

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

JOSE TROCHE, on behalf of
himself and others similarly situated,

Plaintiff,

v.

CASE NO.:

HOGAN'S BRIDGE, LLC, a Florida
Limited Liability Company,
and CHRISTINE E. HOGAN,

Defendants.

_____ /

WAGE THEFT COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, JOSE TROCHE ("Plaintiff"), on behalf of himself and others similarly situated, hereby sues the Defendant, HOGAN'S BRIDGE, LLC, a Florida limited liability company ("Hogan's Bridge"), and CHRISTINE E. HOGAN ("Hogan") (collectively, "Defendants") and alleges as follows:

JURISDICTION, VENUE AND PARTIES

1. This is an action brought under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) ("FLSA"). Accordingly, this Court has subject-matter jurisdiction.

2. Venue is proper within the Middle District of Florida because a substantial part of the events giving rise to this claim arose here.

3. At all times material, Plaintiff was a resident of Hernando County, Florida.

4. At all times material, Defendant Hogan's Bridge was/is a Florida limited corporation registered with the Florida Division of Corporations to conduct business in the State of Florida, with a principal place of business at 12415 Kildeer Road, Weeki Wachee, FL 34614.

5. At all times material, Defendant, Hogan, was/is a resident of Hernando County, Florida.

6. The INTERNAL REVENUE SERVICE ("IRS") will be notified of the filing of this Complaint in accordance with Subsection 7434(d) of the Internal Revenue Code, which provides that "[a]ny person bringing an action under Subsection [7434](a) shall provide a copy of the complaint to the IRS upon the filing of such complaint with the court." 26 U.S.C. § 7434(d).

GENERAL ALLEGATIONS

7. Defendant Hogan's Bridge is in business primarily engaged in the care of the sick or the aged.

8. Defendant Hogan is the President and Manager of Hogan's Bridge. In that position, Hogan exercises significant control over the company's operations, has the power to hire and fire employees, the power to determine salaries, the responsibility to maintain employment records and has operational control over significant aspects of the company's day-to-day functions.

9. Defendants are employers as defined by the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b), et seq. ("FLSA").

10. At all material times, Defendants were an enterprise covered by the

FLSA, and as defined by 29 U.S.C. §203(r) and 203(s).

11. Plaintiff was engaged in interstate commerce during his employment with Defendants.

12. Plaintiff was employed by Defendants as a personal support coordinator from June 2016 through his termination date of November 10, 2017. During this time period, Plaintiff regularly worked more than 40 hours per workweek.

13. Defendants misclassified Plaintiff as an independent contractor, but in reality he was an employee under the applicable laws and regulations.

14. Plaintiff has been required to retain the undersigned counsel to represent him in this action and is obligated to pay them a reasonable fee for their services.

COUNT I
OVERTIME – FLSA (BOTH DEFENDANTS)

15. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1 to 14 as if fully restated herein.

16. This action is brought under the FLSA to recover unpaid overtime compensation owed to Plaintiff and all others similarly situated who are or were employed by Defendants as personal support coordinators who worked more than 40 hours per workweek and were subject to the same unlawful pay practices.

17. Plaintiff and others similarly situated were employees of Defendants under the FLSA.

18. Defendants failed to pay proper overtime compensation to Plaintiff or other similarly situated personal support coordinators.

19. Defendants failed to comply with the FLSA because Plaintiff, and other similarly situated employees, were regularly required to work in excess of forty (40) hours a workweek were not paid overtime compensation as required by the FLSA.

20. The additional persons who may become Plaintiffs in this action are employees similarly situated to Plaintiff and who were required to work in excess of forty (40) hours a workweek but were not paid overtime compensation as required by the FLSA.

21. Defendants' violations of the FLSA were knowing, willful and in reckless disregard of the rights of Plaintiff and all other similarly situated. Defendants did not have reasonable grounds for believing that their acts were not a violation of the FLSA.

22. During the three (3) year period prior to filing this action, Defendants failed to pay Plaintiff and all other similarly situated employees overtime compensation for hours worked over forty (40) in a workweek.

23. Defendants' failure to pay Plaintiff and all other similarly situated employees overtime compensation for hours worked over forty (40) in any workweek constitutes a violation of the FLSA, 29 U.S.C. § 207.

24. Defendants' violations of the FLSA were knowing, willful and in reckless disregard of the rights of Plaintiff and all other similarly situated.

WHEREFORE, Plaintiff respectfully requests, on behalf of himself and all others similarly situated, that this Court issue an Order in Plaintiff's favor and against both Defendants awarding damages in the amount of the unpaid overtime

compensation owed, awarding liquidated damages pursuant to 29 U.S.C. § 216(b), awarding reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b), awarding injunctive relief requiring Defendants to comply with the FLSA, and awarding all such other relief as the Court deems just and appropriate.

COUNT II
CIVIL DAMAGES FOR FRAUDULENT
FILING OF INFORMATION RETURNS UNDER 26 U.S.C. §7434 (a)
(DEFENDANT HOGAN'S BRIDGE)

25. Plaintiff hereby incorporates by reference the allegations contained in Paragraphs 1 to 14 as if fully restated herein.

