

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
ASHLAND DIVISION

JAMES MERRIMAN, individually &
on behalf of all similarly situated,

Plaintiff(s),

Case Number _____

v.

WRIGHT TREE SERVICE, INC.

Defendant.

_____ /

Complaint

1. The named Plaintiff, James Merriman, individually and on behalf of all similarly situated, sues Defendant, Wright Tree Service, Inc., pursuant to 29 U.S.C. § 216(b) for unpaid overtime.

2. Defendant is a foreign corporation.

3. Defendant conducts business throughout the United States.

4. Named Plaintiff worked for Defendant within the past two years.

5. Named Plaintiff worked for Defendant as a driver and laborer.

6. The Honorable Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

7. Venue is appropriate in Ashland, Kentucky because named Plaintiff worked for Defendant in, among other counties, Rowan County, Kentucky.

8. Defendant provides tree services.

9. Plaintiff(s) are paid an hourly wage.

10. Defendant did pay Plaintiff(s) time and half for some hours worked over forty in a workweek, but not for all hours worked.

11. Specifically Defendant utilized drivers to drive to and/or from a worksite back to a parking lot.

12. Defendant did not pay any wages to its drivers.

13. Plaintiff(s) drove one or more of Defendant's laborers from a designated parking lot to a worksite; Plaintiff(s) drove one or more of Defendant's laborers from a worksite to a designated parking lot.

14. Plaintiff(s) drove company vehicles.

15. The vehicles Plaintiff(s) drove were less than 10,000 lbs.

16. Plaintiff(s) had two primary duties: (1) drive company vehicle carrying co-workers; and (2) performing tree services.

17. Plaintiff(s) were paid for performing tree services.

18. Plaintiff(s) were not paid for driving company vehicles transporting co-workers.

19. Defendant's No Driver Pay Policy violates 29 U.S.C. § 207(a)(1).

20. Plaintiff(s) regularly work over forty hours a week without any payments for transporting co-workers.

21. An employer must pay an employee overtime pursuant to 29 U.S.C. § 207(a)(1).

22. Defendant did not comply with 29 U.S.C. § 207 as it relates to Plaintiff(s).

23. Defendant has annual gross revenues of over \$500,000.

24. Defendant employs employees that handle goods or materials that have moved in interstate commerce, such as paper, cell phones, tools and materials.

25. Defendant is an enterprise as defined by 29 U.S.C. § 203(r).

26. Defendant is an enterprise engaged in commerce as defined by 29 U.S.C. § 203(s)(1)(A).

27. Defendant employed named Plaintiff.

28. Defendant was named Plaintiff's employer as defined by 29 U.S.C. § 203(d).

29. Defendant willfully violated the FLSA.

30. Defendant acted in reckless disregard of the FLSA.

31. Plaintiff(s) are owed proper overtime pay for the work they performed for Defendant.

32. Defendant has been the employer of Plaintiff(s) as defined by 29 U.S.C. § 203(d).

33. The Plaintiff(s) had similar job duties.

34. The Plaintiff(s) were paid pursuant to the same pay policy.

35. There are similarly situated employees to named Plaintiff that would like to recover unpaid overtime.

Wherefore, Plaintiff(s) demand pursuant to Section 16(b) of the FLSA facilitation of notice of rights to putative class members, conditional class

certification, class certification, trial by jury, unpaid overtime, liquidated damages, judgment, attorneys' fees and costs.

Respectfully submitted this 16th day of August 2017,

/s/ Bernard R. Mazaheri

Bernard R. Mazaheri

Morgan & Morgan

333 W Vine St Ste 1200

Lexington, Kentucky 40507

Tel – (859)286-8368

Email – bmazaheri@forthepeople.com

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
JAMES MERRIMAN, individually & on behalf of all similarly situated,
(b) County of Residence of First Listed Plaintiff Fayette
(c) Attorneys (Firm Name, Address, and Telephone Number) Morgan & Morgan, 333 W Vine St Ste 1200, Lexington, KY 40507; Direct - (859)286-8368

DEFENDANTS
WRIGHT TREE SERVICE, INC.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
PROPERTY RIGHTS
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. Sec. 216(b)
Brief description of cause:
Defendant did not pay its drivers any wages thus violating overtime law(s)

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: X Yes [] No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE
DOCKET NUMBER

DATE 08/16/2017
SIGNATURE OF ATTORNEY OF RECORD /s/ Bernard R. Mazaheri

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Eastern District of Kentucky

JAMES MERRIMAN, individually &
on behalf of all similarly situated,

Plaintiff(s)

v.

WRIGHT TREE SERVICE, INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) WRIGHT TREE SERVICE, INC.
c/o CT Corporation System (Registered Agent)
306 W Main St Ste 512
Frankfort, KY 40601

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Bernard R. Mazaheri
Morgan & Morgan
333 W Vine St Ste 1200
Lexington, KY 40507

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Employee Sues Wright Tree Service Over Allegedly Unpaid Travel Time](#)
