

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

BRUCE SOMERS, INDIVIDUALLY  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

Plaintiff,

v.

GENERAL ELECTRIC COMPANY,

Defendant.

: CIVIL DIVISION  
:  
: GD No.: \_\_\_\_\_  
:  
: **COMPLAINT**  
:  
: **Code** \_\_\_\_\_  
:  
: **CLASS ACTION**  
:  
: Filed on behalf of Bruce Somers, Plaintiff  
:  
: Counsel of Record:  
: Derrek W. Cummings, Esq. (PA 83286)  
: Larry A. Weisberg, Esq. (PA 83410)  
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:  
: Party represented by Out-of-County  
: Counsel Only  
:  
: **JURY TRIAL DEMANDED**

Counsel for Plaintiff  
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## **NOTICE**

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral Service  
Allegheny County Bar Association  
11th Floor Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219  
Telephone: (412) 261-5555

## **AVISO**

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA

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SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

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## **COMPLAINT**

Plaintiff, Bruce Somers (hereinafter “Somers” or “Named Plaintiff”), individually and on behalf of all others similarly situated, for his Class Action Complaint against Defendant, General Electric Company (hereinafter “GE” or “Defendant”), states as follows:

### **Nature of Case**

GE is an American multinational conglomerate incorporated in New York and headquartered in Boston. On or about February 25, 2019, GE sold one of its business units, GE Transportation, to Wabtec Corporation (“Wabtec”). Prior to the sale of GE Transportation to Wabtec, GE had employed numerous people, including Somers, at its GE Transportation facilities in Pennsylvania. Along with other employees of GE, these employees were eligible to receive benefits, including vacation time and vacation pay, pursuant to GE’s company-wide benefits policy.

At the time of the sale of GE Transportation to Wabtec, GE’s vacation and leave policy included two (2) methods by which employees would earn annual leave. Using the “Annual Vacation Allotment Method,” which applied to employees hired prior to June 18, 2007, employees would earn vacation time based on the length of their continuous service with GE on January 1 of the calendar year. The paid vacation time that an employee could take during the calendar year was earned during that same current calendar year, and the employee’s full annual allotment was granted at the beginning of the calendar year. Using the “Earn As You Go (EAYG) Method,” which applied to employees hired on or after June 18, 2007, employees would earn a fractional portion of their annual vacation each month during the calendar year.

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The GE vacation and leave policy also had provisions entitled, “WHAT HAPPENS IF I LEAVE THE COMPANY?”, which stated as follows:

If you earn vacation under the Annual Vacation Allotment Method, you (or your estate) will be paid for any unused vacation days when you leave the Company for any reason, including resignation, discharge, retirement, layoff, disability or death.

Under the Earn As You Go (EAYG) Method, you may take your annual vacation in advance of actually earning it. However, if you resign or are terminated, only earned but unused vacation is paid to you.

When GE sold GE Transportation to Wabtec on or about February 25, 2019, some of the employees of GE, including Somers, were hired by Wabtec, while other employees may have been reassigned to other divisions of GE and some were separated from both GE and Wabtec. Upon information and belief, employees of GE who did not remain employed by either GE or Wabtec following the sale were paid their earned but unused vacation in accordance with GE’s vacation and leave policy. However, employees such as Somers, who were separated from GE, but went to work for Wabtec, were not paid their earned but unused vacation in accordance with GE’s vacation and leave policy, which constitutes a breach of contract and a violation of the Pennsylvania Wage Payment and Collection Law (hereinafter “PWPCCL”), 43 P.S. 260.1 *et seq.*

Accordingly, this lawsuit is brought as a class action under Pennsylvania contract law and the PWPCCL, or in the alternative as an unjust enrichment claim, to recover unpaid wages owed to Somers and all other similarly situated employees.

### **Parties, Jurisdiction, and Venue**

1. Named Plaintiff, Bruce Somers, is an adult individual residing at 237 Stoneboro Road, Grove City, Mercer County, Pennsylvania 16127.

2. Somers worked as an employee of GE, in the GE Transportation business unit, from prior to June 18, 2007 until on or about February 25, 2019, when GE Transportation was sold to Wabtec.

