

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

2015 OCT -7 P 12:39

<p>JON J. MARTE and MELISSA R. WARD, individually and on behalf of others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>GENERAL DYNAMICS INFORMATION TECHNOLOGY, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p>Civil Action No. <u>15-cv-01297</u> TSE/TCB</p> <p style="text-align: center;">JURY TRIAL DEMANDED</p>
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U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

COLLECTIVE COMPLAINT

COME NOW Plaintiffs Jon J. Marte and Melissa R. Ward (collectively "Plaintiffs"), by counsel, on behalf of themselves and others similarly situated, and state as follows for their Collective Complaint against General Dynamics Information Technology, Inc. ("GDIT" or "Defendant").

NATURE OF THE CASE

1. Plaintiffs are former employees of GDIT. This proceeding seeks unpaid overtime for Plaintiffs and others similarly situated under federal laws that establish the payment scheme for work performed for an employer in excess of 40 hours per week.

2. Plaintiffs bring this action against GDIT to redress GDIT's violation of its statutory obligation to pay Plaintiffs overtime compensation, in an amount equal to one-and-a-half times the rate of regular pay ("Premium Wages"), for hours over 40 worked in a single workweek, pursuant to 29 U.S.C. § 207(a). Specifically, GDIT willfully and purposefully

misclassified Plaintiffs as “exempt” employees to circumvent the statutory obligation to pay overtime wages.

3. Count One encompasses individual claims pursuant to which Plaintiffs seek to recover unpaid compensation and liquidated damages under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, as amended (“FLSA”). The relief sought is back pay in the form of wages and overtime wages, monetary damages, liquidated damages, interest, costs, reasonable attorneys’ fees, and other relief available as a result of GDIT’s commonly applied policy and practice of misclassifying Plaintiffs and other similarly situated employees as exempt and failing to pay them overtime wages, in violation of the FLSA.

4. Count Two is a Collective Action claim pursuant to which Plaintiffs seek to recover unpaid compensation and liquidated damages for themselves and other similarly situated employees under the FLSA. The relief sought is back pay in the form of wages and overtime wages, monetary damages, liquidated damages, interest, costs, reasonable attorneys’ fees, and other relief available as a result of GDIT’s commonly applied policy and practice of misclassifying Plaintiffs and other similarly situated employees as exempt and failing to pay them overtime wages, in violation of the FLSA.

5. Upon information and belief, for at least three years prior to the filing of this Complaint, Defendant willfully and intentionally committed the widespread violations of the FLSA.

JURISDICTION, VENUE, AND STATUTE OF LIMITATIONS

6. This Court has subject matter jurisdiction over the causes of action alleged in this Complaint pursuant to 28 U.S.C. § 1331 because this is an action based on violations of the FLSA, 29 U.S.C. §§ 201 *et seq.*

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1).

8. This Complaint is filed within the statute of limitations provided by 29 U.S.C. § 255, which provides that a civil complaint must be filed within three years of a willful violation of the FLSA.

PARTIES

9. Defendant is a corporation organized and existing under the laws of the State of Virginia with its principal place of business in Fairfax, Virginia and, among other services, provides information technology support to governments and corporations throughout the United States, including federal government agencies in Virginia, Maryland, Massachusetts, and the District of Columbia.

10. Defendant is an “employer” within the meaning of 29 U.S.C. § 203(d).

11. Defendant operates and controls an enterprise engaged in commerce, with an annual gross volume of business exceeding \$500,000.00 in each year during Plaintiffs’ employment.

12. Plaintiffs were employed by Defendant and worked throughout the United States, including at on-site offices located in the District of Columbia and Massachusetts.

13. By bringing this action, Plaintiffs consent to participate in an action under the FLSA.

14. Plaintiffs bring this action on behalf of themselves and others similarly situated under the collective action provisions of the FLSA set forth in 29 U.S.C. § 216(b). Such other similarly situated individuals are former employees of GDIT who were employed as information technology (“IT”) services staff, including technicians, analysts, support analysts, customer support analysts, and desktop technicians (“IT Services Positions”) and who were improperly

classified as “exempt” by GDIT. The term “Collective Action Members,” as used in this Complaint, refers to all putative members of the collective action pursuant to 29 U.S.C. § 216 (b) and is defined in Paragraph 30 below.

