

VIRGINIA:

IN THE CITY OF RICHMOND CIRCUIT COURT

TAMBRA LYNN BLANKENSHIP

On behalf of herself and all others similarly
situated,

Plaintiffs,

v.

MARIE MARCH, DELEGATE,

In her Individual and Official Capacity

and

VIRGINIA GENERAL ASSEMBLY |
COMMONWEALTH OF VIRGINIA

Defendants.

Civil Action No.

TRIAL BY JURY DEMANDED

INDIVIDUAL AND COLLECTIVE ACTION COMPLAINT

COME NOW Plaintiff Tandra Lynn Blankenship, on behalf of herself and all others
similarly situated, (collectively "Plaintiffs"), by counsel, and make the following allegations on
behalf of herself and all others similarly situated:

PRELIMINARY STATEMENT

1. Insofar as this matter is concerned, this is a case regarding unpaid wages. The named Plaintiff and any Putative Plaintiffs are all former or current employees of the Virginia General Assembly titled, "Legislative Assistant" and/or "Legislative Aide" and/or "Legislative Associate" and/or "Administrative Assistant," among other titles that all refer to the same position. For the purposes of this Complaint, this position shall be collectively referred to as an "LA." As provided below, the named Plaintiff and Putative Plaintiffs are owed overtime wages among other compensation pursuant to the Virginia Overtime Wage Act, Va. Code § 40.1-29.2, *et seq.*, for performing non-exempt services as employees for elected members of the Virginia General Assembly in excess of forty (40) hours per week. The named Plaintiff is owed compensation pursuant to the Virginia Minimum Wage Act, Va. Code § 40.1-28.8, *et seq.*, against Defendant Del. Marie March in her individual capacity.

2. Named Plaintiff and some of the Putative Plaintiffs are former or current employees of Del. March, an elected Delegate from the 7th District in the Virginia House of Delegates. The named Plaintiff worked for Del. March as an LA but also performed services for Del. March that were outside of the scope of her position as an LA. At numerous times, the named Plaintiff and Putative Plaintiffs that were employed by Del. March were intentionally directed by Del. March to perform services that benefited Del. March's private business or businesses and/or her personal life and were not essential nor related to the taxpayer-funded LA position. These Plaintiffs are owed compensation for all services performed for Del. March and/or her business(es) including any services performed in excess of forty (40) hours per week.

PARTIES

3. Selected for hire on or about June 27, 2022, the named Plaintiff is domiciled in Giles County, Virginia.

4. Unlike some legislative positions in Virginia, the named Plaintiff's position was completely funded by the Commonwealth of Virginia.

5. Richmond City is an appropriate venue for this matter as Defendant Marie March is an elected Delegate in the Virginia House of Delegates from the 7th District which incorporates Floyd County and portions of Montgomery and Pulaski Counties. Due to redistricting, Del. March intends to seek re-election to the newly created 47th District in 2023. Del. March managed funding from the Commonwealth of Virginia to pay for employees to serve as LAs. Del. March manages an office within the City of Richmond pursuant to her position as a Delegate.

a) Regular and routine work performed by LAs on behalf and in furtherance of Del. March's role as an elected official of the Commonwealth of Virginia was work performed for Del. March as an employer in her official capacity. The Commonwealth of Virginia is ultimately responsible for the payment of these funds.

b) Employees that performed work on behalf and in furtherance of Del. March's role as a private business owner and/or private individual and not on behalf of an elected official of the Commonwealth of Virginia, was work performed for Del. March as an employer in her individual capacity. Del. March in her individual capacity is ultimately responsible for the payment of these funds.

6. Collectively, Defendant Virginia General Assembly | Commonwealth of Virginia is a state government that provides funding and the use of state property to the Plaintiffs in this matter. When the named Plaintiff was hired by Del. March in June of 2022, the Virginia General Assembly had explicitly waived sovereign immunity pursuant to the Virginia Overtime Wage Act.

For all hours worked by the named Plaintiff and Putative Plaintiffs prior to July of 2022, sovereign immunity did not exist for overtime claims against the Commonwealth of Virginia. The Virginia Overtime Wage Act was later amended to withdraw the waiver of sovereign immunity. Prior to the withdrawal of the waiver of sovereign immunity, causes of action accrued for the Plaintiffs in this matter.

