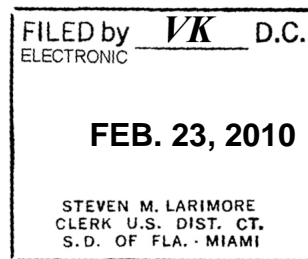


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FT. LAUDERDALE DIVISION



ERNESTO CARRERA, on his  
Own behalf and others similarly situated,

Plaintiff,

**10-60263-CIV-Lenard/Turnoff**

v.

CASE NO.:

UPS SUPPLY CHAIN SOLUTIONS, INC.,  
A Foreign Profit Corporation,

Defendant,

\_\_\_\_\_ /

**COMPLAINT**

Plaintiff, ERNESTO CARRERA (“Plaintiff”), on his own behalf and others similarly situated, by and through undersigned counsel, files this Complaint against Defendant, UPS SUPPLY CHAIN SOLUTIONS, INC., (“UPS SCS”), a Foreign Profit Corporation, (“Defendant”) and states as follows:

**JURISDICTION**

1. Jurisdiction in this Court is proper as the claims are brought pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201, *et seq.*, hereinafter called the “FLSA”) to recover unpaid overtime wages, minimum wages, an additional equal amount as liquidated damages, obtain declaratory relief, and reasonable attorney’s fees and costs.

2. The jurisdiction of the Court over this controversy is based upon 29 U.S.C. §216(b).

PARTIES

3. At all times material hereto, Plaintiff was, and continues to be a resident of Miami-Dade County, Florida.

4. At all times material hereto “UPS SCS” was a Foreign Profit Corporation. Further, at all times material hereto, “UPS SCS” was engaged in business in Florida, with a principle place of business in Broward County, Florida.

5. At all times material hereto, Plaintiff was “engaged in commerce” within the meaning of §6 and §7 of the FLSA.

6. At all times material hereto, Plaintiff was an “employee” of Defendant within the meaning of FLSA.

7. At all times material hereto, Defendant was the “employer” within the meaning of FLSA.

8. Defendant was, and continues to be, “employer” within the meaning of FLSA.

9. At all times material hereto, Defendant was, and continues to be, an “enterprise engaged in commerce” within the meaning of FLSA.

10. At all times material hereto, Defendant was, and continues to be, an enterprise engaged in the “production of goods for commerce” within the meaning of the FLSA.

11. The additional persons who may become plaintiffs in this action were hourly paid drivers of Defendants, who held similar positions to Plaintiff and who worked in excess of forty (40) hours during one or more work weeks during the relevant time periods but who did not receive pay at one and one-half times their regular rate for their hours worked in excess of forty (40) hours.

12. Based upon information and belief, the annual gross revenue of Defendant was in

excess of \$500,000.00 per annum during the relevant time periods.

13. At all times material hereto, Defendant had two (2) or more employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce.

14. At all times hereto, Plaintiff was “engaged in commerce” and subject to individual coverage of the FLSA.

15. At all times hereto, Plaintiff was engaged in the “production of goods for commerce” and subject to the individual coverage of the FLSA.

16. At all times material hereto, the work performed by the Plaintiff was directly essential to the business performed by Defendant.

#### **STATEMENT OF FACTS**

17. On or about July of 1999, Defendants hired Plaintiff to work as a non-exempt driver.

18. At various material times hereto, Plaintiff worked for Defendant in excess of forty (40) hours within a work week.

19. From at least July of 1999 and continuing to date, Defendant failed to compensate Plaintiff minimum wage for each hour he worked during his employment with Defendant.

20. From at least July of 1999 and continuing to date, Defendant failed to compensate Plaintiff at rate of one and one-half times Plaintiff’s regular rate for all hours worked in excess of forty (40) hours in a single work week. Plaintiff should be compensated at the rate of one and one-half times Plaintiff’s regular rate for those hours that Plaintiff worked in excess of forty (40) hours per week as required by the FLSA.

21. Defendant has violated Title 29 U.S.C. §207 from at least July of 1999 and

continuing to date, in that:

- a. Plaintiff has not been paid the minimum wage for each hour worked during one or more weeks of employment with Defendant;
- b. Plaintiff worked in excess of forty (40) hours per week for the period of employment with Defendant;
- c. No payments, and provisions for payment, have been made by Defendant to properly compensate Plaintiff at the statutory rate of one and one-half times Plaintiff's regular rate for those hours worked in excess of forty (40) hours per work week as provided by the FLSA; and
- d. Defendant has failed to maintain proper time records as mandated by the FLSA.

22. Plaintiff has retained the law firm of MORGAN & MORGAN, P.A. to represent Plaintiff in the litigation and has agreed to pay the firm a reasonable fee for its services.

**COUNT I**  
**RECOVERY OF OVERTIME COMPENSATION**

23. Plaintiff realleges and reavers paragraphs 1 through 22 of the Complaint as if fully set forth herein.

24. From at least July of 1999 and continuing to date, Plaintiff worked in excess of the forty (40) hours per week for which Plaintiff was not compensated at the statutory rate of one and one-half times Plaintiff's regular rate of pay.

