

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA 2017 NOV -1 AM 11:00
OCALA DIVISION

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FL
OCALA FLORIDA

LAFARRELL BUNTING, on behalf of)
himself and those similarly situated,)
)
Plaintiff,)
)
v.)
)
A TO Z WIRING, LLC, and RWL)
COMMUNICATIONS, INC.)
)
Defendants.)
_____)

Civil Action No.: 5:17-cv-525-OC-30PRU

COMPLAINT

COMES NOW the Plaintiff, LAFARRELL BUNTING, on behalf of himself and those similarly situated (“PLAINTIFF”), and files this Complaint against Defendants, A TO Z WIRING, LLC and RWL COMMUNICATIONS, INC. (collectively “DEFENDANTS”) respectfully stating unto the Court the following:

GENERAL ALLEGATIONS

1. This is a cause of action to recover compensatory and liquidated damages, attorney fees, and other relief from DEFENDANTS for violations of the Fair Labor Standards Act (“FLSA”) and for breach of contract.
2. At all material times, PLAINTIFF was a citizen and resident of Marion County, Florida.
3. At all material times, DEFENDANT A TO Z was a Florida corporation, with its principal place of business in Clearwater, Florida.
4. At all material times, DEFENDANT RWL was a Florida corporation, with its principal place of business in Sarasota, Florida.

5. Venue is appropriate in this division because Plaintiff performed work in Marion County, Florida on behalf of DEFENDANTS and it is that work which is the basis of this lawsuit.

BACKGROUND

6. PLAINTIFF brings this action to require DEFENDANTS to pay back wages owed to PLAINTIFF and those similarly situated, which DEFENDANTS failed to pay in violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* PLAINTIFF seeks damages suffered as the result of that violation.
7. At all relevant times, DEFENDANTS acted through their officers, agents, servants and employees.
8. Upon information and belief, at all relevant times, DEFENDANTS had annual gross sales in excess of \$500,000.00 and two or more employees who regularly handled goods that moved in or were produced for interstate commerce.
9. Upon information and belief, at all relevant times, DEFENDANTS were enterprises engaged in commerce as defined at 29 U.S.C. § 203 and joint employers.
10. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1337 and by 29 U.S.C. § 216(b).
11. PLAINTIFF worked for DEFENDANTS between from early 2016 until in or around August 2016. During this time, Plaintiff worked as a telecommunications installer.
12. PLAINTIFF trained for approximately four weeks without being paid for his training.
13. The additional persons who may become Plaintiffs in this action are DEFENDANTS' current and former employees, who were not paid for their training and who worked overtime hours for DEFENDANTS, but were not compensated for those hours because DEFENDANTS misclassified them as exempt from the overtime provisions of the FLSA.

These additional persons, like PLAINTIFF, were at all material times, non-exempt employees of DEFENDANTS who were mislabeled as independent contractors.

14. At all relevant times, PLAINTIFF was paid per job. He typically began his workday at 6:00 a.m. and worked until as late as 7:00 to 8:00 at night, six days per week.
15. To further complicate its pay structure, DEFENDANTS began back charging PLAINTIFF and similarly situated employees for bogus complaints shortly after they started their employment. For example, if PLAINTIFF had earned a certain amount of money, DEFENDANTS would create bogus reasons to dock pay from PLAINTIFF and those similarly situated were treated the same way. This happened regularly, throughout PLAINTIFF'S employment as soon as PLAINTIFF had earned money to back charge.
16. DEFENDANTS failed to pay PLAINTIFF overtime pay for the overtime he worked. Instead, DEFENDANTS routinely required PLAINTIFF to work beyond 40 hours per week and failed to pay him time and one-half for any hours he worked beyond 40 hours per week.
17. DEFENDANTS also failed to pay PLAINTIFF for his mileage and required him to provide his own tools and transportation.
18. In addition, DEFENDANTS withheld PLAINTIFF'S final two paychecks.
19. During his time as DEFENDANTS' employee, PLAINTIFF routinely worked 70 or more hours per week, but never received time and one-half compensation for the hours he worked beyond the 40th hour each week. This is because DEFENDANTS misclassified PLAINTIFF and those similarly situated as independent contractors.
20. PLAINTIFF and those similarly situated have also had paychecks withheld because DEFENDANTS claimed customers complained about damage to things in their home that

purportedly occurred during installations.

21. The FLSA requires an employer to pay its employees at a rate of at least one and one-half their regular rate for time worked in one work week over 40 hours. This is commonly known as “time-and-a-half pay for overtime work.”
22. Upon information and belief, DEFENDANTS have, since the beginning of PLAINTIFF’S employment, willingly, deliberately and intentionally refused to pay PLAINTIFF and the similarly situated employees time and one-half pay for overtime worked when they worked over forty hours per week.
23. PLAINTIFF and the similarly situated employees are, therefore, owed compensation for time and one-half overtime wages and back wages by DEFENDANTS, who willingly and knowingly withheld those wages.

