

1 Clifford P. Bendau, II (030204)
2 Christopher J. Bendau (032981)
3 THE BENDAU LAW FIRM PLLC
4 P.O. Box 97066
5 Phoenix, Arizona 85060
6 Telephone: (480) 382-5176
7 Facsimile: (602) 956-1409
8 Email: cliffordbendau@bendaulaw.com
9 chris@bendaulaw.com
10 *Attorneys for Plaintiffs*

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 **Sean Delnoce, Colin Russell, Brian**
14 **Zimmerman, and Austin Edwards,**
15 individually, and on behalf of all others
16 similarly situated,

17 Plaintiffs,

18 v.

19 **GlobalTranz Enterprises, Inc., Andrew**
20 **J. Leto and Jane Doe Leto,** a married
21 couple, **Michael Leto and Jane Doe Leto**
22 **II,** a married couple, and **Marty**
23 **Sinicrope and Jane Doe Sinicrope,** a
24 married couple,

25 Defendants.

No.

COLLECTIVE ACTION
COMPLAINT PURSUANT TO THE
FAIR LABOR STANDARDS ACT, 29
U.S.C. § 201, ET SEQ.

(Demand for Jury Trial)

26 Plaintiffs, Sean Delnoce (“Plaintiff Delnoce”), Colin Russell (“Plaintiff Russell”),
27 Brian Zimmerman (“Plaintiff Zimmerman”), and Austin Edwards (“Plaintiff Edwards”)
(collectively “Plaintiffs”), individually, and on behalf of all other persons similarly
situated, allege as follows:

PRELIMINARY STATEMENT

1. This is an action for equitable relief, overtime pay, liquidated damages,
attorneys’ fees, costs, and interest under the Fair Labor Standards Act (“FLSA”), as

THE BENDAU LAW FIRM PLLC
P.O. Box 97066
Phoenix, AZ 85060

1 amended, 29 U.S.C. § 216(b). Plaintiffs bring this action on behalf of themselves and all
2 similarly-situated current and former Logistics Specialists and Carrier Representatives
3 (also referred to as the “Covered Positions”) of Defendants.

4 2. Plaintiffs, individually, and on behalf of all others similarly-situated, bring
5 this action against Defendants¹ for their unlawful failure to pay overtime in violation of
6 the FLSA.

7 3. Plaintiffs bring a collective action under the FLSA to recover the unpaid
8 overtime wages owed to them individually and on behalf of all other similarly-situated
9 Logistics Specialists and Carrier Representatives, current and former, of Defendants.
10 Members of the Collective Action are referred to as the “Collective Members.”

11 4. Plaintiffs and the Collective Members are current and former employees of
12 Defendants and bring this action on behalf of themselves and all similarly-situated
13 current and former Logistics Specialists and Carrier Representatives who Defendants
14 misclassified as “exempt” from overtime under the FLSA, and who were therefore not
15 paid one-and-one-half times their regular rates of pay for all time worked in excess of 40
16 hours in a given workweek.

17 5. The Collective Members are all current and former Logistics Specialists
18 and Carrier Representatives who were employed by Defendants at any time starting three
19 years before this Complaint was filed, up to the present.

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¹ All Defendants to this action are collectively referred to as either “GlobalTranz” or
“Defendants” unless specified otherwise.

1 12. At all material times, Plaintiff Delnoce was a full-time employee of
2 Defendants who worked as a Carrier Representative from approximately September 1,
3 2013 through approximately July 31, 2015.

4 13. At all times material to the matters alleged in this Complaint, Plaintiff
5 Russell was an individual residing in Maricopa County, Arizona, and is a former
6 employee of Defendants.
7

8 14. At all material times, Plaintiff Russell was a full-time employee of
9 Defendants who worked as a Carrier Representative from approximately May 1, 2013
10 through approximately June 30, 2016.
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12 15. At all times material to the matters alleged in this Complaint, Plaintiff
13 Zimmerman was an individual residing in Maricopa County, Arizona, and is a former
14 employee of Defendants.
15

16 16. At all material times, Plaintiff Zimmerman was a full-time employee of
17 Defendants who worked as a Logistics Specialist from approximately December 1, 2013
18 through approximately February 28, 2015.

19 17. At all times material to the matters alleged in this Complaint, Plaintiff
20 Edwards was an individual residing in Maricopa County, Arizona, and is a former
21 employee of Defendants.
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23 18. At all material times, Plaintiff Edwards was a full-time employee of
24 Defendants who worked as a Logistics Specialist from approximately December 1, 2013
25 through approximately January 1, 2016.
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1 19. At all material times, Plaintiffs were employed by Defendants and paid as
2 exempt employees.

3 20. At all relevant times, Defendants employed Logistics Specialists to perform
4 various non-exempt duties, including, but not limited to, cold-calling and emailing
5 current and potential customers to obtain the customer's agreement to ship their freight
6 using GlobalTranz's services.

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8 21. At all relevant times, Defendants employed Carrier Representatives to
9 perform various non-exempt duties, including, but not limited to, cold-calling current and
10 potential carriers and securing contracts for the carriers to transport GlobalTranz's
11 customers' freight at the lowest possible cost.

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13 22. At all material times, Plaintiffs were employees of Defendants as defined
14 by the FLSA, 29 U.S.C. § 203(e)(1).

