

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
(Western Division)**

NATE DOUGLAS, THOMAS DERICO, LISA	:	
SMITH, and LEROY ROBINSON, individually	:	
and on behalf of all persons similarly situated,	:	CLASS ACTION/COLLECTIVE ACTION
	:	
Plaintiffs,	:	Civil Action No.: 4:09-cv-0652-SWW
	:	
v.	:	JURY TRIAL DEMANDED
	:	
FIRST STUDENT, INC.,	:	
	:	
	:	
Defendant.	:	
	:	

SECOND AMENDED CLASS ACTION AND COLLECTIVE ACTION COMPLAINT

Plaintiffs Nate Douglas, Thomas Derico, Lisa Smith and Leroy Robinson (“Plaintiffs”), by and through their undersigned counsel, on behalf of themselves and all others similarly situated, file this Second Amended Class Action and Collective Action Complaint (the “Second Amended Complaint”) against Defendant First Student, Inc. (“First Student” or “Defendant”). Defendant has already appeared and may be served through its counsel of record. Plaintiffs complain and allege upon information and belief, except as to the allegations that pertain to the named Plaintiffs, which are based upon personal knowledge, as follows:

I. INTRODUCTION

1. Plaintiffs bring this case as a representative action against Defendant under federal law pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.*, on behalf of themselves and all other similarly situated current and former employees of Defendant’s Little Rock, Arkansas Terminal (the “Little Rock Terminal”) for, *inter alia*, unpaid wages and unpaid overtime wages, liquidated damages, and attorneys’ fees and costs.

2. Plaintiffs also bring this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure by Plaintiffs on behalf of themselves and all other similarly situated current and former employees of Defendant's Little Rock Terminal for the purpose of obtaining relief under Arkansas law for *inter alia*, unpaid wages and unpaid overtime wages, under the Arkansas Minimum Wage Act, Ark. Code Ann. §§ 11-4-201 *et seq.*, breach of contract, and unjust enrichment.

II. JURISDICTION AND VENUE

3. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and Section 16(b) of the FLSA, 29 U.S.C. § 216(b). This Court has supplemental jurisdiction over Plaintiffs' state law class claims pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c). The events giving rise to Plaintiffs' claims occurred within this judicial district. Defendant resides in this judicial district and is subject to personal jurisdiction here.

III. PARTIES

5. Plaintiff Nate Douglas resides in Little Rock, Arkansas. He worked for Defendant and its predecessor between approximately February 1997 and March 2008 as a driver. Plaintiff Douglas often worked in excess of 40 hours per week, but did not receive overtime compensation as required by state and federal wage laws. In addition, Defendant failed to pay Plaintiff Douglas for all straight-time hours at his promised hourly wage rate as required by state and federal wage laws.

6. Plaintiff Thomas Derico resides in Little Rock, Arkansas. He worked for Defendant and its predecessor between 1999 and March 2009 as a driver and dispatcher. Plaintiff Derico worked exclusively as a dispatcher between January 2007 and March 2009.

Plaintiff Derico often worked in excess of 40 hours per week, but did not receive overtime compensation as required by state and federal wage laws. In addition, Defendant failed to pay Plaintiff Derico for all straight-time hours at his promised hourly wage rate as required by state and federal wage laws.

7. Plaintiff Lisa Smith resides in Little Rock, Arkansas. She has worked for Defendant and its predecessor since 1995 as a driver. Between 2001 and 2008, Plaintiff Smith worked as a dispatcher in addition to her duties as a driver. Plaintiff Smith often worked in excess of 40 hours per week, but did not receive overtime compensation as required by state and federal wage laws. In addition, Defendant failed to pay Plaintiff Smith for all straight-time hours at her promised hourly wage rate as required by state and federal wage laws.

