

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

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LAWRENCE TOMSCHA, LATANYA HARRISON, PETER  
D. DAVIS, JONATHAN PHILLIPS, CRYSTAL CUFFEE,  
and PRISCILLA ROSARIO,

Case No.: \_\_\_\_\_

Plaintiffs,

-against-

DENISE TURNER ROTH, Administrator, THE GENERAL  
SERVICES ADMINISTRATION, Agency,

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF  
AND PETITION FOR  
WRIT OF MANDAMUS**

Defendants.  
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Plaintiffs, Lawrence Tomscha, Latanya Harrison, Peter D. Davis, Jonathan Phillips, Crystal Cuffee and Priscilla Rosario, by and through their attorney, Jesse C. Rose, Esq. of The Rose Law Group PLLC, hereby bring this action against the Defendant, the General Services Administration, upon information and belief, as follows:

**NATURE OF THE CASE**

1. Plaintiff seeks Declaratory Judgment that Defendant's actions are against the law and for an injunction prohibiting the entering into a lease for the General Services Administration to take up space at the One World Trade Center and for a Writ of Mandamus Ordering the General Services Administration to perform their duties and follow the statutes codified in 41 U.S.C. § 253 and 40 U.S.C. § 585.
2. Plaintiffs further seek review of the Defendant's actions under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*

**JURISDICTION AND VENUE**

3. Jurisdiction of this Court is proper under the Declaratory Judgment Act, 28 U.S.C. §

2201, the Mandamus Act, 28 U.S.C. § 1361, the Administrative Procedure Act, 5 U.S.C. § 701 *et seq* and based on the federal questions presented herein under 28 U.S.C. § 1331. Jurisdiction is also valid due to the Federal Government being a party to this action.

4. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) based upon the location of the property and lease at issue.

**ALLEGATIONS SPECIFIC TO EACH PARTY**

*a. Larry Tomscha*

5. That at all times relevant hereto, Plaintiff Lawrence Tomscha (“Tomscha”) was a resident of the State of New York and the New York County.
6. Plaintiff Tomscha was first hired as a federal employee on September 22, 1982 as a pipe fitter working for the General Services Administration. In or around 1987 Plaintiff Tomscha was made a contract specialist.
7. In or around 1988 Plaintiff Tomscha became president of the local union representing GSA employees.
8. Since the inception of his employment, Plaintiff Tomscha has worked out of 26 Federal Plaza, a federally owned and managed building located in Manhattan, New York.
9. On September 11, 2001, Plaintiff Tomscha went to the World Trade Center buildings after the first plane hit to check on his employees.
10. After the second plane hit Plaintiff Tomscha returned to 26 Federal Plaza, fearful for his life and those of the employees he represented.
11. Since that day Plaintiff Tomscha has recurring fears whenever he sees low flying planes.
12. Plaintiff Tomscha is fearful of working in the Freedom Tower due to it being a target for terrorists.

*b. Latanya Harrison*

13. That at all times relevant hereto, Plaintiff Latanya Harrison (“Harrison”) was a resident of the State of New York and Kings County.
14. Plaintiff Harrison began working in or around January of 1989 as a Clerk Typist, GS3.
15. Since then, Plaintiff Harrison has received numerous promotions and is currently a Contracting Officer, GS12.
16. When Plaintiff Harrison first started she worked out of CMCC in Brooklyn, New York and in 1994 was moved to 26 Federal Plaza where she has remained since then.
17. Currently, Plaintiff Harrison works out of her own cubicle with a dedicated work space.
18. In the new space, Plaintiff Harrison will not have her own dedicated space which will make it more difficult to perform her work as she uses her current work space to store projects between work days as well as personal belongings which make the workplace more comfortable such as a sweater and personal heater.
19. In the new space this will be impossible as she will have to reserve space on a day to day basis and remove each of those items at the end of each day.
20. This will make Plaintiff Harrison less efficient and affects her work environment in a negative way.

*c. Peter D. Davis*

21. That at all times relevant hereto, Plaintiff Peter D. Davis (“Davis”) was a resident of the State of New York and Westchester County.
22. Plaintiff Davis has worked for the General Services Administration since 1992. He started as a marketing specialist and has received step increases and various awards, including Regional Marketing Professional of the Year Award for the Northeast and

Caribbean Region 2.