7. This matter incorporates federal principle of overtime compensation because Virginia law incorporates the same. Pursuant to Va. Code § 40.1-29.2:

Any employer that violates the overtime pay requirements of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.*, as amended, and any regulations, guidance, or rules adopted pursuant to the overtime pay provisions of such federal act or any related governing case law shall be liable to the employee for the applicable remedies, damages, or other relief available under the federal Fair Labor Standards Act in an action brought pursuant to the process in subsection J of § 40.1-29.

For the purposes of this section, "employer" and "employee" shall have the meanings ascribed to them under the federal Fair Labor Standards Act and all applicable exemptions, overtime calculation methods, methods of overtime payment, or other overtime provisions within the federal Fair Labor Standards Act and any attendant regulations, guidance, or rules shall apply. Any action brought pursuant to this section shall accrue according to the applicable limitations set forth in the federal Fair Labor Standards Act.

8. In this matter, Defendants are an "employer" within the meaning of 29 U.S.C. § 207(a)(1) and Va. Code § 40.1-29.2. Defendants were the Plaintiffs' employer at all relevant times.

9. Only LAs within the actionable window of the Virginia Overtime Wage Act may be parties to this case.

10. No members of the Virginia General Assembly has paid overtime compensation or managed the payment of overtime compensation to LAs.

11. Insofar as the collective class, Plaintiffs are, or were, residents of Virginia and are, or were, LAs employed by Defendants.

12. Similarly situated plaintiffs all bear similar job duties and titles as the named Plaintiff.

13. The named Plaintiff brings this action on behalf of herself and other similarly situated current and former employees of Defendants who were, or are, employed by Defendants as LAs or with duties similar to LAs.

THE CLASS: WORKING AS A LEGISLATIVE ASSISTANT

14. Elected officials of both Houses of the Virginia General Assembly are provided funding to hire personnel to work on behalf of that elected official.

15. The most common of these employees is an LA. A member of the Virginia General Assembly may have two or more LAs on staff at any given time.

16. There are 140 elected members of the Virginia General Assembly. The Virginia Overtime Wage Act has a two-year statute of limitations, and a three-year statute of limitations for willful violations. The putative class in this matter is estimated to have more than five hundred (500) but less than one thousand (1,000) possible Plaintiffs.

17. LAs provide administrative assistance to elected officials. An exhaustive list of the varied tasks that an LA must perform would not be possible to draft. LAs attend meetings, schedule meetings and telephone calls, provide clerical assistance to the elected official, run errands for the elected official on official state business, coordinate campaign volunteers, and perform a variety of white-collar tasks to assist the elected official in meeting his or her duties to their constituents.

18. LAs do not possess the primary duty of exercising discretion or independent judgment with respect to matters of significance. In fact, their duties are highly authorized, regulated, and managed by the elected official that acts as the LA's supervisor. An LA that exercises too much discretion regarding matters of significance would be violating their essential duties to their employer.

19. An LA's work does not require advanced knowledge, nor does it require work that is predominantly intellectual in character.

20. LAs do not supervise the work of others nor do they possess the authority to hire or fire other employees.

21. LAs do not meet the requirement of any known federal or state exemption to the duty to compensate employees with overtime compensation.

22. State law requires that LAs be provided compensation for every hour worked.

A. Efficiency of Class Prosecution of Common Claims

23. Certification of a class of current and former LAs is the most efficient and economical means of resolving the questions of law and fact which are common to the claims of the Class Representative and the proposed collective class. Conversely, proceeding on an individual basis will require the filing of potentially hundreds of duplicative individual suits which will waste judicial time and resources and create the risk of inconsistent or varying adjudications of common issues.

B. Numerosity and Impracticability of Joinder

24. The class which the Class Representative seeks to represent are so numerous that joinder is impracticable. On information and belief, there are hundreds of current and former LAs

during the liability period who have been unlawfully denied overtime compensation to which they are entitled.

