

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. _____

EULEXIS HERNANDEZ, and other)
similarly situated individuals,)
)
Plaintiffs,)
)
v.)
)
PROGRESSIVE WASTE SOLUTIONS OF)
FL, INC.,)
)
Defendant.)
)
_____)

COMPLAINT
(OPT-IN PURSUANT TO 29 U.S.C § 216(B))

The Plaintiff, EULEXIS HERNANDEZ, and other similarly situated individuals, sue the Defendant, PROGRESSIVE WASTE SOLUTIONS OF FL, INC., and allege:

1. This is an action to recover money damages for unpaid overtime wages and for retaliation under the laws of the United States. This is also an action for retaliation under Florida Statutes Section 440.205¹. This Court has jurisdiction pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201-219 (Section 216 for jurisdictional placement) (“the Act”).

2. The Court has supplemental jurisdiction over the state law claim for retaliatory discharge because the facts regarding Plaintiff’s state law claims are so related to the Federal claims that they form part of the same case or controversy.

3. Plaintiff, EULEXIS HERNANDEZ (“HERNANDEZ” or “Plaintiff”), is a resident of Broward County, Florida, within the jurisdiction of this Honorable Court. HERNANDEZ is a covered employee for purposes of the Act.

¹ Plaintiff will also file a charge of discrimination with the EEOC for race/color discrimination. As soon as Plaintiff receives his right to sue, he will move to amend this complaint to include counts of discrimination and retaliation.

4. Defendant, PROGRESSIVE WASTE SOLUTIONS OF FL, INC. (“WASTE SOLUTIONS” or “Defendant”), is a Florida Profit corporation having its main place of business in Miami-Dade County, Florida, and at all times material hereto was and is engaged in interstate commerce.

**COUNT I: WAGE AND HOUR FEDERAL (FLSA)
STATUTORY VIOLATION BY HERNANDEZ AGAINST WASTE SOLUTIONS**

5. HERNANDEZ re-adopts each and every factual allegation as stated in paragraphs 1 through 4 above as if set out in full herein.

6. This action is brought by HERNANDEZ, and those similarly situated, to recover from WASTE SOLUTIONS unpaid overtime compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorney’s fees under the provisions of 29 U.S.C. § 201 et seq., and also under the provisions of 29 U.S.C. § 207. 29 U.S.C. § 207 (a)(1) states, “No employer shall employ any of his employees... for a work week longer than 40 hours unless such employee receives compensation for his employment in excess of the hours above-specified at a rate not less than one and a half times the regular rate at which he is employed.”

7. Jurisdiction is conferred on this Court by Title 28 U.S.C. § 1337 and by Title 29 U.S.C. § 216(b). WASTE SOLUTIONS is and, at all times pertinent to this complaint, was engaged in interstate commerce. At all times pertinent to this complaint, WASTE SOLUTIONS operated as an organization which sells and/or markets its services and/or goods to customers from throughout the United States and from outside of the United States, and also provides its services for goods sold and transported from across state lines of other states, and WASTE SOLUTIONS obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do their business, transmit funds outside the State of Florida, and otherwise regularly engages in interstate

commerce, particularly with respect to its employees and customers. Upon information and belief, the annual gross revenue of WASTE SOLUTIONS was at all times material hereto in excess of \$500,000.00 per annum, and/or HERNANDEZ, and those similarly situated, by virtue of working in interstate commerce, otherwise satisfy the Act's requirements.

8. By reason of the foregoing, WASTE SOLUTIONS is and was, during all times hereafter mentioned, an enterprise engaged in commerce or in the production of goods for commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s) and/or HERNANDEZ, and those similarly situated, was engaged in interstate commerce for WASTE SOLUTIONS. WASTE SOLUTIONS' business activities involve those to which the Act applies. WASTE SOLUTIONS is a waste collection company and, through its business activity, affects interstate commerce. HERNANDEZ's work for WASTE SOLUTIONS likewise affects interstate commerce. HERNANDEZ was employed by WASTE SOLUTIONS as a welder for WASTE SOLUTIONS' business.

9. While employed by WASTE SOLUTIONS, HERNANDEZ routinely worked in excess of 40 hours per week without always being compensated at a rate of not less than one and one half times the regular rate at which he was employed. HERNANDEZ was employed as a welder, performing the same or similar duties as that of those other similarly situated welders who HERNANDEZ observed worked in excess of 40 hours per week without overtime compensation.

10. HERNANDEZ was paid approximately \$16.00 per hour by Defendant. His overtime rate was \$24.00 per hour.

11. During Plaintiff's first week(s) of employment, Plaintiff worked at least 20 hours of overtime for which he was not compensated.