3. Somers is a citizen of the Commonwealth of Pennsylvania.

4. Sommers brings this lawsuit as a class action for breach of contract, or in the alternative as unjust enrichment, and under the PWPCCL on behalf of himself and all other similarly situated individuals who were employed by GE in the GE Transportation business unit, who were separated from GE on or about February 25, 2019, and who were not paid for earned but unused vacation days at the time of their separation.

5. GE is a New York corporation, with headquarters located at 5 Necco Street, Boston, Massachusetts 02210.

6. GE maintains a business location in Allegheny County, Pennsylvania, located at 101 North Campus Drive, Imperial, Pennsylvania 15126.

7. At all times relevant and material to this Complaint, GE was an “Employer,” as defined by the PWPCCL. 43 Pa. Stat. Ann. § 260.2a (West).

8. The PWPCCL provides for a private right of action to enforce its provisions. 43 Pa. Stat. Ann. § 260.9a (West).

### **General Allegations**

9. Somers and other similarly situated persons (the “Class”) who performed work for GE within the GE Transportation Unit in Pennsylvania each maintained an employment contract with GE while employed by GE, which included the GE vacation and leave policy.

10. On or about February 25, 2019, GE sold one of its business units, GE Transportation, to Wabtec.

11. Prior to the sale of GE Transportation to Wabtec, GE had employed numerous people, including Somers, at its GE Transportation facilities in Pennsylvania.

12. Along with other employees of GE, these employees were eligible to receive benefits, including vacation time and vacation pay, pursuant to GE's company-wide benefits policy.

13. At the time of the sale of GE Transportation to Wabtec, GE's vacation and leave policy included two methods by which employees would earn annual leave. Using the "Annual Vacation Allotment Method," which applied to employees hired prior to June 18, 2007, employees would earn vacation time based on the length of their continuous service with GE on January 1 of the calendar year. The paid vacation time that an employee could take during the calendar year was earned during that same current calendar year, and the employee's full annual allotment was granted at the beginning of the calendar year. Using the "Earn As You Go (EAYG) Method," which applied to employees hired on or after June 18, 2007, employees would earn a fractional portion of their annual vacation each month during the calendar year.

14. The GE vacation and leave policy also had provisions entitled, "WHAT HAPPENS IF I LEAVE THE COMPANY?", which stated as follows:

If you earn vacation under the Annual Vacation Allotment Method, you (or your estate) will be paid for any unused vacation days when you leave the Company for any reason. Including resignation, discharge, retirement, layoff, disability or death.

Under the Earn As You Go (EAYG) Method, you may take your annual vacation in advance of actually earning it. However, if you resign or are terminated, only earned but unused vacation is paid to you.

15. When GE sold GE Transportation to Wabtec on or about February 25, 2019, some of the employees of GE, including Somers, were hired by Wabtec (these employees constituting the “Class”), while other employees may have been reassigned to other divisions of GE and some were separated from both GE and Wabtec.

16. Following the sale of GE Transportation from GE to Wabtec, members of the Class were no longer employees of GE.

17. Upon information and belief, employees of GE who did not remain employed by either GE or Wabtec following the sale were paid their earned but unused vacation in accordance with GE’s vacation and leave policy. However, employees such as Somers, who were separated from GE, but went to work for Wabtec, *i.e.* the Class, were not paid their earned but unused vacation in accordance with GE’s vacation and leave policy,

18. The Class was subject to a uniform compensation policy; namely, the GE vacation and leave policy.

19. Accordingly, as a result of GE’s failure to pay wages, the Class is entitled to the rights, protections, and benefits provided under the PWPCL.

20. The PWPCL regulates, among other things, the payment of wages to employees both during their employment and following separation.



21. The PWCPL defines wages to include “fringe benefits,” and the term “fringe benefits” is further defined to include “separation, vacation, holiday, or guaranteed pay.” 43 Pa. Stat. Ann. § 260.2a (West).

22. GE breached its contract with the Class by failing to pay earned but unused vacation time upon the separation of each member of the Class from GE when GE sold the GE Transportation business unit to Wabtec.

23. The Class is entitled to special damages in the form of “liquidated damages” as set forth by the PWCPL because GE acted did not act in good faith in its violation of the PWCPL.

24. Alternatively, should the Court find that GE acted in good faith, the Class is entitled to an award of prejudgment interest at the applicable legal rate.

