

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 behalves and
others similarly situated,

Plaintiffs,

v.

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

Defendants.

AMENDED COLLECTIVE ACTION COMPLAINT

Plaintiffs, ERNESTO CARRERA (“CARRERA”) and CHRISTOPHER STEPHENSON (“STEPHENSON”) (collectively referred to as “Plaintiffs”), were employees of Defendant, UPS SUPPLY CHAIN SOLUTIONS, INC., (“UPS SCS”) (hereinafter “Defendant”) and brings this action for unpaid overtime compensation, unpaid minimum wages, declaratory relief, and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (the “FLSA”).

At all times relevant hereto Plaintiffs were non-exempt “piece-rate” paid delivery driver that performed related activities for Defendant in, among others, Broward and Miami-Dade Counties, Florida.¹ The other putative Plaintiffs that already have, and will, join this lawsuit are non-exempt “piece-rate” paid delivery drivers who earned less than \$100,000 in compensation from Defendant in

¹ Each week the Plaintiffs were either paid by 1) 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 Defendant based not on actual miles tracked, but on one-way mileage estimated based on the zip codes of the pick-up and delivery locations. To simplify this method of payment and in order to estimate compensation owed to the Plaintiffs, this method of payment is, in this case, labeled as “piece-rate” and all calculations shall be calculated under a “piece-rate” method.

one or more years during the applicable statute of limitations, and who worked for Defendant at its' offices throughout Florida.

FACTS

1. Plaintiffs, ERNESTO CARRERA and CHRISTOPHER STEPHENSON, were employees of Defendant as more fully alleged herein. Plaintiffs bring this action on behalf of themselves and on behalf of other, current and former employees of Defendant similarly situated to them for overtime compensation and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 201 *et seq.* (the "FLSA" or the "Act").

2. At all times material hereto, Plaintiffs were employed by Defendant as a non-exempt "piece-rate" paid delivery drivers, performing the duties of a delivery driver, primarily within the personal jurisdiction and venue of this Court.

3. Plaintiff CARRERA was employed by Defendant, from approximately July of 1999 and continuing to date.

4. Plaintiff STEPHENSON was employed by Defendant, from approximately July 2002 and continuing to date.

5. Defendant should be in possession of all of the time and wage records for the Plaintiffs and similarly situated employees' workweeks.

6. Defendant, UPS SCS, is a Foreign Profit Corporation that delivers packages for compensation to various customers throughout the United States out of its offices in Miami-Dade County, Florida and elsewhere, principally under the trade name "UPS Supply Chain Solutions."

7. Defendant suffer persons such as Plaintiffs and others similarly situated to work on their behalf in performing the duties of delivering packages throughout the state of Florida and elsewhere.

8. At all times material hereto, Plaintiffs and all the similarly situated employees were performing their duties for the benefit of and on behalf of Defendant.

9. This cause of action is brought as a collective action to recover from Defendant overtime compensation, unpaid minimum wages, liquidated damages, a declaratory judgment, and the costs and reasonable attorney's fees under the provisions of Title 29 U.S.C. §216(b) on behalf of Plaintiffs and all other current and former employees similarly situated during the material time.

10. The asserted class for this collective action includes all current and former employees similarly situated to Plaintiffs, who were non-exempt "piece-rate" paid delivery drivers that earned less than \$100,000 in compensation from Defendant in one or more years during the applicable statute of limitations, and who worked for Defendants at their offices around the country, during the time period of February 2007 through current (the "material time").

11. In the course of employment with Defendant, the Plaintiffs and the other employees in the asserted class regularly worked overtime hours (that is, hours in excess of forty (40) hours per workweek, referred to herein as "overtime hours") and were not paid overtime compensation at an overtime rate of time and one-half of their regular rate of pay (the "overtime rate") for all of the overtime hours worked, based in part upon Defendant's custom and practice of failing to, among other things, credit time actually worked and failing to calculate the correct

regular rate of pay from which to determine the proper overtime rate of pay, among other violations of the FLSA.

