

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
BECKLEY DIVISION

**ERIC YOUNG, Individually  
and on behalf of all others  
similarly situated,**

*Plaintiff,*

*v.*

Civil Action No.: 5:16-cv-09788

**ACT FAST DELIVERY OF WEST  
VIRGINIA, INC.; ACT FAST  
DELIVERY, INC.; HOME CARE  
PHARMACY, LLC d/b/a a variety of  
entities including but not limited to  
OMNICARE OF NITRO and/or  
OMNICARE OF NITRO, WEST  
VIRGINIA; COMPASS HEALTH  
SERVICES, LLC d/b/a a variety of  
entities including but not limited to  
OMNICARE OF MORGANTOWN  
and/or OMNICARE OF  
MORGANTOWN, WEST VIRGINIA;  
OMNICARE, INC.; and other JOHN  
DOE DEFENDANTS**

*Defendants.*

**COLLECTIVE ACTION COMPLAINT**

Plaintiff Eric Young, by counsel, brings this civil action as a collective action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* and under the West Virginia Wage Payment and Collection Act, West Virginia Code § 21-5a-1 *et seq.*, on behalf of himself and a class consisting of all persons who worked or are currently working in the State of West Virginia as Drivers for Defendants Act Fast Delivery, Inc. and Act Fast Delivery of West Virginia, Inc. (collectively “AFD”) and Home Care Pharmacy, LLC d/b/a a variety of entities including but not limited to Omnicare of Nitro and/or Omnicare of Nitro, West Virginia, Compass Health Services, LLC d/b/a a variety of entities including but not limited to Omni of Morgantown and/or Omnicare of Morgantown, West Virginia, Omnicare, Inc. (collectively “Omnicare”) and other John Doe Defendants who are subject to the unlawful wage payment practices described below.

**PARTIES**

1. Plaintiff Eric Young is a former employee of AFD and Omni. Eric Young resides in Kanawha County, West Virginia. He ran numerous routes for Defendants in a number of counties, including the routes in Raleigh and Greenbrier Counties.

2. Defendant Act Fast Delivery of West Virginia, Inc. (“AFD–WV”) is a corporation organized for profit under the laws of the State of West Virginia and with its principal office in Hinton, West Virginia.

3. Defendant Act Fast Delivery, Inc. (“AFDI”) is a corporation organized for profit under the laws of the State of Texas with its principal place of business in Texas. Upon information and belief, AFDI owns, operates, and controls AFD–WV. AFDI is responsible for all payroll operations of AFD–WV and its Drivers. Further, upon information and belief, AFDI uses AFD–WV as a mere shell or conduit to control the West Virginia aspects of AFDI’s greater, single venture. Moreover, AFDI is, as a matter of economic reality, a vertical joint employer of Plaintiff and other similarly situated Drivers such that they were and are economically dependent on AFDI. Specifically, and without limitation, AFDI has significant control over AFD–WV; directs and supervises the activities of both AFD–WV and the Drivers; controls the employment conditions; and has a permanent relationship with AFD–WV. Thus, AFDI is liable to Plaintiff and Drivers because it is directly responsible for the payroll operations of AFD–WV. Additionally, AFDI is also liable to Plaintiff and Drivers through both a veil piercing theory and as a vertical joint employer. Accordingly, AFDI and AFD–WV will be collectively referred to in this Complaint as “AFD.”

4. Home Care Pharmacy, LLC (“Home Care”) is a corporation organized for profit under the laws of the State of Delaware with its principal place of business in Ohio. Home Care Pharmacy operates under a variety of names, including but not limited to “Home Care pharmacy of West Virginia,” “Omnicare of Nitro,” “Omnicare of Nitro, West Virginia,” and “Pharmacare of Ashland.” Specifically but not limited to, Home Care operates a pharmacy in Nitro, West Virginia. That pharmacy is the location where Plaintiff and Drivers would pick up the prescriptions and medical supplies that needed to be delivered to nursing facilities or individual’s homes.

5. Compass Health Services, LLC (“Compass”) is a corporation organized for profit under the laws of the State of West Virginia with its principal place of business in West Virginia. Compass operates under a variety of names, including but not limited to “Neighborcare–Morgantown,” “Omnicare of Morgantown,” and “Omnicare of Morgantown, West Virginia.” Specifically but not limited to, Compass operates a pharmacy in Morgantown, West Virginia. That pharmacy is the location where Drivers would pick up the prescriptions and medical supplies that needed to be delivered to nursing facilities or individual’s homes.

6. Defendant Omnicare, Inc. is a corporation organized for profit under the laws of the state of Delaware and identifies its principal office as in Cincinnati, Ohio. Upon information and belief, Omnicare, Inc. owns, operates, and controls Home Care and Compass. Further, upon information and belief, Omnicare, Inc. uses Home Care and Compass as mere shells or conduits to control certain geographic portions of its greater, single venture. Moreover, as a matter of economic reality, Omnicare, Inc., acting through Home Care and Compass, is a vertical joint employer of Plaintiff and other similarly situated Drivers. Additionally, Omnicare, Inc. is liable to Plaintiff and Drivers through both a veil piercing theory and as a vertical joint employer. Accordingly, Omnicare, Inc., Home Care, and Compass will be collectively referred to in this

Complaint as “Omnicare.”

7. Plaintiff is unaware of the true names and/or capacities of the persons or entities sued as JOHN DOES. Plaintiff is informed and believes and alleges that each of the fictitiously named Defendants is responsible for the occurrences alleged herein and is liable to Plaintiff for the damages proximately caused thereby. Plaintiff will amend this Complaint to set forth the true names and capacities of such DOES when their true identities and/or capacities become known.

**SUBJECT MATTER JURISDICTION AND VENUE**

8. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. § 216(b), 28 U.S.C. § 1331 and 28 U.S.C. § 1367.

9. Pursuant to 28 U.S.C. §1391, venue is proper in the Southern District of West Virginia, Beckley Division because a substantial portion of the events forming the basis of this suit occurred in this District and Division.

10. Plaintiff Eric Young routinely ran routes for Defendants to Raleigh and Greenbrier Counties.

**FACTS**

11. Defendants’ business includes the delivery of pharmaceutical and medical products to customers. Defendants employed Plaintiff and other persons (collectively “Drivers”) to pick-up and deliver pharmaceutical and medical products. Plaintiff and other Drivers were assigned designated routes for deliveries, with assignments being classified as “regularly scheduled deliveries” and “expedited deliveries.”

12. Defendants also employed Dispatchers who also sometimes ran routes as Drivers. For purposes of this Complaint, Dispatchers are included in the group designated as “Drivers.”

13. On regularly scheduled deliveries, Plaintiff and other Drivers were paid a pre-determined fee for the particular “route” driven.

14. On expedited, ad hoc deliveries referred to as “stat” runs, Plaintiff and other Drivers were paid a pre-determined fee for each completed delivery.

15. Plaintiff and other Drivers were employees of Defendants under all economic realities and any other applicable, controlling legal standards. Defendants willfully, intentionally, and knowingly improperly misclassified Plaintiff and other Drivers as “independent contractors” as part of a scheme to avoid their wage payment obligations under Federal and State laws.

16. The employer–employee relationship existing between Defendants and Plaintiff and other Drivers was evidenced by numerous facts, including but not limited to the following:

- a. Defendants are in the business of delivering prescriptions and medical devices from pharmacy distribution outlets to nursing homes;
- b. Plaintiff and other Drivers were delivery drivers for Defendants performing services needed to allow Defendants to carry out their business purpose;
- c. Defendants made all decisions regarding the particular courses that Plaintiff and other Drivers would take and when those routes were driven. Plaintiff and other Drivers performed assignments only determined by Defendants. Plaintiff and other Drivers did not independently schedule assignments, solicit additional work from other clients, or advertise their services. Plaintiff and other Drivers used no managerial skills in performing their assigned tasks.

- d. Plaintiff and other Drivers used their driving skills to fulfill their workload from Defendants. However, Plaintiff and other Drivers made no independent judgments as to what routes they would drive, to which facility they would deliver prescriptions and medical devices, or the sequence of their work. Rather, Plaintiff and other Drivers were told what to do, where to do it, and how to do it.
- e. Defendants gave Plaintiff and other Drivers regular assignments on a near daily basis. Plaintiff and other Drivers did not use their own business initiative to turn down assignments from Defendants.
- f. Plaintiff and other Drivers were subject to Defendants' daily control and direction in the manner in which they performed their assigned tasks, including when, where, and how they performed their work;
- g. Plaintiff and other Drivers were required to perform their work in an order set by Defendants;
- h. Plaintiff and other Drivers were required to wear a uniform with AFD's logo imprinted on it;
- i. Defendants were responsible for hiring, scheduling and paying Plaintiff and other Drivers;
- j. Defendants exercised responsibility and control for disciplining, terminating, and supervising Plaintiff and other Drivers;
- k. Defendants required drivers to scan information and obtain customer signatures into portable devices (smart phones or scanners) at the completion of each delivery and prior to proceeding to the next delivery;

