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.	1		
	'		

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)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 coworkers.
 - 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,

Isl 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 JS 44 (Rev. 06/17) Case: 0:17-cv-00085-HRW Doc #: 1-1 Filed: 08/16/17 Page: 1 of 1 - Page ID#: 5

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.)

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I. (a) PLAINTIFFS JAMES MERRIMAN, individually & on behalf of all similarly situated,			WRIGHT TREE SE	DEFENDANTS WRIGHT TREE SERVICE, INC.			
(b) County of Residence of First Listed Plaintiff Fayette (EXCEPT IN U.S. PLAINTIFF CASES)			County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.				
(c) Attorneys (Firm Name, Morgan & Morgan, 333 V Direct - (859)286-8368	Address, and Telephone Numbe V Vine St Ste 1200, Le	r) exington, KY 40507;	Attorneys (If Known)				
II. BASIS OF JURISDI	CTION (Place an "X" in O	One Box Only)	. CITIZENSHIP OF P	RINCIPAL PARTIES	(Place an "X" in One Box for Plainti,		
□ 1 U.S. Government Plaintiff	■ 3 Federal Question (U.S. Government)	Not a Party)	(For Diversity Cases Only) PT Citizen of This State				
☐ 2 U.S. Government Defendant	☐ 4 Diversity (Indicate Citizensh	ip of Parties in Item III)	Citizen of Another State □	2			
			Citizen or Subject of a	3 □ 3 Foreign Nation	□ 6 □ 6		
IV. NATURE OF SUIT					of Suit Code Descriptions.		
CONTRACT		ORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
 □ 110 Insurance □ 120 Marine □ 130 Miller Act □ 140 Negotiable Instrument □ 150 Recovery of Overpayment & Enforcement of Judgment □ 151 Medicare Act □ 152 Recovery of Defaulted Student Loans (Excludes Veterans) □ 153 Recovery of Overpayment of Veteran's Benefits □ 160 Stockholders' Suits 	PERSONAL INJURY □ 310 Airplane □ 315 Airplane Product Liability □ 320 Assault, Libel & Slander □ 330 Federal Employers' Liability □ 340 Marine □ 345 Marine Product Liability □ 350 Motor Vehicle □ 355 Motor Vehicle	PERSONAL INJURY □ 365 Personal Injury - Product Liability □ 367 Health Care/ Pharmaceutical Personal Injury Product Liability □ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY □ 370 Other Fraud □ 371 Truth in Lending	□ 625 Drug Related Seizure of Property 21 USC 881 □ 690 Other LABOR 710 Fair Labor Standards Act	□ 422 Appeal 28 USC 158 □ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS □ 820 Copyrights □ 830 Patent □ 835 Patent - Abbreviated New Drug Application □ 840 Trademark SOCIAL SECURITY □ 861 HIA (1395ff) □ 862 Black Lung (923)	□ 375 False Claims Act □ 376 Qui Tam (31 USC 3729(a)) □ 400 State Reapportionment □ 410 Antitrust □ 430 Banks and Banking □ 450 Commerce □ 460 Deportation □ 470 Racketeer Influenced and Corrupt Organizations □ 480 Consumer Credit □ 490 Cable/Sat TV □ 850 Securities/Commodities/		
☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise REAL PROPERTY	Product Liability 360 Other Personal Injury 362 Personal Injury - Medical Malpractice CIVIL RIGHTS	□ 380 Other Personal Property Damage □ 385 Property Damage Product Liability	☐ 720 Labor/Management Relations ☐ 740 Railway Labor Act ☐ 751 Family and Medical Leave Act	□ 863 DIWC/DIWW (405(g)) □ 864 SSID Title XVI □ 865 RSI (405(g))	Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 955 Freedom of Information Act		
□ 210 Land Condemnation □ 220 Foreclosure □ 230 Rent Lease & Ejectment □ 240 Torts to Land □ 245 Tort Product Liability	☐ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/ Accommodations	PRISONER PETITIONS Habeas Corpus: □ 463 Alien Detainee □ 510 Motions to Vacate Sentence □ 530 General	☐ 790 Other Labor Litigation ☐ 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609	896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of		
☐ 290 All Other Real Property	☐ 445 Amer. w/Disabilities -	☐ 535 Death Penalty	IMMIGRATION]	State Statutes		
	Employment □ 446 Amer. w/Disabilities - Other □ 448 Education	Other: 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee - Conditions of Confinement	☐ 462 Naturalization Application☐ 465 Other Immigration Actions				
	**	Remanded from 4 Appellate Court		erred from			
VI. CAUSE OF ACTIO	ON 29 U.S.C. Sec. 2	16(b) nuse:	ling (Do not cite jurisdictional stat	utes unless diversity):	2.000.7.100		
VII. REQUESTED IN COMPLAINT:		IS A CLASS ACTION	ages thus violating overting DEMAND \$	3 /	if demanded in complaint:		
VIII. RELATED CASI IF ANY	E(S) (See instructions):	JUDGE		DOCKET NUMBER			
DATE 08/16/2017		signature of attor /s/ Bernard R. Ma					
FOR OFFICE USE ONLY							
RECEIPT # AN	MOUNT	APPLYING IFP	JUDGE	MAG. JUI	OGE		

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky						
JAMES MERRIMAN, individually &) on behalf of all similarly situated,))						
Plaintiff(s)	Civil Action No.					
v.	CIVII Action No.					
WRIGHT TREE SERVICE, INC.))						
Defendant(s)						
SUMMONS IN A CIVIL ACTION						
To: (Defendant's name and address) WRIGHT TREE SERVICE, IN c/o CT Corporation System (R 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 (are the United States or a United States agency, or an officer of P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer the Federal Rules of Civil Procedure. The answer or motion in whose name and address are: Bernard R. Mazaheri Morgan & Morgan 333 W Vine St Ste 1200 Lexington, KY 40507	r to the attached complaint or a motion under Rule 12 of					
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:						
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 (1))

was re	This summons for (nanceived by me on (date)	ne of individual and title, if any)					
	☐ 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) , very designated by law to accept service of process on behalf of (name of organization)						
	designated by law to a	on (date)					
	☐ I returned the summ	nons unexecuted because		; or			
	☐ Other (specify):						
	My fees are \$	for travel and \$	for services, for a total of \$	0.00			
	I declare under penalty	y 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: <u>Employee Sues Wright Tree Service Over Allegedly Unpaid Travel Time</u>