12. Defendant employed Plaintiffs and those similarly situated to them, under a compensation plan, whereby they paid Plaintiffs, and those similarly situated to them, in one of two ways. Each week they were paid this by either 1) 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 Defendant based, not on actual miles tracked, but on one-way mileage estimated based on the zip codes of the pick-up and delivery locations.

13. In most (if not all) weeks where Plaintiffs and those similarly situated to Plaintiffs, were paid on a “piece-rate” basis, Defendant failed to include all hours worked, and therefore did not pay Plaintiffs and those similarly situated to Plaintiffs their proper overtime compensation.

14. Further, by virtue of their failure to pay Plaintiffs, and those similarly situated to them for all hours worked, in weeks which were paid on a “piece-rate” basis, Defendant failed to pay Plaintiffs, and those similarly situated to them at least minimum wages for all hours worked.

15. By failing to pay overtime to Plaintiffs and the putative class as articulated in Paragraph 13 above, Defendant violated 29 C.F.R. §778.118.

16. Defendant does not possess any records that show in each workweek during Plaintiffs’ employment with Defendant in which they worked more than forty (40) hours per week, that they properly paid Plaintiffs appropriate overtime wages.

17. The records, if any, concerning the number of hours actually worked by Plaintiffs and all other employees in the asserted class, and the compensation actually paid to such employees should be in the possession and custody of Defendant.

18. The Plaintiffs were not paid full and proper overtime compensation during their employment with the Defendant. Instead, they was paid straight-time for all hours over 40 in a workweek. Plaintiff CARRERA estimates that he is owed approximately \$63,000.00 in unpaid overtime wages, plus attorneys' fees and costs. (See Affidavit of ERNESTO CARRERA attached hereto as **Exhibit "A"**) Plaintiff STEPHENSON estimates that he is owed approximately \$74,729.04 in unpaid overtime wages and minimum wages, plus attorneys' fees and costs. (See Affidavit of CHRISTOPHER STEPHENSON attached hereto as **Exhibit "B"**)

19. Plaintiff CARRERA was employed by Defendant from approximately July of 1999, through the present. Plaintiff STEPHENSON was employed by Defendant from approximately July of 2002, through the present. Each week they were paid by either 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 Defendant based not on actual miles tracked but on one-way mileage estimated based on the zip codes of the pick-up and delivery locations.

20. Defendant's violated the FLSA because where Plaintiffs were paid in one of the two ways described above, they were not paid for all hours worked. Thus, when every hour worked is considered, Plaintiff STEPHENSON'S wages for such weeks were sub-minimum wage for all hours worked; Defendant failed to pay Plaintiffs appropriate time and a half premium pay for all overtime hours, where they were paid either in lump-sum for deliveries or

per mile for stops outside of a certain radius. In such weeks, Plaintiffs are entitled to be paid an additional “half-time” premium for all overtime hours worked, but not paid.²

Plaintiff’s damages will be calculated (when appropriate documentation is received) as follows:

MINIMUM WAGE VIOLATION(S):

[Hours worked x Applicable Florida State Minimum Wage] – [Hours credited x Applicable Minimum Wage] = Minimum Wage Damages/Deficiency Due x 2 = Liquidated Damages Amount.

OVERTIME VIOLATIONS IN COMMISSION-PAID WEEKS:

“Piece-rate” work earnings/Hours Worked = Regular Rate

[25 hours/week x Regular Rate x .5] = Unliquidated Damages x 2 = Liquidated Damages

In addition to amounts calculated using the methodologies above, Plaintiffs are entitled to reasonable attorneys’ fees and costs pursuant to the FLSA.

21. Subject matter jurisdiction is conferred on this Court by Title 28 U.S.C. §1337 and by Title 29 U.S.C. §216(b).

22. At all times pertinent to this Complaint, Defendant was an enterprise engaged in interstate commerce or in the production of goods for commerce as defined §3(r) and 3(s) of the Act, 29 U.S.C. §203(r) and 203(s).

² Prior to the receipt of full time and pay records from Defendant, any calculation would be mere guesswork rather than an educated guess, because Plaintiffs are not clear as to how many weeks they were paid lump sum or by the mileage driven. Plaintiffs reserve the right to amend their estimates/calculations upon receipt of pertinent document production from Defendant.

23. The annual gross sales volume of the Defendant was in excess of \$500,000.00 per annum.

24. By nature of their work, Plaintiffs and those employees similarly situated worked in interstate commerce so as to fall within the protections of the Act.

25. At all times pertinent to this Complaint, Defendant failed to comply with Title 29 U.S.C. §§ 201-209 in that Plaintiffs and those employees similarly situated performed services and labor for Defendant for which Defendant made no provision to pay Plaintiffs and the other employees in the asserted class full and proper overtime compensation to which they were lawfully entitled for all of the hours worked in excess of forty within a workweek.

26. Plaintiffs have retained the undersigned counsel to represent them individually and on behalf of the asserted class, and have incurred attorney's fees and costs in bringing this action. Pursuant to 29 U.S.C. § 216(b), Plaintiffs are entitled to recovery of reasonable attorney's fees and costs if he prevails in this action.

COUNT I
RECOVERY OF OVERTIME COMPENSATION

27. Plaintiffs re-allege, and incorporate here by reference, all allegations contained in Paragraphs 1 through 26 above.

28. Plaintiffs are entitled to be paid time and one-half of Plaintiffs' respective regular rates of pay for each hour worked in excess of forty (40) hours per work week. All similarly situated employees (comprising the members of the asserted class) are similarly owed their full overtime rate for each overtime hour they worked and were not properly paid.

29. By reason of the said intentional, willful and unlawful acts of Defendant, Plaintiffs and the similarly situated employees in the asserted class have suffered damages plus incurring costs and reasonable attorney's fees.

30. As a result of Defendant's willful violation of the Act, Plaintiffs and those similarly situated to Plaintiffs are entitled to liquidated damages.

31. Plaintiffs demand a jury trial.

WHEREFORE, Plaintiffs, ERNESTO CARRERA and CHRISTOPHER STEPHENSON, and those persons similarly situated to Plaintiffs who have or will opt into this collective action, demand judgment against Defendant, jointly and severally, for the payment of compensation for all overtime hours at one and one-half their regular rate of pay due them for the hours worked by them for which they have not been properly paid, liquidated damages, reasonable attorney's fees and costs of suit, prejudgment interest, and for all other appropriate relief.

COUNT II
RECOVERY OF UNPAID MINIMUM WAGES (FLSA)

32. Plaintiff, CHRISTOPHER STEPHENSON re-alleges, and incorporates here by reference, all allegations contained in Paragraphs 1 through 31 above.

33. Plaintiff is entitled to be paid at least minimum wage for all hours worked. All similarly situated employees (comprising the members of the asserted class) are similarly owed their minimum wages for each hour they worked and were not properly paid.

34. Due to Defendant's failure to include all hours worked each week, in Plaintiff's paychecks, as compensable time, Defendant failed to pay Plaintiff at least minimum wage for all hours worked.

35. By reason of the said intentional, willful and unlawful acts of Defendant, Plaintiff and the similarly situated employees in the asserted class have suffered damages plus incurring costs and reasonable attorney's fees.

35. As a result of Defendant's willful violation of the Act, Plaintiff and those similarly situated to Plaintiff are entitled to liquidated damages.

36. Plaintiff demands a jury trial.

WHEREFORE, Plaintiffs, ERNESTO CARRERA and CHRISTOPHER STEPHENSON, and those persons similarly situated to Plaintiffs who have or will opt into this collective action, demand judgment against Defendant, jointly and severally, for the payment of compensation for all overtime hours at one and one-half their regular rate of pay due them for the hours worked by them for which they have not been properly paid, unpaid minimum wages, liquidated damages, reasonable attorney's fees and costs of suit, prejudgment interest, and for all other appropriate relief.

Dated: March 15, 2010

Respectfully submitted,

s/ NANETTE LEVI

Nanette Levi

FL Bar No.: 646679

MORGAN & MORGAN, P.A.

6824 Griffin Road

Davie, FL 33314

Tel: 954-318-0268

Fax: 954-333-3515

E-Mail: NLevi@forthepeople.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 15, 2010, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing all counsel of record.

s/ NANETTE LEVI
Nanette Levi