FACTUAL ALLEGATIONS COMMON TO BOTH CAUSES OF ACTION

15. During all times pertinent hereto, Defendant employed Plaintiffs and Collective Action Members as Help Desk Specialists assigned to provide services pursuant to GDIT’s federal government contract with the Department of Homeland Security (“DHS”), United States Citizenship and Immigration Service (“USCIS”). Plaintiffs and Collective Action Members’ duties included attending to the Help Desk’s phone lines and email, as well as assisting with any necessary IT support, such as creating user accounts and email accounts, setting up printers, software installments, physically installing computers in their designated locations, and day-to-day desk-side help desk support to users. While working for GDIT under the DHS contract, Plaintiffs and Collective Action Members’ positions were improperly classified as “exempt” for FLSA purposes.

16. Plaintiffs and Collective Action Members did not hold any supervisory duties or responsibilities.

17. Plaintiffs and Collective Action Members did not have the ability to exercise discretion or independent judgment.

18. At no time during Plaintiffs and Collective Action Members’ employment with GDIT did they perform work duties that would make them exempt from the overtime requirements of the FLSA.

19. Plaintiffs and Collective Action Members frequently worked over 40 hours per workweek and were required to inform their supervisors when they did so.

20. At all relevant times herein, GDIT controlled the work schedules, duties, protocols, assignments, and conditions of employment of Plaintiffs and Collective Action Members.

21. At all relevant times herein, GDIT set and determined Plaintiffs and Collective Action Members' rates and methods of pay.

22. Although Plaintiffs and Collective Action Members regularly worked in excess of 40 hours per work week, at no time while they were working in the DHS positions were Plaintiffs and Collective Action Members paid Premium Wages for the overtime hours they worked.

23. Plaintiffs and Collective Action Members did not qualify as exempt employees, as defined by the applicable federal regulations.

24. GDIT's failure to pay overtime compensation, including Premium Wages in violation of the FLSA as alleged herein, has been willful, arbitrary, unreasonable, and/or in bad faith.

25. Beginning at least three years ago and continuing thereafter, Plaintiffs and Collective Action Members worked in the manner described above and were improperly compensated in the manner described above.

26. GDIT's wrongful acts and/or omissions, as alleged herein, were not made in good faith or in conformity with or in reliance on any written administrative regulation, order, ruling, approval, or interpretation by the United States Department of Labor.

27. As a result of the foregoing, Plaintiffs and Collective Action Members were illegally deprived of overtime compensation earned, including Premium Wages, in amounts to be determined at trial and are entitled to recovery of such amounts, liquidated damages, pre-

judgment interest, costs, reasonable attorneys' fees, and other relief pursuant to 29 U.S.C. § 216(b).

FLSA COLLECTIVE ACTION ALLEGATIONS

28. Plaintiffs file this FLSA collective action pursuant to 29 U.S.C. § 216(b) as representative Plaintiffs on behalf of themselves and all other similarly situated employees who were affected by the actions, policies, and procedures of GDIT as described herein.

29. Plaintiffs each consent to become party Plaintiffs in this FLSA collective action pursuant to 29 U.S.C. § 216(b). *See* Plaintiffs' Consent to Become Party to Collective Action Under 29 U.S.C. § 216, filed contemporaneously herein.

30. Members of the FLSA collective action, referred to herein as Collective Action Members, are defined as follows: All current or former employees of GDIT who were employed as information technology services staff, including technicians, help desk specialists, analysts, support analysts, customer support analysts, and desktop technicians ("IT Services Positions") throughout the United States and/or on all federal government contracts wherever they were performed during the applicable statutory period through March 15, 2015, and who were misclassified as exempt and not paid overtime for all hours worked in excess of 40 hours in a work week.

31. Plaintiffs reserve the right to amend the definition of Collective Action Members consistent with information obtained through discovery.

