

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

PABLO GONZALEZ,

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and

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**JERRY A. SNOW, JR., individually and
on behalf of all others similarly situated**

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§

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Plaintiffs,

§

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v.

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CIVIL ACTION NO. 4:17-cv-733

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**RAILWORKS TRACK SERVICES,
INC.,**

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§

JURY TRIAL DEMANDED

Defendant.

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PLAINTIFF’S COLLECTIVE ACTION COMPLAINT

Now comes Pablo Gonzalez (“Plaintiff Gonzalez” or “Gonzalez”) and Jerry Snow, Jr. (“Plaintiff Snow” or “Snow”) (collectively “Plaintiffs”) on behalf of themselves and on behalf of the class that Plaintiffs seek to represent (collectively the “Putative Class” or the “Putative Class Members”), bring this action against against Railworks Track Services, Inc.. (“Defendant” or “Railworks”) a Maryland Corporation doing business in the State of Ohio, seeking all available relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, the Ohio Minimum Fair Wage Standards Act, §§ 4111, *et seq.* (the “Ohio Wage Act”), the Ohio Prompt Pay Act (“OPPA”), and O.R.C. § 4113.15 (the Ohio Wage Act and the OPPA will be referred to collectively as the “Ohio Acts”). The following allegations are based on personal knowledge as to Plaintiffs’ own conduct and are made on information and belief as to the acts of others.

I.
INTRODUCTION

1. Plaintiffs bring this action on behalf of themselves and all individuals who have worked for Defendant, have been based out of Ohio, and have not been paid all overtime wages owed in violation of the federal Fair Labor Standards Act (“FLSA”) and the Ohio Acts. Defendant has not paid its employees for all hours worked, and the unpaid hours are overtime hours for which the employees are owed time-and-a-half.

II.
JURISDICTION AND VENUE

2. Plaintiffs’ claims arise under Fair Labor Standards Act (“FLSA”). 29 U.S.C. §201 et seq. Accordingly, this Court has jurisdiction over the subject matter of this action under 29 U.S.C. §216(b) and 28 U.S.C. § 1331.

3. This Court has supplemental jurisdiction under 28 U.S.C. §1367 over Plaintiffs’ state law claims under the Ohio Acts. As with their FLSA claims, Plaintiffs must show that they were not paid overtime pay for all hours worked. As such, the claims arise “from a common nucleus of operative fact.” *See United Mine Works of Am. V. Gibbs*, 383 U.S. 715, 725 (1966).

4. Defendant Railworks is a for-profit corporation doing business in the State of Ohio. This Court has personal jurisdiction over Defendant Railworks pursuant to O.R.C. § 2307.382.

5. Pursuant to 28 U.S.C. § 1391, venue is proper in the Northern District of Ohio because a substantial portion of the events forming the basis of this suit occurred in the Northern District of Ohio.

III.

PARTIES

7. Plaintiff Pablo Gonzalez is an adult individual residing at 3208 N. Wendover Circle, Youngstown, Ohio, 44511 and has consented in writing to be a part of this action part pursuant to 29 U.S.C. § 216(b). Plaintiff Gonzalez's signed consent form is attached as **Exhibit A.**

8. Plaintiff Jerry A. Snow, Jr. is an adult individual residing at 1210 Vine Street, Girard, Ohio 44420 and has consented in writing to be a part of this action pursuant to 29 U.S.C. § 216(b). Plaintiff Snow's signed consent from is attached as **Exhibit B.**

9. Defendant Railworks is a foreign corporation doing business in the State of Ohio and is registered with the Ohio Secretary of State and can be served through its registered agent, Corporation Service Company, 50 West Broad Street, Columbus, Ohio 43215.

10. Plaintiffs' FLSA claims are asserted as a collective action pursuant to 29 U.S.C. § 216(b).

11. Plaintiffs' Ohio Acts' claims are asserted as a class action pursuant to Fed. R. Civ. P. 23.

IV.

FACTUAL ALLEGATIONS

12. Defendant Railworks is a private corporation specializing in railroad track construction and maintenance and maintenance service, which conducts business across the United States.

13. During all times material to this complaint, Defendant has engaged employees, including Plaintiffs and the Putative Class Members, in commerce or in the production of goods for commerce, or has had employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and Defendant has had an annual gross volume of sales made or business done of not less than \$500,000 per year (exclusive of excise taxes at the retail level) by operating a railway track maintenance and construction company.

