

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

	:	
ROBERT SPRAGUE, on behalf of himself and	:	
similarly situated employees,	:	CIVIL ACTION NO. _____
	:	
Plaintiff,	:	JUDGE
	:	
v.	:	MAGISTRATE JUDGE
	:	
UNIVERSAL TRANSPORTATION	:	JURY TRIAL DEMANDED
SYSTEMS LLC (d/b/a “UTS”)	:	
	:	
and	:	
	:	
QUALITY TRANSPORTATION SERVICES	:	
LLC,	:	
	:	
Defendants.	:	
	:	

COMPLAINT – CLASS/COLLECTIVE ACTION

Plaintiff Robert Sprague (“Plaintiff”), on behalf of himself and similarly situated employees, brings this class/collective action lawsuit against Defendants Universal Transportations Systems LLC (d/b/a “UTS”) (“Defendant Universal” or “Universal”) and Quality Transportation Services LLC (“Defendant Quality” or “Quality”) (collectively “Defendants”), seeking all available relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, the Ohio’s Minimum Fair Wage Standards Act (“OMFWSA”), O.R.C. §§ 4111.01, 4111.03 and 4111.10, and the Ohio Prompt Pay Act (“OPPA”), O.R.C. § 4113.15 (the OMFWSA and the OPPA will be referred to collectively as the “Ohio Acts”). Plaintiff’s FLSA claim is asserted as a collective action under FLSA Section 16(b), 29 U.S.C. § 216(b), while his Ohio Acts claims are asserted as class actions under Federal Rule of Civil Procedure 23. See Swigart v. Fifth Third Bank, 288 F.R.D. 177, 182 (S.D. Ohio 2012) (FLSA collective actions and

Rule 23 class actions may proceed together in same lawsuit).

JURISDICTION AND VENUE

1. This Court has jurisdiction over Plaintiff's FLSA claim pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

2. Jurisdiction over the Ohio Acts claims is proper pursuant to 28 U.S.C. § 1367 as this Complaint raises additional claims pursuant to the laws of Ohio, over which this Court maintains supplemental subject matter jurisdiction.

3. Venue in this Court is proper pursuant to 28 U.S.C. § 1391, because Plaintiff entered into an employment relationship with Defendants in the Southern District of Ohio, Defendant has done substantial business in the Southern District of Ohio, and Defendants have their headquarters located in the Southern District of Ohio.

PARTIES

4. Plaintiff, Robert Sprague, is an individual, a United States Citizen, residing in Middletown, Ohio (Butler County).

5. Plaintiff, at all times relevant herein, is an employee covered by the FLSA and the Ohio Acts.

6. Defendant Universal Transportation Systems LLC (d/b/a "UTS") ("Universal") is an Ohio limited liability company headquartered in Fairfield, Ohio (Butler County). Universal may be served through its Registered Agent Todd J. Flagel, of Flagel & Papakirk, at 50 E. Business Way, Suite 410, Cincinnati, Ohio 45241.

7. Defendant Quality Transportation Services LLC ("Quality") is an Ohio limited liability company headquartered in Hamilton, Ohio (Butler County). Quality may be served through its Registered Agent Scott Hughes at 717 E. Pearl Street. Miamisburg, Ohio 45342.

8. At all times relevant herein, Defendants have each been an “employer” as that term is defined in the FLSA and the Ohio Acts.

9. Upon information and belief, Defendants jointly set and controlled the payroll practices for their employees, and Defendants were joint employers of Plaintiff and the other Drivers.

FACTS

10. Defendants provide transportation services throughout Ohio, including, but not limited in Butler, Hamilton, Warren, Montgomery, Clinton, Clermont, Franklin, Fairfield, and Preble Counties.

11. During the past three years, Defendants have jointly employed hundreds of individuals as drivers, including Plaintiff, who are paid on an hourly basis and whose primary duty is transporting Defendants’ customers from location to location throughout Ohio. These individuals shall be referred to herein as “Drivers.”

12. Plaintiff was employed by Defendants as a Driver from approximately February 2016 until approximately December 2017.¹

13. Drivers typically pick up multiple customers in a day and are paid for the time they spend transporting the individual customer from location to location.

14. However, Defendants fail to pay Plaintiff and other Drivers for all the time elapsed between customer visits.

15. For example, if Plaintiff was scheduled to drop off Customer One at 10:00 a.m. and arrive to pick up Customer Two at 11:00 a.m., Plaintiff would not be compensated for this entire one-hour period.