C. Common Questions of Law and Fact

25. The application of Defendants' overtime accrual, exercise of overtime, and timekeeping policies present common issues of fact in this matter. Upon information and belief, all present and former LAs were subject to the same compensation practices during the liability period.

26. Common issues of fact exist in this matter as to whether Defendants' scheduling and compensation practices violated applicable state law.

D. Typicality of Claims and Relief Sought

27. The claims of the Class Representative are typical to those of the class members as a whole in that her claims are based on the same scheduling and compensation practices. The relief sought by the Class Representative for overtime compensation is also typical of the relief which is sought on behalf of the proposed class.

28. Relief / compensation for work performed by the named Plaintiff for Del. March in her individual capacity as an employer is not a claim of the proposed collective class.

E. Adequacy of Representation

29. Plaintiff is an adequate class representative. Her interests are co-extensive with those of the members of the proposed class she seeks to represent in this class. She has knowledge of Defendants' scheduling and compensation practices. The named Plaintiff is committed to being representative of the class, and she has retained counsel experienced in prosecuting collective action employment cases to protect the interests of the class.

30. Common questions of law and fact predominate over any questions affecting only individual members because the basis of any claims herein is the common application of policies and procedures, as well as the common scheduling and compensation practices of Defendants.

31. A collective action is superior to other available methods for adjudicating the controversy because other methods would involve the filing of hundreds of individual claims that are based on the same centralized scheduling and compensation facts and the same legal issues regarding the same. Hundreds of individual cases would clog the court and waste judicial time and resources. Moreover, multiple individual cases based on the same legal issue could lead to inconsistent or varying adjudications of the same issue.

32. The putative class members do not have a substantial interest in individually controlling a separate action because any such claim would be based on the same centralized scheduling and compensation practices and their recovery in either an individual or collective action will be based on the amount of overtime compensation that they have been denied by Defendants.

33. The Class Representative and counsel are not aware of any other litigation concerning the controversy that has already begun by proposed class members.

34. The Class Representative and counsel do not foresee any substantial difficulties in managing a collective action and counsel is experienced in managing collective action litigation.

CLAIM FOR OVERTIME COMPENSATION: ALL LEGISLATIVE ASSISTANTS

35. The named Plaintiff files this statutorily authorized collective action pursuant to Va. Code § 40.1-29(J) as Representative Plaintiff. Plaintiff consents to become a party plaintiff in this representative wage as evidenced by the named Plaintiff's "Consent to Become Party to Collective Action" filed herewith.

36. Defendants employ, and has employed, multiple persons in the same job functions and/or positions that the named Plaintiff held from June of 2022 through her termination of employment on or about August 30, 2022.

37. These employees perform, and have performed, functions which entitle them to payment of overtime compensation wages that they have not received.

38. Defendants compensated the named Plaintiff, and those similarly situated, on uniform compensation models common to all Plaintiffs or wide subsets of Plaintiffs and other persons performing similar job functions.

39. The collective class of similarly situated employees is composed of all present and former employees of Defendants who performed the same or similar job functions as the named Plaintiff and are or were subject to the same pay practices, and have been employed within three (3), or more, years of the date of filing of this action.

40. Plaintiff's titles and job duties, and the titles and job duties of those similarly situated to Plaintiff, are specifically not exempt from the coverage of the FLSA and the Virginia Overtime Wage Act.

41. At all relevant times, Plaintiff and other similarly situated employees have been entitled to the rights, protections, and benefits provided under the FLSA and the Virginia Overtime Wage Act.

42. Defendants paid the named Plaintiff on a salary basis and has done so for all times pertinent to this action. Payment of a salary to an employee in Virginia has no impact on whether the employer owes overtime compensation to the employee.

43. The named Plaintiff and other similarly situated employees regularly worked in excess of forty (40) hours per week. The named Plaintiff worked more than forty (40) hours per week for every week she worked for Del. March.

44. LAs are expected to be "on call" for their elected officials which regularly requires LAs to make themselves available on an as-needed basis around the clock for their employers.

45. On numerous occasions, after working what would normally be a full day's shift, the named Plaintiff was directed by Del. March to perform a variety of tasks including tasks late in the evening.

