

# EXHIBIT B

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

CASE NO.: 10-60263-CIV-LENARD/TURNOFF

ERNESTO CARRERA, and CHRISTOPHER STEPHENSON  
On their own behalf and others similarly situated,

Plaintiff,

v.

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

Defendants.

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**AFFIDAVIT OF CHRISTOPHER STEPHENSON**

BEFORE ME, the undersigned authority, an officer duly authorized to take oaths and administer acknowledgements, appeared CHRISTOPHER STEPHENSON, who upon first being duly sworn, deposed and stated as follows:

1. My name is CHRISTOPHER STEPHENSON.
2. I make this affidavit based on my own personal knowledge. I am over the age of 18 years and competent to testify to the facts in this Affidavit. I submit this Affidavit in support of the Amended Collective Action Complaint for the minimum wage and overtime claims in the lawsuit against UPS Supply Chain Solutions, Inc., ("UPS SCS") to recover minimum wages, unpaid overtime wages and other relief.
3. I worked for UPS Supply Chain Solutions, Inc., and its predecessors ("UPS SCS") from about July 2002 to present, as a driver providing pick-up and delivery services for UPS SCS and its customers. I worked full time, 7 days a week, and routinely worked more than forty hours a workweek.

4. I believe that I am similarly situated to the named Plaintiff, ERNESTO CARRERA because I occasionally work alongside him in the Ft. Lauderdale, Florida and observed the duties he performed and I perform the same exact duties.

5. I worked out of the UPS SCS warehouse located at 2551 SW 39<sup>th</sup> Street, Fort Lauderdale, Florida 33312 with ERNESTO CARRERA.

6. I am personally aware that all of the other “drivers” with whom I worked were/are paid in the exact improper manner. There were around 15 other drivers who worked out of the Ft. Lauderdale warehouse with me. I talked to them and saw them at work just about every day. Their work was basically the same as mine and they had to comply with the same rules.

**Standard, Non-negotiable “Independent Contractor” Agreement**

7. During the time I worked for UPS SCS, the company told me that I was an “independent contractor.” I was required to sign an independent contractor agreement when I first started in 2002. In late 2005, I was required to sign another contract and was told I would be terminated if I did not sign it. I was not given a copy of the contract. UPS SCS presented the contract to me as a complete document. I was not involved in drafting or negotiating any part of the contract and I was not allowed to negotiate any terms. I had to sign the document given to me by UPS SCS, take it or leave it.

**My Work for UPS SCS – Pickup and Delivery Through a Centralized Dispatch System**

8. As a UPS SCS driver, my job was to pick up and/or deliver packages or parts as assigned by the UPS SCS dispatcher. For example, I picked up parts from the UPS SCS warehouse and delivered them to a UPS SCS customer’s place of business. I also

picked up items from other locations, including the airport or the UPS SCS customer's place of business. I also delivered items to locations other than the UPS SCS customer's place of business, including the airport or the UPS SCS warehouse.

9. I had to do this work according to UPS SCS' instructions and rules regarding dispatching, deliveries and pay. UPS SCS set out the rules in memos that the company distributes to all drivers. When the company made changes to rules, it usually communicated those changes in memos to all the drivers also.

10. All of my work was assigned to me by the UPS SCS dispatchers. As I understand it based on talking to the dispatchers, to other drivers and in UPS SCS memos, dispatch is centralized across several states. The dispatchers that assigned work to me on evenings and weekends were located in Dallas, Texas and the dispatchers that assigned work to me on weekdays were located in Atlanta, Georgia.

11. In order to be eligible to receive a work assignment, I had to first check in with the dispatcher and put my name on the dispatcher's list of available drivers. I often had to wait for many hours to get an assignment between deliveries. I waited at or near the warehouse, because dispatchers could and did refuse to assign work to drivers who were not at the warehouse. UPS SCS did not pay me any compensation for the time I spent waiting for an assignment. Because I had to be at or near the warehouse to get work assignments, as practical matter, I could not and did not regularly work for any other delivery company. I was dependent on UPS SCS for my livelihood throughout my time working for UPS SCS.

12. While waiting at the warehouse for an assignment, I observed and spoke to other drivers frequently. From what I saw at the warehouse and from conversations I

have had with other drivers, as well as conversations I have had with UPS SCS managers and UPS SCS dispatchers, I know that other drivers had the same basic job duties that I had, were subject to dispatch on the same basis and had to comply with the same UPS SCS rules.