¹ Plaintiff has not worked since September 2017 due to a work-place injury.

16. Because Plaintiff and other Drivers often are credited with working 40 or more hours per week, much of the uncredited time described in paragraphs 12-14 above would be compensable at their “time and one-half” overtime premium rate.

17. By failing to pay overtime premium to Plaintiff and other Drivers for all hours worked over 40 in a week, Defendants have acted willfully and with reckless disregard of clearly applicable FLSA and Ohio Acts claims provisions.

COLLECTIVE/CLASS ACTION ALLEGATIONS

18. Plaintiff brings his FLSA claim as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all individuals employed by Defendants as Drivers within the past three years from the date of this filing.

19. Plaintiff’s FLSA claim should proceed as a collective action because Plaintiff and other potential members of the collective, having worked pursuant to the common policies described herein, are “similarly situated” as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

20. Plaintiff brings his Ohio Acts claims as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all individuals employed by Defendants as Drivers within the past three years from the date of this filing.

21. Class action treatment of Plaintiff’s Ohio Acts claims is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23’s class action requisites are satisfied.

22. The class, upon information and belief, includes over 100 individuals, all of whom are readily ascertainable based on Defendants’ standard payroll records and are so numerous that joinder of all class members is impracticable.

23. Plaintiff is a member of the class, his claims are typical of the claims of other

class members, and he has no interests that are antagonistic to or in conflict with the interests of other class members.

24. Plaintiff and his counsel will fairly and adequately represent the class and their interests.

25. Questions of law and fact are common to the entire class, because, *inter alia*, this action concerns Defendants' companywide pay policies. The legality of these policies will be determined through the resolution of generally applicable legal principles to a common set of facts.

26. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual members of the class and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

COUNT I
(Alleging FLSA Violations)

27. All previous paragraphs are incorporated as though fully set forth herein.

28. Plaintiff and other Drivers are employees entitled to the FLSA's protections.

29. Defendants are employers covered by the FLSA and are required to comply with the FLSA's mandates.

30. The FLSA requires that covered employees be compensated for every hour worked in a workweek. See 29 U.S.C. § 206(b).

31. The FLSA requires that employees receive overtime premium pay of "not less than one and one-half times" their regular pay rate for each hour worked over 40 in a workweek. See 29 U.S.C. § 207(a)(1).

32. Plaintiff and other Drivers were not exempt from receiving FLSA overtime

benefits because, *inter alia*, they did not meet a recognizable exemption under the FLSA.

33. Defendants violated the FLSA by failing to pay Plaintiff and other Drivers overtime premium compensation for each hour worked over 40 in a workweek.

34. Defendants knew or should have known of the overtime payment requirement of the FLSA.

35. Throughout Plaintiff's and other Drivers' employment, Defendants have knowingly and willfully failed to pay the overtime wages that were due.

36. In violating the FLSA, Defendants acted willfully and with reckless disregard of clearly applicable FLSA provisions and, thus, has committed a willful violation of the FLSA.

37. The exact total amount of compensation, including overtime compensation that Defendants have failed to pay Plaintiff and other Drivers is unknown at this time, as many of the records necessary to make such precise calculations are in the possession of Defendants or were not kept by Defendants.

38. As a direct and proximate result of the Defendants' conduct, Plaintiff and other Drivers have suffered and continue to suffer damages in an amount not presently ascertainable. In addition, Plaintiff and other Drivers seek liquidated damages, interest and attorneys' fees, and all other remedies available, as a result of the Defendants' willful failure and refusal to pay overtime wages in violation of Sections 6 and 7 of the Act (29 U.S.C. §§206-207).

COUNT II
(Alleging Ohio Acts Violations)

39. All previous paragraphs are incorporated as though fully set forth herein.

40. This claim is brought under Ohio Law.

41. Plaintiff and other Drivers are employees entitled to the protections of the Ohio Acts.

42. Defendants are employers covered by the Ohio Acts.

43. The OMFWSA requires that employees receive “time and one-half” overtime premium compensation for each hour worked over 40 per workweek, “in the manner and methods provided in and subject to the exemptions of section 7 and section 13 of the ‘Fair Labor Standards Act of 1938.’” See Ohio Rev. Code Ann. § 4111.03(A), See also, 29 U.S.C. § 207(a)(1).

44. Plaintiff and other Drivers were not exempt from receiving Ohio Wage Act overtime benefits because, *inter alia*, they did not meet a recognizable exemption under the Ohio Wage Act or FLSA.

