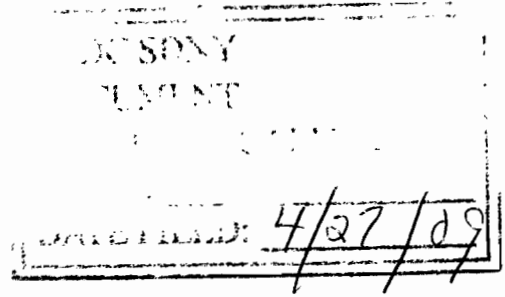


**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**



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**KEENAN M. SCOTT, et al.,**

**Plaintiffs,**

**- against -**

**CITY OF NEW YORK and THE NEW  
YORK CITY POLICE DEPARTMENT,**

**Defendants.**  
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**MEMORANDUM  
OPINION & ORDER**

**02 Civ. 9530 (SAS)**

**SHIRA A. SCHEINDLIN, U.S.D.J.:**

**I. INTRODUCTION AND BACKGROUND**

Over fifteen thousand current and former New York City police officers and detectives (“plaintiffs”) assert that the City of New York and the New York City Police Department (“NYPD”) (collectively “defendants”) systematically violate plaintiffs’ overtime rights under the Fair Labor Standards Act (“FLSA”).<sup>1</sup> This lawsuit addresses the policies and practices of the nation’s largest police department, and plaintiffs claim hundreds of millions of dollars in damages based on defendants’ alleged failures concerning the accrual, use, and payment of

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<sup>1</sup> 29 U.S.C. §§ 201-219.

overtime. This Court must now address whether defendants may be relieved from the FLSA’s liquidated damages provision on account of a good faith attempt to comply with the statute.

Plaintiffs brought five claims. Two are relevant to this motion. *First*, plaintiffs claim that some regular work schedules contain overtime, for which they are not compensated (the “chart” claim).<sup>2</sup> *Second*, plaintiffs claim that defendants improperly exclude shift differentials and longevity pay when calculating FLSA overtime rates (the “regular rate” claim).<sup>3</sup>

In August, 2008, this Court granted summary judgment to plaintiffs concerning both of these claims.<sup>4</sup> In November, this Court conducted a jury trial concerning liability on the remaining claims and on whether defendants’ violation of the chart claim and the regular rate claim was willful. The jury concluded that defendants had willfully violated plaintiffs’ FLSA rights concerning the chart claim and the regular rate claim.<sup>5</sup> The jury further found that defendants had not

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<sup>2</sup> See Amended Complaint ¶¶ 22-31.

<sup>3</sup> See *id.* ¶¶ 32-35.

<sup>4</sup> See *Scott v. City of New York*, 592 F. Supp. 2d 386, 409 (S.D.N.Y. 2008).

<sup>5</sup> See Trial Transcript (“Tr.”) at 2430-2431.

violated the FLSA with regard to the remaining claims.<sup>6</sup>

## II. APPLICABLE LAW

“Any employer who violates [the FLSA’s overtime provisions] shall be liable to the employee or employees affected in the amount of . . . their unpaid overtime compensation . . . and in an additional equal amount as liquidated damages.”<sup>7</sup> However,

if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the [FLSA], the court may, in its sound discretion, award no liquidated damages or [a reduced award].<sup>8</sup>

“Under 29 U.S.C. § 260, the employer bears the burden of establishing, by ‘plain and substantial’ evidence, subjective good faith and objective reasonableness.”<sup>9</sup>

“The burden . . . ‘is a difficult one to meet, however, and [d]ouble damages are the norm, single damages the exception.’”<sup>10</sup> Where the evidence “is sufficient to

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<sup>6</sup> See *id.* at 2429, 2431-2432.

<sup>7</sup> 29 U.S.C. § 216(b).

<sup>8</sup> *Id.* § 260.

<sup>9</sup> *Reich v. Southern N.E. Telecomm. Corp.*, 121 F.3d 58, 71 (2d Cir. 1997) (quoting *Martin v. Cooper Elec. Supply Co.*, 940 F.2d 896, 907 (3d Cir. 1991)).

<sup>10</sup> *Id.* (quoting *Brock v. Wilamowsky*, 833 F.2d 11, 19 (2d Cir. 1987)).

support the jury’s finding of reckless or willful violation,” “the resulting compensatory award should be doubled pursuant to the Fair Labor Standards Act’s liquidated damages provision.”<sup>11</sup>

### III. DISCUSSION

If this Court were free to determine independently whether defendants acted in good faith, I would address evidence presented at trial concerning defendants’ consultation of in-house lawyers and outside counsel, along with other compliance efforts.<sup>12</sup> However, the Second Circuit has squarely held – along with the majority of other Circuits<sup>13</sup> – that a district court may not find good faith after a jury has concluded that the employer willfully violated the FLSA.<sup>14</sup> Therefore, I decline to find that defendants acted in good faith and hold

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<sup>11</sup> *Pollis v. New School for Social Research*, 132 F.3d 115, 120 (2d Cir. 1997) (citing, *inter alia*, *EEOC v. Detroit Health Dep’t*, 920 F.2d 355, 358 (6th Cir. 1990)).

<sup>12</sup> *See, e.g.*, Tr. 1789-1791.

<sup>13</sup> *See Alvarez-Perez v. Sanford-Orlando Kennel Club, Inc.*, 515 F.3d 1150, 1166 (11th Cir. 2008) (finding that the mandatory liquidated damages rule “puts us on what appears to be the majority side of the circuit split on this issue”) (citing, *inter alia*, *Pollis*, 132 F.3d at 120).

<sup>14</sup> This inquiry is necessary to determine the applicable statute of limitations. Although the default statute of limitations for a FLSA claim is two years, upon a finding of willfulness the limitations period is extended to three years. *See* 29 U.S.C. § 255(a).

that plaintiffs are entitled to liquidated damages in equal amount to compensatory damages resulting from the chart claim and the regular rate claim.

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Shira A. Scheindlin', written over a horizontal line.

Shira A. Scheindlin  
U.S.D.J.

Dated:       New York, New York  
              April 24, 2009

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