8. Plaintiff Leroy Robinson resides in Angleton, Texas. He worked for Defendant and its predecessor between 2000 and March 2008 as a driver. Between 2001 and March 2008, Plaintiff Robinson also worked as a trainer. Between 2002 and March 2008, Plaintiff Robinson worked as a dispatcher in addition to his other duties. Plaintiff Robinson often worked in excess of 40 hours per week, but did not receive overtime compensation as required by state and federal wage laws. In addition, Defendant failed to pay Plaintiff Robinson for all straight-time hours at his promised hourly wage rate as required by state and federal wage laws.

9. Pursuant to 29 U.S.C. § 216(b), all of the above-named Plaintiffs who have overtime claims have consented in writing to being Plaintiffs in this action.

10. Defendant First Student, Inc. (“First Student” or “Defendant”) is incorporated under Florida law and is headquartered in Cincinnati, Ohio. First Student employed Plaintiffs and similarly situated employees as bus drivers, dispatchers, trainers and other hourly, non-exempt workers.

11. At all times relevant to this Complaint, Defendant has been an enterprise engaged in interstate commerce within the meaning of the FLSA, and the employer of Plaintiffs within the meaning of the FLSA and the Arkansas Minimum Wage Act.

IV. STATEMENT OF FACTS

12. First Student is the largest school bus transportation company in North America, carrying more than 4 million students on more than 60,000 school buses to and from school each day.

13. First Student contracts school transportation services with the Little Rock School Board to provide the Little Rock, Arkansas school district's bus service.

14. First Student serves more than 15,700 Little Rock students on approximately 236 different routes and provides extra-curricular transportation for field trips and athletic events.

15. The Little Rock School District has contracted school transportation service with First Student and its predecessor since 1995.

16. First Student has assumed all obligations and liabilities from its predecessor corporation, Laidlaw International, Inc.

17. First Student employs bus drivers, dispatchers, trainers and other hourly, non-exempt workers, including Plaintiffs and other employees similarly situated to Plaintiffs at its Little Rock Terminal.

18. First Student has a policy or practice of failing to keep accurate records of all hours worked by Plaintiffs and similarly situated employees, as required by state and federal law.

19. First Student has a policy or practice of failing to compensate Plaintiffs and similarly situated employees for all hours and overtime worked. Even when Plaintiffs have

requested that First Student pay them for all hours worked, First Student has refused to pay them their lawful wages.

20. First Student's National Employee Handbook defines work as "any activity that you are required, requested, or permitted to perform in the interest of the company or for the company's benefit."

21. First Student has failed to pay its drivers for all hours worked under its own definition.

22. First Student agrees to compensate its drivers for all such route time actually worked during the morning shift (the "A.M. Run") and the afternoon shift (the "P.M. Run"), with a guaranteed minimum of five hours.

23. Despite this agreement, in practice, First Student pays its drivers at their hourly rate of pay for two and a half hours for the A.M. Run and two and half hours for the P.M. Run, regardless of how many hours they have actually worked.

24. Duties for the A.M. and P.M. Runs include required pre-trip and post-trip inspections, fueling, review of route changes and transporting students to and from school.

25. First Student's drivers routinely work for longer than two and a half hours per A.M. Run and P.M. Run.

26. The A.M and P.M Runs take longer than two and a half hours due to: required pre-trip and post-trip inspections of their buses; required paperwork for each trip; the time drivers spend waiting for students to be released from school; the time drivers spend transporting their children safely in congested traffic or bad weather; the time drivers spend disciplining students who are not behaving on the bus; and the time drivers spend to wait to park their buses

in the lot and perform other work-related functions, such as fueling or handling mechanical issues.

27. In addition to A.M. and P.M. Runs, drivers routinely perform extra trips, which involve transporting school children outside of the regular A.M. and P.M. runs.

28. These extra trips include: athletic trips for games and practices, field trips, metropolitan runs, noon runs, and late care runs.

29. First Student fails to accurately track all hours worked to perform these extra trips, and are paid at different rates for performing all of these extra trips.