- l. Defendants required customers to complete specified paperwork for every delivery;
- m. Defendants issued work schedules to Plaintiff and other Drivers on a daily basis and Plaintiff and other Drivers were required to abide by these schedules;
- n. Defendants provided on-the-job training to the drivers, instructing them precisely how to perform each task;
- o. Defendants required Plaintiff and other Drivers to be on call for stat runs;
- p. Defendants penalized Plaintiff and other Drivers for arriving late;
- q. Defendants required Plaintiff and other Drivers to work more than 40 hours per week;
- r. Defendants required Plaintiff and other Drivers to work on weekends and holidays; and
- s. Defendants maintained the right to discharge Plaintiff and other Drivers at will.
- t. Plaintiff and other Drivers have/had no opportunity for profit or loss based on their managerial skills. The only way Plaintiff or other Drivers could make more money was to make more deliveries that were scheduled and required by Defendants.
- u. Defendants' piece-rate compensation scheme is non-negotiable and presented to Plaintiff and other Drivers on a take-it-or-leave-it basis.
- v. The delivery work performed by Plaintiff and other Drivers requires no skill beyond driving a car and operating a cell phone. There is no education

requirement to be a driver for Defendants and the only licensing requirement is a valid driver's license.

- w. Defendants operate a delivery business and the drivers are an integral component of that business. Without the delivery drivers, Defendants would be unable to fulfil their business purpose.
- x. A majority of Defendants' revenue—if not all—is derived from the deliveries Plaintiff and other Drivers make.

Based on the foregoing, the economic reality is that Defendants, Plaintiff and other Drivers maintained an employer–employee relationship, and Plaintiff and other Drivers were and are currently being erroneously misclassified as “independent contractors.”

17. Plaintiff and other Drivers were and are employees of Defendants, AFD and Omnicare. Specifically, with regard to Omnicare, its vertical joint employer status is evidenced by numerous facts which show economic dependence, including the following:

- a. While Omnicare was nominally a customer which contracted with AFD, it nonetheless directed, controlled, and supervised the way that Plaintiff and other Drivers performed their work;
- b. Omnicare specified the locations where Plaintiff and other Drivers would travel to, the specific courses that they would take, what order in which to make the deliveries and what particular times to make the deliveries;
- c. Omnicare supplied and specified the forms and documents with which Plaintiff and other Drivers would use on a daily basis;
- d. Omnicare specified various practices for Plaintiff and other Drivers, including specific handling instructions, scanning and tracking procedures; and even



handwashing instructions;

e. Upon information and belief, if the various route specifications set by Omnicare were not adhered to, Omnicare had the ability to have a particular Driver terminated;

f. AFD's relationship with Omnicare is an indefinite and long-term arrangement upon which AFD, Plaintiff, and other Drivers were and are all economically dependent;

g. Upon information and belief, Omnicare exclusively uses AFD for its deliveries in the applicable geographic areas in West Virginia;

h. Upon information and belief, Omnicare is AFD's only customer in the Charleston area;

i. Upon information and belief, Omnicare is, by far, AFD's only customer in the Morgantown area, representing nearly all the deliveries in that area;

j. Plaintiff's and other Drivers' work for AFD and Omnicare is rote and repetitive, is relatively unskilled, requires little to no training, and the same routes and deliveries are used every day;

k. Plaintiff's and other Drivers' deliveries represents an integral part of Omnicare's business such that AFD, Plaintiff, and other Drivers were and are economically dependent on Omnicare;

l. Job interviews for potential Drivers are conducted at facilities owned or leased by Omnicare;

m. Plaintiff's and other Drivers' pick-ups and drop-offs are done at facilities owned by Omnicare; and

n. Plaintiff and other Drivers deliver Omnicare's products, carried in Omnicare's specific delivery containers supplied by Omnicare, such that AFD, Plaintiff, and other Drivers were and are economically dependent on Omnicare.

18. For purposes of overtime compensation, Plaintiff and other Drivers were non-exempt employees that worked on a piece-rate basis picking up and delivering pharmaceutical and medical products. Pursuant to a uniform practice in effect at all locations, Defendants paid Plaintiff and other Drivers on a piece-rate basis a certain, fixed amount per completed delivery and/or route; however, Defendants did not pay Plaintiff and other Drivers minimum hourly wages as required under State and Federal laws.