23. He currently holds the title of small business specialist and works out of 26 Federal Plaza.
24. Plaintiff Davis has been informed by management within the General Services Administration that he will be moved with others to the One World Trade Center offices in January of 2016.
25. Plaintiff Davis suffers from vertigo and a fear of heights.
26. He believes that the move will result in significant exacerbation of his vertigo and fear of heights.
27. Plaintiff Davis also believes that the One World Trade Center is a terrorist target and evacuation of the building would be severely difficult for him due to his vertigo and fear of heights. The fact that the proposed offices are on the fifty-fifth floor further would make evacuation difficult if not impossible due to limitations in his ability to walk down such a significant number of stairs.
28. The new space is not as spacious or beneficial for Plaintiff Davis as his work area is expected to be significantly smaller than the space he currently enjoys.
29. Additionally, the space does not offer private work areas as 26 Federal Plaza currently offers. Rather, each employee will be forced to share workspace with others and reserve a workspace each time they come into work.
30. Upon information and belief, this is the same for all employees within Plaintiff Davis's department who have been informed they will be moved.

*d. Jonathan Phillips*

31. That at all times relevant hereto, Plaintiff Jonathan Phillips ("Phillips") was a resident of the State of New York and Kings County.

32. Plaintiff Phillips first began working for the General Services Administration as a student aid in 1980.
33. Plaintiff Phillips has worked for the General Services Administration continuously until the present and now holds the position of contracting officer.
34. He also holds the title of Vice President for the union which represents General Service Administration employees.
35. Plaintiff Phillips currently works out of 26 Federal Plaza.
36. Plaintiff Phillips was informed in or around May of 2015 that his office will be moved to the One World Trade Center building in the near future.
37. Plaintiff Phillips is fearful that the One World Trade Center will be targeted by terrorists.
38. Plaintiff Phillips suffers from high blood pressure and the stress associated with moving to the One World Trade Center may cause problems with his health.
39. Plaintiff Phillips' new office will not provide him a private work space and his dedicated space will be significantly smaller.
40. The move will effect Plaintiff Phillips' ability to perform his job due to the lack of privacy and the lack of space.
41. This move does not benefit Plaintiff Phillips.
42. Additionally, the union has not been informed if they will be provided space in the same location as the members making representation difficult.

*e. Crystal Cuffee*

43. That at all times relevant hereto, Plaintiff Crystal Cuffee ("Cuffee") was a resident of the State of New York and Bronx County.
44. Plaintiff Cuffee began working for the General Services Administration in or around

1988 as a Clerk Typist. Plaintiff Cuffee has remained employed by the General Services Administration from that time until the present.

45. She is currently a contracting officer. Plaintiff Cuffee's office is presently located at 26 Federal Plaza.
46. In or around April of 2015, Plaintiff Cuffee was told that her office would be moved to the One World Trade Center.
47. While in her present office, Plaintiff Cuffee has a dedicated workspace that offers some privacy, at One World Trade Center she will not have a dedicated work space and her work area will be open with little or no privacy.
48. At 26 Federal Plaza there is a gym offered to employees while in the new location there is no gym or similar amenity.
49. Plaintiff Cuffee is scared that the One World Trade Center will be a terrorist target in the future.

*f. Priscilla Rosario*

50. That at all times relevant hereto, Plaintiff Priscilla Rosario ("Rosario") was a resident of the State of New Jersey and the Hudson County.
51. Plaintiff Rosario started working for Defendant GSA in 1998 in a secretarial position.
52. Since that time she has received two (2) separate promotions and currently holds the title of Program Analyst.
53. Since the beginning of her employment with Defendant GSA she has worked at 26 Federal Plaza.
54. Plaintiff Rosario was working downtown on September 11, 2001 and required therapy after the events due to her proximity and the effect that event had on her.

55. Plaintiff Rosario was first informed of the decision to move her office to the One World Trade Center in or around the beginning of 2015.
56. Plaintiff Rosario is fearful for her safety and has experienced severe trepidation as she contemplates the proposed move to the One World Trade Center.
57. Plaintiff Rosario has sought therapy again due to the proposed move for the first time since soon after the September 11, 2001 terrorist attacks.
58. Plaintiff Rosario lost her God-Father during the attacks on the World Trade Center on September 11, 2001.
59. In her current office Plaintiff Rosario has her own dedicated work space, however, once she is moved to the One World Trade Center she will share space with all other employees and be required to use temporary space whenever she works in the office.
60. Upon information and belief, the space she will have available for use will be significantly smaller which will make her daily duties more difficult to perform.
61. Further, upon information and belief, while she currently is allocated a two monitor system which facilitates her work she will only have a one monitor system. Upon information and belief, while at 26 Federal Plaza there is a designated employee cafeteria, at the One World Trade Center site there is no designated employee cafeteria.

