

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

CASE NO.: \_\_\_\_\_

MARK LOSEY, SUSAN NELSON, and  
GARY DICKSON, individually,  
and on behalf of all others similarly situated,

2:17-CV-29 -FTM-99CM

Plaintiffs,

vs.

BB LOCKSMITH, INC.

Defendant,

CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS, FLORIDA

17 JAN 17 PM 12:45

FILED

**Collective Action Complaint for Violations  
of the Fair Labor Standards Act and Demand for Jury Trial**

Plaintiffs, MARK LOSEY (“LOSEY”), SUSAN NELSON (“NELSON”) and GARY DICKSON (“DICKSON”), by and through undersigned counsel, and sue the Defendant, BB LOCKSMITH, INC. and hereby set forth this collective action for violation of the Fair Labor Standards Act under 29 U.S.C. § 216(b) and allege as follows:

**Introduction**

1. This is an action brought pursuant to the Fair Labor Standards Act, as amended, (29 U.S.C. §201 et seq., hereinafter called the “FLSA”) to recover unpaid overtime compensation, liquidated damages, and reasonable attorney’s fees and costs.

**Jurisdiction and Venue**

2. This Court has jurisdiction over this claim pursuant to 28 U.S.C. § 1331 and 29 U.S.C. §216(b).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as the events or omissions giving rise to the claims alleged herein occurred in Collier County, Florida.

**Parties**

4. At all times material, Plaintiff, LOSEY, was and is a citizen of the State of Florida, domiciled in Collier County, Florida and was employed by the Defendant. Specifically, Plaintiff performed locksmith work for the Defendant.

5. At all times material, Plaintiff, NELSON, was and is a citizen of the State of Florida, domiciled in Collier County, Florida and was employed by the Defendant. Specifically, Plaintiff performed locksmith work for the Defendant.

6. At all times material, Plaintiff, DICKSON, was and is a citizen of the State of Florida, domiciled in Collier County, Florida and was employed by the Defendant. Specifically, Plaintiff performed locksmith work for the Defendant.

7. At all times material hereto, Defendant, BB LOCKSMITH, INC., was and continues to be Florida a corporation engaged in business in Florida with its principal place of business located in Naples, Collier County, Florida. Based upon information and belief, the annual gross revenue of the Defendant business enterprises is in excess of five hundred thousand dollars (\$ 500,000.00).

8. At all times material, Defendant was authorized to do business in the State of Florida.

9. At all times material, Plaintiffs were employees of Defendant pursuant to 29 U.S.C. § 203(e)(1); Defendant was Plaintiff's "employer" under 29 U.S.C. § 203(a) and (d); and Defendant employed Plaintiff within the meaning of 29 U.S.C. § 203(g).

**General Allegations**

10. This action is to include each and every employee who worked for the Defendant at any time in the past three years.

11. At various times hereto, Plaintiff and others similarly situated worked in excess of forty (40) hours within one week.

12. Defendant failed to compensate Plaintiff and others similarly situated at a rate of one and half times the regular rate for all hours worked in excess of forty (40) hours per week as required by the FLSA.

13. At various times hereto, the Defendant required the Plaintiffs and others similarly situated to deduct time from their "clocked" time for lunch and other breaks while requiring the employees to continue working for these periods.

14. Defendant required Plaintiffs and others similarly situated to complete company paperwork, research locksmithing tutorials and other on-line resources "off-the-clock" and without regular or overtime compensation for the hours expended.

15. Defendant systematically denied the Plaintiff and others similarly situated from receiving overtime pay.

16. Defendant has violated 29 U.S.C. §207 from at least January 6, 2014 and continuing to this date, in that:

a. Plaintiffs and others similarly situated worked in excess of forty hours per week per period of employment with Defendant.

b. No payments or provisions for payment have been made by Defendant to properly compensate Plaintiffs and others similarly situated for overtime wages, at the statutory rate of one and one-half times the regular rate of pay for those hours worked in excess of forty as provided by the FLSA.

c. Defendant has failed to maintain proper time records as mandated by the FLSA.

17. Plaintiffs have retained the law firm of Viles & Beckman, L.L.C. to represent them in the litigation and have agreed to pay the firm a reasonable fee for its services.

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

19. Plaintiff, LOSEY, was employed by the Defendant from approximately January 18, 2015 through June, 2015.

20. Plaintiff, NELSON, was employed by Defendant for approximately six (6) months in 2015.

21. Plaintiff, DICKSON, was employed by Defendant from October 28, 2015 to March 15, 2016.

22. Defendant's failure to provide Plaintiff and others similarly situated with overtime compensation for hours worked over 40 per week constitutes a violation of the maximum hour provisions of the FLSA, 29 U.S.C. § 207.

23. Defendant has failed to maintain proper time records as mandated by the FLSA.

24. Defendant's failure to provide Plaintiff and others similarly situated with overtime compensation was willful or done with reckless disregard of the requirements of the FLSA.

25. Plaintiff and others similarly situated are entitled to an award of attorney's fees and costs pursuant to 29 U.S.C. §216(b).

26. The number of employees similarly situated are believed to exceed forty (40) employees.

**WHEREFORE**, Plaintiffs MARK LOSEY, SUSAN NELSON and GARY DICKSON, and all proposed members of the FLSA representative action, pray for relief as follows:

a. Designation of this action as a collective action on behalf of the proposed members of the FLSA representative action and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all similarly situated members of the FLSA opt-in class, apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents To Sue pursuant to U.S.C. §216(b);

b. Designation of Plaintiffs, as Representative Plaintiffs of the putative members of the FLSA representative action;

c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, 29 U.S.C. §201, et seq.;

d. An injunction against Defendant and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendant, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;

e. An award of damages for overtime compensation due for the Plaintiff and the putative members of the class, including liquidated damages, to be paid by Defendant;

f. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;

g. Pre-Judgment and Post-Judgment interest, as provided by law; and

h. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff does hereby demand a Jury Trial and all issues and claims so triable.

Respectfully submitted this 12<sup>th</sup> day of January, 2017.

**VILES & BECKMAN, LLC**

Attorneys for Plaintiffs

6350 Presidential Court, Suite A

Fort Myers, Florida 33919

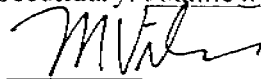
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By: \_\_\_\_\_



Marcus W. Viles, Esquire

Florida Bar Number: 516971

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

Mark Losey, Susan Nelson, and Gary Dickson, Individually, and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Marcus W. Viles, Esq.
Viles & Beckman, LLC
6350 Presidential Court, Fort Myers, FL 33919

DEFENDANTS

BB Locksmith, 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
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)

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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, 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
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:

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 01/13/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Marcus W. Viles, Esq.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE
Print Save As... Reset

## 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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: [BB Locksmith Picked with Unpaid Overtime Class Action](#)

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