

FILED by 76  
ELECTRONIC  
**Nov. 18, 2008**  
STEVEN M. LARIMORE  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIAMI

UNITED STATES DISCTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: **08-23208-CIV-KING/BANDSTRA**  
ROBERTO HERNANDEZ, and  
all others similarly situated,

Plaintiff,  
vs.

BRINK'S INCORPORATED, a  
foreign corporation, d/b/a  
BRINKS,

Defendant.  
\_\_\_\_\_ /

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, ROBERTO HERNANDEZ, on behalf of himself and all others similarly situated and by and through undersigned counsel, hereby sues Defendant, BRINK'S INCORPORATED ("BRINKS"), a Foreign Corporation d/b/a BRINKS, and states:

**JURISDICTION**

1. This is an action to recover for failure to pay overtime wages in violation of the Fair Labors Standards Act, as amended, 29 U.S.C. §201, et seq. (hereinafter referred to as the "FLSA").

2. Jurisdiction is founded upon §216(b) of the FLSA, since the claims are brought pursuant to the FLSA to recover unpaid overtime wages, and additional equal amount in liquidated damages, and reasonable attorney's fees and costs.

**PARTIES**

3. At all times material hereto, Plaintiff, ROBERTO HERNANDEZ, was and is a resident of Miami-Dade County, Florida.

4. At all times material hereto, Defendant, BRINKS, was and is a foreign corporation authorized to do business in Miami-Dade County, Florida.

5. Upon information and belief, Defendant, at all times material hereto, employed individuals who regularly were and are engaged in commerce and/or in the production of goods for commerce. Upon information and belief, Defendant, during all relevant times hereto, has had annual gross volume sales or business done of not less than \$500,000.00. By reason of the foregoing, Defendant was and is an enterprise engaged in commerce or in the production of goods for commerce as defined by §203 (d) of the FLSA.

6. At all times material hereto, Defendant acted directly or indirectly in the interest of an employer in relation to Mr. Hernandez and others similarly situated. Therefore, Defendant is and has been an employer within the meaning of §203 (d) of the FLSA.

7. Mr. Hernandez brings this action on behalf of himself and others similarly situated. The additional persons who may become plaintiffs in this action are current or security employees that were subject to the payroll practices and procedures described in detail below.

#### **GENERAL ALLEGATIONS**

8. Defendant employed Mr. Hernandez to work as a security messenger for Defendant's business.

9. Mr. Hernandez was employed by Defendant from approximately February, 1999 until April 2008. During his employment, Mr. Hernandez was initially paid \$7.58/hour and later paid \$10.61 per hour for work performed for Defendant.

10. In the course of employment with Defendant, Mr. Hernandez and others situated worked the number of hours required by Defendant, which hours regularly exceeded forty (40) hours per week. In this regard, Mr. Hernandez generally was required to work and in fact worked an approximate weekly average of 60 to 70 hours during his employment.

12. During those work weeks when he worked in excess of forty (40) hours per week, Mr. Hernandez and the others similarly situated were not paid overtime in accordance with the requirements of the FLSA.

13. Defendant employed Mr. Hernandez and others similarly situated in the aforesaid enterprise for workweeks longer than forty (40) hours and willfully failed to compensate them overtime for hours worked in excess of forty (40) hours per week in violation of §207 of the FLSA.

14. Attached as Exhibit "A" is the Notice of Consent executed by Mr. Hernandez.

15. Mr. Hernandez has engaged undersigned counsel and agreed to pay the undersigned counsel's costs and reasonable attorney's fees incurred in the prosecution of this action.

16. All conditions precedent to the filing of this action have occurred or have been performed or waived.

17. Mr. Hernandez demands trial by jury.

**COUNT I – RECOVERY OF OVERTIME COMPENSATION**

18. Mr. Hernandez readopts and re-alleges all allegations contained in paragraphs 1 through 17 above.

19. Mr. Hernandez was entitled to be paid by Defendant overtime for each hour he worked in excess of forty (40) hours per week. All others similarly situated also are entitled to be paid overtime by Defendant for each hour worked in excess of forty (40) hours per week.

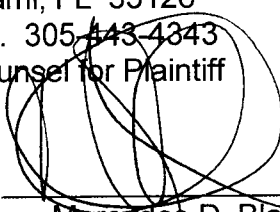
20. As a direct and proximate result of Defendant's deliberate and willful failure to pay overtime wages in accordance with the FLSA, Mr. Hernandez has suffered loss of wages, including unpaid compensation, an additional equal amount of liquidated damages, and Mr. Hernandez, has had to incur costs and reasonable attorney's fees.

WHEREFORE, Plaintiff, ROBERTO HERNANDEZ, on behalf of himself and all others similarly situated, demand judgment be entered against Defendant, BRINK'S SECURITY SERVICE, INC., awarding unpaid overtime compensation, liquidated damages, costs and reasonable attorney's fees pursuant to §216 of the FLSA, and such other relief as is just and proper under the circumstances.

DATED November 12, 2008.

Respectfully submitted,

A. Koss, Attorney, P.A.  
782 N.W. 42<sup>nd</sup> Avenue, Ste. 448  
Miami, FL 33126  
Tel. 305-443-4343  
Counsel for Plaintiff

By:   
Mercedes D. Blason, Esq.  
Florida Bar No.: 73309

**NOTICE OF CONSENT**

I, Roberto Hernandez, hereby consent, in accordance with 29 U.S.C §216(b) of the

Fair Labor Standards Act, to become a party plaintiff in this action against

Brinks and to be represented by Abe Koss, Attorney at

Law, P.A.

  
NAME:

DATE: 10/6/08

JS 44 (Rev. 11/05)

**CIVIL COVER SHEET**

**NOV, 18, 2008**

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 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 the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases**

STEVEN M. LARIMORE  
CLERK U.S. DIST. CT.  
S. D. OF FLA. - MIAMI

**I. (a) PLAINTIFFS**  
ROBERTO HERNANDEZ

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

**(c) Attorney's (Firm Name, Address, and Telephone Number)**  
Mercedes D. Blason, Esq.  
782 NW 42 Ave., #448  
Miami, FL 33126  
Tel (305) 443-4343

**DEFENDANTS**  
BRINK'S INCORPORATED, a foreign corporation, dba BRINKS

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

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  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

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

*Miami OREV 23208 King/Bandstra*

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

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 USC 201 FAIR LABOR STANDARDS ACT

LENGTH OF TRIAL via 2 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 \$** \_\_\_\_\_

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_ DATE 11-12-08

FOR OFFICE USE ONLY

AMOUNT \$350.00 RECEIPT # 992573