

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARYL VELDHOFF, WILLIAM COLLINS,
JOSEPH PILLARS, JAMES PHILLIP BLAIR,
THOMAS WENDZEL, BRAD MURDOCK,
BRAD UMBANHOWER, CINDY WINANS,
OTIS RIGGINS, GORDON FERGUSON,
STEVE BLACKMORE, CLAYTON K. SMITH,
IV, CARL JESSER, BRENT HOISER, DAVID
PETEK, RUBY ROLAND, COLE BREVIS,
CHRIS MIKUSKO, CHRIS LENTZ, KYLE
FORD, ISAAC WOOD and PHILIP CLICK,

Case No. 1:14-cv-01315-PLM

Hon. Paul Maloney

Plaintiffs,

v.

ENTERGY NUCLEAR OPERATIONS, INC.,

Defendant.

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**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendant Entergy Nuclear Operations, Inc., through its undersigned attorneys, states as follows in answer to Plaintiffs' First Amended Complaint:

INTRODUCTION

Defendant denies that it misclassified Plaintiffs as exempt from the overtime requirements of the Fair Labor Standards Act, 29 USC § 201 *et seq*, and as such, Plaintiffs are not entitled to overtime pay as alleged in Plaintiffs' First Amended Complaint.

PARTIES

1. Plaintiff Daryl Veldhoff is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 1 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

2. Plaintiff Bill Collins is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 2 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

3. Plaintiff Joe Pillars is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 3 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor

denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

4. Plaintiff James Phillip Blair is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 4 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

5. Plaintiff Tom Wendzel is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 5 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

6. Plaintiff Brad Murdock is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 6 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and,

therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

7. Plaintiff Brad Umbanhowar is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 7 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

8. Plaintiff Cindy Winans is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 8 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

9. Plaintiff Otis Riggins is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 9 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason

that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

10. Plaintiff Gordon Ferguson is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 10 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

11. Plaintiff Steve Blackmore is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 11 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

12. Plaintiff Clayton K. Smith, IV is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 12 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

13. Plaintiff Carl Jesser is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 13 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

14. Plaintiff Brent Hosier is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 14 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

15. Plaintiff David Petek is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 15 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

16. Plaintiff Ruby Roland is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 16 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

17. Plaintiff Cole Brevis is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 17 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor

denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

18. Plaintiff Chris Mikusko is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 18 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

19. Plaintiff Chris Lentz is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 19 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

20. Plaintiff Kyle Ford is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 20 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and,

therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

21. Plaintiff Isaac Wood is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 21 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

22. Plaintiff Philip Click is an individual who resides in the Western District of Michigan and is an employee for all purposes under the Act.

ANSWER: In answer to Paragraph 22 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the jurisdictional allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs. In further responding, Defendant neither admits nor denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

23. Defendant Entergy Nuclear Operations, Inc. ("Defendant" or "Entergy") is a foreign corporation which operates the nuclear plant located in Covert Township, Michigan, and is an employer for all purposes under the Act.

ANSWER: In answer to Paragraph 23 of Plaintiffs' First Amended Complaint, Defendant admits only that it is a foreign corporation, which operates a nuclear plant located in Covert Township, Michigan, but denies the remaining allegation contained therein for the reason that such allegation constitutes a conclusion of law to which no response is required.

JURISDICTION AND VENUE

24. This is an action asserting claims, inter alia, pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201 et seq.

ANSWER: In answer to Paragraph 24 of Plaintiffs' First Amended Complaint, Defendant admits the allegations contained therein.

25. This Court has subject matter jurisdiction over the matter pursuant to 29 U.S.C. §216 and 28 U.S.C. §1331.

ANSWER: In answer to Paragraph 25 of Plaintiffs' First Amended Complaint, Defendant admits only that 28 USC § 1331 provides this Court has jurisdiction over this matter but neither admits nor denies the remaining allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs.

26. The Defendant has a place of business in this district and the Plaintiffs reside in this district.

ANSWER: In answer to Paragraph 26 of Plaintiffs' First Amended Complaint, Defendant admits only that it has a place of business within the Western District of Michigan, but neither admits nor denies the remaining allegation contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs.