13. When it was my turn to receive an assignment, the dispatcher gave me all necessary information, including the pick-up location, the drop-off location, the deadline or time window for delivery, the flight information if it was an airport pick-up or delivery, and any special instructions, such as the name of the person with whom I had to leave the package, for certain types of deliveries.

14. If I refused an assignment when the dispatcher called me, the dispatcher was supposed to move me to the bottom of the list or not give me any more assignments. Dispatchers did this and it happened to me. As a practical matter, I could not turn down assignments. This is true for the other drivers I worked with also.

15. I had to notify the dispatcher when I made each pick-up or delivery assigned. If I didn't call in by the deadline, someone from Dallas would call me. If I was running late making a delivery, I had to notify the UPS SCS dispatcher at least 15 minutes prior to the delivery deadline. If I was unable to find the consignee for a consignee-only delivery, I had to notify the UPS SCS dispatcher and await further instructions from the dispatcher. If I was delivering a package to the airport, and missed the flight the package was scheduled to go out on, I had to notify the dispatcher. Basically, I was communicating with the dispatcher and getting instructions from him or her throughout the day. I received memos from UPS SCS managers about these requirements.

16. UPS SCS gave me the forms that I had to use in my work, such as bills of lading, airway bills and manifests. UPS SCS had certain rules that I was required to follow about how the paperwork is completed. For example, UPS SCS required me to get each customer to sign the bill of lading.

17. I also had to complete paperwork every day and submit it to UPS SCS. If I didn't complete and submit the paperwork as UPS SCS required, I wouldn't be paid. UPS SCS memos told me that this is the rule.

18. I did not and could not charge UPS SCS' customers directly and I had no role in collecting money from them or setting or negotiating the rates they paid for pick-up and delivery services.

19. UPS SCS' contract required that I maintain "professional appearance and behavior."

**UPS SCS' UNIFORM, Non-Negotiable Pay Structure**

20. UPS SCS set all of my pay rates. They were not negotiable.

21. UPS SCS paid me in two different ways: 1) a lump sum amount for deliveries within a certain radius of the pick-up location or 2) an amount per mile for stops outside of that certain radius, calculated by the company based not on the actual miles traveled but on one-way mileage estimated based on zip codes of the pick-up and delivery locations. UPS SCS's system only calculates mileage one-way, essentially not paying me for the second half of the trip. I believe this uniform pay structure was described in the Agreement I had to sign. UPS SCS made changes whenever it decided to increase the pay rates and occasionally paid extra money for fuel. UPS SCS paid me bi-weekly for most of the time I worked there, though that changed to weekly. Based on

my conversations with other drivers, it is my understanding that we were all paid the same way.

22. I had to provide a vehicle for work and pay for my own gas, vehicle maintenance and repair, company-required insurance and other expenses. UPS SCS did not reimburse me for these amounts and, to my knowledge based on my conversations with other drivers, did not reimburse any other drivers for these amounts either. UPS SCS usually reimbursed me for my parking and toll expenses, as long as I submitted receipts.

23. I regularly worked more than forty (40) hours in a week and never received overtime pay from UPS SCS for the hours worked over forty (40) in a week. I never received overtime pay from UPS SCS when I worked more than forty hours in a week. I have never heard of any UPS driver like me receiving overtime pay.

24. I was not paid full and proper overtime compensation and minimum wage compensation during my employment with Defendant. Instead, I was paid straight-time for all hours over 40 in a workweek. I estimate that I am owed approximately \$54,740.00 unliquidated (\$109,482.00 liquidated) in unpaid overtime wages, and minimum wage, (calculations attached hereto as **Exhibit 1**), plus reasonable attorneys' fees and costs.

#### **Termination at Will**

25. UPS SCS had the ability to terminate at any time.

26. Plaintiff fears retaliation by Defendant as a result of filing said lawsuit.

27. I have personal knowledge of other similarly-situated individuals. The names of the similarly-situated individuals that I recall are Noel Bell and Juan Fuentes. I

know that these individuals are similarly-situated to myself and the named Plaintiff in this matter, because I worked alongside them, and observed that they performed the same duties as myself and were paid in the same manner in which I and the named Plaintiff were paid.