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16 23. At all material times, Plaintiffs were non-exempt employees under 29
17 U.S.C. § 213(a)(1).

18 24. Plaintiffs have given their written consent to be party Plaintiffs in this
19 action pursuant to 29 U.S.C. § 216(b), a true and accurate copy of which is attached to
20 this Complaint as "**Exhibit A.**"

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22 25. Plaintiffs bring this action on behalf of themselves and on behalf of all
23 other persons similarly situated who are current or former Logistics Specialists and
24 Carrier Representatives of Defendants, including but not limited to current or former
25 Logistics Specialists and Carrier Representatives of Defendants who agree in writing to
26 join this action seeking recovery under the FLSA.
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1 26. Plaintiffs bring this action on behalf of themselves and on behalf of all
2 other similarly situated current and former employees of Defendants—specifically, current
3 or former Logistics Specialists and Carrier Representatives of Defendants who
4 Defendants misclassified as “exempt” from overtime under the FLSA and, therefore, did
5 not receive an overtime premium for time spent working in excess of 40 hours in a given
6 workweek.

8 27. Defendant GlobalTranz Enterprises, Inc. is an Arizona corporation,
9 authorized to do business in the State of Arizona and was at all relevant times Plaintiffs’
10 and the Collective Members’ Employer as defined by 29 U.S.C. § 203(d).

12 28. Under the FLSA, Defendant GlobalTranz Enterprises, Inc. is an employer.
13 The FLSA defines “employer” as any individual who acts directly or indirectly in the
14 interest of an employer in relation to an employee. At all relevant times, Defendant
15 GlobalTranz Enterprises, Inc. had the authority to hire and fire employees, supervised
16 and controlled work schedules or the conditions of employment, determined the rate and
17 method of payment, and maintained employment records in connection with Plaintiffs’
18 and the Collective Members’ employment with GlobalTranz. Having acted in the interest
19 of GlobalTranz in relation to their employees, including Plaintiffs, GlobalTranz
20 Enterprises, Inc. is subject to liability under the FLSA.

23 29. Under the FLSA, Defendants Andrew J. Leto and Jane Doe Leto are
24 employers. The FLSA defines “employer” as any individual who acts directly or
25 indirectly in the interest of an employer in relation to an employee. At all relevant times,
26 Defendants Andrew J. Leto and Jane Doe Leto were the owners of GlobalTranz. At all
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1 relevant times, they had the authority to hire and fire employees, supervised and
2 controlled work schedules or the conditions of employment, determined the rate and
3 method of payment, and maintained employment records in connection with Plaintiffs’
4 and the Collective Members’ employment with GlobalTranz. As persons who acted in the
5 interest of GlobalTranz in relation to GlobalTranz’s employees, including Plaintiffs,
6 Defendants Andrew J. Leto and Jane Doe Leto are subject to individual liability under the
7 FLSA.
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9 30. Under the FLSA, Defendants Michael Leto and Jane Doe Leto II are
10 employers. The FLSA defines “employer” as any individual who acts directly or
11 indirectly in the interest of an employer in relation to an employee. At all relevant times,
12 Defendants Michael Leto and Jane Doe Leto II were the owners of GlobalTranz. At all
13 relevant times, they had the authority to hire and fire employees, supervised and
14 controlled work schedules or the conditions of employment, determined the rate and
15 method of payment, and maintained employment records in connection with Plaintiffs’
16 and the Collective Members’ employment with GlobalTranz. As persons who acted in the
17 interest of GlobalTranz in relation to GlobalTranz’s employees, including Plaintiffs,
18 Defendants Michael Leto and Jane Doe Leto II are subject to individual liability under
19 the FLSA.
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22 31. Under the FLSA, Defendants Marty Sinicrope and Jane Doe Sinicrope are
23 employers. The FLSA defines “employer” as any individual who acts directly or
24 indirectly in the interest of an employer in relation to an employee. At all relevant times,
25 Defendants Marty Sinicrope and Jane Doe Sinicrope had the authority to hire and fire
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1 employees, supervised and controlled work schedules or the conditions of employment,
2 determined the rate and method of payment, and maintained employment records in
3 connection with Plaintiffs’ and the Collective Members’ employment with GlobalTranz.
4 As persons who acted in the interest of GlobalTranz in relation to GlobalTranz’s
5 employees, including Plaintiffs, Defendants Marty Sinicrope and Jane Doe Sinicrope are
6 subject to individual liability under the FLSA.
7

8 32. Defendants, and each of them, are sued in both their individual and
9 corporate capacities.

10 33. Defendants are jointly and severally liable for the injuries and damages
11 sustained by Plaintiffs and the Collective Members.
12

13 34. At all relevant times, Plaintiffs and the Collective Members were
14 “employees” of Defendants as defined by the FLSA, 29 U.S.C. § 201, *et seq.*
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16 35. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
17 Defendants.

18 36. At all relevant times, Defendants were and continue to be “employers” as
19 defined by FLSA, 29 U.S.C. § 201, *et seq.*
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21 37. Defendants individually and/or through an enterprise or agent, directed and
22 exercised control over Plaintiffs’ and the Collective Members’ work and wages at all
23 relevant times.

24 38. At all relevant times, Plaintiffs and the Collective Members in their work
25 for Defendants, were engaged in commerce or the production of goods for commerce.
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1 46. GlobalTranz's profit derives from the margin between the fees it collects
2 from customers and the payments it makes to carriers.