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

ANSWER: In answer to Paragraph 27 of Plaintiffs' First Amended Complaint, Defendant admits the allegations contained therein.

BACKGROUND

28. Defendant operates the Entergy Nuclear plant located in Covert Township, Michigan.

ANSWER: In answer to Paragraph 28 of Plaintiffs' First Amended Complaint, Defendant admits it operates the Palisades Nuclear Plant located in Covert Township, Michigan. Defendant denies all remaining allegations contained therein for the reason that they are untrue.

29. All of the Plaintiffs are or were at relevant times employed by Defendant to provide security services at the Palisades Nuclear Plant.

ANSWER: In answer to Paragraph 29 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the allegations contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs.

30. All of the Plaintiffs are or were at relevant times classified as Security Shift Supervisors and/or CAS/SAS Supervisors, and their duties and responsibilities did not and do not rise to a level as an exempt position.

ANSWER: In answer to Paragraph 30 of Plaintiffs' First Amended Complaint, Defendant admits that, at some point in time, each Plaintiff held the position of Security Shift Supervisor. Defendant denies all remaining allegations contained therein for the reason that they are untrue.

31. Despite the fact that the Plaintiffs do not qualify for any exemption from the overtime requirements of the FLSA, Defendant improperly classified them as exempt employees who were not entitled to overtime pay.

ANSWER: In answer to Paragraph 31 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein for the reason that they are untrue.

32. Due to their misclassification as exempt, Plaintiffs were not paid for their overtime hours (hours worked in excess of 40 hours per week) at the legally required overtime rate (one and one-half times their regular rate of pay).

ANSWER: In answer to Paragraph 32 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein for the reason that they are untrue.

33. Throughout the course of their employment, Plaintiffs have worked in excess of 40 hours per week during certain weeks.

ANSWER: In answer to Paragraph 33 of Plaintiffs' First Amended Complaint, Defendant admits that some or all of Plaintiffs have worked in excess of 40 hours during certain workweeks.

34. On information and belief, prior to 2007, the Wackenhut Corporation provided security services at Entergy pursuant to a contractual arrangement with Defendant.

ANSWER: In answer to Paragraph 33 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the allegations contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs.

35. During the period of time prior to 2007, Wackenhut classified certain of the Plaintiffs, and other employees with the position of Security Shift Supervisors and/or CAS/SAS Supervisors, as non-exempt employees who were entitled to overtime pay at the legally-required rate (one and one-half times their regular rate of pay).

ANSWER: In answer to Paragraph 35 of Plaintiffs' First Amended Complaint, Defendant neither admits nor denies the allegations contained therein for the reason that it is without knowledge or information sufficient to form a belief as to the truth thereof and, therefore, leaves Plaintiffs to their proofs.

36. On information and belief, when the Defendant terminated the services of Wackenhut and began to provide security services with its own employees, Defendant reclassified the Security Shift Supervisors and/or CAS/SAS Supervisors as exempt employees, though their duties and responsibilities remained non-exempt.

ANSWER: In answer to Paragraph 36 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein for the reason that they are untrue.

37. On information and belief, Defendant was aware of the requirements of the FLSA and Michigan's Wage and Benefit law and their application to the Plaintiffs but willfully ignored them.

ANSWER: In answer to Paragraph 37 of Plaintiffs' First Amended Complaint, Defendant admits only that it was and is aware of the requirements of the FLSA and the Michigan Payment of Wages and Fringe Benefits Act (assuming that this is the law referred to by Plaintiffs) and their application to Plaintiffs but denies the remaining allegations contained therein for the reasons that they are untrue.

COUNT I
VIOLATION OF THE FAIR LABOR STANDARDS ACT

38. Plaintiffs repeat and incorporate by reference the allegations contained in each of the above paragraphs.

ANSWER: In answer to Paragraph 38 of Plaintiffs' First Amended Complaint, Defendant incorporates by reference its answers to the foregoing allegations.