26. Plaintiff was an employee and not an independent contractor of Defendants, including Hogan's Bridge. Yet, Defendant Hogan's Bridge issued Plaintiff an IRS Form 1099 for his remuneration.

27. As an employee of Defendant, Plaintiff was entitled to be compensated for his work. Through this employment relationship, Defendant incurred a corresponding legal obligation to accurately report Plaintiff's earnings to the IRS and the Social Security Administration for each tax year during which he worked, as well as to deduct applicable taxes from his wages.

28. Defendant had a legal duty not only to deduct applicable employment taxes from Plaintiff's wages and to accurately report these wages to the IRS, but also to file correct information returns with the IRS on Plaintiff's behalf.

29. Defendant did not withhold federal income tax from the remuneration listed in the Form 1099.

30. The IRS Form 1099 was an "information return" for purposes of 26

U.S.C. § 7434(a).

31. In the tax evasion context, fraud is the “willful attempt to evade tax.” See *Beaver v. Commissioner*, 55 T.C. 85, 92 (1970). The IRS itself considers a number of factors to make a showing of fraud, including understatement of income, inadequate records, mischaracterization of sources of income, and implausible or inconsistent explanations of behavior. See *Spies v. United States*, 317 U.S. 492, 499 (1943).

32. Defendant voluntarily and intentionally issued Plaintiff an IRS Form 1099 for the remuneration listed therein in an attempt to evade paying federal income tax on such sums, in violation of its legal duty to deduct applicable employment taxes from Plaintiff’s wages and to accurately report these wages to the IRS.

33. By intentionally issuing Plaintiff a false IRS Form 1099 in an attempt to evade paying federal income tax, Defendant willfully and fraudulently failed to properly record payments made to Plaintiff and to properly account for these payments to the IRS.

34. By engaging in the aforestated conduct, Defendant filed fraudulent information returns for Plaintiff with the IRS, in violation of 26 U.S.C. § 7434(a).

35. By reporting remuneration on a Form 1099, Defendant breached a number of its legal duties under the Internal Revenue Code, including avoiding payment of all of the applicable employment taxes that it was obligated to pay on their behalf. See 26 U.S.C. §§ 3102(a), 3402(a) (imposing a duty on employers to

deduct applicable taxes from their employees' wages); 26 U.S.C. § 3401(d)(1) (defining "employer" under the IRC); (26 U.S.C. § 3121(a) (defining employee wages for the purpose of income taxation); 26 U.S.C. § 6051(a) (imposing a duty on employers to furnish employees with copies of their information returns); 26 U.S.C. § 6721(a)(2)(B) (prescribing penalties for failure to file correct information returns).

36. Plaintiff has suffered harm as a result of Defendant's wrongful conduct.

37. Under the Internal Revenue Code, "[if] any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filing such return." 26 U.S.C. § 7434(a).

38. For violations of 26 U.S.C. § 7434(a), the defendant shall be liable to the plaintiff in an amount equal to the greater of \$5,000 or the sum of any actual damages sustained by the plaintiff as a proximate result of the filing of the fraudulent information return (including any costs attributable to resolving deficiencies asserted as a result of such filing), the costs of the action, and reasonable attorneys' fees.

WHEREFORE, Plaintiff demands:

a) Costs attributable to resolving deficiencies, civil damages of \$5,000 for Plaintiff, and/or damages resulting from Plaintiff's additional tax debt, and Plaintiff's additional time and expenses associated with any necessary corrections;

b) That Defendant Hogan's Bridge be ordered to take all the necessary steps to correct the information returns identified above;

c) All costs and attorney's fees incurred by Plaintiff in prosecuting these

claims; and

d) For such further relief as this Court deems just and equitable.

JURY TRIAL DEMAND

Plaintiff demands trial by jury as to all issues.

DATED this 23rd day of January, 2018.

Respectfully submitted,
WHITTEL & MELTON, LLC
/s/ Jay P. Lechner
Jay P. Lechner, Esq.
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200 Central Avenue, #400
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I FURTHER CERTIFY that a copy hereof has been furnished via U.S. Mail to: Internal Revenue Service pursuant to 26 U.S.C. § 7434(d) at 3848 W. Columbus Dr., Tampa, FL 33607.

/s/ Jay P. Lechner

Attorney

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

JOSE TROCHE, on behalf of himself and others similarly situated.

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Whittel & Melton 200 Central Ave. #400 St. Petersburg, FL 33701

DEFENDANTS

HOGAN'S BRIDGE, LLC, A Florida Limited Liability Company 12415 Kildeer Road Weeki Wachee, FL 34614

County of Residence of First Listed Defendant Hernando (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)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
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, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, 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
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): Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b)

Brief description of cause: Violation of FLSA

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 01/23/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Jay P. Lechner

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 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: [Hogan's Bridge in Hot Water Over Alleged Labor Law Violations](#)