12. Prior to the completion of discovery and to the best of HERNANDEZ's knowledge, at the time of the filing of this complaint, HERNANDEZ's good faith estimate of his unpaid wages is as follows:

a. Overtime Wages

i. $\$16 \times 1.5$ (overtime rate) $\times 20$ (approximate weekly overtime) = \$480

b. Liquidated Damages: \$480

c. Grand Total: \$960 plus reasonable attorney's fees².

13. At all times material hereto, WASTE SOLUTIONS failed to comply with Title 29 U.S.C. §§ 201-219 and 29 C.F.R. § 516.2 and § 516.4 et seq. in that HERNANDEZ, and those similarly situated, performed services and worked in excess of the maximum hours provided by the Act but no provision was made by WASTE SOLUTIONS to properly pay them at the rate of time and one half for all hours worked in excess of 40 hours per workweek as provided in the Act. The additional persons who may become Plaintiffs in this action are weekly-paid employees and/or former employees of WASTE SOLUTIONS who are and who were subject to the unlawful payroll practices and procedures of WASTE SOLUTIONS and were not properly paid time and one half of their regular rate of pay for all overtime hours and straight time hours worked in excess of 40 per week.

14. WASTE SOLUTIONS knew and/or showed reckless disregard of the provisions of the Act concerning the payment of overtime wages and remains owing HERNANDEZ, and those similarly situated, these overtime wages since the commencement of HERNANDEZ's, and those similarly situated employees' employment with WASTE SOLUTIONS as set forth above, and HERNANDEZ, and those similarly situated, are entitled to recover double damages.

² Subject to discovery, Plaintiff reserves the right to make a claim for gas and mileage expenses, which the Defendants never reimbursed to Plaintiff. These expenses constituted illegal deductions to Plaintiff's wages.

15. WASTE SOLUTIONS willfully and intentionally refused to pay HERNANDEZ overtime wages as required by the law of the United States as set forth above and remains owing HERNANDEZ these overtime wages since the commencement of HERNANDEZ's employment with WASTE SOLUTIONS as set forth above.

16. HERNANDEZ has retained the law offices of the undersigned attorney to represent him in this action and is obligated to pay a reasonable attorneys' fee.

PRAYER FOR RELIEF

WHEREFORE, HERNANDEZ, and those similarly situated, request that this Honorable Court:

A. Enter judgment for HERNANDEZ, and other similarly situated, and against WASTE SOLUTIONS on the basis of WASTE SOLUTIONS' willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. and other Federal Regulations; and

B. Award HERNANDEZ actual damages in the amount shown to be due for unpaid overtime compensation for hours worked in excess of forty per week, with interest; and

C. Award HERNANDEZ an equal amount in double damages/liquidated damages; and

D. Award HERNANDEZ reasonable attorneys' fees and costs of suit; and

E. Grant such other and further relief as this Court deems equitable and just.

JURY DEMAND

HERNANDEZ, and those similarly situated, demand trial by jury of all issues triable as of right by jury.

COUNT III: FEDERAL (FLSA) STATUTORY VIOLATION PURSUANT TO 29 U.S.C. 215 (a)(3) RETALIATORY DISCHARGE AGAINST WASTE SOLUTIONS

17. HERNANDEZ re-adopts each and every factual allegation as stated in paragraphs 1 through 16 above as if set out in full herein.

18. WASTE SOLUTIONS willfully and intentionally refused to pay HERNANDEZ his legally owed wages as required by the laws of the United States and remain owing HERNANDEZ these wages as set forth above.

19. 29 U.S.C. § 206(a)(3) states that it shall be unlawful for any person “to discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or *related to this chapter*, or has testified or is about to testify in such proceeding” (emphasis added)

20. On or about December of 2016, Plaintiff complained that he needed to get paid for the 20 hours of overtime he worked when he first started working for the Defendant. Around this time, Plaintiff also complained that he should not be obligated to work through his lunch when the Defendant was deducting 30 minutes from his daily pay.

21. Plaintiff’s supervisor, Nick Pantano, confronted Plaintiff and told him that he needed to work through lunch regardless and he needed to stop complaining about unpaid overtime or else Plaintiff was going to get himself fired.

22. One of the motivating factors, which caused Plaintiff’s termination as described above, was his demand or complaint seeking the payment of overtime wages from the Defendant.

23. Alternatively, HERNANDEZ would not have been terminated but for his complaint about unpaid overtime wages.

24. WASTE SOLUTIONS’ termination of Plaintiff was in direct violation of 29 U.S.C. § 215(a)(3) and, as a direct result, Plaintiff has been damaged.

PRAYER FOR RELIEF

WHEREFORE, HERNANDEZ requests that this Honorable Court:

A. Enter a judgment against WASTE SOLUTIONS for all back wages from the date of discharge to the present date and an equal amount of back wages as liquidated damages, attorneys' fees, costs, and;

B. Reinstatement and promotion and injunctive relief prohibiting WASTE SOLUTIONS from discriminating in the manner described above, emotional distress and humiliation, and pain and suffering, front wages, as well as other damages recoverable by law under 29 U.S.C. § 216(b).

