

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION**

BENJAMIN M. WILLIAMS,)
and)
DAVID BOGO,)
on behalf of themselves and all others)
similarly situated,)

Plaintiffs,)

v.)

XE SERVICES, LLC,)
U.S. TRAINING CENTER, INC.,)
and)
BLACKWATER SECURITY CONSULTING,)
LLC,)

Defendants.)

Civil Action No. 2:09-cv-59

COMPLAINT

NOW COME Plaintiffs Benjamin M. Williams and David Bogo, on behalf of themselves and all other employees similarly situated, for their Complaint against Defendants Xe Services, LLC, U.S. Training Center, Inc., and Blackwater Security Consulting, LLC, and allege and say as follows:

PRELIMINARY STATEMENT

1. This is a collective and class action by Plaintiffs on behalf of themselves and others similarly situated pursuant to 29 U.S.C. § 216(b) to recover compensatory and liquidated damages, attorney fees, and other relief from Defendants for violations of the Fair Labor Standards Act (“FLSA”).

PARTIES

2. Plaintiff Benjamin M. Williams is a citizen and resident of Chesapeake, Virginia.

3. Plaintiff David Bogo is a citizen and resident of Currituck County, North Carolina.

4. Defendant Xe Services, LLC (“Xe Services”), is a limited liability company organized under the laws of Delaware. Its registered office is located at 850 Puddin Ridge Road, Moyock, North Carolina, and it regularly carries on business in Currituck and Camden Counties, North Carolina. Upon information and belief, one or more of its members are citizens of North Carolina.

5. Defendant U.S. Training Center, Inc. (“USTC”), is a Delaware corporation. Its principal and registered offices are located at 850 Puddin Ridge Road, Moyock, North Carolina and it regularly carries on business in Currituck and Camden Counties, North Carolina.

6. Defendant Blackwater Security Consulting, LLC (“BSC”), is a limited liability company organized under the laws of Delaware. Its principal and registered offices are located at 850 Puddin Ridge Road, Moyock, North Carolina, and it regularly carries on business in Currituck and Camden Counties, North Carolina. Upon information and belief, one or more of its members are citizens of North Carolina.

JURISDICTION AND VENUE

7. This is a collective action for unpaid wages, damages, and other relief under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

8. This Court has subject matter jurisdiction of Plaintiffs’ Federal law claims pursuant to 28 U.S.C. § 1331.

9. Plaintiff Bogo and all Defendants reside in this judicial district and a substantial part of the events and omissions giving rise to Plaintiffs’ claims occurred in this district. The unpaid wages sought in this action were earned in this district. Venue is proper in this district

and division pursuant to 28 U.S.C. § 1391(b) and Local Civil Rule 40.1, EDNC.

FACTUAL ALLEGATIONS

10. Defendants are part of the family of entities now doing business as “Xe” which until early 2009 were doing business as “Blackwater Worldwide” and “Blackwater USA.”

11. Xe Services is the successor entity to EP Investments, LLC. Xe Services is the central entity in the “Xe” family of entities.

- a. Xe Services’ CEO and President, Joe Yorio, serves as the senior executive for all of the “Xe” family of entities.
- b. Xe Services’ Executive Vice President and Chief Operating Officer, Danielle Esposito, serves as the senior executive for all of the operations of the “Xe” family of entities.
- c. Xe Services’ Director of Human Resources, Elizabeth Merritt, serves as the HR director for all of the “Xe” family of entities and reports directly to Yorio. Among other things, Merritt is responsible for the human resources functions for all of the “Xe” family of entities.
- d. Xe Services’ Chief Financial Officer, Mike Taylor, serves as the chief financial officer for all of the “Xe” family of entities and reports directly to Yorio.
- e. Xe Services’ Controller, Brian Arsenault, serves as the controller for all of the “Xe” family of entities and reports directly to Taylor. Among other things, Arsenault is responsible for the payroll functions for all of the “Xe” family of entities.

12. USTC is the successor entity to Blackwater Lodge and Training Center, Inc. Its senior executive is Jim Sierawski, Senior Vice President and General Manager of Training

Operations for Xe Services. Sierawski reports directly to Esposito.

13. BSC is managed by its sole member USTC. BSC was previously managed by Blackwater Lodge and Training Center, Inc. Upon information and belief, Sierawski is the senior executive of BSC.

14. Xe Services, as the central or holding company for the “Xe” family of entities, has the right to and in fact exercises control over USTC, BSC, and the other “Xe” entities, through centralized management, human resources, and payroll.

15. Xe Services, USTC, and BSC are engaged in a combination of related activities, and these activities are all related to, and performed for, a unitary business purpose. This unitary business purpose is the reason Xe Services was formed and is common to all these activities.

16. At all relevant times herein, Plaintiffs were employed by Xe Services, USTC, and/or BSC as firearms and tactics instructors.

17. At all relevant times herein, Plaintiffs were misclassified by Defendants as exempt from the overtime requirements of the FLSA.

18. From October 2007, Plaintiff Williams was employed as a full-time instructor in Defendants’ Navy Program training department. He was assigned to work in Moyock, North Carolina and at the Northwest Naval Annex, a Department of Defense facility located in Virginia and North Carolina.

19. Prior to October 2007, Plaintiff Williams was employed as a full-time instructor in Defendants’ Worldwide Personal Protection Services (WPPS) Program. He was assigned to work in Moyock, North Carolina.

20. At some relevant times herein, Plaintiff Williams was misclassified by Defendants as an independent contractor.

21. The manager of the Navy Program, Rob Baugh, reports directly to Jeff Morin, Xe Services' Director of Training Operation, who in turn reports to Sierawski.

22. The manager of the WPPS Program, Andy Walsh, reports directly to Tony Valusek, Xe Services' VP and General Manager of WPPS Programs. Valusek reports directly to COO Esposito.

23. From June 2007 through December 2008, Plaintiff Bogo was employed as a full-time instructor in Defendants' WPPS Program. He was assigned to work in Moyock, North Carolina. Since December 2008, Plaintiff Bogo has worked intermittently for Defendants as what they call an "adjunct" instructor.

24. At some relevant times herein, Plaintiff Bogo was misclassified by Defendants as an independent contractor.

25. Xe Services, USTC, and BSC are all enterprises engaged in commerce with annual gross receipts of more than \$500,000.

26. Xe Services, USTC, and BSC are all covered employers under the Fair Labor Standards Act.

27. Plaintiffs were engaged in interstate commerce when employed by Xe Services, USTC, and/or BSC.

28. Xe Services, USTC, and/or BSC made affirmative misstatements to Plaintiffs, and those similarly situated, that they were exempt from the overtime requirements of the FLSA.

29. Xe Services, USTC, and/or BSC failed to post a notice explaining the FLSA in conspicuous places where Plaintiffs, and those similarly situated, were employed.

30. Plaintiffs and the other WPPS and Navy Program instructors were subject to the same policies, procedures, and practices, including the same classification, timekeeping, and

payroll policies, procedures, and practices.

31. The WPPS and Navy Program instructors, including Plaintiffs, were non-exempt employees, eligible for overtime compensation, under the FLSA.

32. The WPPS and Navy Program instructors, including Plaintiffs, routinely worked more than forty hours in a week but were not paid overtime.

33. The WPPS and Navy Program instructors, including Plaintiffs, were not independent contractors but were employees covered by the FLSA.

34. Upon information and belief, Defendants failed to record the working hours of Plaintiffs and the other WPPS and Navy Program instructors.

35. Upon information and belief, Defendants directed instructors to report eight hours of work per day regardless of the actual number of hours worked. As a result, the instructors' time records, to the extent they exist, fail to document all of the instructors' compensable time.

36. All of the WPPS and Navy Program instructors are similarly situated to Plaintiffs in the manner in which: they were misclassified as exempt from the overtime requirements of the FLSA; they were suffered or permitted to work more than 40 hours in one or more workweeks in the relevant time period; their compensable work time was or was not recorded; and, they have not been paid the overtime premium due for all hours worked.

37. Plaintiffs are appropriate representatives for the purposes of the Court certifying a collective action and approving a notice of the action to potential class members. Plaintiffs' FLSA claims are the same or similar to the claims of the other potential class members.

38. During the time period relevant to this action, Defendants employed 12-15 full-time WPPS and 35-40 full-time Navy Program instructors at any particular time. With turnover of instructors during the relevant period and part-time instructors, the total number of WPPS and

Navy Program instructors who worked for Defendants could be greater than one hundred.

CLAIM FOR RELIEF – UNPAID OVERTIME UNDER THE FLSA

39. The allegations in paragraphs 1 through 38 above are incorporated by reference as if fully set forth herein.

40. Plaintiffs and others similarly situated worked in excess of 40 hours in some workweeks and were not paid the overtime pay required by law.

41. Defendants knew or showed reckless disregard for the matter of whether their failure to pay overtime was prohibited by law.

42. Plaintiffs and others similarly situated have been damaged from Defendants failure to pay the overtime pay required by law.

WHEREFORE, Plaintiffs respectfully pray the Court:

1. That the Court direct that notice of this action be provided to all others similarly situated to Plaintiffs on the FLSA claim;

2. That the Court certify a class of similarly situated employees for whom a collective action under the FLSA will proceed to trial;

3. That Plaintiffs and others similarly situated recover unpaid overtime wages, liquidated damages, attorney fees, and other relief by reason of Defendants' violations of the FLSA;

4. For a trial by jury on all issues so triable; and,

5. For such other and further relief as the Court may deem just and proper.

This the 18th day of December, 2009.

**BENJAMIN M. WILLIAMS,
and DAVID BOGO, for themselves and
all others similarly situated.**

/s/ James R. Theuer

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