14. During all times material to this complaint, Defendant has been an “employer” and “enterprise engaged in commerce or in the production of goods for commerce” as defined in the FLSA, 29 U.S.C. § 203, and an “employer” within the meaning of 29 U.S.C. § 203(d), and Plaintiffs and the Putative Class Members were “employees” of Defendants within the meaning of 29 U.S.C. §203(e) and O.R.C. § 4111.03(D)(3); and were not otherwise exempt from the protections of the FLSA or the Ohio Wage Laws.

15. During all times material to this complaint, Defendant Railworks has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has had employees engaged in commerce or in the production of goods for commerce, or has had employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 per year (exclusive of excise taxes at the retail level).

16. During all times material to this complaint, Plaintiffs and the Class members have been employees pursuant to O.R.C. § 4111.14(B) and were employees who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

17. During all times material to this Complaint, Defendant has been engaged in interstate commerce within the meaning of the FLSA and the Ohio Acts.

18. During all times material to this Complaint, Defendant has, as a matter of economic reality, employed Plaintiffs and the Class members in the State of Ohio in matters relating to railway track construction and maintenance.

13. During all times material to this Complaint, Defendant has operated an enterprise engaged in commerce and/or in the production of goods for commerce within the meaning of the FLSA.

14. During all times material to this Complaint, Plaintiffs and Class Members have been individual employees who have been engaged in commerce as required by the FLSA.

**V.
INDIVIDUAL & CLASS ALLEGATIONS**

15. During all times material to this Complaint, Defendant has been subject to the requirements of the FLSA and the Ohio Acts

16. For purposes of this action, the “relevant period” is defined as such period commencing on the date that is three years prior to the filing of this action, and continuing thereafter.

17. During all times material to this Complaint, Plaintiffs and Class Members' performed job duties for Defendant of primarily manual in nature, including constructing and repairing railroads and railway tracks.

18. During all times material to this complaint, Plaintiffs and the FLSA Class Members were not exempt from receiving FLSA overtime benefits because, *inter alia*, they were not "executive," "computer," "administrative," or "professional" employees, as those terms are defined under the FLSA. *See* 29 C.F.R. §§ 541.0, *et seq.*

19. Plaintiff Gonzalez worked for Defendant during the time period between approximately February 2010 and approximately April 2016 as an Operator, Laborer and Foreman.

20. Plaintiff Snow worked for Defendant during the time period from approximately 1988 to approximately June of 2016 as a Operator, Laborer and Foreman.

21. Defendant maintains an office located at 1550 North Bailey Road, North Jackson, Ohio 44451. During all times material to this Complaint, Defendant has required Plaintiffs and the Class members to report to and perform work at this location.

22. During all times material to this Complaint, Defendant has assigned Plaintiffs and the Class members to work in crews consisting of five (5) to fifteen (15) workers.

23. During all times material to this Complaint, Plaintiffs and Class members have all resided in Ohio and have worked in Ohio on a regular basis. In addition to requiring Plaintiffs and the Class members to perform work in the State of Ohio, Defendant also employed Plaintiffs and the Class members to perform work in states

throughout the nation including, but not limited to Indiana, Illinois, Pennsylvania, Maine, and New Hampshire.

24. During all times material to this Complaint, Defendant through the course of its business has required Plaintiffs and the Class members to travel to and perform work at remote job sites and work locations within the State of Ohio and in other states throughout the nation.

25. During all times material to this Complaint, Defendant has regularly required Plaintiffs and the Class members to work between approximately 40 hours to approximately 70 hours in a workweek.

26. During all times material to this Complaint, Defendant has paid Plaintiffs and the Class members on an hourly basis for the labor which they perform at the site of their assigned projects and for their travel time to the job site.

27. During all times material to this Complaint, Defendant, although compensating Plaintiffs and the Class members for the time they have spent travelling to job locations, has required Plaintiffs and the Class members to travel back to their home locations without providing Plaintiffs and the Class members with any compensation.