30. Drivers are also often asked to pick up extra students who missed the bus after the drivers have completed their A.M. or P.M. runs. These drivers either receive a flat rate or are not compensated for these extra pick ups.

31. Drivers are only paid for athletic trips on a “wheel to wheel” basis: from the time the bus leaves when the students get on the bus to the time the students get off the bus.

32. Drivers routinely work for longer than the time they are paid for their extra trips.

33. First Student requires drivers to perform additional duties in connection with the extra trips, but does not compensate them for that time. These additional duties required include, without limitation: conducting required pre-trip and post-trip inspections of their buses; completing required paperwork; driving to the school; waiting for students to be released from school; driving to and parking buses in the lot; and performing other work-related functions.

34. First Student agreed to pay its dispatchers and trainers at an hourly rate for all time worked.

35. Despite this agreement, in practice, First Student pays its dispatchers and trainers for a fixed number of hours, regardless of the time they have actually worked.

36. First Student's dispatchers routinely work for longer than the fixed number of hours they are paid.

37. Many drivers also perform other tasks for First Student during the day. First Student refers to these tasks as "Non-Revenue" tasks.

38. Non-Revenue tasks include, without limitation: dispatch work, training of other drivers, clerical work and bus washing. First Student pays its drivers a different rate than their hourly driving rate for performance of these tasks.

39. First Student also requires its drivers to perform other tasks throughout the year, including: safety meetings, disciplinary meetings with students at their schools, and drug testing. First Student pays its drivers a different rate than their hourly driving rate for performance of these tasks.

40. First Student has a policy or practice whereby it does not aggregate weekly time spent by its employees when they perform multiple kinds of work, in order to avoid paying its employees overtime as required by state and federal law.

41. Plaintiffs' principal work activities, including all athletic trips and field trips, are conducted intrastate within the State of Arkansas.

42. The transportation of school children to school and school related events is not exempt from the overtime provisions of the FLSA or Arkansas law. Plaintiffs are covered by the overtime requirements of the FLSA and Arkansas law, both of which provide that all hours worked in excess of 40 hours per week are "overtime" hours, payable at a rate of one and one-half times the regular hourly rate.

43. First Student has practice of failing to pay Plaintiffs and similarly situated employees in full for all hours worked, and for all overtime work. This is compensation to which they are entitled under state and federal law.

44. First Student's denial of legal wages and overtime compensation to Plaintiffs and other similarly situated employees is, and has been, willful and deliberate.

45. First Student has also failed to pay Plaintiffs and similarly situated employees for all hours worked at their promised regular hourly rate for non-overtime hours..

V. CLASS ACTION ALLEGATIONS UNDER ARKANSAS LAW

46. Plaintiffs bring this action for Counts II and IV as a class action pursuant to Fed.

R. Civ. P. 23 on behalf of themselves and the following class:

all persons employed by First Student, Inc. and its predecessor as non-exempt hourly workers, including drivers, dispatchers, office staff, fuelers and/or trainers at its terminal in Little Rock, Arkansas at any time from August 1, 2006 to the present (the "Arkansas Class").

47. Plaintiffs also seek to certify a class for Counts III and IV as a class action pursuant to Fed. R. Civ. P. 23 on behalf of themselves and the following class:

all persons employed by First Student, Inc. and its predecessor as non-exempt hourly workers, including drivers, dispatchers, office staff, fuelers and/or trainers at its terminal in Little Rock, Arkansas at any time from August 1, 2006 to December 25, 2008 (the "Breach of Contract/ Unjust Enrichment Class").

48. First Student entered into a collective bargaining agreement ("CBA") with its hourly, non-exempt employees on December 25, 2008. The breach of contract and unjust enrichment claims are specifically limited to apply only to the period between the applicable statute of limitations and the date before the CBA became effective.

49. The members of the proposed classes are so numerous that joinder of all members is impracticable. Plaintiffs believe that the number of class members exceeds 600.

50. Plaintiffs will fairly and adequately represent and protect the interests of the proposed classes because there is no conflict between the claims of the Plaintiffs and those of the proposed classes, and Plaintiffs' claims are typical of the claims of the proposed class members. Plaintiffs' counsel are competent and experienced in litigating class actions and other complex litigation matters, including wage and hour cases like this one.

51. There are questions of law and fact common to the proposed classes, which predominate over any questions affecting only individual members of the proposed classes, including: whether First Student has violated and continues to violate the Arkansas Minimum Wage Act through its policy or practice of not paying employees for all time worked; whether First Student entered into and breached a contract with Plaintiffs and the Breach of Contract/ Unjust Enrichment Class; and whether First Student has been unjustly enriched by its failure to pay Plaintiffs and the Arkansas Class for all hours worked

52. Plaintiffs' claims are typical of the claims of the proposed classes in the following ways: 1) Plaintiffs are members of the proposed classes; 2) Plaintiffs' claims arise out of the same policies, practices and course of conduct that form the basis of the proposed classes; 3) Plaintiffs' claims are based on the same legal and remedial theories as those of the proposed classes and involve similar factual circumstances; 4) there are no conflicts between the interests of the named Plaintiffs and the class members; and 5) the injuries suffered by the named Plaintiffs are similar to the injuries suffered by the proposed class members.

53. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the class predominate over any questions affecting only individual members of the proposed classes.

54. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The proposed classes are readily identifiable from Defendant's own employment records. Prosecution of separate actions by individual members of the proposed classes would create the risk of inconsistent or varying adjudications with respect to individual members of the proposed classes that would establish incompatible standards of conduct for Defendant.

55. A class action is superior to other available methods for adjudication of this controversy because joinder of all members is impractical. Furthermore, the amounts at stake for many of the proposed class members, while substantial, are not great enough to enable them to maintain separate suits against Defendant.

56. Without a class action, Defendant will likely retain the benefit of their wrongdoing and will continue an illegal course of action, which will result in further damages to Plaintiffs and the proposed classes. Plaintiffs envision no difficulty in the management of this action as a class action.

VI. COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA

57. This action is maintainable as an “opt-in” collective action pursuant to 29 U.S.C. § 216(b) as to claims for minimum wage, overtime compensation, liquidated damages (or, alternatively, interest), and attorneys’ fees and costs under the FLSA. In addition to Plaintiffs, numerous current and former employees are similarly situated to Plaintiffs with regard to their claims for unpaid wages and damages, in that they have been denied proper compensation, including overtime compensation, at some point during the three years prior to the filing of this Complaint.

58. Plaintiffs are representative of those other current and former employees and are acting on behalf of their interests as well as Plaintiffs’ own interests in bringing this action.

59. Members of the Class are similarly situated, as they have substantially similar job requirements and provisions and are subject to a set of common practices, policies and/or plans that require or permit them to perform work, in the form of spending time or conducting activities for the benefit of Defendant, which are not compensated pursuant to the FLSA.

60. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs have retained counsel competent and experienced in complex employment class action and collective action litigation.

61. Defendant’s failure to pay Plaintiffs and the Class their lawful wages was and is willful. Defendant knew or should have known that its conduct was unlawful and/or showed reckless disregard for the matter of whether its above-described conduct was prohibited by law.

62. Despite its knowledge that time spent by Plaintiffs and the Class, as described above, was compensable time under both state and federal law, Defendant has refused to fully compensate workers at the Little Rock Terminal for any of this time.

63. These similarly situated employees are known to Defendant and are readily identifiable, and may be located through Defendant's records. These similarly situated employees may readily be notified of this action, and allowed to opt into it pursuant to 29 U.S.C. § 216(b), for the purpose of collectively adjudicating their claims for overtime compensation, liquidated damages (or, alternatively, interest), and attorneys' fees and costs under the FLSA.