32. This is an appropriate collective or representative action under the FLSA, 29 U.S.C. § 216(b), because Plaintiffs and Collective Action Members are similarly situated in that they were all subject to GDIT's common plan or practice of misclassifying Plaintiffs' work as

exempt to avoid GDIT's statutory obligation to pay overtime compensation, including Premium Wages for non-exempt work in excess of 40 hours per week.

33. Plaintiffs and Collective Action Members have all been subjected to GDIT's willful and intentional violation of its statutory obligation to pay overtime wages, including Premium Wages to all non-exempt employees for all hours worked in excess of 40 per week.

34. Collective Action Members are so numerous that joinder of all members is impractical, if not impossible, and a collective action is the only available method for the fair and efficient adjudication of this controversy which, upon information and belief, involves more than 350 individuals.

35. Plaintiffs and Collective Action Members share a community of interests in that there are numerous common questions of fact and law that predominate over any questions and issues solely affecting individual members. As such, a collective action is superior to other methods for the fair and efficient adjudication of the controversy.

36. Questions of fact and law common to the FLSA collective action that predominate over any questions affecting only individual members include:

- (a) Whether GDIT violated the FLSA by failing to pay overtime, including Premium Wages for all hours in excess of 40 hours in a work week, to Plaintiffs and Collective Action Members who are or have been employed in IT Services Positions throughout the United States and/or on all federal government contracts wherever they were performed;
- (b) Whether Collective Action Members qualify for exemption under the FLSA;
- (c) Whether GDIT attempted to contravene the FLSA by classifying Collective Action Members as exempt when their work was non-exempt under the law; and

(d) Whether GDIT's acts or omissions were willful, arbitrary, unreasonable, and/or in bad faith.

37. This litigation is properly brought as a collective action because Plaintiffs' claims are typical of the claims of the Collective Action Members. Like all Collective Action Members, Plaintiffs sustained pecuniary loss as a result of GDIT's common course of conduct, described above, in violation of the FLSA.

38. Because the damages suffered by the individual class members, while not inconsequential, may be relatively small, should separate actions be brought or be required of each individual Collective Action Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants and would create the risk of inconsistent rulings, which might be dispositive of the interests of other class members who are not parties to the adjudication and/or might substantially impede their ability to adequately protect their interests.

39. Plaintiffs are adequate representatives of the Collective Action Members and are not subject to any individual, unique defenses not applicable to the class as a whole.

40. Plaintiffs have retained competent counsel experienced in litigation of this nature, and they are committed to the vigorous prosecution of this action and do not anticipate any difficulties in managing this litigation.

COUNT I

INDIVIDUAL CLAIMS FOR NON-PAYMENT OF OVERTIME WAGES IN VIOLATION OF THE FLSA, 29 U.S.C. §§ 201 *et seq.*

41. Paragraphs 1 through 40 are re-alleged as though fully set forth herein.

42. GDIT has willfully and intentionally engaged in a persistent pattern and practice of violating the provisions of the FLSA as detailed herein, by misclassifying Plaintiffs, employed as Help Desk Specialists during the applicable statutory period, as “exempt.”

43. GDIT has willfully and intentionally engaged in a persistent pattern and practice of refusing to pay Plaintiffs overtime Premium Wages for hours worked in excess of 40 per work week, in violation of the FLSA, 29 U.S.C. §§ 201 *et seq.*

44. GDIT’s conduct in failing to pay Plaintiffs their earned overtime Premium Wages was unreasonable, arbitrary, and/or in bad faith, in that GDIT, by its agents, servants, and/or employees, knew or should have known that Plaintiffs were non-exempt and entitled to be paid Premium Wages for their overtime work.

45. GDIT’s conduct in failing to pay Plaintiffs their earned overtime Premium Wages was unreasonable, arbitrary, and/or in bad faith, in that GDIT’s conduct was not in conformity with or in reliance upon any written administrative regulation, order, ruling, approval, or interpretation by the United States Department of Labor.

46. A three-year statute of limitations applies to each such violation, pursuant to 29 U.S.C. § 255, because GDIT willfully violated the FLSA.

