

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MARK R. LYNN, et al.,

Plaintiffs,

vs.

**Case No.
03-2662-GTV**

GENERAL ELECTRIC COMPANY,

Defendant.

MEMORANDUM AND ORDER

Plaintiffs bring this putative Fair Labor Standards Act collective action, seeking an accounting and judgment for overtime and back wages against Defendant General Electric Company. The case is before the court on Defendant's motion to dismiss the claims of Plaintiffs Todd Gearhart and Mark Lynn (Doc. 13). Plaintiff Gearhart does not contest that his claims are barred by the statute of limitations and should be dismissed. Accordingly, the court grants the motion with respect to Plaintiff Gearhart's claims, but denies the motion with respect to Plaintiff Lynn's claims.

Defendant contends that the court should dismiss Plaintiff Lynn's claims because his Fair Labor Standards Act ("FLSA") consent form is inadequate. Section 16(b) of the FLSA states that, with regard to a collective action, "[n]o employee shall be a party plaintiff to any such action unless he gives his consent in writing to become a party plaintiff and such consent is filed in the court in which such action is brought." 29 U.S.C. § 216(b). An action is considered commenced

only after both the complaint and the individual claimant's written consent are filed. Id. § 256.

Plaintiff Lynn filed a consent form with the complaint in this case. His form reads:

I, Mark R. Lynn, am a current or former employee of the General Electric Transportation Systems division of General Electric Company ("GE"). I believe I am entitled to additional straight time and overtime wages for the hours I have worked in excess of forty hours per week. I wish to be included as a party in the pay claims being asserted by current and former GETS employees against GE. I hereby give my consent to my attorneys, John B. Gage of The Gage Law Firm, P.C., and Peticolas, Shapleigh, Brandys & Kern, P.L.L.C., or such other representatives as they may designate, to bring suit against the City on my behalf under the Fair Labor Standards Act.

Defendant argues that the last sentence, in which Plaintiff Lynn authorizes his attorneys to bring suit against the *City* on his behalf, invalidates Plaintiff Lynn's consent. The court disagrees.

Section 16(b) of the FLSA only requires plaintiffs to file a consent to become a party plaintiff. Plaintiff Lynn's consent meets this requirement; the third sentence reads, "I wish to be included as a party in the pay claims being asserted by current and former GETS employees against GE." The other statements in the consent form regarding General Electric Company also indicate that he intends to consent to be a party in the instant suit, not a suit against the "City." The last sentence in the consent form appears to be the result of an oversight. Although it is technically incorrect, it does not affect the substance of Plaintiff Lynn's consent. Cf. Soler v. G&U, Inc., 103 F.R.D. 69, 76-7 (S.D.N.Y. 1984) (holding consent valid where it omitted the name of the defendant); Riojas v. Seal Produce, Inc., 82 F.R.D. 613, 617 (S.D. Tex. 1979) (holding consent valid where it included the name of Texas Rural Legal Aid rather than one of the injured plaintiffs, but the plaintiffs signed their names below). The court declines to dismiss Plaintiff Lynn's claims based on an insignificant mistake in the consent form.

IT IS, THEREFORE, BY THE COURT ORDERED that Defendant's motion to dismiss (Doc. 13) is granted in part and denied in part. Plaintiff Todd Gearhart is dismissed from the case.

Copies or notice of this order shall be transmitted to counsel of record.

IT IS SO ORDERED.

Dated at Kansas City, Kansas, this 24th day of September 2004.

/s/ G. T. VanBebber
G. Thomas VanBebber
United States Senior District Judge