FLSA COLLECTIVE ACTION ALLEGATIONS

28. Plaintiffs repeats the allegations set forth in the above Paragraphs and incorporate them herein by reference.

29. Plaintiffs brings a collective action pursuant to 29 U.S.C. § 216(b) on behalf of themselves and all similarly situated individuals who are part of the following class:

All individuals employed by Defendant or its predecessors or successors in the state of Ohio as Laborers, Operators, or Foremen and other employees in similar job positions at anytime from April 7, 2014 through and including the present and until the final resolution of the case, and who have not been paid all overtime wages for all hours worked in excess of forty (40) in a workweek (hereinafter the “FLSA Collective Action Class” or the “FLSA Class”)

30. Collective action treatment of Plaintiffs’ and the FLSA Collective Action Class FLSA claims is appropriate because Plaintiffs and the FLSA have been subjected to the same common business practices referenced in the paragraphs above, and the success of their claims depends upon the resolution of common issues of law and fact, including, *inter alia*, whether Defendant paid Plaintiffs and the FLSA Class members overtime wages for all hours worked in excess of forty (40) in a workweek.

31. Plaintiffs and the FLSA Class have been similarly affected by the violations of the Defendant in workweeks during the relevant time period, which amount to a single decision, policy or plan to avoid paying all earned minimum wages.

32. Plaintiffs are similarly situated to FLSA Class members and will prosecute this action vigorously on their behalf.

33. A collective action is an appropriate method for the fair and efficient adjudication of this lawsuit and distribution of the common fund to which the FLSA Class is entitled.

OHIO CLASS ACTION ALLEGATIONS

34. Plaintiffs and the Class members repeat the allegations set forth in the above Paragraphs and incorporate them herein by reference.

35. In addition to the FLSA collective action, Plaintiffs and the Class members bring a class action, pursuant to Federal Rule of Civil Procedure 23, to represent a class that is similarly defined as:

All individuals employed by Defendant or its predecessors or successors in the state of Ohio as Laborers, Operators, or Foremen and other employees in similar job positions at anytime from April 7, 2014 through and including the present and until the final resolution of the case, and who have not been paid all overtime wages, in conformity with O.R.C. 411.03, for all hours worked in excess of forty (40) in a workweek (hereinafter the "Ohio Class")

36. Class action treatment is appropriate, as summarized in Paragraphs 37-43 below, because all of Rule 23's requirements are satisfied.

37. The Ohio Class is so numerous that joinder of all class members is impracticable.

38. Plaintiffs believe Defendant has employed approximately more than 20 persons who have been subject to the Defendant's common and unlawful practices.

39. Plaintiffs are class member and their claims are typical of the claims of the Ohio Class members, and they have no interests that are antagonistic to or in conflict with the interests of other class members.

40. Plaintiffs will fairly and adequately represent the Ohio Class members and their interests and he has retained competent and experienced counsel who will effectively represent the class members' interests.

41. Questions of law and fact are common to all class members.

42. Common questions of law and fact predominate over questions affecting only individual class members.

43. A class action is superior to other available methods for the fair and efficient adjudication of the Ohio class Members' claims.

VI.
VIOLATIONS OF THE OVERTIME PROVISIONS OF THE FLSA

44. Plaintiffs and the FLSA Class members repeat and reallege all the preceding paragraphs of this Complaint, as if fully set forth herein.

45. The FLSA requires that employees receive overtime pay of “not less than one and one-half times” their regular rate of pay for hours worked over forty (40) in a workweek, *see* 29 U.S.C. § 207(a)(1), and employees paid on a job-rate basis are entitled to such overtime premium pay, *see, e.g.*, 29 C.F.R. § 778.112.

46. At all times material to this Complaint, Plaintiffs and the Class members were “employees” within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

47. Defendant is an employer engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

48. At all times material to this Complaint, Defendant has suffered or permitted Plaintiffs and the Class members to work for them as Laborers, Foremen, or Operators.

49. Defendant has failed to pay Plaintiffs and the Class members the overtime wages to which they are entitled under the FLSA for their time spent traveling from job locations back to their home locations.

50. Time spent by an employee in travel as part of their principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked. 29 C.F.R. 785.37-785.41.

51. Defendant has willfully and recklessly violated the FLSA with respect to Plaintiffs and the Class members by failing to pay them the required overtime premium.

52. Because Defendant's violations of the FLSA have been willful, a three-year statute of limitations applies pursuant to 29 U.S.C. § 255.

53. As a result of Defendant's willful violations of the FLSA, Plaintiffs and the Class members suffered damages by being denied overtime wages in accordance with 29 U.S.C. §§ 201, *et seq.*

54. As a result of the unlawful acts of Defendant, Plaintiffs and the Class members have been deprived of overtime compensation and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation pursuant to the FLSA.