47. As a result of the foregoing, Plaintiffs have been unlawfully deprived of overtime Premium Wages earned within the statutory period in amounts to be determined at trial and are entitled to recovery of such unpaid amounts, as well as liquidated damages, pre-judgment interest, costs, reasonable attorneys’ fees, and other compensation pursuant to 29 U.S.C. § 216(b).

COUNT II

**COLLECTIVE CLAIMS FOR NON-PAYMENT OF OVERTIME WAGES IN
VIOLATION OF THE FLSA,
29 U.S.C. §§ 201 *et seq.***

48. Paragraphs 1 through 47 are re-alleged as though fully set forth herein.

49. GDIT has willfully and intentionally engaged in a persistent pattern and practice of violating the provisions of the FLSA, as detailed herein, by misclassifying Collective Action Members, employed in IT Services Positions during the applicable statutory period, as “exempt.”

50. GDIT has willfully and intentionally engaged in a persistent pattern and practice of refusing to pay Collective Action Members overtime Premium Wages for hours worked in excess of 40 per work week, in violation of the FLSA, 29 U.S.C. §§ 201 *et seq.*

51. GDIT’s conduct in failing to pay Collective Action Members their earned overtime Premium Wages was unreasonable, arbitrary, and/or in bad faith, in that GDIT, by its agents, servants, and/or employees, knew or should have known that Collective Action Members were non-exempt and entitled to be paid Premium Wages for their overtime work.

52. GDIT’s conduct in failing to pay Collective Action Members their earned overtime Premium Wages was unreasonable, arbitrary, and/or in bad faith, in that GDIT’s conduct was not in conformity with or in reliance upon any written administrative regulation, order, ruling, approval, or interpretation by the United States Department of Labor.

53. A three-year statute of limitations applies to each such violation, pursuant to 29 U.S.C. § 255, because GDIT willfully violated the FLSA.

54. As a result of the foregoing, Collective Action Members have been unlawfully deprived of overtime Premium Wages that they earned within the statutory period in amounts to be determined at trial and are entitled to recovery of such unpaid amounts, as well as liquidated

damages, pre-judgment interest, costs, reasonable attorneys' fees, and other compensation pursuant to 29 U.S.C. § 216 (b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court order:

- A. Certification of this action as a collective action under the FLSA;
- B. GDIT to pay Plaintiffs all unpaid overtime Premium Wages in an amount to be determined at trial;
- C. GDIT to pay Plaintiffs liquidated damages pursuant to the FLSA, 29 U.S.C. § 216(b);
- D. GDIT to pay Collective Action Members overtime Premium Wages in an amount to be determined at trial and liquidated damages available under the law;
- E. An award of pre-judgment and post-judgment interest, as provided by law;
- F. Any other appropriate equitable relief to which Plaintiffs and Collective Class Members are entitled;
- G. An award of Plaintiffs' reasonable attorneys' fees and costs of suit, including court costs; and
- H. Such other and further relief that the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury with respect to each claim set forth in this Complaint.

Respectfully submitted,


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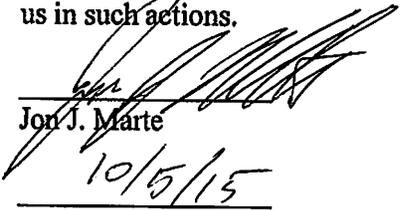
Counsel to Plaintiffs

October 5, 2015
Charleston, SC

CONSENT TO BECOME PARTY TO COLLECTIVE ACTION UNDER 29 U.S.C. § 216

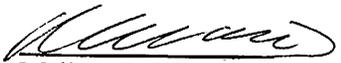
We hereby consent to be Plaintiffs in an action under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, to secure any unpaid wages, overtime pay, liquidated damages, attorneys' fees, costs, and other relief arising out of our employment with GDIT and any other associated parties.

We further authorize Lowe & Associates, P.C., and any associated attorneys to represent us in such actions.



Jon J. Marte

10/5/15
Date



Melissa R. Ward

10/5/15
Date