19. Defendants required and/or permitted Plaintiff and other Drivers to work in excess of forty (40) hours per week, but failed to compensate them for hours worked in excess of forty (40) hours per week at a rate of one and one-half times their regular rate of pay.

20. Related to Defendants' failure to pay Plaintiff and other Drivers required minimum wages and overtime compensation, Defendants also failed to pay Plaintiff and other Drivers for mandated waiting time before and after assigned deliveries; failed to pay Plaintiff and other Drivers for mandated waiting time spent between assigned deliveries; and required specific paperwork to be completed for each job, but did not compensate Plaintiff and other Drivers for the time required to complete such paperwork.

21. Defendants also made the following unauthorized and/or unlawful deductions from the pay of Plaintiff and other Drivers: use of company equipment and services; charges related to fuel costs advanced; fees associated with direct deposit; fees associated with background checks; fees associated with drug tests; and fees associated with the use of fuel cards. Plaintiff and other Drivers were also required to provide their own automobile and pay their own

automobile insurance, maintenance and fuel costs, and if needed, rental fees.

22. Defendants' unauthorized and/or unlawful deductions brought the wages of Plaintiff and other Drivers below that of the federally mandated minimum wage.

23. Defendants failed to properly comply with the Federal Insurance Contributions Tax Act ("FICA") and Federal Unemployment Tax Act ("FUTA").

### **STATUTORY WAGE PAYMENT VIOLATIONS**

24. Plaintiff realleges and reasserts each and every previous paragraph as if fully set forth herein.

25. At all material times, Defendants have been employers within the meaning of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 203(d).

26. At all material times, Defendants have operated as a single "enterprise" within the meaning of the FLSA. 29 U.S.C. § 203(r). That is, Defendants perform related activities through unified operation and common control for a common business purpose. *See Brennan v. Arnheim and Neely, Inc.*, 410 U.S. 512, 515 (1973); *Reich v. Bay, Inc.*, 23 F. 3d 110, 113 (5th Cir. 1994).

27. At all times mentioned herein, each and every Defendant and entity named herein was the agent, principal, employer, employee, partner, joint venture, office, director, controlling shareholder, subsidiary, affiliate, alter-ego, parent corporation, and/or successor in interest and predecessor of each and every other Defendant. In doing the things alleged herein, each and every Defendant was acting within the course and scope of these relationships, and was acting with the consent, permission, authorization and acquiescence of each of the remaining Defendants. All actions of each Defendant alleged herein were ratified and approved by the other Defendants and/or their officers or managing agents.

28. Defendants are subject to common control and management.

29. Defendants formed a single enterprise and are each liable for the violations of the other.

30. At all material times, Defendants have been an enterprise in commerce or in the production of goods for commerce within the meaning of the FLSA, because they had employees engaged in commerce. 29 U.S.C. § 203(s).

31. Furthermore, Defendants have had, and continue to have, an annual gross business volume in excess of the statutory standard.

32. At all material times, Plaintiff and other Drivers were individual employees who engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206–07.

33. Defendants intentionally misclassified Plaintiff and other Drivers as independent contractors to avoid their obligations to pay employees pursuant to the FLSA as well as to reap other benefits of such illegal classification such as reduced tax liability, avoiding paying workers' compensation insurance, and other forms of insurance. None of the exemptions provided by the FLSA regulating the duty of employers to pay overtime at a rate not less than one and one-half times the regular rate at which its employees are employed are applicable to the Defendants, Plaintiff, or the other Drivers.

34. Defendants' practice of failing to pay Plaintiff and other Drivers time-and-a-half rate for hours in excess of forty (40) per workweek violates 29 U.S.C. § 207 and 29 C.F.R. § 778.111.

35. Defendants' practice of failing to pay Plaintiff and other Drivers, at times, wages equal to required minimum wages violates 29 U.S.C. § 206.

36. Defendants' practice of taking unauthorized and/or unlawful deductions from

Plaintiff's and other Drivers' pay violates 29 U.S.C. §§ 201 and 206.

37. Defendants' method of paying Plaintiff and other Drivers in violation of FLSA was and is willful and not based on a good faith and reasonable belief that their conduct complied with the FLSA. That is, Defendants' misclassification was not by accident, but a well thought out scheme to reduce their labor costs.

