

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

ROGER DYALS and
DEE GRANT PORTER,

Plaintiffs,

v.

Sheriff TOMMY J. GREGORY,
in his official capacity,

Defendant.

*
*
*
*
*
*
*
*
*
*

CV 212-207

O R D E R

Presently before the Court is Defendant Sheriff Tommy Gregory's ("Sheriff") motion for summary judgment and Plaintiffs Roger Dyals and Dee Grant Porter's (collectively, "Plaintiffs") motion to amend.¹ (Doc. nos. 31, 52.) The Sheriff seeks summary judgment on all of Plaintiffs' claims, and Plaintiffs seek to attach two exhibits to their response in opposition to summary judgment. Plaintiffs, former deputies in the Camden County Sheriff's Office ("Sheriff's Office"), were terminated on June 29, 2011, as part of a reduction in force purportedly because of a limited budget. However, they allege that they were discriminated against on the basis of their age and retaliated against in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* ("ADEA"). Additionally, Dyals

¹ This Order amends the Court's previous Order entered on September 5, 2014. (Doc. no. 64.)

claims that he is entitled to unpaid overtime and was retaliated against in violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"). As discussed below, the Sheriff's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART** and Plaintiffs' motion to amend is **GRANTED**.

I. BACKGROUND

A. Factual Background

1. Plaintiffs' Employment History and Terminations

This case arises out of Plaintiffs' employment as deputy sheriffs with the Sheriff's Office. Dyals was hired in November 2002 by former Sheriff Bill Smith as a Lieutenant Operations Officer. (Dyals Dep. at 11.) Dyals remained in that position until 2009 at which time he was promoted to Captain. (Id. at 14.) When Sheriff Gregory was elected in 2009 and assumed office, there was a period of reorganization that saw Dyals reassigned and demoted to a deputy fleet manager. (Id. at 16-18.) This also resulted in a decrease in pay. (Id. at 18.) Dyals testified that the Sheriff told him, "Well, you either accept it or you can go home." (Id.) In January 2010, he was again reassigned, this time as a courtroom deputy. (Id. at 20.) This transfer resulted in another reduction in pay. (Id.) Dyals remained in this position until his termination. (See Doc. no. 31-1 ¶ 4.)

Porter, likewise, was hired by Sheriff Smith in March 2005. (Porter Dep. at 11.) He was originally hired as a paramedic in the Jail/Corrections Division. (Id.) Porter remained in this position until September 2009 when Sheriff Gregory made the decision to contract out the medical care to a private company in order to save money. (Id. at 17.) At that time, Porter was reassigned as a deputy to the special operations unit. (Id. at 21.) Porter excelled at this position, drawing high praise and excellent performance evaluations from his supervisor, Kevin Chaney. (See Doc. no. 37-1 at 63.) Porter remained in this position until he was terminated. (See Doc. no. 31-1 ¶ 5.)

On June 29, 2011, Plaintiffs, along with seven other employees, were laid off. (See Doc. no. 37-1 at 54.) At the time of their termination, Dyals was 66 and Porter was 50 years old. (See Doc. no. 41-1 at 15.) Sheriff Gregory contends that the lay-offs were necessary due to "budgetary constraints." (Doc. no. 37-1 at 54.) Apparently, the Sheriff requested a budget for the 2012 fiscal year of approximately \$8 million, but the Camden County Board of Commissioners approved a budget for the Sheriff's Office (including the Jail/Corrections division) of only \$5.5 million. (Fender Dep. at 12.) Michael Fender, the Director of Finance for Camden County, testified that this represented a decrease of approximately \$600,000 from the 2011

budget. (Id.) Plaintiffs argue the decrease was far less, only \$164,170. (See Doc. no. 41-1 at 29.)

Sheriff Gregory explains that once he determined that layoffs were necessary, he asked each division leader to rank his or her employees. (Gregory Dep. at 62.) Purportedly, the employees at the bottom of each list were those at risk of being terminated. (Id.) Lori Whitlow, the Executive Administrative Assistant to Sheriff Gregory, supervised the courthouse security division. (Whitlow Aff. ¶¶ 2, 4.) She testified that in making her list, she considered an employee's work history, attendance, and any disciplinary actions. (Id. ¶ 9.) Applying these criteria, Dyals ranked at the bottom of his division. (Id. ¶ 10.) Unlike Whitlow, however, Kevin Chaney, special operations commander, ranked his employees solely on one factor: seniority. (Chaney Dep. at 13.) Consequently, because Porter was the last individual to join the special operations division, he was ranked last. (Id.)

2. 2012 Hirings

Despite laying off nine employees aged 70, 66, 56, 54, 50, 43, 41, and 38 because of allegedly limited funds,² Sheriff Gregory continued to advertise for and hire new employees throughout 2011 and 2012. In fact, the Sheriff hired three

² Although Plaintiffs' reply to Sheriff's motion for summary judgment asserts that Brandi Nelson, the ninth employee, is "age under 40", the record does not reflect her age. (See Doc. no. 40-2 at 5 and Doc. no. 41-1 at 15.)

employees - one corrections officer and two deputies - on June 27, 2011, two days prior to the lay-offs. (See Doc. no. 41-1 at 15.) The ages of the new hires were 25, 39, and 51. (Id.)

As early as September 30, 2011, the Sheriff placed advertisements requesting applications for open Correctional Officer positions in the newspaper. (See Doc. no. 36-2 at 45.) And over the next several months, the Sheriff hired an additional eighteen employees, including four deputies, twelve corrections officers, one finance officer, and one administrative clerk. (Id.) The ages of the new hires ranged from 19 to 51, and only three of the hires were over the age of 40. (Id.) Dyals alleges that he was replaced by a deputy with less training and experience who was significantly younger than him. (Dyals Decl. ¶¶ 16-17.) And although an employee was not hired to replace Porter, Brittany Barnes was transferred into the special operations division upon Chaney's request. (Chaney Dep. at 25.)

Despite being aware of the advertisements, Plaintiffs did not reapply for employment with the Sheriff's Office. Plaintiffs did not believe that they needed to reapply because when they were terminated they were told that they were "subject to recall." (Porter Decl. ¶ 10; Dyals Decl. ¶ 13.) They were not informed that if they wanted to return to service, they would have to reapply. (Porter Decl. ¶ 9; Dyals Decl. ¶ 12.)

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.