COUNT I

FAIR LABOR STANDARDS ACT

(Denial of Wages, Overtime Compensation and Minimum Wage under Federal Law)

64. Plaintiffs re-allege and incorporate the above paragraphs as though fully set forth herein.

65. Defendant violated the FLSA by knowingly failing to maintain records of all hours worked.

66. Defendant violated the FLSA by knowingly failing to compensate Plaintiffs for all hours worked when Plaintiffs worked in excess of 40 hours per week, and by knowingly failing to compensate Plaintiffs at a rate of one and one-half times their regular hourly wage for hours worked in excess of 40 hours per week in violation of 29 U.S.C. § 207(a)(1).

67. Defendant's actions were willful.

68. Defendant is therefore liable to Plaintiffs and all other similarly situated employees, under 29 U.S.C. § 216(b) of the FLSA, for their unpaid wages and unpaid overtime compensation, plus an additional equal amount as liquidated damages, court costs, reasonable attorneys' fees and expenses, and any other relief deemed appropriate by the Court.

COUNT II

**ARKANSAS MINIMUM WAGE ACT
(Failure to Pay Promised Wage for All Hours Worked
and Denial of Overtime Compensation)**

69. Plaintiffs re-allege and incorporate the above paragraphs as though fully set forth herein.

70. The foregoing conduct, as alleged, violated the Minimum Wage Act of the State of Arkansas, A.C.A. §§ 11-4-201, *et seq.*

71. At all relevant times, Defendant has been, and continues to be, an “employer” within the meaning of A.C.A. § 11-4-203. Plaintiffs and the Arkansas Class are employees within the meaning of A.C.A. § 11-4-203.

72. As a result of Defendant’s failure to pay, and decision to withhold, wages earned and due to its non-exempt current and former hourly employees in the State of Arkansas, including Plaintiffs and the Arkansas Class, for all work performed at the regular hourly wage rate in weeks where Plaintiffs worked over forty hours in a week, and for all work performed at the applicable overtime rate for work over forty hours in a week, Defendant has violated and continues to violate A.C.A. § 11-4-211.

73. As a result of Defendant’s failure to record, report, credit and furnish to each of its non-exempt hourly employees, including Plaintiffs and the Arkansas Class, their respective wage and hour records showing all wages earned and due for all work performed, Defendant has violated and continues to violate A.C.A. § 11-4-217.

74. Plaintiffs and the Arkansas Class therefore seek damages in the amount of the respective unpaid wages earned and due at the regular hourly wage rate, and at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty (40)

hours in a workweek, plus attorney's fees and costs of this action, as provided by A.C.A. § 11-4-218, along with any other legal and equitable relief the Court deems just and proper.

COUNT III

**VIOLATION OF ARKANSAS STATE LAW
(Breach of Contract)**

75. Plaintiffs re-allege and incorporate the above paragraphs as though fully set forth herein.

76. The class period for this Count is limited to August 1, 2006 until December 31, 2008.

77. Defendant offered, and Plaintiffs and the class accepted, employment with Defendant, creating a contract of employment.

78. At different times, Defendant, through its employees/managers and/or agents, made oral offers of employment to the respective Plaintiffs and respective class members, either via telephone or in person at Defendant's Little Rock, Arkansas terminal, the terms of which did not vary between members of the class.

79. The terms of Defendant's oral offer of employment included that Plaintiffs would be compensated 1) at an hourly rate for all time worked for all such route time actually worked during the A.M. Run and the P.M. Run, with a guaranteed minimum of five hours; 2) at an hourly rate for all time worked for training, dispatch, office, and fueling work; and 3) at an hourly rate for all time worked for noon runs, metro runs, and late care runs.

80. Plaintiffs and class members, in justifiable reliance upon Defendant's oral promises to pay them as described above, accepted Defendant's oral offers of employment.

81. The consideration for each contract of employment was the payment of wages as agreed upon by Defendant and the Breach of Contract Class, including Plaintiffs.