I declare under penalty of perjury the laws of the United States that the foregoing is true and correct.

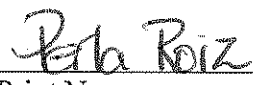
FURTHER AFFIANT SAYETH NAUGHT:

By   
CHRISTOPHER STEPHENSON

STATE OF FLORIDA

COUNTY OF

SWORN TO AND SUBSCRIBED before me this 10<sup>th</sup> day of March, 2010. The Affiant, CHRISTOPHER STEPHENSON, is [ ] personally known to me or  has produced FLDL: S315-108-65-092-0 as identification, which is current or has been issued within the past five years and bears a serial number or other identifying number.

  
Print Name:

  
NOTARY PUBLIC-STATE OF FLORIDA

Commission Number:

My commission expires:



# EXHIBIT 1

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CHRISTOPHER STEPHENSON

Was on call 24/7 as a driver; worked approx. 12 hour days for 7 days a week, totaling 84 hours per week worked; made approximately \$375 weekly  
February 25, 2007 through February 25, 2010 = 157 weeks  
 $\$375 \div 84 = \$4.46$  per hour

2007

Worked from February 25, 2007 – December 31, 2007 = 44 weeks

SHOULD HAVE BEEN PAID THE FOLLOWING:

Minimum Wage = \$6.67 per hour  
 $\$6.67/\text{hour} \times 40 \text{ hours} = \$266.80$   
 $\$10.01$  (overtime rate)  $\times 44 \text{ hours} = \$440.44$   
 $\$266.80 + \$440.44 = \$707.24$  per week  
 $\$707.24$  per week  $\times 44 \text{ weeks} = \$31,118.56$

RECEIVED THE FOLLOWING:

$\$375$  per week  $\times 44 \text{ weeks} = \$16,500.00$

**DIFFERENCE FOR 2007 = \$14,618.56**

2008

Worked from January 1, 2008 - December 31, 2008 = 52 weeks

SHOULD HAVE BEEN PAID THE FOLLOWING

Min Wage = \$6.79 per hour  
 $\$6.79/\text{hour} \times 40 \text{ hours} = \$271.60$   
 $\$10.185$  (overtime rate)  $\times 44 \text{ hours} = \$448.14$   
 $\$271.00 + \$448.14 = \$719.74$  per week  
 $\$719.74$  per week  $\times 52 \text{ weeks} = \$37,426.48$

RECEIVED THE FOLLOWING

$\$375$  per week  $\times 52 \text{ weeks} = \$19,500.00$

**DIFFERENCE FOR 2008 = \$17,926.48**

2009

Worked from January 1, 2009 - July 24, 2009 = 29 weeks

SHOULD HAVE RECEIVED THE FOLLOWING:

Min Wage = \$6.79  
 $\$6.79/\text{hour} \times 40 \text{ hours} = \$271.60$   
 $\$10.185$  (overtime rate)  $\times 44 \text{ hours} = \$448.14$   
 $\$271.60 + \$448.14 = \$719.74$  per week

\$719.74 per week x 29 weeks = \$20,872.46

July 25, 2009 - December 31, 2009 (23 weeks)

SHOULD HAVE RECEIVED THE FOLLOWING:

Min Wage = \$7.25

\$7.25/hour x 40 hours = \$290.00

\$10.875 (overtime rate) x 44 hours = \$478.50

\$290.00 + \$478.50 = \$768.50

\$768.50 per week x 23 weeks = \$17,675.50

TOTAL = \$38,547.96

RECEIVED THE FOLLOWING

\$375.00 per week x 52 weeks = \$19,500.00

**DIFFERENCE FOR 2009 = \$19,047.96**

**2010**

Worked from January 1, 2010 - February 24, 2010 = 8 weeks

SHOULD HAVE RECEIVED THE FOLLOWING:

\$7.25/hour x 40 hours = \$290.00

\$10.875 (overtime rate) x 44 hours = \$478.50

\$290.00 + \$478.50 = \$768.50 per week

\$768.50 per week x 8 weeks = \$6,148.00

PAID THE FOLLOWING:

\$375 per week x 8 weeks = \$3,000.00

**DIFFERENCE FOR 2010 = \$3,148.00**

**TOTAL OWED FOR CHRISTOPHER STEPHENSON**

**\$54,740.00 unliquidated (\$109,482.00 liquidated)**