

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 07-CV-00541-RPM-CBS

NICK ROGERS,
AL ARCHULETA,
WILFRED BELIVEAU,
HARRY BLOODWORTH,
MICHAEL CODY,
TIMOTHY DELSORDO,
CORY DUNAHUE,
RUSSELL DYMOND, JR.,
ROBERT FREUND,
MICHAEL GABRIELE,
PAUL GOFF,
ALEXANDER M. GOLSTON,
JEFFREY MARTINEZ,
MICHAEL MOSCO,
PHILLIP NEWTON, and
ANDREW RAMIREZ,

Plaintiffs,

v.

CITY AND COUNTY OF DENVER, a Colorado Municipal Corporation,

Defendant.

PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DAMAGES

COME NOW the Plaintiffs, by and through counsel, Gary Messing, of Carroll, Burdick & McDonough, LLP, Will Aitchison, of Aitchison & Vick, Inc., Alison Berry Wilkinson and Matthew George, of Rains, Lucia & Wilkinson, LLP, and David L. Worstell and Robert W. Kiesnowski, Jr., of Worstell & Kiesnowski, who respectfully

submit the following Plaintiffs' First Amended Complaint for Damages. As grounds therefor, it is alleged as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Nick Rogers is a natural person, citizen of the State of Colorado, a resident of the City of Denver, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Detective in District 4.

2. Plaintiff Al Archuleta is a natural person, citizen of the State of Colorado, a resident of the City of Brighton, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Instructor at the Denver Police Academy.

3. Plaintiff Wilfred Beliveau is a natural person, citizen of the State of Colorado, a resident of the City of Denver, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Police Officer at the Information Desk.

4. Plaintiff Harry Bloodworth is a natural person, citizen of the State of Colorado, a resident of the City of Englewood, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Technician at Juvenile Intake.

5. Plaintiff Michael Cody is a natural person, citizen of the State of Colorado, a resident of the City of Denver, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Corporal/Police Officer at District 2.

6. Plaintiff Cory Dunahue is a natural person, citizen of the State of Colorado, a resident of the City of Byers, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Patrol Officer in the Traffic Division.

7. Plaintiff Russell Dymond, Jr. is a natural person, citizen of the State of Colorado, a resident of the City of Brighton, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Patrol Officer in Special Operations.

8. Plaintiff Robert Freund is a natural person, citizen of the State of Colorado, a resident of the City of Denver, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Detective in Special Operations.

9. Plaintiff Michael Gabriele is a natural person, citizen of the State of Colorado, a resident of the City of Wheat Ridge, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver

Police Department currently assigned to the job classification of Patrol Officer at District 4.

10. Plaintiff Paul Goff is a natural person, citizen of the State of Colorado, a resident of the City of Denver, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Patrol Officer at District 6.

11. Plaintiff Alexander M. Golston is a natural person, citizen of the State of Colorado, a resident of the City of Aurora, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Patrol Officer in District 3.

12. Plaintiff Jeffrey Martinez is a natural person, citizen of the State of Colorado, a resident of the City of Denver, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Sergeant at the Internal Affairs Bureau.

13. Plaintiff Michael Mosco is a natural person, citizen of the State of Colorado, a resident of the City of Arvada, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Sergeant in the Patrol Division.

14. Plaintiff Phillip Newton is a natural person, citizen of the State of Colorado, a resident of the City of Denver, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police

Department currently assigned to the job classification of Sergeant in the Property Bureau.

15. Plaintiff Timonthy Delsordo is a natural person, citizen of the State of Colorado, a resident of the City of Westminster, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Police Officer in District 5.

16. Plaintiff Andrew Ramirez is a natural person, citizen of the State of Colorado, a resident of the City of Denver, and at all times material hereto was employed by Defendant City and County of Denver as a classified member of the Denver Police Department currently assigned to the job classification of Technician in the Metro SWAT division.

17. Defendant City and County of Denver at all times material hereto, was and is a home rule municipal corporation organized and existing under the laws of the State of Colorado, specifically, Article XX of the Colorado Constitution.