*g. General Services Administration*

62. That at all times relevant hereto, Defendant General Services Administration (“GSA”) is a federal agency with offices located at 26 Federal Plaza.
63. A majority of the decisions referenced herein took place while Daniel Tangherlini was Administrator.
64. However, in or around August of 2015, Denise Turner Roth was confirmed as

Administrator for Defendant GSA.

65. That at all times relevant hereto, Plaintiffs were employed by Defendant GSA.

**MATERIAL FACTS**

66. Existing at 26 Federal Plaza is a building which is owned and operated by the Federal Government. Within that building exists numerous floors which are designated as offices for Defendant GSA's employees.
67. Many of Defendant GSA's employees working at 26 Federal Plaza have worked for Defendant GSA for more than fifteen years and were present in lower Manhattan during September 11, 2001 when the 1 and 2 World Trade Center Towers (the "Towers") were destroyed in a terrorist attack.
68. After the attacks, from April 27, 2006 until May 10, 2013 a new building, referred to as One World Trade Center was constructed in the vicinity of where the Towers had stood.
69. One World Trade Center is owned by the Port Authority of New York and New Jersey and the Durst Organization.
70. Upon information and belief, the One World Trade Center is a target for terrorists who see it as a symbol of the United States economic interests.
71. In or around July of 2012, Defendant GSA entered into an agreement to lease six levels of One World Trade Center.
72. Upon information and belief, Defendant GSA intends to move its employees from 26 Federal Plaza to the One World Trade Center space which it leased.
73. Upon information and belief, Defendant GSA failed to take any bids for any needed space in lower Manhattan to house Defendant GSA's employees.
74. Upon information and belief, the term of the lease is twenty years.

75. Upon information and belief, the cost of the lease is 351 million dollars to tax payers.
76. Upon information and belief, GSA has failed to obtain approval from the United States Congress to enter into the lease which is required by statute.
77. Upon information and belief, leasing this space is entirely unnecessary as there is currently vacant space within 26 Federal Plaza which could be utilized.
78. Upon information and belief, by moving Defendant GSA's employees to One World Trade Center Defendant GSA has undertaken significant unnecessary expense that provides no substantive benefit to Defendant GSA that is not currently provided at a lower cost.
79. Upon information and belief, the change of office space for Plaintiffs will be materially adverse.
80. Upon information and belief, each Plaintiff will have less work space available to them and their work environment will be negatively affected by the move.
81. Upon information and belief, numerous other agencies, including but not limited to the Army Corp of Engineers and EEOC, refused to move to the One World Trade Center due to the same or similar reasons that Plaintiffs object to the move.
82. Upon information and belief, the lease at the One World Trade Center was entered into due to political reasons and not for the benefit of Defendant GSA or Defendant GSA's employees, including Plaintiffs.
83. Upon information and belief, Defendant GSA entered into this lease without obtaining appropriate consent or proceeding through the required processes such as congressional review which is required for leases of this size, a review as required by Executive Order 11988, and numerous internal directives to prevent waste and abuse in government.

84. While Plaintiffs are required, in securing any lease for the Federal Government, to proceed under these directives, executive Orders and other regulations, the lease at the One World Trade Center was entered into without those same processes.
85. Each Plaintiffs' life will significantly change for the worse due to this proposed move.
86. Each Plaintiff pays taxes and those monies are being wasted by the decision to enter into the lease at One World Trade Center as there is available, federally owned space which will otherwise not be used.
87. Upon information and belief, the lease at One World Trade Center is not in the interest of the Federal Government.
88. Upon information and belief, the lease at One World Trade Center is not necessary for the accommodation of a federal agency as there is existing space available at less cost to the Federal Government.