3 47. At all relevant times in their work for Defendants in the Covered Positions,
4 Plaintiffs performed and continue to perform straightforward inside sales tasks.

5 48. At all relevant times in their work for Defendants, Logistics Specialist had
6 and have the primary job duty of cold-calling current and potential customers and selling
7 GlobalTranz's services to them. They call and email current and potential customers to
8 obtain the customer's agreement to ship their freight using GlobalTranz's services.
9

10 49. At all relevant times in their work for Defendants, Carrier Representatives
11 have the primary job duty of cold-calling current and potential carriers and securing
12 contracts for the carriers to transport GlobalTranz customers' freight. When a Logistics
13 Specialist receives a customer's agreement to ship their freight with GlobalTranz, it is the
14 Carrier Representative's job to find a carrier to ship that freight at the lowest possible
15 cost.
16

17 50. At all relevant times in their work for Defendants, the Covered Positions
18 are and have been classified as FLSA-exempt and paid a base salary plus commissions
19 based entirely on sales performance.
20

21 51. On approximately September 1, 2013, Plaintiff Delnoce began employment
22 with Defendants as a Carrier Representative, performing primarily non-exempt tasks,
23 such as cold-calling current and potential carriers and securing contracts for the carriers
24 to transport GlobalTranz's customers' freight at the lowest possible cost.
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1 52. On approximately May 1, 2013, Plaintiff Russell began employment with
2 Defendants as a Carrier Representative, performing primarily non-exempt tasks, such as
3 cold-calling current and potential carriers and securing contracts for the carriers to
4 transport GlobalTranz’s customers’ freight at the lowest possible cost.

5
6 53. On approximately March 1, 2014, Plaintiff Zimmerman began employment
7 with Defendants as a Logistics Specialist, performing primarily non-exempt tasks, such
8 as cold-calling and emailing current and potential customers to obtain the customer’s
9 agreement to ship their freight using GlobalTranz’s services.

10
11 54. On approximately December 1, 2013, Plaintiff Edwards began employment
12 with Defendants as a Logistics Specialist, performing primarily non-exempt tasks, such
13 as cold-calling and emailing current and potential customers to obtain the customer’s
14 agreement to ship their freight using GlobalTranz’s services.

15
16 55. Rather than paying their Logistics Specialists and Carrier Representatives—
17 including Plaintiffs and the Collective Members—an overtime premium for time spent
18 working in excess of 40 hours in a given workweek, Defendants misclassified them as
19 “exempt” in order to avoid their responsibilities under the FLSA.

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21 56. For approximately the first 90 days of Plaintiffs’ employment with
22 Defendants, they were paid a base annual salary of \$30,000 with the potential for
23 commission incentives, regardless of how many hours they worked per workweek.

24 57. After approximately the first 90 days of Plaintiffs’ employment with
25 Defendants, their base annual salary was increased to \$40,000, regardless of how many
26 hours they worked per workweek.
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1 58. In a given workweek, and during each and every workweek, of Plaintiffs'
2 employment with Defendants, they were scheduled to work, at a minimum, forty-five
3 (45) hours per week.

4 59. In a given workweek, and during each and every workweek, of Plaintiffs'
5 employment with Defendants, they worked between five (5) and twenty-five (25) hours
6 of overtime without being compensated at one-and-one-half times their regular rates of
7 pay for such time worked.
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9 60. For example, during workweek of May 4, 2015, Plaintiff Delnoce was
10 scheduled to work, at a minimum, forty-five (45) hours. Additionally, during the
11 workweek of May 4, 2015, Plaintiff Delnoce worked between five (5) and twenty-five
12 (25) hours of overtime without being compensated at one-and-one-half times his regular
13 rate of pay for such time worked.
14

15 61. For example, during workweek of May 4, 2015, Plaintiff Russell was
16 scheduled to work, at a minimum, forty-five (45) hours. Additionally, during the
17 workweek of May 4, 2015, Plaintiff Russell worked between five (5) and twenty-five
18 (25) hours of overtime without being compensated at one-and-one-half times his regular
19 rate of pay for such time worked.
20

21 62. For example, during workweek of November 10, 2014, Plaintiff
22 Zimmerman was scheduled to work, at a minimum, forty-five (45) hours. Additionally,
23 during the workweek of November 10, 2014, Plaintiff Zimmerman worked between five
24 (5) and twenty-five (25) hours of overtime without being compensated at one-and-one-
25 half times his regular rate of pay for such time worked.
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1 63. For example, during workweek of May 4, 2015, Plaintiff Edwards was
2 scheduled to work, at a minimum, forty-five (45) hours. Additionally, during the
3 workweek of May 4, 2015, Plaintiff Edwards worked between five (5) and twenty-five
4 (25) hours of overtime without being compensated at one-and-one-half times his regular
5 rate of pay for such time worked.
6

7 64. In their work for Defendants, Plaintiffs and the Collective Members were
8 non-exempt employees.
9

10 65. At all relevant times, Defendants have required and require the Covered
11 Positions to be constantly available by phone and email and immediately responsive to
12 customers' and carriers' needs, as well as in touch with each other to monitor ever-
13 changing freight needs and carrier availability.
14

15 66. At all relevant times, GlobalTranz has required and requires the Covered
16 Positions to work continuously through the day, communicating with potential and
17 current customers and carriers by phone, text, and email, finalizing shipping
18 arrangements and contracts.
19

20 67. GlobalTranz also sets challenging sales quotas, enforces them harshly, and
21 fosters an intensely competitive culture.
22

23 68. These factors cause Plaintiffs to consistently work significant overtime.
24

25 69. GlobalTranz requires the Covered Positoin to work at least 45 hours per
26 week in the office (separate from any time worked at home).
27

1 70. Because of the nature of the work and demands placed by GlobalTranz,
2 management is aware that Plaintiffs consistently work through lunch (either skipping
3 lunch or eating at their desks while working).