25. Plaintiff was, and is entitled to be paid at the statutory rate of one and one-half times Plaintiff's regular rate of pay for those hours worked in excess of forty (40) hours.

26. At all times material hereto, Defendant failed, and continues to fail, to maintain

proper time records as mandated by the FLSA.

27. Defendant's actions were willful and/or showed reckless disregard for the provisions of the FLSA as evidenced by its failure to compensate Plaintiff at the statutory rate of one and one-half times Plaintiff's regular rate of pay for the hours worked in excess of forty (40) hours per weeks when it knew, or should have known, such was, and is due.

28. Defendant has failed to properly disclose or apprise Plaintiff of Plaintiff's rights under the FLSA.

29. Due to the intentional, willful, and unlawful acts of Defendant, Plaintiff suffered and continues to suffer damages and lost compensation for time worked over forty (40) hours per week, plus liquidated damages.

30. Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 29 U.S.C. §216(b).

31. At all times material hereto, Defendants failed to comply with Title 29 and United States Department of Labor Regulations, 29 C.F.R. §§516.2 and 516.4, with respect to those similarly situated to the named Plaintiff by virtue of the management policy, plan or decision that intentionally provided for the compensation of such employees for fewer hours than they actually worked.

32. Based upon information and belief, the employees and former employees of Defendants similarly situated to Plaintiff were not paid for all hours worked, and to the extent such hours, if properly credited to Plaintiff, would have credited Plaintiff with more than forty (40) or more hours in a work week, Defendant has failed to properly pay Plaintiff, and those similarly situated to him, proper overtime wages at time and a half his regular rate of pay for such hours.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor against Defendant:

- a. Declaring, pursuant to 29 U.S.C. §§201 and 202, that the acts and practices complained of herein are in violation of the maximum hour provisions of the FLSA;
- b. Awarding Plaintiff overtime compensation in the amount due to him for Plaintiff's time worked in excess of forty (40) hours per work week;
- c. Awarding Plaintiff liquidated damages in an amount equal to the overtime award;
- d. Awarding Plaintiff reasonable attorney's fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b);
- e. Awarding Plaintiff pre-judgment interest; and
- f. Ordering any other further relief the Court deems just and proper.

**COUNT II**  
**RECOVERY OF MINIMUM WAGES**

33. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-32 above.

34. Plaintiff was entitled to be paid minimum wage for each hour he worked during his employment with Defendant.

35. Defendant failed to pay Plaintiff minimum wage for each hour he worked for Defendant.

36. Plaintiff has demanded proper compensation for one or more weeks of work with Defendant, but Defendant has refused and/or failed to compensate him for same. As a result of

Defendant's actions in this regard, Plaintiff has not been paid the minimum wage for each hour worked during one or more weeks of employment with Defendant.

37. Defendant had specific knowledge that they were paying sub-minimum wages to Plaintiff, but still failed to pay Plaintiff at least minimum wages.

38. Defendant willfully failed to pay Plaintiff the Federal minimum wage for one or more weeks of work contrary to 29 U.S.C. § 206.

39. As a direct and proximate result of Defendant's deliberate underpayment of wages, Plaintiff has been damaged in the loss of minimum wages for one or more weeks of work with Defendant.

WHEREFORE, Plaintiff demands judgment against Defendant for compensatory damages, an additional and equal amount of liquidated damages, reasonable attorneys' fees and costs incurred in this action, declaratory relief, and any and all further relief that this Court determines to be just and appropriate.

**COUNT III-RECOVERY OF UNPAID WAGES (STATE LAW)**

40. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-39 above. At various times relevant hereto, Plaintiff worked for Defendant, but Defendant failed to pay Plaintiff at least the Florida Minimum Wage, as required by Fl. Statue § 448.110. Defendant has violated Fl. Statue § 448.110.

41. Plaintiff has been damaged as a result of Defendant's failure to pay him the agreed upon wages to which he was entitled, pursuant to Fl. Statue § 448.110.

42. Pursuant to Fl. Statue § 448.08, Plaintiff is entitled to the costs of this action and a reasonable attorneys' fee.

43. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff demands judgment against Defendant for compensatory damages, an additional and equal amount of liquidated damages, reasonable attorneys' fees and costs incurred in this action, declaratory relief, and any and all further relief that this Court determines to be just and appropriate.

**COUNT IV- BREACH OF ORAL AGREEMENT**

44. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-43 above.

45. During Plaintiff's employment, Defendant orally agreed to pay Plaintiff an hourly rate for each hour worked within a work week.

46. Plaintiff agreed to these terms and conditions.

47. Notwithstanding this agreement, Defendant failed to pay Plaintiff the owed wages as agreed, thereby breaching the agreement between the parties.

48. As a result of Defendant's actions, it has breached its oral Agreement with Plaintiff, and Plaintiff seeks to recover his damages as a result.

49. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For compensatory damages and liquidated damages;
2. For pre-judgment interest;
3. For post-judgment interest;
4. For costs of suit; and
5. For an award of attorneys' fees under Florida Statutes 448.108 as to all unpaid wages claims; and
6. Such other and further relief as the Court deems just and proper.



