

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA
OKLAHOMA CITY DIVISION

NIKKO HENDERSON,
Individually and on behalf of All Others
Similarly Situated

PLAINTIFF

vs.

No. 5:17-cv- 626-R

BEAVEX, INC.

DEFENDANT

ORIGINAL COMPLAINT—COLLECTIVE ACTION

COMES NOW Plaintiff Nikko Henderson (“Plaintiff”), individually and on behalf of others similarly situated, by and through his attorney Josh Sanford of Sanford Law Firm, PLLC, and for his Original Complaint–Collective Action (“Complaint”) against Defendant BeavEx, Inc. (“Defendant” or “BeavEx”), and in support thereof does hereby state and allege as follows:

I. PRELIMINARY STATEMENTS

1. Plaintiff, individually and on behalf of all others similarly situated, brings this action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”), for declaratory judgment, monetary damages, liquidated damages, prejudgment interest, civil penalties and costs, including reasonable attorney’s fees, as a result of Defendant’s commonly applied policy and practice of failing to pay Plaintiff and other similarly situated individuals overtime compensation for the hours in excess of forty hours in a single week that they were/are made to work.

II. JURISDICTION AND VENUE

2. The United States District Court for the Western District of Oklahoma has subject matter jurisdiction over this suit under the provisions of 28 U.S.C. § 1331 because this suit raises federal questions under the FLSA.

3. A substantial part of the acts complained of herein were committed and had their principal effect within the Oklahoma City Division of the Western District of Oklahoma; therefore, venue is proper within this District pursuant to 28 U.S.C. § 1391.

III. THE PARTIES

4. Plaintiff Nikko Henderson is an individual and resident of Tulsa, Oklahoma. Mr. Henderson's consent is attached hereto as Exhibit "A."

5. At all times relevant to this Complaint, Plaintiff was employed by Defendant as a courier and misclassified as an independent contractor and non-exempt from the requirements of the FLSA.

6. BeavEx is a foreign for-profit limited liability company, registered to do business in the State of Oklahoma, providing delivery and logistics services throughout the United States.

7. Defendant's annual gross volume of sales made or business done was not less than \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated) during each of the three calendar years preceding the filing of this Complaint.

8. During each of the three years preceding the filing of this Complaint, Defendant employed at least two individuals who were engaged in interstate commerce or in the production of goods for interstate commerce, or had employees handling, selling, or otherwise working on goods or materials that had been moved in interstate

commerce, including but not limited to, vehicles, pharmaceutical products, GPS units, and other goods necessary to operate a delivery and logistics service.

9. The registered agent of BeavEx is listed as Corporation Service Company, 10300 Greenbriar Place, Oklahoma City, Oklahoma 73159.

10. HR and other payment decisions and directives are made at BeavEx's headquarters found at 2120 Powers Ferry Rd., Atlanta, GA 30339.

IV. FACTUAL ALLEGATIONS

11. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as though fully incorporated herein.

12. Defendant's primary business purpose is to provide delivery and logistics services, and Defendant employs courier drivers to accomplish this goal.

13. Defendant was/is the employer for purposes of the FLSA of the couriers, including Plaintiff and the Putative Class Members, throughout the relevant time period in this case.

14. Within three years prior to the filing of this Complaint, Defendant hired Plaintiff, among other individuals, to perform duties as a courier driver.

15. Defendant did not record the amount of hours spent by Plaintiff or other couriers performing deliveries.

16. Defendant set the pay rate for couriers. Defendant compensated couriers, including Plaintiff, for their work on a flat rate basis.

17. Couriers, including Plaintiff, regularly performed his duties for more than forty hours per week.

18. Defendant knew or should have known that the job duties of couriers, including Plaintiff, required them to work hours in excess of forty per week.

19. Defendant failed to pay couriers, including Plaintiff, one-and-one-half times their regular rate for hours that they worked in excess of forty per week.

20. Defendant exercised comprehensive control over the employment of its couriers, including Plaintiff's employment.

21. Defendant required couriers to follow a fixed schedule in performing their routes/deliveries.

22. Couriers could not refuse pick-ups or deliveries on their assigned route.

23. Defendant would order couriers to make additional stops on their routes. Couriers could not refuse to make these additional deliveries/pick-ups.

24. Defendant required couriers to use BeavEx's hand-held scanning device at each delivery/pick-up and would reprimand couriers if they failed to perform a scan at each stop.

25. Defendant required couriers to call in if they were going to be late for a delivery.

26. Defendant monitored couriers and reprimanded them when they were late.

27. Defendant required couriers to stay in contact with Defendant by cellular telephone throughout their workday to confirm deliveries.

28. Defendant required couriers to wear a uniform while performing their job and reprimanded couriers if they failed to wear their uniform.

29. Defendant would audit or spot-check couriers to make sure that they were in compliance with company rules.

30. Defendant terminated couriers if they violated company rules or did not perform their deliveries according to Defendant's schedule.

31. Couriers were required to have a background check and drug screening before they could work for Defendant.

32. Defendant knew or should have known that the FLSA applied to the operation of its courier operations at all relevant times.

33. Defendant knew of or should have been aware of previous litigation and enforcement actions relating to wage and hour violations involving the misclassification of couriers.

34. Despite being on notice of its violations, Defendant chose to continue to misclassify Plaintiff and other members of the proposed collective class and withhold overtime wages to them in an effort to enhance its profits.

