

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2018 JAN 31 PM 3:33

MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

ERIC BROADEN,
on behalf of himself and other
employees similarly situated,

Plaintiff,

CASE NO.: 6:18-cv-150-OL-40X1

FLSA COLLECTIVE ACTION

v.

TRUCKPRO, LLC, d/b/a
TRUCKPRO – ORLANDO,
a Foreign Limited Liability Company,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, ERIC BROADEN, on behalf of himself and other employees similarly situated, by and through his undersigned counsel, sues Defendant, TRUCKPRO, LLC, d/b/a TRUCKPRO – ORLANDO, and in support thereof states as follows:

Jurisdiction and Venue

1. This is an action for damages by Plaintiff, on behalf of himself and other employees similarly situated, against his employer for violations of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201, *et seq.* (“FLSA”). This Court has jurisdiction over Plaintiff’s claims pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

2. Venue is proper in this Court pursuant to Local Rule 1.02(c) of the Local Rules of the Middle District of Florida. Venue is proper in this District because a substantial part of the events giving rise to the instant action occurred in Orange County, Florida. At all times material to the instant action, Defendant has conducted substantial, continuous, and systematic commercial activities in Orange County, Florida.

Parties and Factual Allegations

3. Plaintiff is an individual *sui juris* residing in Orange County, Florida.

4. Plaintiff was hired by Defendant on or around April 7, 2014, and worked for Defendant through his termination on or around June 23, 2016.

5. Plaintiff was an employee of Defendant as that term is defined by 29 U.S.C. 203(e).

6. Defendant was Plaintiff's employer as that term is defined by 29 U.S.C. 203(d).

7. Defendant is an enterprise engaged in commerce as defined by 29 U.S.C. 203(s), who upon information and belief has annual gross business done of not less than \$500,000.

8. As an employee of Defendant, Plaintiff performed the job of Delivery / Warehouse Personnel.

9. As Delivery / Warehouse Personnel, Plaintiff was required to make deliveries and pickup returns of auto parts to and from Defendant's customers, as well as attend to general duties such as stocking in the warehouse.

10. As a Delivery / Warehouse Personnel, Plaintiff regularly handled and worked with goods that had been moved in or produced for interstate commerce.

11. During Plaintiff's employment, Plaintiff was frequently required to work hours beyond his scheduled shift, specifically, when Plaintiff finished deliveries after the warehouse was closed, Plaintiff was required to return to the warehouse and finish closing procedures; however, Plaintiff was unable to use Defendant's timekeeping system, and Defendant would only credit Plaintiff for the time he was scheduled to work, as opposed to the time Plaintiff actually worked.

12. During Plaintiff's employment, Plaintiff's job duties and responsibilities occasionally required Plaintiff to miss lunch, but Defendant failed to pay Plaintiff for this time, and instead deducted the meal time from Plaintiff's time worked.

13. Defendant was aware of the issues complained of in Paragraphs 11 and 12 above.

14. Throughout his employment, Plaintiff regularly worked hours in excess of forty (40) hours per week.

15. Defendant has failed to pay Plaintiff for all hours worked in excess of forty (40) hours per week at a rate of not less than one-and-one-half times Plaintiff's regular rate.

16. Plaintiff has suffered substantial losses due to Defendant's failure to pay overtime compensation in violation of the FLSA.

17. Defendant's failure to pay Plaintiff the required overtime was willful.

18. Upon information and belief, for the three (3) year period preceding the filing of the instant action, Defendant has willfully violated the FLSA in regard to all its employees employed as Delivery / Warehouse Personnel, Plaintiff included, by failing to pay Plaintiff and other Delivery / Warehouse Personnel at a rate of not less than one-and-one-half times their regular rate for all hours worked in excess of forty (40) hours per week.

19. Plaintiff has retained LYTLE & BARSZCZ to represent him in this matter and has agreed to pay said firm reasonable attorneys' fees for its services.

COUNT I
Failure to Pay Overtime

20. Plaintiff repeats and incorporates by reference the allegations set forth in Paragraphs 1 through 19 above, as if fully set forth herein.

21. Plaintiff was an employee of Defendant.

22. Plaintiff's job duties and responsibilities required Plaintiff to engage in commerce and/or use the tools of commerce.

23. Defendant was an employer of Plaintiff.

24. Defendant is an enterprise engaged in commerce, who upon information and belief has annual gross business done of not less than \$500,000.

25. Throughout his employment, Plaintiff regularly worked hours in excess of forty (40) hours per week.

26. Defendant has failed to pay Plaintiff for all hours worked in excess of forty (40) hours per week at a rate of not less than one-and-one-half times Plaintiff's regular rate.

27. Plaintiff has suffered substantial losses due to Defendant's failure to pay overtime compensation in violation of the FLSA.

28. Defendant's failure to pay Plaintiff the required overtime was willful.

29. Upon information and belief, for the three (3) year period preceding the filing of the instant action, Defendant has willfully violated the FLSA in regard to all its employees employed as Delivery / Warehouse Personnel, Plaintiff included, by failing to pay Plaintiff and other Delivery / Warehouse Personnel at a rate of not less than one-and-one-half times their regular rate for all hours worked in excess of forty (40) hours per week.

WHEREFORE, Plaintiff, on behalf of himself and other employees similarly situated, demands judgment against Defendant for the following:

- a. Certification of this action as a Collective Action brought pursuant to 29 U.S.C. § 216(b);
- b. Designation of Plaintiff as representative of the FLSA Collective Class;
- c. That Plaintiff be allowed to give notice of this collective action, or that this Court issue such notice at the earliest possible time; to all past and present Delivery / Warehouse Personnel employed by the Defendant at any time during the three (3) year period

immediately preceding the filing of this Complaint, through and including the date of this Court's issuance of the Court Supervised Notice;

- d. That all past and present members of the Plaintiff Collective Class be informed of the nature of this Collective Action, and similarly situated employees' rights to join this lawsuit;
- e. Equitable tolling of the statute of limitations for all potential opt-in Plaintiffs from the date of filing this Complaint, until the expiration of the deadline for filing consent to sue forms pursuant to 29 U.S.C. § 216(b);
- f. Unpaid overtime due and owing;
- g. Liquidated damages in an amount equal to the unpaid overtime due and owing;
- h. Pre- and post-judgment interest as allowed by law;
- i. Reasonable attorneys' fees and costs; and
- j. Such other relief as this Court finds just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted this 31st day of January 2018.



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David V. Barszcz, Esq.
Florida Bar No. 0750581
Robert N. Sutton, Esq.
Florida Bar No. 0121688
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Counsel for Plaintiff

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

<p>I. (a) PLAINTIFFS ERIC BROADEN, on behalf of himself and other employees similarly situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>Orange</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) LYTLE & BARSZCZ, P.A., 543 N. WYMORE ROAD, SUITE 103, MAITLAND, FL 32751, (407) 622-6455</p>	<p>DEFENDANTS TRUCKPRO, LLC, d/b/a TRUCKPRO – ORLANDO, a Foreign Limited Liability Company</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input checked="" type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395f)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DJWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

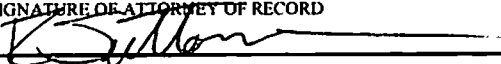
VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 201 et seq. - Fair Labor Standards Act

Brief description of cause:
Failure to Pay Overtime

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint. JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 1/31/18 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [TruckPro Warehouse Worker Seeks Allegedly Unpaid Wages in Class Action Suit](#)