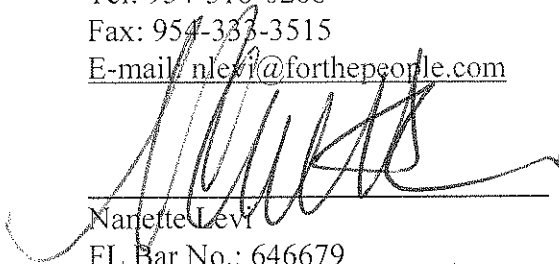
**JURY DEMAND**

Plaintiff demands trial by jury on all issues so triable as a matter of right by jury.

DATED this 19th day of February, 2010.

Respectfully submitted,

MORGAN & MORGAN  
6824 Griffin Road  
Davie, FL 33314  
Tel: 954-318-0268  
Fax: 954-333-3515  
E-mail: [nlevi@forthepeople.com](mailto:nlevi@forthepeople.com)



\_\_\_\_\_  
Nanette Levi  
FL Bar No.: 646679

**Trial Counsel for Plaintiffs**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the Florida and federal rules of procedure or the rules 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 THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS ERNESTO CARRERA, on his own behalf and others similarly situated, (b) County of Residence of First Listed Plaintiff MIAMI-DADE (EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS UPS SUPPLY CHAIN SOLUTIONS, INC., a Foreign Profit Corporation County of Residence of First Listed Defendant BROWARD (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number) MORGAN & MORGAN 954 318-0268 6824 GRIFFIN ROAD DAVIE, FLORIDA 33314

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED. Attorneys (if known)

(d) Check County Where Action Arose: [ ] MIAMI-DADE [ ] MONROE [X] BROWARD [ ] PALM BEACH [ ] MARTIN [ ] ST. LUCIE [ ] INDIAN RIVER [ ] OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) [ ] 1 U.S. Government Plaintiff [X] 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) (For Diversity Cases Only) Citizen of This State PTF DEF [ ] 1 [ ] 1 Citizen of Another State [ ] 2 [ ] 2 Citizen or Subject of a Foreign Country [ ] 3 [ ] 3 Foreign Nation [ ] 4 [ ] 4 [ ] 5 [ ] 5 [ ] 6 [ ] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only) [X] 1 Original Proceeding [ ] 2 Removed from State Court [ ] 3 Re-filed (see VI below) [ ] 4 Reinstated or Reopened [ ] 5 Transferred from another district (specify) [ ] 6 Multidistrict Litigation [ ] 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page): a) Re-filed Case [ ] YES [ ] NO b) Related Cases [ ] YES [ ] NO JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 29 U.S.C. 217(b) ACTION FOR UNPAID WAGES LENGTH OF TRIAL via \_\_\_\_\_ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: [ ] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ UNKNOWN AT THIS TIME CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE SIGNATURE OF ATTORNEY OF RECORD DATE

FOR OFFICE USE ONLY AMOUNT RECEIPT # IFP

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FT. LAUDERDALE DIVISION

ERNESTO CARRERA, on his  
Own behalf and others similarly situated,

Plaintiff,

v.

CASE NO.:

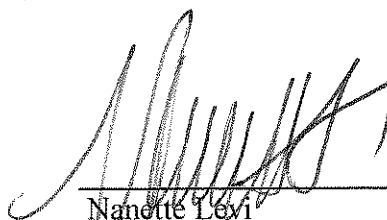
UPS SUPPLY CHAIN SOLUTIONS, INC.,  
a Foreign Profit Corporation,

Defendant,  
\_\_\_\_\_ /

**NOTICE OF FILING NOTICE OF CONSENT TO JOIN**

Plaintiff, ERNESTO CARRERA, gives notice of filing his Notice of Consent to  
Join the above-styled lawsuit.

DATED this 23rd day of February, 2010.



Nanette Levi  
**FL Bar No.: 646679**  
MORGAN & MORGAN  
6824 Griffin Road  
Davie, Fl. 33314  
Tel: 954-318-0268  
Fax: 954-333-3515  
E-mail: NLevi@forthepeople.com  
**Trial Counsel for Plaintiffs**

**NOTICE OF CONSENT TO JOIN**

Pursuant to 29 U.S.C. § 216(b), I, Ernesto Carrera, consent to become a party plaintiff in this action.

02-10-2010  
DATE

  
CLIENT SIGNATURE

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
FT. LAUDERDALE DIVISION

ERNESTO CARRERA, and on their own behalves  
and others similarly situated,

**SUMMONS IN A CIVIL CASE**  
**CASE NO.:**

Plaintiff,

v.

UPS SUPPLY CHAIN SOLTUIONS, INC.,  
A Foreign Profit Corporation, and

Defendant.

---

TO: UPS SUPPLY CHAIN SOLUTIONS  
Corporation Service Company, Registered Agent  
1201 Hays Street  
Tallahassee, Florida 32301- 2525

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not including 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's 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:

Nanette Levi, ESQ.  
MORGAN & MORGAN, P.A.  
6824 Griffin Road  
Davie, FL 33314  
(954) 318-0268  
(954) 333-3515 (facsimile)

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.

---

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. 45.)*

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: