

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

<p>JON J. MARTE, MELISSA R. WARD, individually and on behalf of others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>GENERAL DYNAMICS INFORMATION TECHNOLOGY, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">Case No. 1:15-cv-01297-TSE-TCB</p>
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STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Agreement”) is made and entered into by and among Defendant General Dynamics Information Technology, Inc. (the “Company” or “GDIT”) and Plaintiffs Jon Marte, Melissa Ward, John Charcas and William Pierce (“Plaintiffs”).

I. DEFINITIONS

1.1 The “Approval Order” means the Order entered by this Court approving the terms of this Agreement, including the release of Released Claims, and the Plan of Allocation, approving any payments of attorneys’ fees and costs as set forth below in this Agreement, dismissing the above-captioned action in its entirety with prejudice, and retaining jurisdiction to enforce the terms of the Agreement, including the release of Released Claims.

1.2 “GDIT” means Defendant General Dynamics Information Technology, Inc.

1.3 “Counsel for GDIT” means Morgan, Lewis & Bockius LLP.

1.4 “Effective Date” means the date on which Final Dismissal occurs.

1.5 “Final Dismissal” means the latest of: (i) the date of final affirmance on an appeal of the Court’s Approval Order; (ii) the date of final dismissal, with prejudice, of the last pending

appeal from the Court's Approval Order; (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any form of valid appeal of the Court's Approval Order.

1.6 The "Litigation" means the matter of *Marte, et al. v. General Dynamics Information Technology, Inc.*, 1:15-cv-01297-TSE-TCB (E.D. Va.).

1.7 "Plaintiff Payments" means the payments made to Plaintiffs pursuant to paragraph 4.1 of this Agreement and the Plan of Allocation.

1.8 "Parties" means Plaintiffs and GDIT.

1.9 "Plaintiff Releasors" means the Plaintiffs and the Plaintiffs' spouses and families, attorneys, agents, executors, administrators, personal representatives, heirs, successors, and any future estates, assigns, and beneficiaries.

1.10 "Plaintiffs' Counsel" means collectively the law firms of Lowe & Associates, PC, Kernan Professional Group, and Richardson, Patrick, Westbrook & Brickman.

1.11 "Released Claims" means any and all claims, demands, causes of action, fees and liabilities of any kind whatsoever, whether known or unknown, whether contingent or non-contingent, specifically asserted or not, which the Plaintiff Releasors ever had, now have, or may have against any of the Releasees by reason of any act, omission, transaction, practice, plan, policy, procedure, conduct, occurrence, or other matter, up to and including the date of Final Dismissal, related to the payment of wages and/or other compensation that were or could have been asserted in the Litigation, including those claims that could arise under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"), or any other state or local wage/hour and wage payment statute/ordinance, including without limitation the wage and hour and wage payment laws of New York, Massachusetts, the District of Columbia, and Florida, for any type of relief, including without limitation, minimum, overtime or other wages, retaliation damages, unpaid

costs, penalties, wage deductions, premium pay, liquidated damages, penalties, punitive damages, interest, attorneys' fees, litigation costs, restitution, and equitable relief.

1.12 "Releasees" means GDIT and all of GDIT's past, present and future parents, subsidiaries, affiliates, successors and predecessors, and each of their past, present and future directors, officers, employees, insurers, lawyers benefit plans, and agents.

1.13 "Settlement Share" means the award from the Total Settlement Payment for which each Plaintiff is eligible based upon the terms of this Agreement and the Plan of Allocation.

1.14 "Total Settlement Payment" means the amount of Sixty-Five Thousand Dollars and No Cents (\$65,000.00). This amount shall be the maximum that GDIT will pay pursuant to the Agreement and is inclusive of all payments necessary to implement the Agreement and dismiss the Litigation, including all attorneys' fees and costs, and the Plaintiff Payments. Notwithstanding the foregoing, GDIT shall pay the employer's portion of any payroll taxes due on the Plaintiff Payments outside the Total Settlement Payment, as provided in Section 4.2.

II. RECITALS

2.1 Plaintiffs have made certain allegations concerning GDIT's alleged misclassification of their employment and alleged failure to pay them sufficient overtime premiums in purported violation of the FLSA. GDIT has denied, and continues to deny, all of the claims asserted in the Litigation, denies any and all liability or wrongdoing of any kind whatsoever associated with any of the facts or claims alleged in the Litigation and by the Plaintiffs, and makes no concession or admission of wrongdoing or liability of any kind whatsoever.

2.2 The Parties and their counsel have considered that under the circumstances and in light of the costs, distractions to GDIT's business and risks of litigation, their respective interests

are best served by compromise, settlement and dismissal of the Litigation with prejudice and have concluded that the terms of this Agreement are fair, reasonable and adequate.

2.3 The Parties participated in lengthy arm's-length settlement discussions, and as a result of these settlement discussions, they have agreed to settle the issues, matters and things in dispute between and among them pursuant to the terms of this Agreement.

2.4 Plaintiffs' Counsel represents that other than the Plaintiffs, Plaintiffs' Counsel does not have any other clients who worked for GDIT and who have potential claims against any of the Releasees. Additionally, Plaintiffs' Counsel are not aware of any individual contemplating claims against any of the Releasees.

III. COMPROMISE ACKNOWLEDGEMENT

3.1 Plaintiff Releasors acknowledge and agree that this Agreement, and the consideration provided herein, have been and are made and received solely on the basis of a compromise of disputed claims, and this Agreement is not, and is not to be construed as, and may not be cited or referred to as, an admission by any of the Releasees of any liability whatsoever, nor is it, nor shall it be construed as, nor may it be cited or referred to as, an admission of any act or fact whatsoever, including any violation of federal, state, local or common law, statute, ordinance directive, regulation or order (including executive orders), which admissions are expressly denied. The Plaintiff Releasors further acknowledge that the GDIT's agreement to collectively settle their claims under the FLSA is done for settlement purposes only, will not be deemed to be, cited as, or referred to as an admission or concession by GDIT that class or collective treatment is or was appropriate or that collective action decertification is not appropriate in the Litigation or in any other action.

3.2 The Parties have conducted discovery and independent investigations of the facts and law during the Litigation, including, among other things, service of document requests and interrogatories, analysis of the responses thereto, production of documents and the depositions of two Plaintiffs. Plaintiffs' Counsel and Counsel for GDIT have further analyzed the applicable law as applied to the facts discovered regarding the allegations of Plaintiffs, GDIT's defenses thereto, and the damages claimed by Plaintiffs.

3.3 Both Plaintiffs and their Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against the GDIT through costly discovery, collective action decertification briefing, dispositive motion briefing, trial and possible appeals. Plaintiffs and their Counsel also have taken into account the uncertain outcome and the risk of any litigation, including decertification of the conditionally certified collective action and the risks of dispositive motions and at trial, as well as the difficulties and delays inherent in such litigation and the likelihood of protracted appellate review. As a consequence of their investigation and analyses, Plaintiffs' Counsel has engaged in arm's length negotiations with Counsel for GDIT. The agreed upon settlement provides for monetary compensation and will save Plaintiffs the time and expense of trial going forward. Plaintiffs and Plaintiffs' Counsel believe that this Agreement confers appropriate benefits upon the Plaintiffs and that it is fair, reasonable, adequate, in accordance with the law, and in the best interests of the Plaintiffs.

3.4 GDIT has denied and continues to deny, specifically and generally, the claims asserted in the Litigation, any and all liability or wrongdoing of any kind whatsoever associated with any of the facts or claims alleged in the Litigation, and that any claims in the Litigation are suitable for collective or class action treatment, and it makes no concessions or admissions of wrongdoing or liability of any kind whatsoever. GDIT maintains that the Plaintiffs and all other

individuals who provided services to GDIT pursuant to a requisition for the ITOM contract were properly classified and fully compensated for all of the time they worked for GDIT. Although GDIT has vigorously contested the allegations in the Litigation to date and denies that it committed any wrongful action or violation of law, it believes nonetheless that further litigation with respect to the Plaintiffs would be protracted, expensive, and contrary to its best interests. Substantial amounts of time, energy, and other resources have been and, absent settlement, will continue to be devoted to GDIT's defense against the claims asserted by Plaintiffs, including further discovery, moving for decertification, moving for summary judgment and potentially trial. In light of these realities, GDIT believes that the settlement memorialized in this Agreement is the best way to resolve the disputes among the Parties while minimizing disruptions to its business and its own further expenditures.

3.5 The Parties understand and agree that this settlement memorialized in this Agreement represents a compromise of disputed claims, and have agreed to enter into this Agreement to avoid the risks, costs, and delays associated with further proceedings. Pursuant to Federal Rule of Evidence 408, and any other analogous rules of evidence that are applicable, neither the settlement memorialized in this Agreement, nor any act performed or document executed pursuant to, or in furtherance of, the settlement memorialized in this Agreement: (a) is or may be deemed to be or may be used as an admission or evidence of, the validity of any claims released in this Agreement, or of any wrongdoing or liability of the Releasees, or any of them; or (b) is or may be deemed to be or may be used as an admission or evidence of, any fault or omission of the Releasees, or any of them, in any civil, criminal or administrative proceeding in any court, administrative agency, or other tribunal. The Plaintiffs and Plaintiffs' Counsel agree not to argue or present any argument, and hereby waive any argument, that GDIT could not contest (or are

estopped from contesting) collective action treatment (including seeking decertification) on any grounds if the Court fails to enter the Approval Order.

3.6 Plaintiffs will seek judicial approval of this Agreement. In the event this Agreement is not approved by the Court, this Agreement will no longer have any effect and the Parties will revert to litigating the Litigation as of the date and time immediately prior to the execution of this Agreement.

IV. PAYMENT AND DISTRIBUTION

4.1 In consideration for the terms, conditions and undertakings by or relating to Plaintiffs in this Agreement, and the mutual promises and covenants contained herein, GDIT will respectively send to Plaintiffs and Plaintiffs' Counsel within five (5) business days after the Effective Date the Total Settlement Payment the following:

- (a) Each Plaintiff shall receive, subject to Court approval, a Settlement Share as determined by each Plaintiff's rate of compensation and the number of hours they worked for GDIT during the relevant period. Based on this criteria Plaintiff Marte's Settlement Share is \$20,907.71; Plaintiff Ward's Settlement Share is \$12,800.64; Plaintiff Charcas' Settlement Share is \$5,973.63; and Plaintiff Pierce's Settlement Share is \$2,986.81; and
- (b) Plaintiffs' Counsel shall receive, subject to Court approval, \$22,331.20 in full and complete settlement of all claims for attorneys' fees and costs associated with the Litigation and the Released Claims set forth in this Agreement. Plaintiffs' counsel's has limited its costs in this matter to \$1000.00. The portion of the payment representing attorney's fees shall be divided equally among the three firms consisting Plaintiffs' counsel. GDIT will mail one check for \$22,331.20 to Lowe & Associates, PC who then will be responsible for making payment to the Kernan Professional Group and Richardson, Patrick, Westbrook & Brickman in accordance with this paragraph. Payment to Plaintiffs' Counsel set forth in this Paragraph 4.1(b) is contingent on Plaintiffs' Counsel providing

GDIT with the pertinent taxpayer identification number(s) on IRS Form(s) W-9 on or before the Effective Date.

4.2 The Settlement Share to each Plaintiff shall be deemed payment in settlement of claims for unpaid wages and shall be subject to appropriate deductions and withholding for wages by GDIT, and for which a Form W-2 shall be issued to each Plaintiff. The “employee’s share” of any and all payroll taxes shall be taken from the Total Settlement Payment. GDIT shall pay the “employer’s share” of any and all payroll taxes in addition to the Total Settlement Payment. GDIT will report the attorneys’ fee check as appropriate on Form 1099-MISC.

4.3 Those payments allocated to the settlement of claims for unpaid wages: (a) shall be subject to required withholdings and deductions by GDIT, and so the net amounts payable will be less than the gross amounts; and (b) shall be reported in the year of payment as wage income to the Plaintiff on a Form W-2 issued by GDIT and such other state or local tax reporting forms as may be required by law. Other than as set forth above, GDIT will not make from the payment to each Plaintiff any deductions, withholdings, or additional payments, including without limitation, medical or other insurance payments or premiums, employee 401(k) contributions or matching employer contributions, wage garnishments, or charity withholdings, and entry of the Approval Order by the Court shall be deemed authority not to make such deductions, withholdings, or additional payments. Any amount paid to a Plaintiff shall not create any credit or otherwise affect the calculation of any deferred compensation, benefit, pension, or other compensation or benefit plan provided by any of the Releasees.

4.4 Payments made to Plaintiffs pursuant to the terms of this Agreement will be deemed void if not cashed within ninety (90) days from the date of their mailing by GDIT, and such unclaimed amounts will be returned to GDIT.

4.5 Except for amounts to be paid pursuant to the terms of this Agreement, the Parties shall bear responsibility for their own fees, costs and expenses incurred by them or arising out of the Litigation and will not seek reimbursement thereof from any party to this Agreement or the

Releasees. GDIT makes no representations, and it is understood and agreed that GDIT has made no representations, as to the taxability to any Plaintiff of any portions of the Settlement Share.

4.6 Plaintiffs and Plaintiffs' Counsel represent that there are no other counsel who have provided any services to Plaintiffs or those they sought to represent in this case in connection with this case and that they no of no other counsel with potential claims for fees/costs related to this litigation.

V. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

5.1 Promptly upon execution of this Agreement, and in no event later than April 15, 2016, Plaintiffs' Counsel and Counsel for GDIT shall apply to the Court for the entry of an Approval Order:

(a) Approving the terms of this Agreement, including the releases of the Released Claims;

(b) Approving the payment of attorneys' fees and costs and the Plaintiff Payments set forth in this Agreement and the Plan of Allocation; and

(c) Adjourning the pre-trial conference and all deadlines.

5.2 In computing any period of time prescribed or allowed by this Settlement Agreement, unless otherwise stated, such computation or calculation shall be made consistent with Federal Rule of Civil Procedure 6(a) as it exists on March 28, 2016.

VI. MUTUAL AND FULL COOPERATION

6.1 The Parties agree that they will fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement and effectuate the terms of this Agreement.

VII. NOTICES

7.1 Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given on the day of personal service, the first day after overnight transport by a courier including, but not limited to, FedEx or United Postal Service (“UPS”), and the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To the Plaintiffs:

Robert J. Lowe, Jr., Esq.
Lowe & Associates, PC
P.O. Box 21556
Charleston, SC 29413

To GDIT:

Michael J. Puma, Esq.
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

VIII. MODIFICATION

8.1 This Agreement and its attachments may not be changed, altered, or modified, except in a writing signed by Counsel for GDIT and Plaintiffs’ Counsel on behalf of themselves and Plaintiffs.

IX. ENTIRE AGREEMENT AND SEVERABILITY

9.1 This Agreement and its attachments constitute the entire agreement between the Parties concerning the subject matter hereof. No extrinsic oral or written representations or terms shall modify, vary or contradict the terms of this Agreement. In the event of any conflict between this Agreement and any other document related to the Parties’ settlement of the Litigation, the Parties intend that this Agreement shall be controlling.

9.2 It is the desire and intent of the Parties that the provisions and releases of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of, or release in, this Agreement, including the Released Claims, shall be adjudicated by a court, or arbitral forum, of competent jurisdiction to be illegal, invalid, prohibited or unenforceable under any present or future law, and if the rights and obligations of any of the parties under this Agreement will not be materially and adversely affected thereby, such provision or release shall be ineffective in that jurisdiction in which enforcement is sought, without invalidating the remaining provisions of, or releases in, this Agreement, or affecting the validity or enforceability of such provision or release in any other jurisdiction in which enforcement may be sought. To this end, the provisions and releases of this Agreement are declared to be severable. Furthermore, in lieu of such invalid or unenforceable provision or release there will be added automatically as a part of this Agreement, a legal, valid and enforceable provision or release as similar in terms to such invalid or unenforceable provision or release as may be possible. Notwithstanding the foregoing, if such provision or release could be more narrowly drawn (as to geographic scope, period of duration or otherwise) so as not to be invalid, prohibited or unenforceable in the jurisdiction in which enforcement is sought, it shall, as to the jurisdiction in which enforcement is sought, be so narrowly drawn, without invalidating the remaining provisions or releases of this Agreement or affecting the validity or enforceability of such provision or release in any other jurisdiction in which enforcement is sought.

X. CHOICE OF LAW/JURISDICTION

10.1 This Agreement shall be subject to, governed by, construed, enforced, and administered in accordance with the laws of the Commonwealth of Virginia, both in its procedural

and substantive aspects, and shall be subject to the continuing jurisdiction of the Court. This Agreement shall be construed as a whole according to its fair meaning and intent, and not strictly for or against any party, regardless of who drafted or who was principally responsible for drafting this Agreement or any specific term or condition thereof.

10.2 Following entry of the Approval Order, the Court will retain jurisdiction to enforce this Agreement.

XI. COUNTERPARTS

11.1 This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties and their respective counsel.

XII. CONFIDENTIALITY AND PUBLIC COMMENT

12.1 Except as otherwise provided herein, each Plaintiff and Plaintiffs' Counsel shall keep strictly confidential the fact and terms of this Agreement and all communications relating to settlement leading up to the Agreement and will not disclose, make known, discuss or relay orally, or in writing, electronically or otherwise, the existence or terms of this Agreement, any information concerning this Agreement, or any of the discussions leading up to this Agreement. If asked about the Litigation, each Plaintiff and Plaintiffs' Counsel will merely say that "the matter has concluded and been dismissed." Moreover, each Plaintiff and Plaintiffs' Counsel will not publicize or disclose the terms of this Agreement or the negotiations with respect thereto, either directly or indirectly, that is, through agents, attorneys, or any other person or entity, either in specific terms or as to general existence or content (e.g., they cannot refer generally to the amount of any payment under the Agreement such as indirect references to a "5-figure" settlement or a

“good” settlement), to any person or media, including on the internet and social media including, but not limited to, Facebook, Twitter, Instagram, personal blogs and websites, the public generally, or any individual or entity. Notwithstanding the foregoing, each Plaintiff and Plaintiffs’ Counsel may disclose information concerning this Agreement to their respective immediate families, counsel, and tax advisors who have first agreed to keep said information confidential and to not disclose it to others. GDIT agrees that if contacted by the media regarding the Litigation, its response will be limited to “the matter has concluded and been and dismissed.” The foregoing shall not prohibit or restrict such disclosure as is required by law or as may be necessary for the prosecution of claims relating to the performance or enforcement of this Agreement, or prohibit or restrict any Plaintiff or Plaintiffs’ Counsel from responding to any inquiry about this Agreement or Litigation or its underlying facts and circumstances by any governmental agency, or any regulatory organization. To the extent permitted by law, with respect to any such disclosure pursuant to the foregoing sentence, each Plaintiff and Plaintiffs’ Counsel shall provide GDIT with as much notice as possible of any request to make any above-described disclosure, and will use best efforts to ensure that if such disclosure occurs it will occur in a manner designed to maintain the confidentiality of this Agreement to the fullest extent possible. Each Plaintiff hereby agrees and acknowledges that he/she will pay as liquidated damages to GDIT for any breach of this paragraph 50% of the Plaintiff’s Settlement Share as set forth in Section VI.

XIII. VOIDING THE AGREEMENT

13.1 In the event this Agreement, or any amended version agreed upon by the Parties, does not obtain judicial approval for any reason, then this Agreement shall be null and void in its entirety (except for those provisions relating to non-admissibility and non-admission of liability set forth in Section 2.1, Section III and confidentiality set forth in Section XII), unless expressly

agreed in writing by all Parties, its terms and provisions shall have no further force and effect and shall not be used in this Litigation, in any other proceeding or otherwise, for any purpose; the negotiations leading to the settlement set forth in this Agreement may not be used as evidence for any purpose; and GDIT shall retain the right to challenge all claims and allegations, to assert all applicable defenses, and to support or dispute the propriety of collective action certification or decertification on all applicable grounds.

13.2 If Plaintiffs or Plaintiffs' Counsel violate the confidentiality provision set forth in Section XII of the Agreement prior to the Court issuing an Approval Order, GDIT may, with notice to Plaintiffs' Counsel and the Court, rescind this Agreement, rendering it null and void (except for those provisions relating to non-admissibility and non-admission of liability set forth in Sections 2.1, Section III and confidentiality set forth in Section XII); the Agreement's terms and provisions shall have no further force and effect and shall not be used in this Litigation, in any other proceeding or otherwise, for any purpose; the negotiations leading to the settlement set forth in this Agreement may not be used as evidence for any purpose; and GDIT shall retain the right to challenge all claims and allegations, to assert all applicable defenses, and to support or dispute the propriety of collective action certification or decertification on all applicable grounds.

XIV. PLAINTIFFS' CERTIFICATIONS

14.1 Plaintiff Releasors, voluntarily and with the advice of counsel, fully and forever release, acquit, and discharge the Releasees from any and all Released Claims, with full knowledge of any and all rights they may have, and they hereby assume the risk of any mistake in fact in connection with the true facts involved, or with regard to any facts which are now unknown to them. This release is effective regardless of whether any Plaintiff cashes a Settlement Share check.

14.2 Each Plaintiff hereby certifies that he/she:

a) Has read entirely and signed this Agreement voluntarily and knowingly in exchange for the consideration described herein, which the Plaintiff acknowledges is adequate and satisfactory and beyond that to which the Plaintiff is otherwise entitled;

b) Has been advised by the Plaintiffs' Counsel and has consulted with Plaintiffs' Counsel before signing this Agreement;

c) Has been given adequate time to review and consider this Agreement, to discuss it with an attorney of his or her own choosing, and to decide whether or not to sign it; and

e) Neither GDIT nor any of the Releasees have made any representations to the Plaintiff concerning the terms or effects of this Agreement other than those contained herein.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date indicated below:

APPROVED BY COUNSEL

Dated: April 15, 2016

LOWE & ASSOCIATES, PC

By: 

Robert J. Lowe, Jr.
P.O. Box 21556
Charleston, SC 29413

Counsel for Plaintiffs

Dated: April 14, 2016

KERNAN PROFESSIONAL GROUP

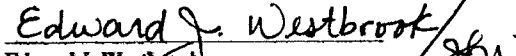
By: 

Patrick J. Kern
777 D Street, NW
Washington, D.C. 20004

Counsel for Plaintiffs

Dated: April 15, 2016

RICHARDSON, PATRICK, WESTBROOK &
BRICKMAN

By: 

Edward J. Westbrook
1037 Chuck Dawley Blvd., Bldg. A
Mt. Pleasant, SC 29564

Counsel for Plaintiffs

Dated: April 15, 2016

MORGAN, LEWIS & BOCKIUS LLP

By: 

Michael J. Puma, Esq.
1701 Market Street
Philadelphia, Pennsylvania 19103
(215) 963-5305

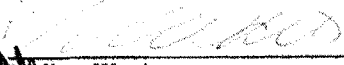
*Counsel for Defendant General Dynamics
Information Technology, Inc.*

Dated: April 13, 2016



Jon Marte

Dated: April 14, 2016



Melissa Ward

Dated: April 13, 2016



John Charcas

Dated: April 14, 2016



William Pierce

Dated: April __, 2016

For General Dynamic Information Technology, Inc.

By: _____