V. LEGAL ALLEGATIONS

35. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

A. Individual Claims for FLSA Overtime Violations

36. 29 U.S.C. § 207 requires employers to pay employees one and one-half times the employee's regular rate for all hours that the employee works in excess of forty per week. 29 U.S.C.S. § 207 (LEXIS 2013).

37. Defendant failed to pay Plaintiff at a rate of one and one-half times his regular rate for all hours worked over forty (40) hours per week.

38. Defendant knew or should have known of its obligation to pay Plaintiff at a rate of one and one-half times their regular rate for all hours worked over forty (40) hours per week.

39. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff for unpaid overtime wages, liquidated damages, pre-judgment interest, costs, and a reasonable attorney's fee as provided by the FLSA.

B. Collective Action Claims for Violation of the FLSA

40. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated in this section.

41. In addition to his individual claims against Defendant, Plaintiff brings claims for violation of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons who were, are or will be employed by Defendant as similarly situated employees at any time within the applicable statute of limitations period.

42. The proposed class of opt-in Plaintiffs in this case is preliminarily defined as follows:

Each and every individual who performed courier/delivery services on Defendant's behalf any time after three years preceding the filing of the Original Complaint.

43. Throughout the statute of limitations period covered by these claims, Plaintiff and Putative Class Members regularly worked in excess of forty (40) hours per week, and Putative Class Members continue to do so.

44. At all relevant times, Defendant operated under common policies, plans and practices of failing and refusing to pay Plaintiff and Putative Class Members at one-

and-one-half times their regular rate for work in excess of forty (40) in each workweek in violation of the FLSA.

45. Defendant knew or should have known of its obligation to pay the Putative Class Members at a rate of one and one-half times their regular rate for all hours worked over forty (40) hours per week.

46. Defendant's conduct and practice, as described above, were/are willful, intentional, unreasonable, arbitrary and in bad faith.

47. By reason of the unlawful acts alleged herein, Defendant is liable to Putative Class Members for monetary damages, liquidated damages and costs, including reasonable attorney's fees provided by the FLSA.

VI. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff Nikko Henderson, individually and on behalf of all others similarly situated, respectfully prays for declaratory relief and damages as follows:

- A. That Defendant be summoned to appear and answer herein;
- B. That Defendant be required to account to Plaintiff, the class members, and the Court for all of the hours worked by Plaintiff and the class members and all monies paid to them;
- C. A declaratory judgment that Defendant's practices alleged herein violate the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, and attendant regulations at 29 C.F.R. §516 *et seq.*;
- D. Certification of, and proper notice to, together with an opportunity to participate in the litigation, all qualifying members of the collective action class;

E. Judgment for damages for all unpaid overtime compensation under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, and attendant regulations at 29 C.F.R. §516 *et seq.*;

F. Judgment for liquidated damages pursuant to the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, and attendant regulations at 29 C.F.R. §516 *et seq.*, in an amount equal to all unpaid overtime compensation owed to Plaintiff and Putative Class Members during the applicable statutory period;

G. An order directing Defendant to pay Plaintiff and Putative Class Members prejudgment interest, reasonable attorney's fees and all costs connected with this action; and

H. Such other and further relief as this Court may deem necessary, just and proper.

Respectfully submitted,

**NIKKO HENDERSON, Individually
and on behalf of All Others Similarly
Situated, PLAINTIFF**

SANFORD LAW FIRM, PLLC
ONE FINANCIAL CENTER
650 SOUTH SHACKLEFORD, SUITE 411
LITTLE ROCK, ARKANSAS 72211
TELEPHONE: (501) 221-0088
FACSIMILE: (888) 787-2040

Young & Newsom, P. C.
Jeremi K. Young, OBA No. 22035
Tim Newsom, OBA No. 20017
1001 S. Harrison, Suite 200
Amarillo, Texas 79101
Telephone: (806) 331-1800
Facsimile: (806) 379-7176
jyoung@youngfirm.com

Josh tim@youngfirm.com

By: /s/ Tim Newsom
Tim Newsom

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA
OKLAHOMA CITY DIVISION

NIKKO HENDERSON,
Individually and on behalf of All Others
Similarly Situated

PLAINTIFF

vs.

No. _____


BEAVEX, INC.

DEFENDANT

CONSENT TO JOIN COLLECTIVE ACTION

I am/was employed by Beavex, Inc., during some of the three years prior to the signing of this document. I understand this lawsuit is being brought under the Fair Labor Standards Act for unpaid overtime and/or minimum wage compensation. I consent to becoming a party-plaintiff in this lawsuit, to be represented by Young & Newsom, P.C., and to be bound by any settlement of this action or adjudication by the Court.

I declare under penalty of perjury that the foregoing is true and correct.



NIKKO HENDERSON
c/o Young & Newsom, P.C.
1001 S Harrison, Suite 200
Amarillo, Texas 79101
TELEPHONE: (806) 331-1800
FACSIMILE: (806) 398-9095

Date: June 2, 2017

EXHIBIT

A

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

NIKKO HENDERSON, Individually and on behalf of All Others Similarly Situated

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

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

Josh Sanford, Sanford Law Firm, 650 S. Shackelford, Ste. 411, Little Rock, AR 72211, (501) 221-0088, Jeremi Young, Tim Newsom, 1001 S. Harrison, Ste. 200, Amarillo, TX 79101 (806) 331-1800

DEFENDANTS

BEAVEX, INC

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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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 U. S. C. 201

Brief description of cause: Defendant violated the FLSA by failing to pay overtime at time and one-half for all hours worked over 40

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 06/05/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Tim Newsom

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [BeavEx, Inc. Chipped with Wage and Hour Lawsuit](#)
