part 778.

59. The Defendants knew or should have known that their method of calculating the “regular rate” and paying a lower overtime rate than required by the FLSA violated the law.

60. Plaintiffs, and those similarly situated, have been damaged by Defendants’ actions.

WHEREFORE, Plaintiffs pray as hereinafter set forth.

**Third Claim for Relief
(Breach of Contract)**

61. Plaintiffs incorporate the allegations of paragraphs 1 through 60.

62. Plaintiffs and Class Members were offered employment on terms and conditions set forth in Defendant’s Policies and Procedures and Standard Operating Procedures.

63. Defendants have agreed to pay Plaintiffs and Class members for all hours actually worked.

64. Defendants have not paid Plaintiffs and Class members for all hours actually worked.

65. Defendants have not paid all overtime compensation due to Plaintiffs and Class Members.

66. Defendants' actions constitute a breach of the contracts with Plaintiffs and the Class members, all to their damage.

WHEREFORE, Plaintiffs pray as is hereinafter set forth.

**Fourth Claim for Relief
(Promissory Estoppel)**

67. Plaintiffs incorporate the allegations of paragraphs 1 through 66.

68. Defendants should have reasonably expected Plaintiffs and Class Members to consider its Policies and Procedures and Standard Operating Procedures regarding payment for all work performed as a commitment to abide thereby.

69. Plaintiffs and Class Members reasonably relied on the Defendants' Policies and Procedures and Standard Operating Procedures to their detriment.

70. Injustice can only be avoided by enforcement of Defendants' commitment that its police officers be paid for all hours worked.

WHEREFORE, Plaintiffs pray as hereinafter set forth.

**Fifth Claim for Relief
(Implied Contract)**

71. Plaintiffs incorporate the allegations of paragraphs 1 through 70.

72. Plaintiffs and Class Members rendered services to and for the benefit of Defendants.

73. Plaintiffs and Class Members did so with the reasonable expectation that Defendants would pay the reasonable value of such services.

74. Defendants requested and accepted the services expecting to pay for them, or under such circumstances that Defendants reasonably should have known that Plaintiffs and Class Members expected to be paid.

75. Defendants are liable to Plaintiffs and Class Members for the reasonable value of such services.

WHEREFORE, Plaintiffs pray as hereinafter set forth.

**Sixth Claim for Relief
(Unjust Enrichment)**

76. Plaintiffs incorporate the allegations of paragraphs 1 through 75.

77. Plaintiffs and Class Members conferred a benefit upon Defendants.

78. Defendants appreciated or realized such benefit.

79. Defendants accepted the benefit under such circumstances that it would be inequitable for Defendants to retain the benefit without payment of its value.

WHEREFORE, Plaintiffs pray as hereinafter set forth.

**Seventh Claim for Relief
(Declaratory Judgment)**

80. Plaintiffs incorporate the allegations of paragraphs 1 through 79.

81. Defendants have willfully violated their obligations under the FLSA by not paying Plaintiffs for all work performed including all off-the-clock work.

82. Defendants have willfully failed to properly calculate the "regular rate" as required by the FLSA which has resulted in underpayment of overtime compensation owed to the Plaintiffs.

WHEREFORE, Plaintiffs respectfully pray for relief from the Court as follows:

A. To certify this action to be a Collective Action pursuant to 29 U.S.C. § 216 (b);

- B. To certify this action to be a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- C. For compensatory and statutory damages and relief, including unpaid overtime compensation and an additional equal amount as liquidated damages as set forth in 29 U.S.C. § 216(b);
- D. For an award of costs and reasonable attorney's fees;
- E. For prejudgment and post-judgment interest;
- F. For the entry of a declaratory judgment that the Defendants have willfully and wrongfully violated their obligations under the FLSA by not paying Plaintiffs for all work performed including all off-the-clock work and by willfully failing to properly calculate the "regular rate" as required by the FLSA which has resulted in underpayment of overtime compensation owed to the Plaintiffs;
- G. For such other relief as the Court finds equitable, just and proper.

Plaintiffs demand a jury trial.

DATED this 12th day of April, 2007.

Respectfully submitted,

SPARKS WILLSON BORGES
BRANDT & JOHNSON, P.C.

By s/Scott W. Johnson
Scott W. Johnson
Paul W. Hurcomb
P.O. Box 1678 (80901)
24 South Weber, Suite 400
Colorado Springs, CO 80903
(719) 475-0097
Fax: (719) 633-8477
E-Mail: swjohns@sparkswillson.com
pwhurcomb@sparkswillson.com

Attorneys for Plaintiffs