39. The conduct of the Defendant described above violated the FLSA, as a result of which the Plaintiffs are entitled to damages, including but not limited to payment for overtime (i.e. hours in excess of 40 hours per week) at the rate of one and one-half time their regular rate of pay.

ANSWER: In answer to Paragraph 39 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein for the reason that they are untrue.

40. On information and belief, Defendant's violation of the FLSA was willful, within the meaning of 29 U.S.C. §255(a).

ANSWER: In answer to Paragraph 40 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein for the reason that they are untrue.

41. Plaintiffs are also entitled to liquidates [sic] damages equal to the unpaid overtime compensation described in the previous paragraphs, and award of attorneys' fees incurred in connection with this action.

ANSWER: In answer to Paragraph 41 of Plaintiffs' First Amended Complaint, Defendant denies the allegations contained therein for the reason that they are untrue.

WHEREFORE, Defendant respectfully requests that the Court dismiss Plaintiffs' First Amended Complaint in its entirety with prejudice and award Defendant its costs and attorneys' fees in defending against the instant allegations together with any and all additional relief this Court may deem just and fair.

AFFIRMATIVE DEFENSES

Defendant Entergy Nuclear Operations, Inc., through its undersigned attorneys, states the following Affirmative Defenses to Plaintiffs' First Amended Complaint:

1. Plaintiffs' First Amended Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

2. Plaintiffs' claims, in whole or in part, are barred by the applicable statute of limitations and/or other contractual or jurisdictional limitations or prerequisites.

3. Plaintiffs have suffered no damages, have failed to mitigate their damages, and/or are barred from recovering damages by after-acquired evidence.

4. Defendant did not willfully and with intent deprive Plaintiffs of any wages or pay to which Plaintiffs were entitled under the FLSA.

5. Plaintiffs have been properly compensated under the FLSA, and they cannot maintain a collective action on behalf of other "similarly situated" and/or properly compensated employees.

6. Plaintiffs have failed to sufficiently allege or identify other "similarly situated" employees or otherwise sufficiently allege the prerequisites of an "opt-in" action under 29 USC § 216(b).

7. There are no other persons "similarly situated" to Plaintiffs.

8. Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs seek compensation in this action for work other than compensable working time.

9. The relief sought by Plaintiffs is improper, inappropriate and/or otherwise not available under the law upon which their claims rest including, but not limited to, that there is no basis for liquated damages as Defendant has acted in good faith as a reasonably prudent entity would have acted under the circumstances and in reasonable belief of compliance with the applicable law.

10. Plaintiffs are not entitled to relief because any alleged acts or omissions by Defendant were in good faith, in conformity with and in reliance on applicable administrative regulations, orders, rules, approval or interpretation, or administrative practices or enforcement policies of the Administrator of the Wage and Hour Division of the United States Department of Labor and/or judicial orders and interpretations with respect to the class of employers to which Defendant belongs.

11. To the extent that this action asserts claims for compensation outside the applicable statute of limitations set forth under 29 USC § 255, *et seq.*, such claims are barred.

12. To the extent that Plaintiffs seek overtime compensation for hours worked at or below 40 hours per week, such claims are barred.

13. The alleged violations of the FLSA, if any, were *de minimis*.

14. Plaintiffs' claims are barred, in part, because Defendant is not a covered employer, nor Plaintiffs' employer, as defined by relevant federal law for the time period alleged in the First Amended Complaint.

15. Plaintiffs were independent contractors for the time period alleged in the First Amended Complaint, and as such they were not employees as defined by the FLSA.

16. This action should be dismissed or judgment accorded to Defendant to the extent that Plaintiffs are exempt from some or all of the FLSA's requirements.

17. Defendant reserves the right to amend these affirmative defenses and/or add affirmative defenses.

Respectfully submitted,

s/Gillian P. Yee
Gillian P. Yee (P68972)
Ogletree, Deakins, Nash, Smoak & Stewart, PLLC
Attorneys for Defendant

Dated: February 10, 2015

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2015 I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF participants. I further certify that I will serve a copy of such filing on any non-ECF participants as necessary.

s/Gillian P. Yee _____
Gillian P. Yee (P68972)
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