45. The OPPA requires that Defendants pay Plaintiff and other Drivers all wages, including unpaid overtime, on or before the first day of each month, for wages earned by her during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month, for wages caused by her during the last half of the preceding calendar month. See Ohio Rev. Code Ann. § 4113.15(A).

46. Defendants violated the OMFWSA by failing to pay Plaintiff and other Drivers overtime premium compensation for each hour worked over 40 in a week.

47. Plaintiff and other Drivers were also not paid all wages, including overtime wages at one and one-half times their regular rates, within thirty days of performing the work.

48. The wages of Plaintiff and other Drivers remain unpaid for more than thirty days beyond their regularly scheduled payday.

49. In violating the Ohio Acts, Defendants acted willfully, without a good faith basis and with reckless disregard of clearly applicable Ohio law.

JURY TRIAL DEMANDED

Plaintiff demands a jury trial as to all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and other members of the class/collective, seeks the following relief:

- A. Unpaid overtime wages;
- B. Prejudgment interest;
- C. Liquidated damages;
- D. Litigation costs, expenses, and attorneys' fees; and
- E. Such other and further relief as this Court deems just and proper.

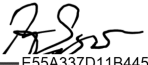
Date: March 6, 2018

/s/Robert E. DeRose
Robert E. DeRose, Esq. (0055214)
Jason C. Cox, Esq. (0095169)
**BARKAN MEIZLISH HANDELMAN
GOODIN DEROSE WENTZ, LLP**
250 E. Broad Street
10th Floor
Columbus, OH 43215
Phone: (614) 221-4221
Fax: (614) 744-2300
Email: bderose@barkanmeizlish.com
jcox@barkanmeizlish.com

Peter Winebrake (*pro hac vice* admission anticipated)
R. Andrew Santillo
Mark J. Gottesfeld
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Phone: (215) 884-2491
Fax: (215) 884-2492
Email: pwinebrake@winebrakelaw.com
asantillo@winebrakelaw.com
mgottesfeld@winebrakelaw.com

CONSENT TO BECOME PARTY PLAINTIFF

I hereby consent, pursuant to Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), to become a party plaintiff in the accompanying FLSA action. I understand that I will be bound by the judgment of the Court on all issues in this case.

DocuSigned by:

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Signature

Robert Sprague

Print Name

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

Robert Sprague, on behalf of himself and similarly situated employees

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Robert E. DeRose, Esq., Barkan Meizlish Goodin DeRose Wentz, LLP 250 E. Broad Street, 10th Floor, Columbus, Ohio 43215 Telephone Number: (800) 274-5297 Fax Number: (614) 744-2300

DEFENDANTS

Universal Transportation Systems LLC (d/b/a "UTS") and Quality Transportation Services, LLC

County of Residence of First Listed Defendant Butler (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, 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)

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, 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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, 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., O.R.C. §§4111.01, 4111.03 and 4111.10, Ohio Prompt Pay Act, O.R.C. §4113.15

Brief description of cause: Failing to pay individuals overtime premium for hours worked in excess of 40 a week.

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 03/06/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Robert E. DeRose, Esq.

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.

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

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

Robert Sprague, on behalf of himself and similarly situated employees

Plaintiff(s)

v.

Universal Transportation Systems LLC (d/b/a "UTS") and Quality Transportation Services, LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Universal Transportation Systems, LLC (d/b/a "UTS") Registered Agent: Todd J. Flagel of Flagel & Papakirk 50 E. Business Way, Suite 410 Cincinnati, Ohio 45241

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:

Robert E. DeRose, Esq. Barkan Meizlish Handelman Goodin DeRose Wentz, LLP 250 E. Broad Street, 10th Floor Columbus, Ohio 43215

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:

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

UNITED STATES DISTRICT COURT

for the

Southern District of Ohio

Robert Sprague, on behalf of himself and similarly situated employees

Plaintiff(s)

v.

Universal Transportation Systems LLC (d/b/a "UTS") and Quality Transportation Services, LLC

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Quality Transportation Services, LLC Registered Agent: Scott Hughes 717 E. Pearl Street Miamisburg, Ohio 45342

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:

Robert E. DeRose, Esq. Barkan Meizlish Handelman Goodin DeRose Wentz, LLP 250 E. Broad Street, 10th Floor Columbus, Ohio 43215

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: [Former Driver Alleges Universal Transportation Systems, One Other Defendant Owe Unpaid OT](#)