**AS A FIRST CAUSE OF ACTION  
FOR DECLARATORY JUDGMENT AND  
INJUNCTION PURSUANT TO 28 U.S.C. § 2201 et seq**

89. Under 41 U.S.C. § 253(a) Defendant GSA “(A) Shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this subchapter and the Federal Acquisition Regulation; and (B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.” 41 U.S.C. § 253(a)(1)(A)-(B).
90. Further, “(2) In determining the competitive procedures appropriate under the circumstance, an executive agency
  - (A) shall solicit sealed bids if—
    - (i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about

their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; and

(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

91. Defendant GSA failed to use a competitive procedure in procuring this lease.
92. By failing to utilize the procedure required by the law Plaintiffs have been damaged in their standing as citizens and taxpayers of the United States.
93. Plaintiffs have standing as employees of Defendant GSA.
94. Plaintiffs demand a declaratory judgment and injunction finding that Defendant GSA violated this law in entering into the lease at the One World Trade Center.

**AS A SECOND CAUSE OF ACTION  
FOR WRIT OF MANDAMUS PURSUANT TO 28 U.S.C. § 1361**

95. Under 41 U.S.C. § 253(a) Defendant GSA “(A) Shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this subchapter and the Federal Acquisition Regulation; and (B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.” 41 U.S.C. § 253(a)(1)(A)-(B).
96. Further, “(2) In determining the competitive procedures appropriate under the circumstance, an executive agency

(A) shall solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about

their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; and

(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

97. Defendant GSA failed to use a competitive procedure in procuring this lease.
98. Plaintiffs petition the Court to issue a writ of mandamus ordering Defendant GSA to engage in a competitive procedure prior to entering into a lease for additional space.

**AS A THIRD CAUSE OF ACTION  
FOR DECLARATORY JUDGMENT AND  
INJUNCTION PURSUANT TO 28 U.S.C. § 2201 et seq**

99. 40 U.S.C. § 585 states that “The Administrator of General Services may enter into a lease agreement with a person, copartnership, corporation, or other public or private entity for the accommodation of a federal agency in a building (or improvement) which is in existence or being erected by the lessor to accommodate the federal agency. The Administrator may assign and reassign the leased space to a federal agency.” 40 U.S.C. § 585(a)(1).
100. Further, “A lease agreement under this subsection shall be on terms the Administrator considers to be in the interest of the Federal Government and necessary for the accommodation of the federal agency.” 40 U.S.C. § 585(a)(2).
101. Defendant GSA entered into a lease which was not in the interest of the Federal Government and was not necessary for the accommodation of a federal agency.
102. By entering into a lease which is not in the interest of the Federal Government and which

is not necessary for the accommodation of a federal agency, Plaintiffs have been damaged in their standing as citizens and taxpayers of the United States.

103. Plaintiffs have standing as employees of Defendant GSA.

104. Plaintiffs demand a declaratory judgment and injunction finding that Defendant GSA violated this law in entering into the lease at the One World Trade Center.

**AS A FOURTH CAUSE OF ACTION  
FOR INJUNCTION PURSUANT TO 5. U.S.C. § 701 et seq**

105. The Administrative Procedure Act authorizes this Court to “decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall –...

(2) hold unlawful and set aside agency action, findings, and conclusions found to be –

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

106. Defendant GSA has abused its discretion, acted not in accordance with law, exceeded their statutory authority, acted without observance of procedure required by law, and was

further unwarranted by the facts.

107. As such, the Court should set aside the decision of Defendant GSA to enter into the leased space at One World Trade Center.

108. Further, the Court should set aside the decision to move Plaintiffs offices to the One World Trade Center.

**WHEREFORE**, Plaintiffs respectfully request a writ and judgment against the Defendant:

- A. Declaring that Defendant violated 41 U.S.C. § 253(a) and 40 U.S.C. § 585;
- B. Setting aside Defendant's decision to enter into a lease at One World Trade Center and move Plaintiffs' offices to that site;
- C. Enjoining Defendant from entering into the lease described herein;
- D. Issuing a writ of mandamus ordering Defendant to proceed under the policies and procedures required by law as described by 41 U.S.C. § 253(a);
- E. Reviewing the administrative decision utilized in entering into the lease described herein pursuant to the Administrative Procedure Act, 5 U.S.C. § 701 et seq; and,
- F. Awarding Plaintiffs' attorneys' fees, costs, and expenses incurred in the prosecution of the action.

Dated: Astoria, New York  
September 16, 2015

By:



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