46. LAs are frequently emailed or texted after normal working hours with an expectation that LAs respond to communications immediately.

47. LAs may have an official work schedule of 9:00 AM through 5:00 PM but they are expected to work both before and after this shift.

48. LAs consistently work from as many as fifty (50) hours per week up to and including sixty-five (65) or seventy (70) hours per week.

49. Defendants intentionally and with willful disregard for the law, do not compensate LAs any overtime compensation for hours worked in excess of forty (40) hours of work per week.

50. State and federal law requires that employers maintain accurate records of employees' time worked or in paid status for compensation purposes. *See, e.g.,* 29 C.F.R. § 516, *et seq.*

51. Defendants have denied the named Plaintiff and similarly situated employees' overtime compensation to which they are entitled.

WORKING FOR DEL. MARCH

52. During the course of her employment, the named Plaintiff was repeatedly directed by Del. March to perform services that had nothing to do with the role of an employee of an elected official, but rather benefited Del. March's private business enterprise(s) and/or her personal life.

53. The named Plaintiff worked several hours per week on matters for Del. March that were unrelated to her role within the Virginia General Assembly. At all times pertinent, the named Plaintiff followed the direction of her supervisor, Del. March.

54. Del. March repeatedly tasked the named Plaintiff with job duties that benefited either a business enterprise of Del. March or a personal matter for Del. March or both. Neither of these types of tasks were tasks that were part of the essential job duties of an LA. All these tasks fell outside the scope of the official duties of an LA.

55. The named Plaintiff regularly performed these tasks — among others — after having already worked forty (40) hours in work week.

56. Del. March expected and directed the named Plaintiff to perform duties that benefited her private business(es) and her personal life all while the named Plaintiff was being compensated for purported legislative assistance by taxpayer funds paid by the Commonwealth of Virginia.

57. Del. March also directed employees to intentionally falsify time records to illustrate that employees were working less hours than the total number of hours actually worked for Del. March.

**COUNT I: VIOLATION OF THE VIRGINIA WAGE OVERTIME ACT AGAINST ALL DEFENDANTS
(FOR NAMED PLAINTIFF AND ALL SIMILARLY SITUATED PLAINTIFFS)**

58. At all times relevant to the matters alleged herein, Defendants have engaged in a pattern, practice, or policy of not compensating LAs in accordance with state and federal mandates for overtime work performed for Defendants' benefit.

59. At all times relevant hereto, Defendants knew that federal and state wage laws applied to the named Plaintiff and others similarly situated.

60. Defendants had knowledge that Plaintiffs and all others similarly situated often worked off the clock and beyond the named Plaintiff's normally scheduled hours. Defendants required such off the clock work and freely accepted the benefit of this time, and at a minimum suffered and permitted this practice.

61. Defendants have an obligation to maintain accurate records of time worked by employees.

62. Defendants willfully violated state overtime laws by requiring LAs to perform tasks off-the-clock. Defendants failed to pay the named Plaintiff, and other similarly situated employees, overtime compensation for such hours worked in excess of forty (40) hours per week.

63. The foregoing conduct constitutes a willful violation of the Virginia Overtime Wage Act as Defendants knew or showed reckless disregard for the fact that their compensation practices were in violation of federal and state law.

64. Defendants have not acted in good faith with respect to their failure to pay overtime compensation. Defendants have no legitimate reason to believe their actions and omissions were *not* a violation of state overtime laws, thus entitling Plaintiffs, and those similarly situated, to recover an award of liquidated damages.

65. This Court is authorized to certify class status pursuant to Va. Code Ann. § 40.1-29(J).

**COUNT II: VIOLATION OF THE VIRGINIA WAGE OVERTIME ACT
AND THE VIRGINIA MINIMUM WAGE ACT
AGAINST DEL. MARCH IN HER INDIVIDUAL CAPACITY
(FOR NAMED PLAINTIFF ONLY)**

66. The named Plaintiff hereby incorporates and realleges all the preceding allegations of this Complaint.

67. The named Plaintiff performed work without compensation for Del. March in her individual capacity.

68. Del. March was unjustly enriched by the work performed by the named Plaintiff.

69. The named Plaintiff performed services for Del. March that benefited Del. March in her capacity as an individual and not as an elected official. Del. March owes compensation to the named Plaintiff pursuant to Virginia law for every hour worked by the named Plaintiff for tasks that benefited Del. March.

