

FILED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA 3 PM 12
ORLANDO DIVISION

US DISTRICT CO.
MIDDLE DISTRICT OF F
ORLANDO, FLORIDA

**BRIAN DREASHER, on behalf
of himself and those similarly
situated,**

Plaintiff,

CASE NO.: 6:17-cv-1288-ORL-41-TBS

vs.

**PAUL E. WALSH TRUCKING, INC., a
Florida Corporation, and PAUL WALSH,
Individually,**

Defendants. _____/

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, BRIAN DREASHER, and those similarly situated, by and through the undersigned attorney, sues the Defendants, PAUL E. WALSH TRUCKING, INC., a Florida Corporation, and PAUL WALSH, Individually, and alleges:

1. Plaintiff, BRIAN DREASHER, and those similarly situated, was an employee of Defendants and brings this action for unpaid overtime compensation, liquidated damages, and all other applicable relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (“FLSA”).

General Allegations

2. Plaintiff, BRIAN DREASHER, and those similarly situated, was an employee who worked at Defendants’ property within the last three years in Orange County, Florida.

3. Plaintiff, BRIAN DREASHER, and those similarly situated, worked for Defendants as a piece rate truck driver receiving 23% of the job value.

4. Plaintiff, BRIAN DREASHER, and those similarly situated, are non-exempt

employees and therefore entitled to overtime wages for overtime hours worked.

5. Defendant, PAUL E. WALSH TRUCKING, INC., is a Florida for profit Corporation that operates and conducts business in Orange County, Florida and is therefore, within the jurisdiction of this Court.

6. Defendant, PAUL E. WALSH TRUCKING, INC., is a delivery company. Specifically, Defendant hauls/delivers landscaping materials, wood, mulch and other goods around the Central Florida area to residential and commercial locations.

7. At all times relevant to this action, PAUL WALSH was an individual resident of the State of Florida, who owned and operated PAUL E. WALSH TRUCKING, INC., and who regularly exercised the authority to: (a) hire and fire employees of PAUL E. WALSH TRUCKING, INC.; (b) determine the work schedules for the employees of PAUL E. WALSH TRUCKING, INC., and (c) control the finances and operations of PAUL E. WALSH TRUCKING, INC.. By virtue of having regularly exercised that authority on behalf of PAUL E. WALSH TRUCKING, INC., PAUL WALSH is/was an employer as defined by 29 U.S.C. § 201, et seq.

8. This action is brought under the FLSA to recover from Defendants overtime compensation, liquidated damages, and reasonable attorneys' fees and costs.

9. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §1331 and the FLSA.

10. During Plaintiff's employment with Defendants, Defendant, PAUL E. WALSH TRUCKING, INC., earned more than \$500,000.00 per year in gross sales.

11. Defendant, PAUL E. WALSH TRUCKING, INC., employed approximately twenty (20) employees and paid these employees plus earned a profit from their business.

12. During Plaintiff's employment, Defendant, PAUL E. WALSH TRUCKING, INC.,

employed at least two employees who handled goods, materials and supplies which travelled in interstate commerce, such as fill dirt, rock, gravel, muck, wood debris, tires, concrete, and other items used to run the business.

13. Therefore, at all material times relevant to this action, Defendant, PAUL E. WALSH TRUCKING, INC., was an enterprise covered by the FLSA, and as defined by 29 U.S.C. §203(r) and 203(s).

14. Additionally, Plaintiff, BRIAN DREASHER, and those similarly situated, are individually covered under the FLSA.

FLSA Violations

15. At all times relevant to this action, Defendants failed to comply with the FLSA because Plaintiff, and those similarly situated, performed services for Defendants for which no provisions were made by Defendants to properly pay Plaintiff, and those similarly situated, for all overtime hours worked.

16. During his employment with Defendants, Plaintiff, and those similarly situated, was not paid time and one-half his regular rate of pay for all hours worked in excess of forty (40) per work week during one or more work weeks.

17. Based upon these above policies, Defendants have violated the FLSA by failing to pay complete overtime pay.

18. Upon information and belief, the records, to the extent any exist, concerning the number of hours worked and amounts paid to Plaintiff, and those similarly situated, are in the possession and custody of Defendants.

COUNT I - RECOVERY OF OVERTIME COMPENSATION

19. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-

18 above as though stated fully herein.

20. Plaintiff is/was entitled to be paid time and one-half his regular rate of pay for each hour worked in excess of forty (40) per work week.

21. During his employment with Defendants, Plaintiff, and those similarly situated, worked overtime hours but was not paid time and one-half compensation for same.

22. Plaintiff, and those similarly situated, was paid a straight 23% value of each load delivered regardless of how many overtime hours were worked in the workweek.

23. Additionally, Defendants had a policy preventing employees from clocking in until their truck was loaded up. Specifically, employees were required to arrive at the Defendant's place of business to retrieve a truck. Employees then had to drive to a secondary location to fill said truck before setting out to deliver those materials. Employees routinely had to wait in excess of an hour before they could receive the materials.

24. Defendants have failed to provide accurate overtime compensation for numerous pay periods.

25. Defendants did not have a good faith basis for their decision not to pay Plaintiff, and those similarly situated, full overtime compensation.

26. In addition, Defendants failed to post the required informational listings for the Plaintiff, and those similarly situated, and other employees pursuant to the FLSA.

27. As a result of Defendants' intentional, willful and unlawful acts in refusing to pay Plaintiff, and those similarly situated, time and one-half his regular rate of pay for each hour worked in excess of forty (40) per work week in one or more work week, Plaintiff, and those similarly situated, has suffered damages plus incurring reasonable attorneys' fees and costs.

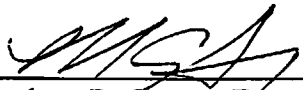
28. As a result of Defendants' willful violation of the FLSA, Plaintiff, and those

similarly situated, is entitled to liquidated damages.

29. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff, BRIAN DREASHER, and those similarly situated, demands judgment against Defendants for unpaid overtime compensation, liquidated damages, reasonable attorneys' fees and costs incurred in this action, declaratory relief, and any and all further relief that this Court determines to be just and appropriate.

Dated this 28 day of June, 2017



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Attorneys 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.)

I. (a) PLAINTIFFS

BRIAN DREASHER, on behalf of himself and those similarly situated,

(b) County of Residence of First Listed Plaintiff Orange
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Matthew R. Gunter, Esq., Morgan & Morgan, PA, 20 N. Orange Ave., Ste. 1600, P.O. Box 4979, Orlando, FL 32802-4979, (407) 420-1414

DEFENDANTS

PAUL E. WALSH TRUCKING, INC., a Florida For Profit Corporation, and PAUL E. WALSH, Individually,

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" 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

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 (Excludes Veterans) <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	PERSONAL INJURY <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 <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	<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
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

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. 216(b)

Brief description of cause:
 Actions for unpaid wages and/or overtime violations

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

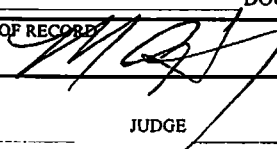
(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE _____

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: [Paul E. Walsh Trucking Knocked with Wage and Hour Class Action](#)