18. Jurisdiction in this Court is conferred pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

19. In addition to the named Plaintiffs, all other similarly situated persons—those being, all persons employed by Defendant City and County of Denver as classified members of the Denver Police Department, are members of the Plaintiff class. This claim is maintained as a collective action under, and pursuant to, the statutory requirements of the Fair Labor Standards Act (hereinafter “FLSA”), 29 U.S.C. § 216(b).

Attached hereto and incorporated herein by reference as Plaintiffs' Exhibit 1, are consent forms for the applicable class members as required by 29 U.S.C. § 216(b).

20. Defendant City and County of Denver is, and at all times material hereto was, a public agency within the meaning of 29 U.S.C. § 203(x).

21. Defendant City and County of Denver is, and at all times material hereto was, engaged in related activities performed through unified operation or common control for a common business purpose in conjunction with the activities of a public agency. Defendant City and County of Denver is, and at all times material hereto was, an enterprise within the meaning of 29 U.S.C. § 203(r).

22. Defendant City and County of Denver is, and at all times material hereto was, an enterprise engaged in commerce or production of goods for commerce within the meaning of Section 29 U.S.C. § 203(s)(1)(c).

GENERAL ALLEGATIONS

23. Plaintiffs incorporate herein by reference all of the preceding paragraphs of this pleading as if they were set forth here verbatim.

24. Defendant City and County of Denver has failed to compensate Plaintiffs, and similarly situated employees, for the time it takes to don and doff uniforms and required protective/safety gear, as those activities are integral and indispensable to the primary duties of law enforcement required of Plaintiffs and similarly situated employees.

25. Defendant City and County and Denver has failed to compensate Plaintiffs, and similarly situated employees, for the time spent complying with Department policies regarding the cleaning and maintenance of required uniforms,

protective/safety gear, and Department issued firearms, which are work activities that are integral and indispensable to the primary duties of law enforcement required of Plaintiffs and similarly situated employees.

26. Defendant City and County and Denver has failed to compensate Plaintiffs, and similarly situated employees, for the time it takes to comply with Department policies regarding the cleaning and maintenance of Department issued vehicles, which are work activities that are integral and indispensable to the primary duties of law enforcement required of Plaintiffs and similarly situated employees.

27. Defendant City and County of Denver requires Plaintiffs, and similarly situated employees, assigned to specialty units within the Denver Police Department, including, but not limited to, the Crimes Against Persons and Homicide Units, to perform mandatory work activities integral and indispensable to the primary duties of employees assigned to those specialty units, prior to, and after, their regular duty hours for which they are not compensated.

28. Defendant City and County of Denver requires Plaintiffs, and other similarly situated employees, assigned to specialty units within the Denver Police Department, including, but not limited to, the Crimes Against Persons and Homicide Units, to be placed on standby status, in excess of their regular duty hours for which they are not compensated.

29. Defendant City and County of Denver requires Plaintiffs, and other similarly situated employees, to perform work, including, but not limited to, reading and responding to work related emails, report writing, and reading Police Department bulletins, prior to, and after, their regular duty hours for which they are not compensated.

Such work is integral and indispensable to the primary duties of law enforcement performed by Plaintiffs and similarly situated employees.

30. Defendant City and County of Denver provides Plaintiffs, and similarly situated employees, with 18 days of sick leave per calendar year.

31. Defendant City and County of Denver limits the accrual of unused sick leave for Plaintiffs, and similarly situated employees, to a maximum of 90 days.

32. Defendant City and County of Denver requires that Plaintiffs, and similarly situated employees, to either take compensated time off for each unused sick day that would accrue above the 90 day maximum, or to accept compensation for any unused sick day so that the employee will not accrue more than 90 days of unused sick leave.

33. Defendant City and County of Denver has failed to properly include, among other things, compensation for shift differentials and premium pay within the “regular rate” of pay for overtime compensation, as that term is defined by Section 207(e) of the FLSA.

34. Defendant City and County of Denver has failed to compensate Plaintiffs and similarly situated employees in a timely manner by delaying the payment of compensation for overtime worked until a time after the pay period during which the Plaintiff should have been compensated.

35. Defendant City and County of Denver has routinely denied Plaintiffs and other similarly situated employees the use of earned compensatory time off without providing a proper basis for the denial.

