

FILED

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

2017 DEC 22 PM 1:32

JOSHUA HENDERSON, and RODNEY
RANDOLPH, for themselves and on
behalf of those similarly situated,

Plaintiff,

CASE NO.: 3:17-cv-1428-J-39JBT

vs.

US ROOF RECYCLE, LLC, a Florida
Limited Liability Company, and
JOHANN BOWMAN, Individually

Defendants.

_____ /

COMPLAINT & DEMAND FOR JURY TRIAL

Plaintiffs, JOSHUA HENDERSON (“HENDSESON”), and RODNEY RANDOLPH (“RANDOLPH”) (collectively “Plaintiffs”), for themselves and on behalf of those similarly situated, by and through their undersigned counsel, file this Complaint against Defendants, US ROOF RECYCLE, LLC, a Florida Limited Liability Company (“US ROOF”), and JOHANN BOWMAN, Individually (“BOWMAN”) (collectively “Defendants”), and state as follows:

INTRODUCTION

1. This is an action for failure to pay overtime wages pursuant to 29 U.S.C. § 216(b) and 29 U.S.C. § 207(a).
2. Section 7(a) of the FLSA requires payment of time-and-one-half an employee’s regular hourly rate whenever a covered employee works in excess of forty (40) hours per work week. 29 U.S.C. § 207(a).

3. Defendants have violated the FLSA by misclassifying Plaintiffs and others similarly situated as “independent contractors” and refusing to pay them time and one-half of their regular rate for overtime hours worked.

4. At all times material to this action, Plaintiff JOSHUA HENDERSON was a resident of Duval County, Florida.

5. At all times material to this action, Plaintiff RODNEY RANDOLPH was a resident of Duval County, Florida.

6. At all times material hereto, Defendant US ROOF was, and continues to be, a Florida limited liability company. Further, at all times material hereto, Defendant, US ROOF’s principle place of business is located in Duval County, Florida.

7. Based on information and belief, at all times material hereto, Defendant BOWMAN was an individual resident of the State of Florida, Duval County.

8. At all times material hereto, Defendant BOWMAN was Manager of US ROOF, owned US ROOF, and regularly exercised the authority to: (a) hire and fire employees of US ROOF; (b) determine the work schedules for the employees of US ROOF; and (c) control the finances and operations of US ROOF.

9. Defendant BOWMAN is an individual employer as defined by 29 U.S.C. §201, et seq., in that they acted, directly or indirectly, in the interests of US ROOF towards Plaintiff.

10. At all times material hereto, Plaintiff was “engaged in commerce” within the meaning of §6 and §7 of the FLSA.

11. At all times material hereto, Plaintiff was an “employee” of Defendants within the meaning of the FLSA.

12. At all times material hereto, Plaintiffs, full-time hourly laborers whose work was

directly essential to the business in which US ROOF was engaged, were classified as an “independent contractor” by Defendants.

13. At all times material hereto, Defendants were, and continue to be, “employers” within the meaning of the FLSA.

14. At all times material hereto, Defendant, US ROOF was, and continues to be, an “enterprise engaged in commerce” within the meaning of the FLSA.

15. Based upon information and belief, the annual gross revenue of Defendant was in excess of \$500,000.00 per annum during the three years preceding the filing of this Complaint.

16. Defendants had two or more employees handling, selling or otherwise working on goods or materials that had been moved in or produced for commerce, such as heavy machinery, telephones, and computers.

17. At all times material hereto, the work performed by the Plaintiff was directly essential to the business performed by Defendants.

STATEMENT OF FACTS

18. This Court has original jurisdiction over Plaintiff’s claims pursuant to 28 U.S.C. § 1331 as they arise under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*

19. Venue is proper as the acts and omissions giving rise to Plaintiff’s claims occurred in Duval County, Florida.

20. Defendant, US ROOF is a Florida Corporation, doing business since 2013.

21. Defendant operates a company which recycles materials taken from roofs, such as shingles.

22. Plaintiff HENDERSON was hired on or about December, 2015, to work for Defendants as a full-time nonexempt hourly-paid laborer.

23. Plaintiff RANDOLPH was hired on or about April, 2015, to work for Defendants as a full-time nonexempt hourly paid laborer.

24. Defendants classified Plaintiffs as independent contractors throughout the time that Plaintiffs worked for Defendants.

25. As an hourly paid laborer, Plaintiffs' job duties included, but were not limited to, sorting shingles from metal and trash.

26. Plaintiffs did not have the ability to negotiate their rate(s) of pay.

27. Plaintiffs did not negotiate their rate(s) of pay, rather Plaintiffs' rate(s) of pay were pre-set by Defendants.

28. Defendants set Plaintiffs' schedules, and dictated to Plaintiffs the hours that they had to be at work. These hours almost always exceeded forty hours per week for Plaintiffs as well as the other laborers who worked with Plaintiffs.

29. Plaintiffs never signed any contract with Defendant for their services.

30. Defendants provided the equipment necessary for Plaintiffs to perform their work, such as heavy machinery and tools.

31. Plaintiffs were not incorporated or otherwise in business for themselves during the time that they performed work for Defendants.

32. If Plaintiffs wished to take a day off, they were required to request permission from Defendants.

33. Plaintiffs did not generate any of their own work, rather, they received all of their assignments from Defendants.

34. Plaintiffs' opportunity for profit or loss did not depend on their entrepreneurial skills.

35. The work Plaintiffs did was essential and integral to Defendants' business.

36. Plaintiffs worked for Defendants for over a year.

37. Defendant set rules and guidelines governing Plaintiffs' employment, including but not limited to, hours of work, Plaintiffs' rates of pay, and when Plaintiffs could take time off.