25. As a result of the aforesaid breach of contract and willful violations of the PWCPL, compensation has been unlawfully withheld by GE from the Class.

### **Collective and Class Action Allegations**

26. Somers brings Counts I, II and III as a class action pursuant to Pa. R.C.P. No. 1702, *et seq.* and 43 Pa. Stat. Ann. 260.9a, on behalf of himself and as the Class Representative of the following persons:

All former employees of General Electric Company who (1) worked for the GE Transportation business unit, (2) were separated from General Electric Company when the GE Transportation business unit was sold to Wabtec on or about February 25, 2019, and (3) who were not paid for earned but unused vacation time, in accordance with General Electric Company’s policy, subsequent to their separation.

27. These claims, if certified for class wide treatment, may be pursued by all similarly-situated persons.

28. Somers' claims satisfy the requirements of a class action set out in Pa. R.C.P. No. 1702, *et seq.*

29. The class satisfies the numerosity standards. The class consists of approximately one thousand one hundred (1,100) persons who are dispersed throughout Pennsylvania, and elsewhere. As a result, the class is sufficiently numerous and joinder of all class members in this action is impracticable.

30. There are questions of fact and law common to the class that predominate over any questions affecting only individual members. The questions of law and fact common to the class arising from GE's actions include, without limitation, the following:

Whether General Electric Company failed to pay earned but unused vacation time, in accordance with its written policy, to employees who were separated from General Electric Company when the GE Transportation business unit was sold to Wabtec, on or about February 25, 2019, in violation of General Electric's contract with its employees and the Pennsylvania Wage Payment and Collection Law.

Whether General Electric Company's conduct in violating the PWPCCL was in good faith.

Whether General Electric Company was unjustly enriched by its failure to pay earned but unused vacation time to employees who were separated from General Electric Company when the GE Transportation business unit was sold to Wabtec, on or about February 25, 2019

31. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency,

economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the state law claims.

32. Somers will fairly represent the members of the class because his claims are typical of those of the class because he and the class members have worked under a common policy, and were similarly uncompensated for earned but unused vacation time upon their separation from GE. In this respect, Somers' claims are typical of the claims of the class he seeks to represent and his interests do not conflict with the interests of the members of the class.

33. Also, the interests of the members of the class will be fairly and adequately protected by Plaintiff's counsel who have experience prosecuting class action litigation.

34. A class action is the appropriate method for the fair and efficient adjudication of this controversy. GE has acted or refused to act on grounds generally applicable to the class. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for GE, and/or substantially impair or impede the ability of class members to protect their interests.

35. Maintenance of this action as a class action is a fair and efficient method for adjudication of this controversy. It would be impracticable and undesirable for each member of the class who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

## **COUNT I**

### **Breach of Contract**

#### *Failure to Pay Earned but Unused Vacation Time*

36. Somers and other similarly situated persons incorporate herein the allegations set forth above.

37. Members of the Class who performed work for GE within the GE Transportation Unit in Pennsylvania each maintained an employment contract with GE while employed by GE, which included the provisions of the GE vacation and leave policy, and provided for the payment of earned but unused vacation time upon an employee's separation from GE.

38. The provisions of the GE vacation and leave policy were in effect on or about February 25, 2019, when GE sold its GE Transportation business unit to Wabtec, evidenced by the fact that GE paid employees who separated from GE but did not go to work for Wabtec for their earned but unused vacation time.

39. GE breached its contract with Somers and the Class by deliberately failing to pay Somers and the Class for all earned but unused vacation time upon their separation from GE on or about February 25, 2019, when GE sold its GE Transportation business unit to Wabtec.

40. Accordingly, Somers and the Class are entitled to judgment in an amount equal to the value of their earned but unused vacation time at the time of their separation from GE.

## **COUNT II**

### **Violation of the Pennsylvania Wage Payment and Collection Law** *Failure to Pay Wages*

41. Somers and other similarly situated persons incorporate herein the allegations set forth above.

42. Somers alleges that GE failed to pay the Class wages, as defined by the PWPCCL, when GE failed to pay the Class for earned but unused vacation time following the Class members' separation from GE.

43. GE's failure to pay the Class wages was not in good faith, evidenced by the fact that GE paid employees who separated from GE but did not go to work for Wabtec for their earned but unused vacation time.