COUNT I
VIOLATION OF THE FAIR LABOR STANDARDS ACT

24. The General Allegations and Background above are hereby incorporated by reference as though fully set forth herein.
25. DEFENDANTS regularly engage in commerce and their employees, including PLAINTIFF, and the similarly situated employees, handled and used materials, which have moved in interstate commerce.
26. At all relevant times, DEFENDANTS were joint employers within the meaning of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* and are subject to the provisions of the Act.
27. PLAINTIFF and the similarly situated employees at all relevant times were non-exempt employees of DEFENDANTS, as defined by the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.*

28. During PLAINTIFF'S employment with DEFENDANTS, PLAINTIFF performed overtime work for which no additional compensation was paid to him by DEFENDANTS in violation of the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* More specifically, DEFENDANTS violated §7 of the FLSA by failing to pay time and one-half overtime wages to PLAINTIFF and the similarly situated employees when they were hourly, non-exempt employees who earned overtime pay.
29. PLAINTIFF and those similarly situated also trained to work as cable installers and were not compensated for their training time, in violation of the minimum wage provisions of the Act.
30. Upon information and belief, DEFENDANTS' pay system was unilaterally imposed upon PLAINTIFF and the similarly situated employees.
31. DEFENDANTS' failure to properly administer a scheme of compensation, including, but not limited to, actual time, overtime and/or comp time compensation violates the overtime provisions of the FLSA and the regulations thereunder.
32. DEFENDANTS' failure to compensate PLAINTIFF and the similarly situated employees for all compensable hours was a willful and knowing violation of the FLSA.
33. As a result of DEFENDANTS' willful and knowing failure to properly compensate PLAINTIFF and the similarly situated employees, PLAINTIFF and the similarly situated employees have suffered substantial delays in receipt of wages owed and damages.
34. DEFENDANTS' failure to properly administer a compensation scheme for overtime was a willful and knowing violation of the FLSA.
35. Pursuant to 29 U.S.C. §§207 and 216, DEFENDANTS owe PLAINTIFF and the similarly situated employees compensation for overtime work, and an additional equal amount as

liquidated damages, together with an additional sum for attorney's fees and costs.

36. All conditions precedent to maintaining this action have occurred or otherwise been waived.

WHEREFORE, PLAINTIFF and the similarly situated employees demand judgment against DEFENDANTS and respectfully pray the Court that they will recover nominal damages, unpaid overtime wages, back pay, liquidated damages, pre- and post-judgment interest, attorney fees, costs of litigation and other relief by reason of DEFENDANTS' violations of the FLSA; for a trial by jury on all issues so triable; and, for such other and further relief as the Court may deem just and proper.

COUNT II
BREACH OF CONTRACT

37. The General Allegations and Background above are hereby incorporated by reference as though fully set forth herein.
38. PLAINTIFF was an employee of DEFENDANTS and was entitled to be paid for his time worked.
39. PLAINTIFF performed work for DEFENDANTS in or around August 2016 and DEFENDANTS agreed to pay PLAINTIFF in the amounts of \$996 and \$756 for that work.
40. DEFENDANTS wrongfully then changed their mind and withheld PLAINTIFF'S final two paychecks and PLAINTIFF has been required to retain an attorney to get his compensation.

WHEREFORE, PLAINTIFF demands judgment against DEFENDANTS and respectfully prays the Court that he will recover nominal damages, back pay, pre- and post-judgment interest, attorney fees, costs of litigation and other relief by reason of DEFENDANTS' breach of contract; for a trial by jury on all issues so triable; and, for such other and further relief as the Court may deem just and proper.

Dated: October 29, 2017

Respectfully submitted,

**THE LAW OFFICE OF
MATTHEW BIRK, LLC**

/s/ Matthew W. Birk

Matthew W. Birk

Florida Bar No.: 92265

309 Northeast First Street

Gainesville, FL 32601

(352) 244-2069

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ATTORNEYS FOR PLAINTIFF

5:17-cv-525-oc-30 PRL

JS 44 (Rev. 07/16)

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 LAFARRELL BUNTING, on behalf of himself and those similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>El Paso</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) The Law Office of Matthew Birk, LLC, 309 NE 1st St., Gainesville, FL 32601, 352.244.2069</p>	<p>DEFENDANTS A TO Z WIRING, LLC and RWL COMMUNICATIONS, INC.</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 <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></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)*

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

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 - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
29 USC 216

Brief description of cause:
Unpaid wages

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 PGB-PRL DOCKET NUMBER 5:16-cv-484

DATE 10/29/2017 SIGNATURE OF ATTORNEY OF RECORD s/Matthew W. Birk

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: [A to Z Wiring, RWL Communications Owe Back Pay, Lawsuit Says](#)