VII.
OVERTIME VIOLATIONS OF THE OHIO WAGE ACT

55. Plaintiffs and the Ohio Class Members repeat and reallege all the preceding paragraphs of this Complaint, as if fully set forth herein.

56. The Ohio Wage Act requires that employees receive overtime compensation "not less than one and one-half times" (1.5) the employee's regular rate of pay for all hours worked over forty (40) in one 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 1937." *See* O.R.C. § 4111.03(A); *see also* 29 U.S.C. § 207(a)(1).

57. During all times material to this Complaint, Plaintiffs and the Ohio Class members have been employed by Defendant, and Defendant has been an employer covered by the overtime requirements under the Ohio Wage Act.

58. During all times material to this Complaint, Plaintiffs and the Ohio Class members have worked in excess of the maximum weekly hours permitted under O.R.C. § 4111.03, but have not been paid overtime wages at a rate of one and a half (1.5) times their regular rate for a portion of these hours that they spent traveling back to their home locations from remote job locations.

59. The Ohio Revised Code requires employers to make, keep, and preserve records of the wages, hours, and other conditions and practices of employment, and to preserve such records. Plaintiff and the Ohio Class members are entitled to review the relevant records of hours worked to determine the exact amount of overtime wages owed by Defendant. Absent Defendant keeping these records as required by law, Plaintiffs and the Class members are entitled to submit their information about the number of hours worked.

COUNT III
VIOLATION OF THE OPPA

60. Plaintiffs and the Ohio Class Members repeat and reallege all the preceding paragraphs of this Complaint, as if fully set forth herein.

61. During relevant times, Defendant has been an entity covered by the OPPA and Plaintiffs and the Ohio Class members have been employed by Defendant within the meaning of the OPPA.

62. The OPPA requires that Defendant pay Plaintiffs and the Ohio Class members all wages, including unpaid overtime, on or before the first day of each month, for wages earned by them 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 earned by them during the last half of the preceding calendar month. *See* O.R.C. § 4113.15(A).

63. During relevant times, Plaintiffs and the Class members were not paid all wages, including overtime wages at one and one-half times their regular rate within thirty (30) days of performing the work. *See* O.R.C. § 4113.15(B).

64. Plaintiffs and the Class members' unpaid wages have remained unpaid for more than thirty (30) days beyond their regularly scheduled payday.

65. In violating the OPPA, Defendant has acted willfully, without a good faith basis and with reckless disregard of clearly applicable Ohio law.

PRAYER FOR RELIEF

- A. Awarding to the Plaintiffs and the Class members unpaid compensation, including overtime wages as to be determined at trial together with any liquidated damages allowed by FLSA;
- B. Awarding Plaintiffs and the Class members compensation for unpaid wages, liquidated damages and any and all other relief available pursuant to ORC 4111.03 and the OPPA;
- C. Awarding Plaintiffs and the Class members costs and disbursements and reasonable allowances for fees of counsel and experts, and reimbursement of expenses;
- D. Awarding Plaintiffs and the Class members such other and further relief as the Court deems just and proper;
- E. Issuing an Order prohibiting Defendant from engaging in future violations of the

FLSA, the ORC 4111.03 and the OPPA; and

- F. Rendering a judgment against Defendant, for all damage, relief, or any other recovery whatsoever.

Date: April 7, 2017

Respectfully submitted,

/s/ Trent R. Taylor

Trent R. Taylor (OH Bar No. 091748)
Robert E. DeRose (OH Bar No. 0055214)
**BARKAN MEIZLISH HANDELMAN
GOODIN DEROSE WENTZ, LLP**
250 E. Broad St., 10th Floor
Columbus, Ohio 43215
Telephone: (614) 221-4221
Fax: (614) 744-2300
Email: ttaylor@barkanmeizlish.com
bderose@barkanmeizlish.com

ATTORNEYS FOR PLAINTIFFS

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury as to all claims so triable.

/s/ Trent R. Taylor
Trent R. Taylor

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served on all counsel of record by operation of the Court's electronic filing system this 7th day of April, 2017

/s/ Trent R. Taylor _____
Trent R. Taylor

Exhibit A

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

PABLO GONZALEZ,

and

JERRY A. SNOW, JR., individually and on
behalf of all others similarly situated

Plaintiffs,

v.

RAILWORKS TRACK SERVICES, INC.,

Defendant.