FIRST CLAIM FOR RELIEF

(Violation of Fair Labor Standards Act-Failure to Pay Overtime for Donning and Doffing Protective/Safety Gear)

36. Plaintiffs incorporate herein by reference all of the preceding paragraphs of this pleading as if they were set forth here verbatim.

37. Defendant City and County of Denver has willfully violated, and is willfully violating, the overtime compensation provisions of 29 U.S.C. § 207 by employing some or all of the named Plaintiffs and other similarly situated employees in an enterprise engaged in commerce or in the production of goods for commerce, for work weeks longer than the applicable maximum weekly hours established by § 207 of the FLSA, without timely compensating the named Plaintiffs, and all other similarly situated employees, for the time spent donning and doffing required uniforms and safety/protective gear in excess of the above-described hours at rates not less than one and one-half times their regular rates of pay.

SECOND CLAIM FOR RELIEF

(Violation of Fair Labor Standards Act-Failure to Pay Overtime for Cleaning/Maintaining Uniforms, Protective Gear and Department Issued Firearms)

38. Plaintiffs incorporate herein by reference all of the preceding paragraphs of this pleading as if they were set forth here verbatim.

39. Defendant City and County of Denver has willfully violated, and is willfully violating, the overtime compensation provisions of 29 U.S.C. § 207 by employing some or all of the named Plaintiffs and other similarly situated employees in an enterprise engaged in commerce or in the production of goods for commerce, for work weeks longer than the applicable maximum weekly hours established by § 207 of the FLSA, without timely compensating the named Plaintiffs, and all other similarly situated

employees, for the time spent cleaning and maintaining required uniforms, protective/safety gear, and Department issued firearms in excess of the above-described hours at rates not less than one and one-half times their regular rates of pay.

THIRD CLAIM FOR RELIEF

(Violation of Fair Labor Standards Act-Failure to Pay Overtime for Cleaning/Maintaining Department Vehicles)

40. Plaintiffs incorporate herein by reference all of the preceding paragraphs of this pleading as if they were set forth here verbatim.

41. Defendant City and County of Denver has willfully violated, and is willfully violating, the overtime compensation provisions of 29 U.S.C. § 207 by employing some or all of the named Plaintiffs and other similarly situated employees in an enterprise engaged in commerce or in the production of goods for commerce, for work weeks longer than the applicable maximum weekly hours established by § 207 of the FLSA, without timely compensating the named Plaintiffs and all other similarly situated employees for the cleaning and maintenance of Department owned vehicles in excess of the above-described hours at rates not less than one and one-half times their regular rates of pay.

FOURTH CLAIM FOR RELIEF

(Violation of Fair Labor Standards Act-Failure to Pay Overtime for Work Performed Before and After Shift)

42. Plaintiffs incorporate herein by reference all of the preceding paragraphs of this pleading as if they were set forth here verbatim.

43. Defendant City and County of Denver has willfully violated, and is willfully violating, the overtime compensation provisions of 29 U.S.C. § 207 by employing some or all of the named Plaintiffs and other similarly situated employees in

an enterprise engaged in commerce or in the production of goods for commerce, for work weeks longer than the applicable maximum weekly hours established by § 207 of the FLSA, without timely compensating the named Plaintiffs and all other similarly situated employees for work performed prior to, and after, the regularly scheduled shift hours, including, but not limited to, the reading of and responding to work-related emails, report writing, and the reading of Department bulletins in excess of the above-described hours at rates not less than one and one-half times their regular rates of pay.

FIFTH CLAIM FOR RELIEF

(Violation of Fair Labor Standards Act-Failure to Pay Overtime)

44. Plaintiffs incorporate herein by reference all of the preceding paragraphs of this pleading as if they were set forth here verbatim.

45. Defendant City and County of Denver has willfully violated, and is willfully violating, of 29 U.S.C. § 207 by employing some or all of the named Plaintiffs, and other similarly situated employees, assigned to specialty units within the Denver Police Department, including, but not limited to, the Crimes Against Persons and Homicide Units, to perform mandatory work relating to those specialty assignments, without providing them compensation for overtime hours worked during work weeks longer than the applicable maximum weekly hours established by § 207 of the FLSA.

SIXTH CLAIM FOR RELIEF

(Violation of Fair Labor Standards Act-Failure to Pay Overtime When on Restricted or Standby Status)

46. Plaintiffs incorporate herein by reference all of the preceding paragraphs of this pleading as if they were set forth here verbatim.

47. Defendant City and County of Denver has willfully violated, and is willfully violating, of 29 U.S.C. § 207 by employing some or all of the named Plaintiffs,

and other similarly situated employees, assigned to specialty units within the Denver Police Department, including, but not limited to, the Crimes Against Persons and Homicide Units, to perform work, by placing them on restrictive standby status, without providing them compensation for overtime hours worked during work weeks longer than the applicable maximum weekly hours established by § 207 of the FLSA.

SEVENTH CLAIM FOR RELIEF

(Violation of Fair Labor Standards Act-Untimely Payment of Overtime)

48. Plaintiffs incorporate herein by reference all of the preceding paragraphs of this pleading as if they were set forth here verbatim.

49. Defendant City and County of Denver has willfully violated, and is willfully violating, the requirements of 29 U.S.C. § 201, et seq., by employing some or all of the named Plaintiffs, and other similarly situated employees, in an enterprise engaged in commerce or in the production of goods for commerce, by unlawfully delaying payment of compensation for overtime hours worked during work weeks longer than the applicable maximum weekly hours established by § 207 of the FLSA.

EIGHTH CLAIM FOR RELIEF

(Violation of Fair Labor Standards Act-Improper Calculation of Overtime Pay and Unused Sick Time)

50. Plaintiffs incorporate herein by reference all of the preceding paragraphs of this pleading as if they were set forth here verbatim.

51. Defendant City and County of Denver has willfully violated, and is willfully violating, the overtime compensation provisions of 29 U.S.C. § 207 by employing some or all of the named Plaintiffs and other similarly situated employees without compensating them by failing to properly calculate the “regular rate” of pay for overtime purposes as that term is defined by Section 207(e) of the FLSA, and by failing

to include within the regular rate of pay, compensation for unused sick-leave paid to the employee in the event that the employee would accrue more than 90 days of unused sick leave.

NINTH CLAIM FOR RELIEF

(Violation of Fair Labor Standards Act-Improper Calculation Overtime Pay Associated with Shift Differentials and Premium Pay)

52. Plaintiffs incorporate herein by reference all of the preceding paragraphs of this pleading as if they were set forth here verbatim.

53. Defendant City and County of Denver has willfully violated, and is willfully violating, the overtime compensation provisions of 29 U.S.C. § 207 by employing some or all of the named Plaintiffs and other similarly situated employees without compensating them by failing to properly calculate the “regular rate” of pay for overtime purposes, as that term is defined by Section 207(e) of the FLSA, by failing to include all shift differentials and premium pay within the regular rate of pay.

TENTH CLAIM FOR RELIEF

(Violation of Fair Labor Standards Act-Denial of Compensatory Time Off)

54. Plaintiffs incorporate herein by reference all of the preceding paragraphs of this pleading as if they were set forth here verbatim.

55. Defendant City and County of Denver has willfully violated, and is willfully violating, the provisions of 29 U.S.C. § 207(o) by denying some or all of the named Plaintiffs and other similarly situated employees their right to use accumulated compensatory time off, even when the requested use of compensatory time off would not “unduly disrupt” the operations of the Denver Police Department.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that judgment be entered in their favor and against Defendant City and County of Denver; that Plaintiffs be paid all unpaid overtime compensation found due as a result of Defendant's violation of Section 207 of the FLSA, plus an additional, equal amount as liquidated damages; that Defendant be required to pay Plaintiffs' reasonable attorney fees and costs of this action; that Plaintiffs be awarded interest both pre-judgment and post-judgment until the date of satisfaction; and for such other and further relief that this Court deems just and appropriate under the circumstances.

Respectfully submitted this 18th day of May, 2007.

/S/Gary Messing

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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on May 18, 2007, I presented the foregoing **PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DAMAGES** to the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following e-mail addresses:

gmessing@cbmlaw.com
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and I hereby certify that on May 18, 2007, I mailed a true and correct copy of the foregoing **PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DAMAGES** postage prepaid in the United States Mail addressed to the following:

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