70. Del. March, in her individual capacity, failed to compensate the named Plaintiff for any and all tasks performed by the named Plaintiff on behalf of Del. March.

71. Del. March failed to compensate the named Plaintiff for work performed in excess of forty (40) hours per week.

72. At all times relevant to the matters alleged herein, Del. March has engaged in a pattern, practice, or policy of not compensating the named Plaintiff in accordance with state law.

**COUNT III: CLAIM OF QUANTUM MERUIT
AGAINST DEL. MARCH IN HER INDIVIDUAL AND OFFICIAL CAPACITIES
(FOR NAMED PLAINTIFF ONLY)**

73. The named Plaintiff hereby incorporates and realleges all the preceding allegations of this Complaint.

74. The named Plaintiff rendered valuable consideration to Del. March, in the form of work performed for which she has not been paid.

75. At the time that the named Plaintiff performed the work, she reasonably expected to be paid by Del. March. Del. March received and benefited from the work with knowledge or reason to know that the named Plaintiff expected to be paid. Del. March voluntarily accepted the benefit of the work and kept the benefits therefrom without waiving, refusing, or returning the benefit.

76. The named Plaintiff is entitled under the doctrine of quantum meruit to recover damages from Del. March in her individual and official capacities.

**COUNT IV: CLAIM OF UNJUST ENRICHMENT
AGAINST DEL. MARCH IN HER INDIVIDUAL AND OFFICIAL CAPACITIES
(FOR NAMED PLAINTIFF ONLY)**

77. Plaintiff incorporates by reference herein the preceding paragraphs of this complaint.

78. At the specific request of Del. March and for her use and benefit, the named Plaintiff has performed work for Del. March to benefit Del. March's business and personal life that were outside the scope of her duties as an LA.

79. The services provided by the named Plaintiff to Del. March represent an unjust enrichment for which Del. March has failed to compensate the named Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court:

A. Approve notice, as soon as possible, to those employees and former employees similarly situated to Plaintiff, namely all LAs, and other employees performing the duties of LAs who were employed by Defendants during any portion of the three years immediately preceding the filing of this action, of the existence of this representative collective action, the claims set forth herein and further provide notice of their right to opt-in to this action. Generally, this notice should inform such employees and former employees that this action has been filed, describe the nature of the action and explain their right to opt in to this lawsuit if they were not paid the proper overtime wage compensation for their hours worked in any week during the statutory period;

B. Designate this action as a collective action on behalf of the collective class;

C. Enter judgment declaring that the acts and practices complained of herein are violations of the Virginia Overtime Wage Act and the Virginia Minimum Wage Act;

D. Enter judgment awarding Plaintiff, and all similarly situated present and former employees, actual compensatory damages in the amount shown to be due for unpaid overtime compensation, with pre-judgment interest, against Defendants;

E. Enter judgment that Defendants' violations of overtime compensation were willful;

F. Enter judgment awarding Plaintiffs an amount equal to their overtime damages as liquidated damages;

G. Enter judgment awarding Plaintiffs triple the amount of wages due;

H. Enter judgment for post-judgment interest at the applicable legal rate;

I. Enter judgment awarding Plaintiffs reasonable attorney's fees and costs of this suit;

J. Grant leave to amend to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court; to add claims under applicable state and federal laws;

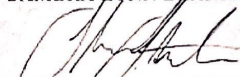
Enter judgment for the named Plaintiff against Defendant Del. March for Counts II, III and IV in an amount of SEVENTY THOUSAND DOLLARS (\$70,000.00) to include pre and post-judgment interest, and costs; and

L. Grant such other and further relief as this Court deems necessary and proper.

A TRIAL BY JURY ON ALL THINGS TRIABLE IS HEREBY REQUESTED.

Respectfully submitted,

TAMBRA LYNN BLANKENSHIP



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