

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
Case No. 18-20536-cv-

LAZARO PRIETO on behalf of  
himself and all others similarly  
situated,

Plaintiff,

v.

OLD DOMINION FREIGHT LINE, INC.

Defendant.

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**COMPLAINT**

Plaintiff, LAZARO PRIETO ("PRIETO"), on behalf of himself and others similarly situated, sues Defendant, OLD DOMINION FREIGHT LINE, INC. ("OLFL") and alleges:

**JURISDICTION AND VENUE**

1. This action arises under the Fair Labor Standards Act, 29 U.S.C. § 201 et. seq ("FLSA") to recover unpaid overtime compensation under the FLSA, liquidated damages and reasonable attorney's fees and costs.
2. Jurisdiction for is founded on 29 U.S.C. § 216(b) and on 28 U.S.C. § 1337.
3. Venue is proper in the Miami Division of the Southern District of Florida pursuant to 28 U.S.C. Section 1391(b) inasmuch the acts which form the basis of the claims arose within the Southern District of the State of Florida.
4. All jurisdictional prerequisites to bringing this claim has been met or waived.

## **PARTIES**

5. PRIETO is a resident of Dade County, Florida, is sui juris, and formerly worked as an employee of ODFL.

6. Defendant, ODFL is a North Carolina corporation that operates a trucking and freight company with a terminal located at 12500 NW 107<sup>th</sup> Avenue, Medley in Miami-Dade County, Florida.

7. ODFL offers less-than-truckload (“LTL”) freight shipping, among other services, across state lines. ODFL’s website describes that the company provides “complete nationwide coverage across all regions of the United States.” Its website describes the scope of its interstate commerce as “ 227 LTL shipping service centers, 32 transfer points and more than 18,000 employees who work to provide an extraordinary level of customer service to the six major geographical regions and thousands of direct shipping points in the lower 48 states” ODFL is listed on the NASDAQ and therefore, on information and belief, it had annual gross sales of \$500,000.00 at all times pertinent to this action.

8. During the period at issue, ODFL was an enterprise engaged in commerce because it ordered machinery, equipment, goods or materials from out of state sources, and employed two or more employees who drove across state lines or who worked on or handled goods or materials that moved through interstate commerce. ODFL employed employees who were covered by the Motor Carrier Act and others who were covered by the Fair Labor Standards Act.

9. The additional persons who may opt into this action are all current and former employees of ODFL who were not covered by the Motor Carrier Act and are or were subject to the same unlawful pay practices described below.

FACT

10. PRIETO worked as a switcher <sup>1</sup> for ODFL for the three years preceding the filing of this lawsuit.

11. During this period, PRIETO routinely worked over 40 hours in a work week.

12. However, ODFL paid PRIETO for all hours over 40 in a work week at a straight time rate because ODFL misclassified him as an employee who was subject to the jurisdiction of the U.S. Department of Transportation and covered by the Motor Carrier Act rather than an employee who was under the jurisdiction of the U.S. Department of Labor and covered by the FLSA.

13. However, PRIETO's work was not covered by the Motor Carrier Act. He was neither a driver, a driver's helper, or a mechanic and PRIETO's work never required him to drive a truck or move a trailer on a public road.

14. ODFL suffered or permitted PRIETO and others who were similarly situated to work more than forty hours in a work week but failed or refused to pay the employees at the federally mandated rate of a time and a half for each hour over 40 in a work week.

15. PRIETO has been required to hire the undersigned law firm to enforce his rights under the FLSA and has agreed to pay counsel a reasonable fee for its services.

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<sup>1</sup> The position is also known in the trucking industry as a hostler or yard jockey.

COUNT I  
FLSA - Overtime Pay

16. PRIETO incorporates by reference and re-states paragraphs 1 through 15 and further alleges:

17. ODFL violated the overtime pay provisions of the FLSA in that it employed PRIETO and others similarly situated to him but failed to compensate them at a rate of time and a half for all hours they worked in excess of 40 in a work week.

18. ODFL willfully and knowingly disregarded its obligations under the FLSA because it knew or should have known that the position of switcher did not fall within the Motor Carrier Act exemption to the FLSA.

19. By reason of such intentional, willful and unlawful acts, PRIETO and those similarly situated to him have suffered damages and are entitled not only to FLSA mandated overtime rate for their hours over 40 in a work week but an equal amount as liquidated damages plus reimbursement of attorney's fees and costs.

WHEREFORE, PRIETO and those similarly situated to him who will opt into this action demand judgment against ODFL for:

A. Overtime pay that is due for all hours worked for which they were not properly compensated;

B. An amount equal to the overtime pay that is due to them as liquidated damages;

C. Costs of suit and an award of reasonable attorney's fees pursuant to 29 U.S.C. §216(b); and,

D. Declaratory, injunctive and such other relief as the Court deems just and proper.

E. Such other relief as the Court deems just and proper

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury.

Dated this 12<sup>th</sup> day of February, 2018.

LANGBEIN & LANGBEIN, P.A.  
Attorneys for the Plaintiff  
8181 NW 154<sup>th</sup> Street, Suite 105  
Miami Lakes, FL 33016  
Tel: (305) 556-3663  
Fax: (305) 556-3647

By: Leslie W. Langbein  
Leslie W. Langbein, Esq.  
Fla. Bar No. 305391

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

LAZARO PRIETO and all others similarly situated,

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Leslie W. Langbein, Esq., 8181 NW 154th St, Suite 105, Miami Lakes, FL 33016 (305) 556-3663

DEFENDANTS

OLD DOMINION FREIGHT LINE, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, Labor, etc.

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, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 USC Section 201 et seq
Brief description of cause: Unpaid Overtime Pay

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 02/12/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Leslie W. Langbein, 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.C.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; 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**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 dollar amount (in thousands of dollars) 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

SOUTHERN DISTRICT OF FLORIE

LAZARO PRIETO

Plaintiff

v.

OLD DOMINION FREIGHT LINE, INC.

Defendant

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Civil Action No. 18- 20536-cv

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Registered Agent  
CT CORPORATION SYSTEM, INC.  
1200 PINE ISLAND ROAD  
PLANTATION, FLORIDA

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: Langbein & Langbein, P.A.  
8181 NW 154th Street, Suite 105  
Miami Lakes, FL 33016

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: 02/12/2018

Signature of Clerk or Deputy Clerk



Civil Action No. 18- 20536-cv

**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: [Old Dominion Freight Line Facing Switcher's FLSA Lawsuit](#)

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