38. Defendants' practice of taking unauthorized deductions from Plaintiff and other Drivers also violated W. Va. C.S.R. § 42-5-9.1, which requires an employer to have a written assignment of wages that conforms to the requirements set forth in W. Va. Code § 21-5-3(e) on the form approved by the Commissioner prior to making any deductions, other than authorized statutory deductions, from an employee's wages.

39. Defendants' practice of taking unauthorized deductions from Plaintiff and other Drivers also violated W.Va. C.S.R. § 42-5-9.4.

40. Defendants' illegal and unauthorized deductions from Plaintiff's and other Drivers' wages contributed to Plaintiff's and other Drivers' pay failing to equal the required minimum wages of 29 U.S.C. § 206.

41. Defendants failed to pay Plaintiff and other Drivers all wages due upon separation of employment within the time required by the West Virginia Wage Payment and Collection Act.

42. Defendants failed to make required payments to the West Virginia Unemployment Compensation Fund, as required, for Plaintiff's and the other Drivers' benefit.

43. Plaintiff has given his consent in writing to become a party plaintiff in this action as required under 29 U.S.C. § 216(b), as attached as "Exhibit A."

#### **RESTITUTION AND UNJUST ENRICHMENT**

44. Plaintiff incorporates each and every previous paragraph as if fully set forth herein.

45. Defendants have been unjustly enriched by shifting a portion of the cost of doing business on to their employees. Such costs include, *inter alia*, the costs of fuel, vehicle maintenance, insurance, scanners, uniforms, payroll processing, and other expenses that should be incurred by the employer. Additionally and in the alternative of Plaintiff's and other Drivers' claims pursuant to Federal and West Virginia wage statutes, Defendants have also been unjustly enriched by receiving the value of Plaintiff's and other Drivers' labor in exchange for their wages, which were lower than the value of that labor and lower than legally required.

46. Plaintiff and other Drivers are entitled to restitution and/or damages in *quantum meruit* for the value of these economic benefits that bestowed upon Defendants.

47. Any contracts Plaintiff and the other drivers entered into or were required to enter into as a condition of their employment that govern such payments are unconscionable and unenforceable.

48. Plaintiff and the other Drivers are entitled to restitution for all of Defendants' costs or fees that have been levied upon Plaintiff and the other Drivers together with prejudgment interest. Additionally and in alternative of Plaintiff's and other Drivers' claims pursuant to Federal and West Virginia wage statutes, Plaintiff and other Drivers are also entitled to restitution for proper and legally required value of their labor that was not properly paid by the Defendants.

#### **COLLECTIVE ACTION ALLEGATIONS**

49. Plaintiff incorporates each and every previous paragraph as if fully set forth herein.

50. Plaintiff has first-hand personal knowledge of wage payment violations alleged herein having also occurred for Defendants' route drivers at Defendants' two West Virginia locations in Nitro and Morgantown.

51. Plaintiff has actual knowledge that some of Defendants' other route drivers have been paid by piece rate for driving both regular and stat/emergency routes, and done so more than forty hours per week, and thus also denied overtime pay for hours worked over forty hours per workweek.

52. Defendants made unauthorized and/or unlawful deductions from Plaintiff's and the other Driver's paychecks in the same ways.

53. During the last three years before this Complaint was filed, upon information and belief, Defendants paid all of their Drivers on a piece rate basis the same or substantially the same as Plaintiff. Upon information and belief, such drivers worked more than forty hours per workweek at times, and Defendants did not compensate them at the appropriate overtime rate.

54. Upon information and belief, Defendants' other Drivers perform or have performed the same or similar work as the Plaintiff and under the same direction and control of Defendants.

55. Upon information and belief, Defendants made deductions from Defendants' other Drivers' pay such that their regular rate of pay fell below the federally mandated minimum wage.

56. Defendants' other Drivers are not exempt from receiving overtime under the FLSA.

57. As such, Defendants' other Drivers are similar to Plaintiff in terms of job duties, pay structure, and/or the denial of overtime and unauthorized deductions and thus Plaintiff can adequately represent the other Drivers in this collective action.

58. Defendants' failure to pay overtime compensation to Plaintiff and the other Drivers results from generally applicable policies or practices, and does not depend on the personal circumstances of a particular Driver.

59. The experiences of the Plaintiff, with respect to his pay, is typical of the experiences of the other Drivers. Plaintiff and all Drivers were victims of a common scheme by Defendants to

classify their driver workforce as independent contractors.

60. Although the exact amount of damages may vary among Drivers, the damages for the Drivers can be easily calculated. The claims of all Drivers arise from a common nucleus of facts and all Drivers were subject to the same terms and conditions of employment and compensation. Liability is based on a systematic course of willful wrongful conduct by Defendants that caused harm to Plaintiff and all Drivers in the same way.

61. As such, the FLSA opt-in class of similarly situated persons is properly defined as follows (hereinafter referred to as “Class Members”)

All current and former delivery drivers classified as independent contractors who performed work for Defendants in West Virginia during the three-year period before the filing of this Complaint up to the date the Court authorizes notice.

62. As alleged herein, the proposed class is appropriate because the class is ascertainable; the class is so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class; the representative’s claims or defenses are typical of those of the class; and the representative will fairly and adequately represent the interests of the class.

63. As alleged herein, the proposed class is also appropriate because questions of law or fact common to class members predominate over any questions affecting only individual members; and proceeding as a class is superior to other available methods of fair and efficient adjudication of the controversy.

64. As alleged herein, the proposed class is also appropriate because Defendants have acted or refused to act on grounds that apply generally to the class, so that final declaratory and/or injunctive relief is appropriate respecting the class as a whole.



**WAGE DAMAGES SOUGHT**

65. Plaintiff and Drivers are entitled to recover their unpaid overtime compensation.

66. Plaintiff and Drivers are entitled to recover unpaid minimum wages for all hours worked in a workweek.

67. Plaintiff and Drivers are entitled to recover unauthorized and/or unlawful deductions from their pay.

68. Plaintiff and Drivers are entitled to an amount equal to all their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

69. Plaintiff and Drivers are entitled to recover attorneys' fees and costs as required by the FLSA, 29 U.S.C. § 216(b).

70. Plaintiff and Drivers are entitled to recover any and all wages due, liquidated damages and attorneys' fees for Defendants' failure to pay Plaintiff all wages due upon separation of employment within the time required by the West Virginia Wage Payment and Collection Act.

**PRAYER FOR RELIEF**

71. For these reasons, Plaintiff and Class Members respectfully request judgment to be entered in their favor including the following items:

- a. A declaration that Defendants are joint employers of the Plaintiff and other Class Members;
- b. A declaration that Plaintiff and Class Members are non-exempt employees of Defendants for purposes of the FLSA;
- c. A declaration that Plaintiff and Class Members are employees of Defendants under West Virginia law including, but not limited to, for purposes of the West Virginia Wage Payment and Collection Act;
- d. A declaration that Defendants have violated and are violating the FLSA;

- e. A declaration that Defendants have violated and are violating West Virginia's Wage Payment and Collection Act;
- f. A declaration that Defendants violations of the FLSA and the West Virginia Wage Payment and Collection Act are willful;
- g. An award of overtime compensation for all unpaid hours worked in excess of forty (40) at the rate of one and one-half times their regular rates;
- h. An award of unpaid minimum wages for all hours worked in a workweek;
- i. An award of an amount equal to their unpaid minimum and overtime wages as liquidated damages as allowed under the FLSA;
- j. An award for recovery for all unauthorized and/or unlawful deductions;
- k. An award for recovery for any mileage not properly paid and any other unreimbursed business expenses;
- l. An award of attorneys' fees and costs;
- m. An award of liquidated damages and attorneys' fees for Defendants' failure to pay Plaintiff all wages due upon separation of employment within the time required by the West Virginia Wage Payment and Collection Act;
- n. An award for unemployment compensation benefits;
- o. An award to Plaintiff and Class Members for such other relief as this Court deems proper.

Plaintiff demands a trial by jury on all issues so triable.

Eric Young,  
By counsel

/s/ Carrie Goodwin Fenwick  
Carrie Goodwin Fenwick (W. Va. Bar No. 7164)  
James A. Kirby (W. Va. Bar No. 8564)  
Lucas R. White (W. Va. Bar No. 12501)  
Goodwin & Goodwin, LLP  
P. O. Box 2107  
Charleston, WV 25328-2107  
304-346-7000

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

Eric Young

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Carrie Goodwin Fenwick (#7164) and Lucas White (#12501) Goodwin & Goodwin, LLP P.O. Box 2107; Charleston, WV 25328

DEFENDANTS

Act Fast Delivery of West Virginia, Inc., et al

County of Residence of First Listed Defendant Incorporated in WV (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 and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country).

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

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, 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 (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. 201 et seq.

Brief description of cause: Violations of FLSA among other claims

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 10/17/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Carrie Goodwin Fenwick (WV Bar No. 7164)

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

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

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

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Act Fast Delivery of WV Facing FLSA Class Action](#)

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