38. Plaintiffs did not have the ability to alter or change the terms of their employment.

39. Plaintiffs were economically dependent upon Defendants for their livelihood, earning 100% of their income from Defendants throughout their employment.

40. Defendants knew or should have known that Plaintiffs were economically dependent on Defendants and not in business for themselves, as they routinely worked over 40 hours per week for Defendants.

41. In various weeks during their employment, Defendants failed to compensate Plaintiffs at a rate of one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in a single workweek.

42. This failure to pay proper overtime was due to two policies, applicable to Plaintiffs and all of the other full-time laborers with whom they worked: 1) Plaintiffs and all other full-time laborers were misclassified as independent contractors; and 2) Plaintiffs and all other full-time laborers were only paid their regular hourly rate for hours over forty, with no overtime premium.

43. Plaintiffs should be compensated at the rate of one and one-half times their regular rate for those hours that Plaintiffs worked in excess of forty (40) hours per workweek, as required by the FLSA, in weeks in which they performed work for Defendants.

44. Defendants are in possession of the majority of the records reflecting the amounts paid and the actual hours worked by Plaintiffs.

45. The additional persons who may become Plaintiffs in this action also “worked” for Defendants as hourly-paid laborers, were also subject to a common policy of misclassification as independent contractors and payment of the regular hourly rate for overtime hours, and were denied proper overtime compensation for overtime hours due to this misclassification and pay policy.

46. Defendants have violated Title 29 U.S.C. §207 from at least December, 2015 to March, 2017, in that:

A. Plaintiffs, and those similarly situated, worked in excess of forty (40) hours in one or more workweeks for the period of employment with Defendants; and

B. No payments or provisions for payment have been made by Defendants to properly compensate Plaintiffs, and those similarly situated, at the statutory rate of one and one-half times their regular rate for all hours worked in excess of forty (40) hours per workweek, as provided by the FLSA due to the policies and practices described above.

47. The records of Plaintiffs’ pay show hours over forty paid at the regular hourly rate, rather than at time and one half of the regular hourly rate.

48. The records of all hourly-paid laborers’ pay show hours over forty paid at the regular hourly rate, rather than at time and one half of the regular hourly rate.

49. Upon information and belief, Defendants did not rely upon any Department of Labor Wage and Hour Opinions in creating Plaintiff’s and other hourly paid laborers’ pay structures.

50. Defendants knew or should have known with reasonable diligence that its conduct violated the Fair Labor Standards Act or was in reckless disregard for its provisions. As such, Defendants’ violation of the law was willful.

51. Defendants failed and/or refused to properly disclose or apprise Plaintiff of his rights under the FLSA.

COUNT I
UNPAID OVERTIME WAGES

52. Plaintiffs reincorporate and adopt the allegations in paragraphs 1-51 above.

53. Plaintiffs were Defendants' employees.

54. Defendants were Plaintiffs' employers as defined by the FLSA.

55. Defendant US ROOF is a covered enterprise as defined by the FLSA.

56. Plaintiffs, and those similarly situated, regularly worked in excess of forty (40) hours per week for Defendant.

57. Plaintiffs, and those similarly situated, are entitled to one and one half times their regular hourly rate for all hours worked over forty (40) in each week during which they worked as hourly paid laborer for Defendants.

58. Defendants failed to pay Plaintiffs, and those similarly situated, time and one half their regular hourly rate for all hours worked in excess of forty (40) in each week.

59. Defendants' actions were willful and/or showed reckless disregard for the provisions of the FLSA, as evidenced by its failure to compensate Plaintiffs, and those similarly situated, at the statutory rate of one and one-half times their regular rate of pay for the hours worked in excess of forty (40) hours per workweek when it knew, or should have known, such was, and is, due.

60. Plaintiffs, and those similarly situated, suffered harm and continue to suffer harm in the form of unpaid wages as a result of Defendants' violations of the FLSA.

61. Plaintiffs, and those similarly situated, are owed additional compensation in the form of unpaid overtime wages and liquidated damages.

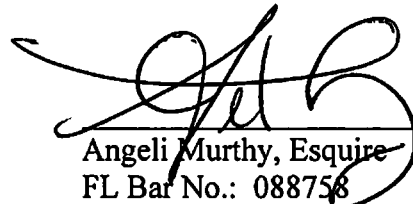
WHEREFORE, Plaintiffs, for themselves and on behalf of those similarly situated, requests conditional certification; pursuant to Section 216(b) of the FLSA, of employees who worked for Defendants as hourly paid laborers in the three years preceding the filing of the Complaint, an order permitting Notice to all potential class members; a Declaration that Defendants' policy violates the FLSA; entry of judgment in Plaintiffs' favor and against Defendants for actual and liquidated damages, as well as costs, expenses and attorneys' fees and such other relief deemed proper by this Court.

JURY DEMAND

Plaintiffs demand trial by jury on all issues so triable as a matter of right by jury.

Dated this 21st day of December 2017.

Respectfully submitted,



Angeli Murthy, Esquire
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Trial Counsel for Plaintiff

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

JOSHUA HENDERSON and RODNEY RANDOLPH, for themselves and on behalf of those similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Angeli Murthy, Esq., Morgan & Morgan, P.A. 600 N. Pine Island Road, Plantation, FL 33324 (954) 318-0268

DEFENDANTS

US ROOF RECYCLE, LLC, a Florida Limited Liability Company, and JOHANN BOWMAN, 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)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor Standards, etc.

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): 28 U.S.C. §1331; 29 U.S.C. §§201, 207, 216 (b)
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 \$ Unknown CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT JAX AMOUNT \$400- APPLYING IFP JUDGE 39 MAG. JUDGE JBT

02/22/19

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Two Claim US Roof Recycle Misclassified Workers, Refused to Pay Overtime](#)