4 71. In addition, Plaintiffs work extensive time outside of normal business
5 hours, during mornings, evenings, and weekends.
6

7 72. In their work for Defendants, Plaintiffs and the Collective Members were
8 not outside sales employees.

9 73. In their work for Defendants, Plaintiffs and the Collective Members were
10 not customarily and regularly engaged away from Globaltranz's place or places of
11 business in performing their primary duties.
12

13 74. In their work for Defendants, Plaintiffs and the Collective Members were
14 not commissioned sales employees half of whose total earnings consisted of
15 commissions.
16

17 75. At no point during any workweek during which Plaintiffs and Collective
18 Members worked for Defendants did more than half of their total earnings consist of
19 commissions.
20

21 76. In their work for Defendants in the Covered Positions, Plaintiffs' and the
22 Collective Members' primary duty was not managing the enterprise that is GlobalTranz,
23 or managing a customarily recognized department or subdivision of the enterprise that is
24 GlobalTranz.
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1 77. In their work for Defendants in the Covered Positions, Plaintiffs and the
2 Collective Members did not customarily and regularly direct the work of at least two or
3 more other full-time employees or their equivalent.

4 78. In their work for Defendants in the Covered Positions, Plaintiffs did not
5 have the authority to hire or fire other employees, nor were their suggestions or
6 recommendations as to the hiring, firing, advancement, promotion, or any other change in
7 status of other employees given particular weight.

8 79. In their work for Defendants in the Covered Positions, Plaintiffs' and the
9 Collective Members' primary duty was not the performance of office or non-manual
10 work directly related to the management or general business operations of GlobalTranz or
11 GlobalTranz's customers.

12 80. In their work for Defendants in the Covered Positions, Plaintiffs' and the
13 Collective Members' primary duty did not include the exercise of discretion and
14 independent judgment with respect to matters of significance.

15 81. From the beginning of Plaintiffs' and the Collective Members' employment
16 through the present day, Defendants failed to properly compensate Plaintiffs and the
17 Collective Members for any of their overtime hours. During each and every workweek
18 during which Plaintiffs and the Collective Members worked for Defendants, they worked
19 approximately forty-five (45) to sixty (65) hours per week, including routinely working
20 through lunch periods, routinely working from home after regular business hours, and
21 routinely working from home on weekends for which time Defendants failed to
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1 accurately record Plaintiffs' and the Collective Members' time worked while suffering or
2 permitting them to work nonetheless.

3 82. Defendants refused and/or failed to properly disclose to or apprise Plaintiffs
4 and the Collective Members of their rights under the FLSA.

5 83. Defendants engaged in the regular practice of willfully failing to pay
6 Plaintiffs and the Collective Members one-and-one-half times their regular rates of pay
7 for all time that they suffered or permitted Plaintiffs and Collective Members to work in
8 excess of forty (40) hours per workweek.

9 84. As a result of Defendants' willful failure to pay Plaintiffs and Collective
10 Members one-and-one-half times their regular rates of pay for all work in excess of forty
11 (40) hours per workweek, Defendants paid Plaintiffs less than the applicable overtime
12 wage rate for such work that Plaintiffs and the Collective Members performed in excess
13 of forty (40) hours per workweek.

14 85. Defendants engaged in the regular practice of failing to accurately, if at all,
15 record the time during which Defendants suffered or permitted Plaintiffs and the
16 Collective Members to work. As such, Plaintiffs' and the Collective Members' time
17 records understate the duration of time each workweek that Defendants suffered or
18 permitted Plaintiffs and the Collective Members to work.

19 86. As a result of Defendants' willful failure to compensate Plaintiff the
20 applicable overtime wage rate for such hours worked, Defendants have violated 29
21 U.S.C. § 207(a).

1 87. Defendants knew that – or acted with reckless disregard as to whether –
2 their failure to pay to Plaintiffs and the Collective Members one-and-one-half times their
3 regular rates of pay for all work in excess of forty (40) hours per workweek, would
4 violate federal and state law, and Defendants were aware of the FLSA overtime wage
5 requirements during Plaintiff’s employment. As such, Defendants’ conduct constitutes a
6 willful violation of the FLSA.
7

8 88. Defendants have and continue to willfully violate the FLSA by not paying
9 Plaintiffs and the Collective Members one-and-one-half times their regular rates of pay
10 for all work in excess of forty (40) hours per workweek.
11

12 89. Defendants individually and/or through an enterprise or agent, directed and
13 exercised control over Plaintiffs’ and the Collective Members’ work and wages at all
14 relevant times.
15

16 90. In a given workweek, and during each and every workweek of Plaintiffs’
17 and the Collective Members’ employment with Defendants, Plaintiffs and the Collective
18 Members worked for Defendants for more than 40 hours and were not paid the applicable
19 overtime wage premium of one and one-half times their regular rates of pay under the
20 FLSA 29, U.S.C. § 207(a).
21

22 91. Plaintiffs and the Collective Members are covered employees within the
23 meaning of the Fair Labor Standards Act (“FLSA”).
24

25 92. Defendants wrongfully withheld wages from Plaintiffs and the Collective
26 Members by failing to pay all wages due for hours Plaintiffs and the Collective Members.
27

1 93. Due to Defendants' illegal wage practices, Plaintiffs and the Collective
2 Members are entitled to recover from Defendants compensation for unpaid minimum
3 wages, an additional amount equal amount as liquidated damages, interest, and
4 reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).