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CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

CONSENT TO JOIN AND PARTICIPATE AS PARTY PLAINTIFF

I hereby give my consent to be a party plaintiff in this case, and agree to be bound by any settlement or judgment of the Court in this action. I understand that this lawsuit against Railworks Track Services, Inc., is being filed to recover alleged unpaid wages, including overtime compensation, and other damages and relief available under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. I agree to be represented by Barkan Meizlish Handelman Goodin DeRose Wentz, LLP. This written Consent is intended to serve as my consent in writing to join in this lawsuit and become a party plaintiff as required by 29 U.S.C. § 216(b).

Date: 4/6/2017

Handwritten signature of Pablo Gonzalez

SIGNATURE

Pablo Gonzalez

NAME (Please Print Clearly)

Street Address

STREET ADDRESS

City, State, Zip Code

CITY, STATE, ZIP CODE

Phone Number

PHONE NUMBER

Email Address

EMAIL ADDRESS

Exhibit B

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

PABLO GONZALEZ,

and

JERRY A. SNOW, JR., individually and on
behalf of all others similarly situated

Plaintiffs,

v.

RAILWORKS TRACK SERVICES, INC.,

Defendant.

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CIVIL ACTION NO. _____

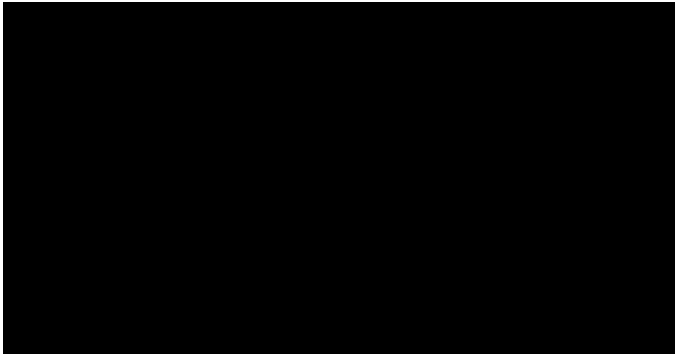
JURY TRIAL DEMANDED

CONSENT TO JOIN AND PARTICIPATE AS PARTY PLAINTIFF

I hereby give my consent to be a party plaintiff in this case, and agree to be bound by any settlement or judgment of the Court in this action. I understand that this lawsuit against Railworks Track Services, Inc., is being filed to recover alleged unpaid wages, including overtime compensation, and other damages and relief available under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. I agree to be represented by Barkan Meizlish Handelman Goodin DeRose Wentz, LLP. This written Consent is intended to serve as my consent in writing to join in this lawsuit and become a party plaintiff as required by 29 U.S.C. § 216(b).

Date: 4/5/2017

Jerry Snow
SIGNATURE
Jerry Snow
NAME (Please Print Clearly)



EMAIL ADDRESS

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

Pablo Gonzalez and Jerry A. Snow, Jr., individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Barkan Meizlish, LLP Attorney: Trent R. Taylor 250 E. Broad St, 10th Floor Columbus, Ohio, 43215 (614) 221-4221

DEFENDANTS

Railworks Track Services, Inc. c/o Corporation Service Company 50 West Broad St., Columbus, Ohio 43215

County of Residence of First Listed Defendant Franklin (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)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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): FLSA 29 U.S.C. Sec. 201, 29 U.S.C. Sec. 216(b) and 28 U.S.C. Sec. 1331

Brief description of cause: Violation of Fair Labor Standards Act

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 04/07/2017 SIGNATURE OF ATTORNEY OF RECORD /s/Trent R. Taylor, Esq.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

- 1. General Civil
- 2. Administrative Review/Social Security
- 3. Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is **RELATED** to another **PENDING** civil case. This action is **REFILED** pursuant to **LR 3.1**.

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY:

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY:

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY: Mahoning

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

- AKRON (Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)
- CLEVELAND (Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)
- YOUNGSTOWN (Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

- TOLEDO (Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

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. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

Pablo Gonzalez, et al,

Plaintiff

v.

Railworks Track Services, Inc.

Defendant

)
)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Railworks Track Services, Inc.
c/o Corporation Service Company
50 West Broad St., Columbus, Ohio 43215

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: Barkan Meizlish, LLP Attorney: Trent R. Taylor
250 E. Broad St, 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.

SANDY OPACICH, 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:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Railroad Workers Sue Employer Over Unpaid Wages](#)