82. Inherent in every contract of employment are the terms and conditions of employment guaranteed by applicable federal and state wage and hour laws, including the FLSA and Arkansas state law.

83. Plaintiffs and the Breach of Contract Class, by accepting employment and working for Defendant, performed all conditions precedent to performance by Defendant.

84. Defendant breached this contract of employment with all of the Plaintiffs and class members by deliberately failing to pay Plaintiffs and class members for all hours worked, as promised, by not providing wages for all hours worked, including overtime wages.

85. Plaintiffs and the Breach of Contract Class were damaged by Defendant's breach in that they worked hours for which they should have been compensated, but were not compensated because of Defendant's breach.

86. Plaintiffs and the Breach of Contract Class are entitled to recover all wages to which they are owed by contract, and all other damages resulting from this breach of contract.

COUNT IV

VIOLATION OF ARKANSAS STATE LAW (Unjust Enrichment)

87. All named Plaintiffs, on behalf of themselves and all prospective members of the Arkansas Class, repeat and incorporate by reference the allegations set forth above.

88. In the alternative that the Court does not find that the Plaintiffs had a contract with Defendant, Defendant has received and benefitted from the uncompensated labor of the

Plaintiffs, such to retain said benefits without compensation would be inequitable and rise to the level of unjust enrichment.

89. The class period for this Count is limited to the time under applicable statute of limitations until December 31, 2008.

90. Plaintiffs and the Arkansas Class conferred on Defendant the benefit of their services.

91. At all relevant times hereto, Defendant devised and implemented a plan to increase its earnings and profits by fostering a scheme of securing uncompensated work from Plaintiffs and class members.

92. Defendant has appreciated the benefit of these services without paying Plaintiffs and the Arkansas Class for the full value of their services.

93. Contrary to all good faith and fair dealing, Defendant instructed and encouraged its managers and supervisors to refuse to pay Plaintiffs and the class for all work performed, despite its promises that all work performed would be compensated for various tasks.

94. By reason of having secured the work and efforts of Plaintiffs and class members without compensation, Defendant enjoyed reduced over head and operation costs at its Little Rock, Arkansas terminal and therefore realized additional earnings and profits to its own benefit and to the detriment of Plaintiffs and class members.

95. Defendant retained and continued to retain such benefits contrary to the fundamental principles of justice, equity, and good conscience.

96. Therefore, Defendant's acceptance of this benefit without paying Plaintiffs and the Arkansas Class for the full value of their services, despite promises to the contrary, is inequitable under the circumstances detailed herein.

97. Plaintiffs and the Arkansas Class are entitled to recover the reasonable value of their services, including all wages owed, and all other damages arising out Defendant's failure to pay Plaintiffs and the Arkansas Class for their services.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this court:

- a. Enter a declaratory judgment that Defendant violated Plaintiffs' rights under the FLSA and the Arkansas Minimum Wage Act;
- b. Enjoin Defendant to comply with all applicable federal and state wage laws;
- c. Award to each Plaintiff his or her unpaid wages, including overtime wages plus liquidated damages, as required by the FLSA and the Arkansas Minimum Wage Law;
- d. Award to each Plaintiff his or her unpaid wages due as a result of Defendant First Student's breach of contract.
- e. Award damages corresponding to the reasonable value of the services rendered to Defendant First Student whereby Defendant was unjustly enriched;
- f. Award to Plaintiffs their costs and attorneys' fees incurred in this action, as provided in 29 U.S.C. § 216(b), and Ark. Code Ann. §§ 11-4-218; and
- g. Grant such other and further relief as the court may deem just and proper.

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury for all issues of fact.

Date: October 13, 2010

Respectfully submitted,

LAVEY & BURNETT

/s/ John L. Burnett, Jr.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
(Western Division)**

I hereby certify that on October 13, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following attorneys for Defendant:

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