5
6 **COLLECTIVE ACTION ALLEGATIONS**

7 94. Plaintiffs reallege and incorporate by reference all allegations in all
8 preceding paragraphs.

9 95. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) on their own
10 behalves and as representatives of individuals similarly situated who are current or
11 former servers and bartenders of Defendants.

12 96. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) on their own
13 behalves and as representatives of individuals similarly situated who are current and
14 former Logistics Specialists and Carrier Representatives of Defendants, who are not or
15 were not paid one-and-one-half times their regular rates of pay for all time in excess of
16 forty (40) hours per workweek that Defendants suffered or permitted them to work, in
17 violation of pursuant to 29 U.S.C. § 207(a), who agree in writing to join this lawsuit
18 seeking recovery under the FLSA.

19 97. At all relevant times, Plaintiffs and the Collective Members are and have
20 been similarly situated, have had substantially similar job requirements and pay
21 provisions, and are and have been subject to Defendants' decision, policy, plan, and
22 common programs, practices, procedures, protocols, routines, and rules of willfully
23 failing and refusing to pay and one-and-one-half times Plaintiffs' and the Collective
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1 Members' regular rates of pay for all time in excess of forty (40) hours per workweek
2 that Defendants suffered or permitted them to work. Plaintiffs' claims stated herein are
3 essentially the same as those of the Collective Members. This action is properly
4 maintained as a collective action because in all pertinent aspects the employment
5 relationship of individuals similarly situated to Plaintiffs are identical.
6

7 98. Plaintiffs and the Collective Members worked more than forty (40) hours in
8 a given workweek without being compensated for the hours worked in excess of forty
9 (40) during that workweek. Further, Plaintiffs and the Collective Members worked more
10 than forty (40) hours in a given workweek without being compensated for the overtime
11 hours worked during that workweek.
12

13 99. For approximately the first 90 days of Plaintiffs' and the Collective
14 Members' employment, they were paid a base annual salary of \$30,000 with the potential
15 for commission incentives, regardless of how many hours they worked per workweek.
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17 100. After approximately the first 90 days of Plaintiffs' and the Collective
18 Members' employment with Defendants, their base annual salary was increased to
19 \$40,000, regardless of how many hours they worked per workweek.
20

21 101. In a given workweek, and during each and every workweek, of Plaintiffs'
22 and the Collective Members' employment with Defendants, they were scheduled to work,
23 at a minimum, forty-five (45) hours per week.
24

25 102. In a given workweek, and during each and every workweek, of Plaintiffs'
26 and the Collective Members' employment with Defendants, they worked between five
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1 and twenty-five (25) hours of overtime without being compensated at one-and-one-half
2 times their regular rate of pay for such time worked.

3 103. Although Defendants permitted and/or required the Collective Members to
4 work in excess of forty (40) hours per workweek, Defendants have denied them full
5 compensation for their hours worked over forty (40) in a given workweek.
6

7 104. The Collective Members perform or have performed the same or similar
8 work as the Plaintiffs.

9 105. The Collective Members regularly work or have worked in excess of forty
10 (40) hours during a given workweek.
11

12 106. The Collective Members are not exempt from receiving overtime pay.

13 107. As such, the Collective Members are similar to Plaintiffs in terms of job
14 duties, pay structure, and/or the denial of overtime.
15

16 108. Defendants' failure to pay overtime compensation required by the FLSA
17 results from generally applicable policies or practices, and does not depend on the
18 personal circumstances of the Collective Members.

19 109. The experiences of Plaintiffs, with respect to their pay, are typical of the
20 experiences of the Collective Members.
21

22 110. The specific job titles or precise job responsibilities of each Collective
23 Member does not prevent collective treatment.

24 111. All class members, irrespective of their particular job requirements, are
25 entitled to compensation for hours worked in excess of forty (40) during a given
26 workweek.
27

1 112. Although the exact amount of damages may vary among the Collective
2 Members, the damages for the Collective Members can be easily calculated by a simple
3 formula. The claims of all Collective Members arise from a common nucleus of facts.
4 Liability is based on a systematic course of wrongful conduct by the Defendants that
5 caused harm to all of the Collective Members.
6

7 113. As such, Plaintiffs bring their FLSA overtime claims as a collective action
8 on behalf of the following class:

9 **The FLSA Collective Members are all of Defendants' current and**
10 **former Logistics Specialists and/or Carrier Representatives who**
11 **worked for Defendants at any time starting three years before this**
12 **lawsuit was filed up to the present.**

13 114. Defendants' unlawful conduct, as described in this Collective Action
14 Complaint, is pursuant to a corporate policy or practice of minimizing labor costs by
15 manipulating and/or failing to properly record the hours the employees work.

16 115. Defendants are aware or should have been aware that federal law required
17 them to pay employees performing non-exempt duties an overtime premium of not less
18 than one-and-one-half times their regular rates of pay for hours worked in excess of forty
19 (40) per workweek.
20

21 116. Defendants' unlawful conduct has been widespread, repeated, and
22 consistent.
23

24 117. This action is properly brought under and maintained as an opt-in collective
25 action pursuant to 29 U.S.C. § 216(b).
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1 Collective Members are entitled one and one-half times their regular rates of pay for all
2 time spent working in excess of 40 hours per week for Defendants.

3 124. Plaintiffs and the Collective Members are also entitled to an amount equal
4 to all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

5 125. Plaintiffs and the Collective Members are also entitled to recover their
6 attorney's fees and costs as required by the FLSA. 29 U.S.C. § 216(b).

7
8 **COUNT ONE: FAIR LABOR STANDARDS ACT**
9 **UNPAID OVERTIME**

10 126. Plaintiffs reallege and incorporate by reference all allegations in all
11 preceding paragraphs.

12 127. Defendants misclassified Plaintiffs and the Collective Members as
13 "exempt" from overtime under the FLSA.

14 128. Defendants operated pursuant to their policy and practice of not paying
15 Plaintiffs and the Collective Members one and one-half times their regular rates of pay
16 for all time spent working in excess of 40 hours per workweek.

17 129. While employed by Defendants, Plaintiffs and the Collective Members
18 worked tens of hours of overtime per week each and every workweek for which they
19 worked for Defendants, and Defendants did not pay to Plaintiffs and the Collective
20 Members one-and-one-half times their regular rate of pay for such time.

21 130. As a result, Defendants have intentionally failed and/or refused to pay
22 Plaintiffs and the Collective Members overtime according to the provisions of the FLSA.
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1 131. Defendants further have engaged in a widespread pattern and practice of
2 violating the provisions of the FLSA by failing and/or refusing to pay Plaintiffs and the
3 Collective Members in accordance with 29 U.S.C. § 207.

4 132. Plaintiffs and the Collective Members believe and therefore aver that
5 Defendants owe them unpaid overtime wages for each and every pay period for the
6 duration of their employment.
7

8 133. Additionally, while employed by Defendants, during each and every
9 workweek during which Plaintiffs and the Collective Members worked, Defendants
10 suffered or permitted Plaintiffs and the Collective Members to work overtime hours
11 during lunch breaks, outside of normal business hours and on weekends, yet Defendant
12 did not pay Plaintiffs or the Collective Members any wage whatsoever for such time
13 Plaintiffs and the Collective Members worked. As a result, Defendants additionally
14 failed or refused to compensate Plaintiffs and the Collective Members one-and-one-half
15 times their regular rates of pay for hours Plaintiffs and the Collective Members worked
16 outside of normal business hours and on weekends.
17

18 134. As a result, Defendants have intentionally failed and/or refused to pay
19 Plaintiffs and the Collective Members overtime according to the provisions of the FLSA.
20
21

22 135. Defendants further have engaged in a widespread pattern and practice of
23 violating the provisions of the FLSA by failing to pay Plaintiffs and the Collective
24 Members in accordance with 29 U.S.C. § 207.
25

26 136. Although at this stage, Plaintiffs and the Collective Members are unable to
27 state the exact amount owed for all time worked during the course of their employment,

1 Plaintiffs and the Collective Members believe that such information will become
2 available during the course of discovery. Furthermore, when an employer fails to keep
3 complete and accurate time records, employees may establish the hours worked by their
4 testimony, and the burden of overcoming such testimony shifts to the employer.
5

6 137. Defendants knew that – or acted with reckless disregard as to whether –
7 their refusal or failure to properly compensate Plaintiffs and the Collective Members over
8 the course of their employment would violate federal and state law, and Defendants were
9 aware of the FLSA minimum wage requirements during Plaintiffs’ and the Collective
10 Members’ employment. As such, Defendants’ conduct constitutes a willful violation of
11 the FLSA.
12

13 138. Defendants have and continue to willfully violate the FLSA by not paying
14 Plaintiffs and the Collective Members a wage equal to one and one-half times their
15 regular rates of pay for all time spent performing labor for Defendants in excess of their
16 regular 40-hour workweek.
17

18 139. As a result of Defendants failure or refusal to pay Plaintiffs and the
19 Collective Members a wage equal to one and one half times Plaintiffs’ and the Collective
20 Members’ regular rates of pay for work they performed for Defendants in excess of their
21 regular 40-hour workweek, Defendants violated 29 U.S.C. § 207(a). Plaintiffs and the
22 Collective Members are therefore entitled to compensation of one-and-one-half times
23 their regular rates of pay, to be proven at trial, plus an additional equal amount as
24 liquidated damages, together with interest, reasonable attorney’s fees, and costs.
25
26
27

1 WHEREFORE, Plaintiffs, Sean Delnoce, Colin Russell, Brian Zimmerman, and
2 Austin Edwards, individually, and on behalf of all other similarly situated persons,
3 requests that this Court grant the following relief in Plaintiffs' and the Collective
4 Members' favor, and against Defendants:

- 5
- 6 A. For the Court to declare and find that the Defendants committed one or
7 more of the following acts:
- 8 i. violated the overtime provisions of the FLSA, 29 U.S.C. § 207, by
9 failing to pay proper minimum wages; and
10 ii. willfully violated minimum wage provisions of the FLSA, 29 U.S.C.
11 § 207;
- 12
- 13 B. For the Court to award damages in the amounts of all unpaid overtime
14 wages due and owing to Plaintiffs and the Collective Members;
- 15
- 16 C. For the Court to award compensatory damages, including liquidated
17 damages pursuant to 29 U.S.C. § 216(b), in amounts to be determined at
18 trial;
- 19
- 20 D. For the Court to award prejudgment and post-judgment interest on any
21 damages awarded;
- 22
- 23 E. For the Court to award Plaintiffs' and the Collective Members' reasonable
24 attorneys' fees and costs of the action pursuant to 29 U.S.C. § 216(b) and
25 all other causes of action set forth in this Complaint;
- 26
- 27 F. For the Court to provide reasonable incentive awards for each named
Plaintiff to compensate them for the time they spent attempting to recover

1 wages for the Collective Members and for the risks they took in doing so;
2 and

3 G. Such other relief as this Court deems just and proper.

4 **REQUEST FOR COLLECTIVE ACTION CERTIFICATION**

5
6 Plaintiffs request that the Court designate this action as a collective action on
7 behalf of the FLSA Collective Members and promptly issue a notice pursuant to 29
8 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising
9 them of the pendency of this action, and permitting them to timely assert FLSA claims in
10 this action by filing individual Consent to Sue Forms pursuant to 29 U.S.C. § 216(b).

11
12 **JURY TRIAL DEMAND**

13 Plaintiffs demand a trial by jury on all issues so triable.

14
15 RESPECTFULLY SUBMITTED this 28th day of April, 2017.

16
17 THE BENDAU LAW FIRM, PLLC

18 By: */s/ Clifford P. Bendau, II*
19 Clifford P. Bendau, II
20 Christopher J. Bendau
21
22
23
24
25
26
27

THE BENDAU LAW FIRM, PLLC

CLIFFORD P. BENDAU, II, ATTORNEY

Licensed in Arizona and Ohio

P.O. Box 97066

Phoenix, AZ 85060

[AZ] (480) 382-5176

[OH] (216) 395-4226

[FAX] (602) 956-1409

cliffordbendau@bendaulaw.com

www.bendaulaw.com

Exhibit A

1 Clifford P. Bendau, II (030204)
2 Christopher J. Bendau (032981)
3 THE BENDAU LAW FIRM PLLC
4 P.O. Box 97066
5 Phoenix, Arizona 85060
6 Telephone: (480) 382-5176
7 Facsimile: (602) 956-1409
8 Email: cliffordbendau@bendaulaw.com
9 chris@bendaulaw.com
10 *Attorneys for Plaintiffs*

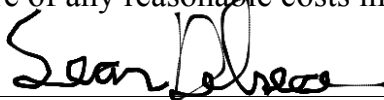
11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 **Sean Delnoce**, et al.,
14 Plaintiffs,
15 v.
16 **GlobalTranz Enterprises, Inc.**, et al.,
17 Defendants.

No.

**PLAINTIFF SEAN DELNOCE'S
CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

18 I, Sean Delnoce, do hereby consent to be a party plaintiff to the above-entitled
19 action. I have read the complaint to be filed in the United States District Court for the
20 District of Arizona and authorize my attorneys, The Bendau Law Firm PLLC, and their
21 associated attorneys ("the Attorneys"), to file the Complaint on my behalf and for other
22 employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit
23 and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and
24 all other matters related to the Lawsuit. I agree to provide the Attorneys forty percent
25 (40%) of any recovery they obtain on my behalf in the Lawsuit or the reasonable hourly
26 value of their legal services for time expended in the Lawsuit, as paid by Defendants,
27 whichever is greater. I authorize the Attorneys to deduct from any recovery my pro rata
share of any reasonable costs incurred by the Attorneys on my behalf.



Sean Delnoce

4/25/2017

Date

1 Clifford P. Bendau, II (030204)
2 Christopher J. Bendau (032981)
3 THE BENDAU LAW FIRM PLLC
4 P.O. Box 97066
5 Phoenix, Arizona 85060
6 Telephone: (480) 382-5176
7 Facsimile: (602) 956-1409
8 Email: cliffordbendau@bendaulaw.com
9 chris@bendaulaw.com
10 *Attorneys for Plaintiffs*

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 **Sean Delnoce**, et al.,
14 Plaintiffs,
15 v.
16 **GlobalTranz Enterprises, Inc.**, et al.,
17 Defendants.

No.
**PLAINTIFF COLIN RUSSELL'S
CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

18 I, Colin Russell, do hereby consent to be a party plaintiff to the above-entitled
19 action. I have read the complaint to be filed in the United States District Court for the
20 District of Arizona and authorize my attorneys, The Bendau Law Firm PLLC, and their
21 associated attorneys ("the Attorneys"), to file the Complaint on my behalf and for other
22 employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit
23 and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and
24 all other matters related to the Lawsuit. I agree to provide the Attorneys forty percent
25 (40%) of any recovery they obtain on my behalf in the Lawsuit or the reasonable hourly
26 value of their legal services for time expended in the Lawsuit, as paid by Defendants,
27 whichever is greater. I authorize the Attorneys to deduct from any recovery my pro rata
share of any reasonable costs incurred by the Attorneys on my behalf.

28 
29 Colin Russell

4/25/17
Date

1 Clifford P. Bendau, II (030204)
2 Christopher J. Bendau (032981)
3 THE BENDAU LAW FIRM PLLC
4 P.O. Box 97066
5 Phoenix, Arizona 85060
6 Telephone: (480) 382-5176
7 Facsimile: (602) 956-1409
8 Email: cliffordbendau@bendaulaw.com
9 chris@bendaulaw.com
10 *Attorneys for Plaintiffs*

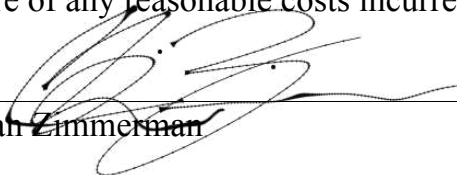
11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 **Sean Delnoce**, et al.,
14 Plaintiffs,
15 v.
16 **GlobalTranz Enterprises, Inc.**, et al.,
17 Defendants.

No.

**PLAINTIFF BRIAN ZIMMERMAN'S
CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

18 I, Brian Zimmerman, do hereby consent to be a party plaintiff to the above-entitled
19 action. I have read the complaint to be filed in the United States District Court for the
20 District of Arizona and authorize my attorneys, The Bendau Law Firm PLLC, and their
21 associated attorneys ("the Attorneys"), to file the Complaint on my behalf and for other
22 employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit
23 and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and
24 all other matters related to the Lawsuit. I agree to provide the Attorneys forty percent
25 (40%) of any recovery they obtain on my behalf in the Lawsuit or the reasonable hourly
26 value of their legal services for time expended in the Lawsuit, as paid by Defendants,
27 whichever is greater. I authorize the Attorneys to deduct from any recovery my pro rata
share of any reasonable costs incurred by the Attorneys on my behalf.

26 
27 Brian Zimmerman

4/25/17
Date

1 Clifford P. Bendau, II (030204)
2 Christopher J. Bendau (032981)
3 THE BENDAU LAW FIRM PLLC
4 P.O. Box 97066
5 Phoenix, Arizona 85060
6 Telephone: (480) 382-5176
7 Facsimile: (602) 956-1409
8 Email: cliffordbendau@bendaulaw.com
9 chris@bendaulaw.com
10 *Attorneys for Plaintiffs*

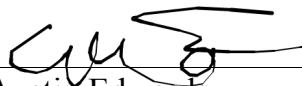
11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 **Sean Delnoce**, et al.,
14 Plaintiffs,
15 v.
16 **GlobalTranz Enterprises, Inc.**, et al.,
17 Defendants.

No.

**PLAINTIFF AUSTIN EDWARDS
CONSENT TO JOIN COLLECTIVE
ACTION AS NAMED PLAINTIFF**

18 I, Austin Edwards, do hereby consent to be a party plaintiff to the above-entitled
19 action. I have read the complaint to be filed in the United States District Court for the
20 District of Arizona and authorize my attorneys, The Bendau Law Firm PLLC, and their
21 associated attorneys (“the Attorneys”), to file the Complaint on my behalf and for other
22 employees similarly situated. I authorize the Attorneys to represent me in the Lawsuit
23 and make decisions on my behalf, including how to conduct the Lawsuit, settlement, and
24 all other matters related to the Lawsuit. I agree to provide the Attorneys forty percent
25 (40%) of any recovery they obtain on my behalf in the Lawsuit or the reasonable hourly
26 value of their legal services for time expended in the Lawsuit, as paid by Defendants,
27 whichever is greater. I authorize the Attorneys to deduct from any recovery my pro rata
share of any reasonable costs incurred by the Attorneys on my behalf.

26 
27 Austin Edwards

04/25/2017
Date

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): **Sean Delnoce ; Colin Russell ; Brian Zimmerman ; Austin Edwards**

Defendant(s): **GlobalTranz Enterprises, Inc. ; Andrew J. Leto ; Jane Doe Leto ; Michael Leto ; Jane Doe Leto II ; Marty Sinicrope ; Jane Doe Sinicrope**

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

Clifford Phillip Bendau II, Managing Attorney
(Sean Delnoce ; Colin Russell ; Brian Zimmerman ; Austin Edwards)
The Bendau Law Firm PLLC
P.O. Box 97066
Phoenix, Arizona 85060
(480) 382-5176

Christopher Jacob Bendau , Managing Attorney
(Sean Delnoce ; Colin Russell ; Brian Zimmerman ; Austin Edwards)
The Bendau Law Firm PLLC
P.O. Box 97066
Phoenix, Arizona 85060
(480) 382-5176

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **710 Fair Labor Standards Act**

VI.Cause of Action: **29 U.S.C. § 201, et seq.**

VII. Requested in Complaint

Class Action: **No**
Dollar Demand:
Jury Demand: **Yes**

VIII. This case IS RELATED to Case Number **2:15-cv-536** assigned to Judge **Humetewa.**

Signature: /s/ Clifford P. Bendau, II

Date: 4-28-17

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [GlobalTranz Enterprises, Three Married Couples Facing FLSA OT Lawsuit](#)
