

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JAMES C. ANDERSON, ROBERT DAVIS and  
DAVID C. RACKMYRE,

Plaintiffs,

**COMPLAINT**

v.

Civil Action No. 1:19-cv-1241 (TJM/TWD)

CITY OF GLOVERSVILLE,

Defendant.

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Plaintiffs, by their attorneys, The Tuttle Law Firm, by James B. Tuttle, Esq. of Counsel,  
for their complaint, respectfully allege as follows:

**JURISDICTION AND VENUE**

1. Plaintiffs bring this action to recover unpaid overtime compensation and other relief under the provisions of the Fair Labor Standards Act of 1938, as amended 29 USC §201-219, hereafter “the Act”.
2. Jurisdiction of this action is conferred upon this Court by Section 16(b) of the Act, 29 USC §216(b), and by 28 USC §§1331, 1337, and 1367.
3. Venue of this action is established in this Court by section 16(b) of the Act, 29 USC §216(b) and by 28 USC §1391(b).
4. All plaintiffs are residents of the Northern District of New York, and prior to their retirement were employees of the defendant.
5. Plaintiff James C. Anderson retired from his employment with the Defendant on October 13, 2018

6. Plaintiff Robert Davis retired from his employment with the Defendant on August 23, 2018.

7. Plaintiff David C. Rackmyre retired from his employment with the Defendant on September 16, 2018.

8. Pursuant to 29 USC §§ 216(b) and 256, plaintiffs have executed and hereby file with the Court their consent in writing to become parties plaintiff in this action, which are appended hereto. They bring this action on behalf of themselves and others similarly situated pursuant to the authority of 29 USCA §216.

9. Defendant's office and place of business is located within the Northern District of New York in Gloversville, New York

#### **FIRST CLAIM FOR RELIEF**

10. Defendant is a political subdivision of the State of New York operating, among other departments, a Fire Department which employed all of the plaintiffs prior to their retirement.

11. At all times relevant, defendant was and is a public agency, and therefore, is an employer as defined by section 3(d) of the Act, 29 USC §203(d).

12. Plaintiffs were employees of the defendant subject to the civil service laws of New York State as defined by Section 3(e) of the Act, 29 USC §203(e).

13. Under Section 7 of the Act, employees covered by the Act are entitled to overtime compensation at the rate of one and one-half times their regular rate of pay for all hours worked in excess of forty hours per workweek, except as otherwise provided in Section 7 of the Act, 29 USC §207.

14. Section 29 USCA §207(K) entitled “Employment by Public Agency Engaged in Fire Protection or Law Enforcement Activities” provides as follows:

No public agency shall be deemed to have violated subsection (a) with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if –

- (1) In a work period of 28 consecutive days the employee receives four tours of duty which in the aggregate exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) [29 USCS §213 note] in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975; or
- (2) In the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives four tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 216 hours (or if lower, the number of hours referred to in clause (B) of paragraph (1)) bears to 28 days, compensation at a rate not less than one and one-half times the regular rate at which he is employed.

15. The regulations promulgated by the United States Department of Labor and appearing at 29 CFR 553.230 provides at subpart (c) thereof that for firefighters with a work period of seven days, overtime compensation in premium pay (or compensatory time) is required for all hours worked in excess of fifty-three hours per work period.

16. During all applicable statutory time periods, the collective bargaining agreements governing the plaintiffs’ terms and conditions of employment defined the work period as an average of 40 hours per week (i.e.: a 7 day work period) and specifically provided for compensatory time off.

17. During all applicable time periods, the collective bargaining agreements between the Plaintiffs and the Defendants provided that hours devoted to training, public awareness and certain other firefighter duties would be paid for via compensatory time off.

18. Said collective bargaining agreements also provided that comp time could be accumulated and, if not used, paid for in cash at the rate of pay in force on the date of termination of employment, but that the amount of comp time redeemable in cash at the time of retirement was limited to 100 hours.

19. During the applicable statutory time periods, plaintiffs were required to work, and did work, in excess of fifty-three hours per work period without receiving compensation for such excess hours at a rate of one and one-half times the regular rate at which plaintiffs were employed.

20. During the applicable statutory time periods, all of the plaintiffs employed as firefighters were required to and did work in excess of fifty-three hours per work period and were awarded compensatory time off for such overtime hours, but they were credited with compensatory time at straight time rather than at one and one-half times the hours worked in excess of 53 hours per work period as required under §7 of the Act.

21. The working of such unpaid overtime hours was required by defendant as a condition of plaintiffs' employment and was worked with full knowledge and approval of defendant.

22. The failure of defendant to credit the plaintiffs with comp time at one and one-half times the number of hours worked in excess of 53 hours per work period is a violation of the Act. Such violation is redressable by plaintiffs under Section 16(b) of the Act, 29 USC §216(b).



23. The plaintiffs all retired with far more than 100 hours of comp time, even when incorrectly recorded at straight time as aforesaid.

24. Plaintiff David Rackmyre has been paid for 100 hours of his comp time at straight time, but is still owed 50% of that amount to correct for the fact that it was recorded at straight time instead of time and one half, and he is still owed for the remainder of his unpaid accumulated comp time, after correcting for its improper recording at straight time, at his rate of pay at the time of his retirement.

25. Plaintiffs Anderson and Davis have not been paid for any of their accumulated comp time and are entitled to a recalculation of their time at time and one-half hours worked in excess of 53 per pay period and to be paid for the recalculated hours at their rate of pay at the time of their retirements.

26. Defendant therefore is liable to plaintiffs in the amount of plaintiffs' unpaid overtime compensation and an additional equal amount as liquidated damages, and for reasonable attorney's fees, together with the costs and disbursements of this action, all as provided in Section 16(b) of the Act, 29 USC § 216(b).

27. The employment and work records for plaintiffs are in the possession, custody and control of the defendant, and plaintiffs are unable to state precisely at this time the exact amounts owing to them. The defendant is under a duty imposed by 29 USC § 211(c) and the applicable regulations of the United States Department of Labor to maintain and preserve payroll and other employment records with respect to plaintiffs from which the amount of defendant's liability can be ascertained.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs request the Court to grant the following relief:

(a) Judgment determining that defendant has violated plaintiffs' statutory right and entitlement to be paid overtime as required by federal law;

(b) An order for a complete and accurate accounting of all the compensation to which plaintiffs are entitled under the Fair Labor Standards act and their Collective Bargaining Agreement, including a recalculation of their accumulated comp time at one and one-half the number of hours actually worked in excess of 53 hours per work period and a calculation of the amount due to each of them by multiplying the recalculated amount of comp time hours for each plaintiff by their hourly rate of pay at the date of the termination of their employment;

(c) Judgment against the defendant awarding plaintiffs monetary damages in the form of unpaid overtime compensation and an additional amount as liquidated damages equal to the unpaid overtime compensation, and pre- and post-judgment interest;

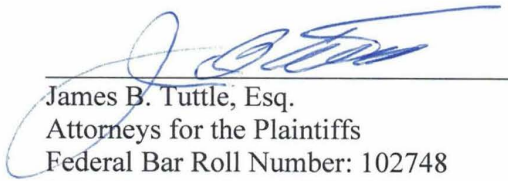
(d) Reasonable attorney's fees; and

(e) The costs and disbursements of this action, together with such other and further relief as the Court deems proper.

Dated: October 8, 2019

Respectfully submitted,

THE TUTTLE LAW FIRM



James B. Tuttle, Esq.  
Attorneys for the Plaintiffs  
Federal Bar Roll Number: 102748  
1520 Crescent Road, Suite 300  
Clifton Park, New York 12065  
(518) 783-1001

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

JAMES C. ANDERSON, ROBERT DAVIS and  
DAVID C. RACKMYRE,

Plaintiffs,

**CONSENT TO BECOME  
PARTY PLAINTIFF IN FLSA  
ACTION**

v.

Civil Action No. 1:19-cv-1241 (TJM/TWD)

CITY OF GLOVERSVILLE,

Defendant.

---

The undersigned employee or former employee hereby gives his consent to become a party plaintiff in this Court action seeking overtime pay and other relief under the Fair Labor Standards Act in accordance with a confidential retainer agreement executed by the undersigned for such purpose.

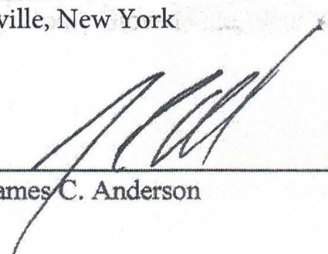
Name: James C. Anderson

Home Address: Gloversville, New York

Social Security No.: XXX-XX-7118

Employment Address: Gloversville, New York

Dated: September 14, 2019

  
\_\_\_\_\_  
James C. Anderson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JAMES C. ANDERSON, ROBERT DAVIS and  
DAVID C. RACKMYRE,

Plaintiffs,

v.

**CONSENT TO BECOME  
PARTY PLAINTIFF IN FLSA  
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CITY OF GLOVERSVILLE,


Defendant.

---

The undersigned employee or former employee hereby gives his consent to become a party plaintiff in this Court action seeking overtime pay and other relief under the Fair Labor Standards Act in accordance with a confidential retainer agreement executed by the undersigned for such purpose.

|                      |                        |
|----------------------|------------------------|
| Name:                | Robert Davis           |
| Home Address:        | Gloversville, New York |
| Social Security No.: | XXX-XX-3200            |
| Employment Address:  | Gloversville, New York |

Dated: September 17, 2019

  
\_\_\_\_\_  
Robert Davis



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

JAMES C. ANDERSON, ROBERT DAVIS and  
DAVID C. RACKMYRE,

Plaintiffs,

v.

**CONSENT TO BECOME  
PARTY PLAINTIFF IN FLSA  
ACTION**

Civil Action No. 1:19-cv-1241 (TJM/TWD)

CITY OF GLOVERSVILLE,

Defendant.

The undersigned employee or former employee hereby gives his consent to become a party plaintiff in this Court action seeking overtime pay and other relief under the Fair Labor Standards Act in accordance with a confidential retainer agreement executed by the undersigned for such purpose.

Name: David C. Rackmyre, Jr.

Home Address: St. Johnsville, New York

Social Security No.: XXX-XX-3568

Employment Address: Gloversville, New York

Dated: September 16, 2019

  
\_\_\_\_\_  
David C. Rackmyre, Jr.

## CIVIL COVER SHEET

1:19-cv-1241

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

James C. Anderson, Robert Davis and David C. Rackmyre,

(b) County of Residence of First Listed Plaintiff Fulton

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James B. Tuttle, Esq.

The Tuttle Law Firm

1520 Crescent Road, Suite 300, Clifton Park, NY 12065

**DEFENDANTS**

City of Gloversville

County of Residence of First Listed Defendant Fis:tpm

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

| CONTRACT  | TORTS  | FORFEITURE/PENALTY   | BANKRUPTCY   | OTHER STATUTES  |   |
|---|--|--|--|---|---|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><b>LABOR</b><br><input checked="" type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 USC Section 201-219

Brief description of cause:

violation of statutory right and entitlement to be paid overtime as required by federal law

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ to be determined by jury

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

October 8, 2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

\$400.00

APPLYING IFP

JUDGE

TJM

MAG. JUDGE

TWD

ANYNDC-4900586