44. GE's failure to pay wages permits a civil suit to recover wages due to the Class, costs and attorneys' fees under 43 Pa. Stat. Ann. 260.9a, as well as liquidated damages of 25% of the total amount of wages due or \$500 dollars, whichever is greater, pursuant to 43 Pa. Stat. Ann. 260.10.

## **COUNT III**

### **Unjust Enrichment**

#### *Failure to Pay Straight-Time Wages, Overtime and/or Premium Pay Wages*

45. Named Plaintiff and other similarly situated persons incorporate herein the allegations set forth above.

46. The relevant time period for this cause of action begins at least four (4) years before the date on which the Complaint was filed.

47. GE has received and benefited from its failure to pay wages to Somers and the Class, such that to retain said benefit without compensation would be inequitable and rise to the level of unjust enrichment.

48. At all relevant times hereto, GE devised and implemented a plan to increase its earnings and profits by deliberately failing to pay wages to Somers and the Class.

49. By reason of having failed to pay wages to Somers and the Class, GE enjoyed reduced overhead with respect to its labor costs, and therefore realized additional earnings and profits to its own benefit and to the detriment of Somers and the Class. GE retained and continues to retain such benefits contrary to the fundamental principles of justice, equity, and good conscience.

50. Accordingly, Somers and the Class are entitled to judgment in an amount equal to the benefits unjustly retained by GE.

### **PRAYER FOR RELIEF**

WHEREFORE, Named Plaintiff, Bruce Somers, and all similarly situated employees demand judgment against Defendant, General Electric Company, as follows:

1. Certify the state law claims set forth above as a class action pursuant to Pa. R.C.P. No. 1702, *et seq.* and 43 Pa. Stat. Ann. 260.9a;

2. **As to Count I (Breach of Contract)**, award Named Plaintiff and all similarly situated employees a) damages according to proof at trial, b) pre-judgment interest at the highest level rate, from and after the date of service of the initial complaint in this action on all unpaid

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wages from the date such wages were earned and due, and c) all other relief as this Court may deem proper and equitable

3. **As to Count II (Violation of the Pennsylvania Wage Payment and Collection Law)**, award Named Plaintiff and all similarly situated employees a) damages for the amount of unpaid wages, in addition to interest and penalties subject to proof, b) liquidated damages in an amount equal to twenty-five percent (25%) of the total amount of wages due pursuant to the Wage Payment and Collection Law, 43 P.S. § 260.10, c) an award to Plaintiffs and class members of reasonable attorneys' fees and costs pursuant to the Wage Payment and Collection Law, and d) all other relief as this Court may deem proper and equitable; and

4. **As to Count III (Unjust Enrichment)**, award Named Plaintiff and all similarly situated employees a) general damages according to proof at trial, b) special damages according to proof at trial, c) pre-judgment interest at the highest level rate, from and after the date of service of the initial complaint in this action on all unpaid wages from the date such wages were earned and due, d) all other relief as this Court may deem proper, and e) all other relief as this Court may deem proper and equitable.

#### **DEMAND FOR JURY TRIAL**

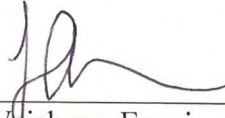
Named Plaintiff hereby requests a trial by jury of all issues triable by jury.

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Date: 4/6/2020

Respectfully submitted,

**WEISBERG CUMMINGS, P.C.**



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***COUNSEL FOR PLAINTIFF***



**VERIFICATION**

I, Bruce Somers, verify that I am the Plaintiff in the foregoing Complaint and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief; and that this verification is subject to the penalties of 18 Pa.C.S. § 4904 relative to unsworn falsification to authorities.

4/4/2020  
Date

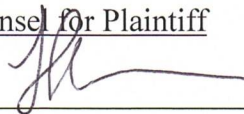
Bruce Somers  
Bruce Somers

**CERTIFICATE OF COMPLIANCE**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted By: Counsel for Plaintiff

Signature: \_\_\_\_\_



Name: Larry A. Weisberg

Attorney No. (if applicable): 83410

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims GE Transportation Workers Owed for Unused Vacation Days After Feb. 2019 Sale to Wabtec](#)

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