

STATE OF CONNECTICUT

RETURN DATE: SEPTEMBER 19, 2017	SUPERIOR COURT
BRIAN POLI, JUAN CRESPO and CARLOS COSME, individually and on behalf of all others similarly situated, Plaintiffs	JUDICIAL DISTRICT OF HARTFORD
v.	AT HARTFORD
NEHDS LOGISTICS, LLC. Defendant	AUGUST 11, 2017

CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This is an action brought on behalf of current and former delivery drivers of NEHDS LOGISTICS, LLC. ("Defendant" or "NEHDS"), challenging their unlawful misclassification as independent contractors instead of employees. Brian Poli, Juan Crespo and Carlos Cosme ("Plaintiffs") bring this action on behalf of themselves and on behalf of a class of similarly situated persons who have worked as delivery drivers for NEHDS for statutory and common law violations that stem from this misclassification.

II. THE PARTIES

2. Plaintiff, Brian Poli, lives in Farmington, Connecticut and has worked for NEHDS since approximately December 2016 as a delivery driver.

3. Plaintiff, Juan Crespo, lives in West Springfield, Massachusetts and has worked for NEHDS since approximately February 2016 as a delivery driver.

4. Plaintiff, Carlos Cosme, lives in Indian Orchard, Massachusetts and has worked for NEHDS since approximately early 2015 as a delivery driver.

5. Plaintiffs bring this action on behalf of a class of similarly-situated individuals, namely, all other persons who have worked for NEHDS as delivery drivers during the period beginning two years prior to the filing of this lawsuit and continuing until the date of final judgment in this action, and who have been classified as independent contractors.

6. NEHDS is a Connecticut corporation with its headquarters in Bethel, Connecticut. NEHDS does business in Connecticut, and operates facilities in Connecticut and several other northeastern states including Bethel and Windsor, Connecticut, Dedham, Massachusetts, Cranbury and Kearny, New Jersey, Colonie, New York, and Hudson and Portsmouth, New Hampshire.

III. STATEMENT OF FACTS.

7. NEHDS is in the business of providing the delivery of retail merchandise on behalf its customers to consumers. NEHDS provides delivery services for companies such as Bob's Discount Furniture, Costco, Ashley Furniture and other similar companies. To carry out this central function, NEHDS purports to contract with individuals such as Plaintiffs, to drive a delivery truck and to deliver retail merchandise to customers' homes.

8. Plaintiffs and other drivers performed delivery services for NEHDS. To receive such work, NEHDS required Plaintiffs and all other class members to sign an Independent Contractor Service Agreement ("ICSA", copy attached hereto as Exhibit A), or similar contract, which stated that he was an independent contractor.

9. This Agreement, which was required of all delivery drivers no matter what state in which they lived or worked, indicated that it was "governed by and construed

and enforced in accordance with the laws of the State of Connecticut without regard to its conflict of laws principles.”

10. Although NEHDS has classified the Plaintiffs, as well as other drivers as independent contractors, in fact they are Defendant’s employees.

11. For Defendant to show that Plaintiffs and the members of the class are independent contractors, it has to prove all three elements of Connecticut’s ABC test for independent contractor status. This test requires Defendant to show, as to these individuals and the services that they provide, that:

- (a) such individual has been and will continue to be free from control and direction in connection with the performance of such service, both under his contract for the performance of service and in fact; and
- (b) such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and
- (c) such individual is customarily engaged in an independently established trade occupation, profession, or business of the same nature as that involved in the service performed.

12. In fact, as to the “A” part of Connecticut’s ABC independent contractor test, Defendant does not allow Plaintiffs and other delivery drivers to be free from control in the manner in which they perform their work. Defendant imposes significant control over Plaintiffs through operation of its ICSA and its “standard operating procedures” which it incorporates by reference into that Agreement. This control includes but is not limited to:

- i. Defendant requires Plaintiffs and the class to load and unload their trucks “at the Company facility ... which will mean the Company’s or Customer’s terminal and that portion of such terminal in which Company personnel are authorized to work in accordance with schedules implemented by Company and/or Customers.”
- ii. Defendant requires Plaintiffs and the class to report to the facility by 6 a.m., five days a week, to check in, obtain instructions for the day including possible last-minute additions to their deliveries.
- iii. Defendant requires Plaintiffs, as well as the other drivers, to make all deliveries within specific time frames.
- iv. Defendant requires Plaintiffs, as well as the other drivers, to follow specific instructions as to whom deliveries must be made, the order in which deliveries are to be made, and locations where deliveries to be made.
- v. Defendant requires Plaintiffs and other delivery drivers to be “bound by Company’s or Customer’s reasonable requests to amend Contractor’s method of providing Services in order to decrease costs to Customers, including but not limited to:
 - a. working for most efficient routing of deliveries:
 - b. meeting pick-up and delivery times; and
 - c. training of delivery teams to meet specialized service needs, including time sensitive deliveries.”

- vi. Defendant also adds additional deliveries that were not originally scheduled for the day to Plaintiff and other drivers' routes and they are not allowed to postpone those deliveries for another day or to turn them down.
- vii. Defendant requires Plaintiffs, as well as the other drivers, to wear uniforms when making deliveries.
- viii. Defendant requires Plaintiffs, and other drivers to submit rosters of any workers they hire and to maintain records regarding those workers for a period of "(3) years after termination of" the Agreement.
- ix. Defendant requires Plaintiffs, and other drivers to be "courteous and well groomed."
- x. Defendant's Agreement indicates that Plaintiffs and other drivers were "obligated to wear approved picture identification and approved apparel at all times while performing Services."
- xi. Defendant requires Plaintiffs, as well as the other drivers, to carry a cell phone so that they may receive calls from Defendant. Defendant contacts Plaintiff during the day with instructions related to cancellations and rescheduling of deliveries.
- xii. Defendant requires Plaintiffs and other drivers to acquire and/or carry with them computer tablets with applications or software to track Plaintiffs and the merchandise being delivered.
- xiii. Defendant requires Plaintiffs, as well as the other drivers, to be in contact with Defendant's clients regarding the status of deliveries.

- xiv. Defendant requires Plaintiffs, as well as other drivers, to leave their trucks at the Defendant's facility when not making deliveries.
- xv. Defendant requires Plaintiff, as well as the other drivers, to get signatures from customers when deliveries are made.
- xvi. Defendant also requires delivery drivers with which it contracts to have or lease a truck that meets certain specifications which are listed as an exhibit to the Agreement.
- xvii. Defendant also required Plaintiffs and other drivers "to abide by Company's policies and procedures as provided or otherwise communicated to Contractor and as amended from time to time."
- xviii. Defendant also reserved the right to audit and inspect Plaintiffs' records and documents.

13. As for the "B" part of Connecticut's ABC test, Defendant requires Plaintiffs, as well as the other drivers, to perform work which is in the usual course of business of Defendant – i.e., they perform delivery services and Defendant is engaged in the business of providing delivery services to its customers. Further, the work performed by Plaintiffs and other delivery drivers is not performed outside of all the places of business of the enterprise for which the service is performed. Instead, Defendant requires that Plaintiffs and the class members be at Defendant's facility in the morning and evening for 30-90 minutes each time to load, unload, receive merchandise and instructions and for other reasons.

14. Finally, as to the "C" part of Connecticut's ABC independent contractor test, Defendant does not permit Plaintiffs, as well as the other drivers, to be customarily

engaged in an independently established trade occupation, profession, or business of the same nature as that involved in the service performed. Its Agreement contains a "Covenant Not to Compete" which provides that "[d]uring the Term of this Agreement and for a period of twelve (12) months after the termination of the Agreement for any reason (the "Non-Competition Period"), Contractor shall not, within twenty-five (25) miles of the Service Territory, ... render any delivery-related services ... competitive with the Company." Ex. A, par. 21. Additionally, because Defendant gives Plaintiffs and the class so much work and requires that their trucks be stored at their facility after their routes, as a practical matter, Defendant prevents its drivers from being independently established. Accordingly, Defendant does not allow Plaintiffs to be independently established as part C of the ABC test requires.

15. Although Defendant did not satisfy Connecticut's ABC test for Independent Contractor status, Defendant nevertheless classified Plaintiffs and all delivery drivers as independent contractors.

16. As a result of its misclassification of Plaintiffs and other delivery drivers, Defendant violated their rights under the Connecticut Minimum Wage Act by failing to pay them all the wages they were due under this Agreement.

17. According to the Agreement Defendant was required to pay Plaintiffs no less than "62% of the adjusted gross revenue." Adjusted Gross Revenue was "all revenue received by Company from its Customers for transportation services provided by Contractor" after reduction for (1) non-hauling revenue, (2) payments to 3d parties, (3) excess value or insurance payments and (4) incentives given to Customers.

18. Instead, Defendant made certain deductions directly from Plaintiffs' wages, including deductions for "Loss or Damage" regardless of whether Plaintiffs were legally liable for said losses or damages. See Ex. A, Section 13.

19. While the ICSA provides that the "Company will provide Contractor with a written explanation and itemization of such deductions" before they are made, Defendant does not do so and instead just makes the deductions without any input from Plaintiffs or other delivery drivers or any consideration as to fault.

20. For example, Defendant deducted \$200 from Plaintiff Carlos Cosme's adjusted gross revenue on 4/18/2017 for "5 scratches on customer's dining room floor." It also deducted \$165 from Cosme's adjusted gross revenue on 5/1/2017 for "Damage to the customer's interior door frame."

21. Defendant also makes deductions if Plaintiffs fail to make the stops that it assigns them to make. For example, Defendant deducted \$65 from Plaintiff Brian Poli's adjusted gross revenue on 4/10/2017 for "failed stop J07/14, ded from payment."

22. Defendant also makes deductions if Plaintiffs' fail to set up the merchandise. For example, Defendant deducted \$65 from Plaintiff Brian Poli's adjusted gross revenue on 4/10/2017 for "did not set up merch, ZSV1 charges ded from payment."

23. Defendant also makes deductions for allegedly missing merchandise. For example, Defendant deducted \$321.49 from Plaintiff Brian Poli's adjusted gross revenue for "missing merch J07-0324, ded from payment."

24. Defendant also requires Plaintiffs' to make a cash payment of \$3,000 as a "Performance Bond" from which such deductions are made. Defendant also deducts

sums of money from Plaintiffs and other drivers to satisfy this bond requirement. See Ex. A, Section 9.

For example, Defendant deducted \$50 per week from Plaintiff Brian Poli's adjusted gross revenue from 12/24/16 through 6/10/2017 towards his performance bond.

25. It is against the public policy of the State of Connecticut as expressed in Conn. Gen. Stat. Sec. 31-73 to take advantage of the employment relationship to exact sums of money from employees in return for the acquisition or continuation of employment. *Lockwood v. Professional Wheelchair Transp.*, 37 Conn. App. 85, 94 (1995).

26. In addition, Defendant requires that Plaintiffs and other delivery drivers use their wages to purchase insurance, including workers compensation and other insurance, that it does not and cannot by law force employees to purchase. See Ex. A, Section 12.

27. In fact, Plaintiffs Poli, Crespo and Cosme all have spent thousands of dollars from their earned wages to purchase workers compensation insurance that Defendant should have procured.

28. Defendant's requirement that Plaintiffs pay for their own workers' compensation insurance violates the public policy contained in Connecticut's Workers Compensation Act which requires employers to provide workers compensation insurance coverage for their employees.

29. Defendant charges Plaintiffs 6% of weekly revenue for every week in which workers compensation insurance is not secured and deducts these sums from their pay. For example, during week ending 12/24/2016 Defendant charge Plaintiff Juan

Crespo \$166.50 as a “Workers’ Compensation Penalty – 6% of revenue.” Crespo’s adjusted gross revenue that week was \$2,775.00.

30. Defendant makes the above listed deductions, which are for the direct benefit of Defendant and not the Plaintiffs, without obtaining Plaintiffs’ written authorization on a form approved by the Commissioner of the Connecticut Department of Labor in violation of Conn. Gen. Stat. Sec. 31-71e.

31. Defendant’s deductions, including its requirement that Plaintiffs pay a \$3,000 “performance bond” violate Conn. Gen. Stat. Sec. 31-73 which prohibits employers from requiring that employees pay a “sum of money” or “deduct any part of the wages agreed to be paid, upon the representation or the understanding that such refund of wages, fee, sum of money, contribution or deduction is necessary to secure employment or continue in employment.”

CLASS ALLEGATIONS

32. Plaintiffs bring this action individually and on behalf of a class of individuals similarly situated.

33. The class of individuals similarly situated are all individuals like the Plaintiffs who have performed or currently perform delivery services for Defendant as delivery drivers during the two years immediately preceding this lawsuit and continuing until the date of final judgment in this matter.

34. Class certification for these Connecticut law claims is appropriate under Rule 23(a) and Rule 23(b)(3) because all the requirements of the Rules are met.

35. The class is so numerous that joinder of all members is impracticable. On information and belief, there have been approximately 50 or more delivery drivers working for Defendant during the past two years.

36. There are questions of law and fact common to the class, including whether the putative class members were improperly classified as independent contractors, whether Defendant failed to pay them all wages due and / or illegally deducted sums from their pay in violation of Connecticut law.

37. Plaintiffs' claims are typical of those of the class members. Plaintiffs' claims encompass the challenged practices and course of conduct of Defendant. Furthermore, Plaintiffs' legal claims are based on the same legal theories as the claims of the putative class members. The legal issues as to the violation of the CMWA by Defendants' conduct apply equally to Plaintiffs and to the class.

38. Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs' claims are not antagonistic to those of the putative class and he has hired counsel skilled in the prosecution of class actions.

39. Common questions of law and fact predominate over questions affecting only individuals, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. This proposed class action under Fed. R. Civ. P. 23 presents few management difficulties, conserves the resources of the parties and the court system, protects the rights of each class member and maximizes recovery to them.

COUNT I

ILLEGAL WITHHOLDING OF WAGES IN VIOLATION OF C.G.S. SECTION 31-72

40. As set forth above, by misclassifying Plaintiffs and other delivery drivers as independent contractors when they were in fact employees under Connecticut law, and by making the indicated deductions and requiring them to purchase certain insurance policies, Defendant failed to pay Plaintiffs the wages that they were due, i.e., 62% of adjusted gross revenue as promised under the Agreement, in violation of Conn. Gen. Stat. Section 31-72.

41. In this way, Defendant violated the rights under the Connecticut Minimum Wage Act of Plaintiffs and all members of the class and, pursuant to Conn. Gen. Stat. Sec. 31-72, is liable to them for “twice the full amount of such wages, with costs and such reasonable attorney’s fees as may be allowed by the court,...”

COUNT II
UNJUST ENRICHMENT

42. As set forth above, by misclassifying Plaintiffs and other delivery drivers as independent contractors when they are employees under Connecticut law, Defendants were unjustly enriched or were conferred a benefit because they unlawfully shifted their business costs and expenses to the Plaintiff and class members, including without limitations workers' compensation insurance, general liability insurance, to the detriment of Plaintiff and class members.

43. Defendant's conduct violated the public policy of the State of Connecticut including the public policy that employers, not employees, should provide workers' compensation coverage, and the public policy that employers should not benefit from their misclassification of employees as independent contractors.

44. Defendants were aware that they received a benefit from its misclassification of Plaintiffs and it would be unjust to let Defendants keep the benefit of their savings in business costs and expenses.

45. Defendant's conduct in misclassifying Plaintiffs and the class was done with malice in that it was done with conscious disregard for Plaintiffs' rights. Defendant knew that its classification of Plaintiffs' as independent contractors violated Connecticut's ABC independent contractor test but went forward with it nonetheless, knowing that it would cause Plaintiffs harm as alleged above.

WHEREFORE, the Plaintiffs pray that this Court grant them appropriate compensatory relief, including:

1. Certification of this action as a class under Fed. R. Civ. P. 23;
2. Compensatory damages under the common law and under the Connecticut Minimum Wage Act;
3. Penalty damages under the Connecticut Minimum Wage Act;
4. Common law punitive damages;
5. Incentive awards for the class representatives;
6. Interest;
7. Court costs and attorney's fees;
8. Such other relief as at law or equity may apply.

Plaintiffs, BRIAN POLI, JUAN CRESPO
and CARLOS COSME, individually and
on behalf of all others similarly situated

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STATEMENT OF AMOUNT IN DEMAND

WHEREFORE, Plaintiffs claim a cause of action seeking damages not less than 15,000.00, exclusive of interests and costs, which cause is within the jurisdiction of the Superior Court.

Plaintiffs, BRIAN POLI, JUAN CRESPO
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