JURY TRIAL DEMAND

Plaintiff requests a trial by jury on all issues so triable.

**COUNT III: RETALIATORY DISCHARGE
UNDER 440.205, FLORIDA STATUTES**

25. Plaintiff re-adopts each and every factual allegation as stated in paragraphs 1-4 above as if set out in full herein.

26. This is an action for wrongful, retaliatory discharge of an employee in violation of Section 440.205 of the Florida Statutes.

27. This is an action for damages that exceeds \$15,000.00 exclusive of interest, attorney's fees and costs.

28. The Defendant is a corporation existing under the laws of the State of Florida and conducting business in Miami-Dade County, Florida.

29. The acts or omissions giving rise to this complaint occurred in whole or in part in Miami-Dade County, Florida.

30. All conditions precedent to bringing this action have occurred, been performed or been excused.

31. The Plaintiff has retained the undersigned counsel in order that his rights and interests may be protected. The Plaintiff has become obligated to pay the undersigned a reasonable attorney's fee.

32. At all times relevant, Plaintiff was employed by the Defendant as a welder.

33. On or about November of 2016, Plaintiff sustained a work-related injury on his lower back. Specifically, a forklift at the Defendant hit a heavy waste container and the container hit Plaintiff. The impact caused Plaintiff to get injured.

34. Plaintiff immediately notified of the accident to his supervisor, Ramon (ULN) and Plaintiff requested medical treatment. In response, Mr. Ramon instructed Plaintiff to "get an ibuprofen from Roli".

35. The above-referenced work-related injury caused Plaintiff ongoing pain and Plaintiff continued to request medical treatment, but he was ignored.

36. Approximately one week later, Plaintiff was called into a meeting with another supervisor, Nick Pantano. At the meeting, Plaintiff again reminded his supervisors that he was in need of a doctor because the pain to his lower back was not going away and this was interfering with his ability to push the waste containers.

37. In response to Plaintiff's complaint, Mr. Pantano warned that Plaintiff must stop complaining or else he would be fired.

38. Because Plaintiff did not want to lose his job, he continued working, taking pain killers and seeing his own doctors.

39. On or about February 17, 2017, Plaintiff was again called to a meeting.

40. At the meeting, Plaintiff was again confronted because he had been heard complaining about the lower back pain caused by the pushing of the waste containers.

41. Plaintiff replied that the reason he keeps complaining is because the work-related accident in November injured him to the point that he continuously undergoes pain in his lower back. Plaintiff again requested to please get medical treatment.

42. Defendant denied Plaintiff's request. In fact, not once did the Defendant offer medical treatment for Plaintiff, or upon information and belief, reported Plaintiff's accident to its insurance carrier.

43. Instead of providing medical treatment as the law mandates, the Defendant fired Plaintiff and did not allow him to re-commence work.

44. Plaintiff's injury alleged above required medical treatment.

45. Plaintiff's work prior to his discharge was satisfactory or more than satisfactory and the sole apparent reason or one of the motivating factors for the termination of Plaintiff's employment was that Plaintiff sought or attempted to seek compensation or benefits under the Workers' Compensation Law, as Plaintiff was entitled to do.

46. One of the motivating factors which caused the Plaintiff's discharge as described above, was the request and/or attempted request for worker's compensation benefits pursuant to Fla. Stat. §§ 440 et. seq.

47. Alternatively, the Plaintiff would not have been fired but for his claiming or attempt to claim worker's compensation benefits as described above.

48. The Defendant's act of discharging of Plaintiff was in direct violation of Fla. Stat. § 440.205 and, as a direct result, the Plaintiff has been damaged.

49. By reason of Defendant's wrongful act as described above, Plaintiff has been damaged in that Plaintiff has suffered lost wages and has suffered emotional distress.

50. The Defendant's conduct in wrongfully discharging Plaintiff was willful, wanton, and in reckless disregard of Plaintiff's rights and therefore Plaintiff is entitled to punitive damages.

WHEREFORE, the Plaintiff respectfully requests judgment against the Defendant WASTE SOLUTIONS for all back wages from the date of discharge and all other damages available under 440.205 Florida Statutes; and for any and all other relief that this Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff requests a trial by jury on all issues so triable.

Dated: May 15, 2017.

By: /s/ R. Martin Saenz
R. Martin Saenz, Esquire
Fla. Bar No.: 0640166
Email: msaenz@saenzanderson.com
SAENZ & ANDERSON, PLLC
20900 N.E. 30th Avenue, Ste. 800
Aventura, Florida 33180
Telephone: (305) 503.5131
Facsimile: (888) 270.5549

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

EULEXIS HERNANDEZ, and other similarly situated individuals,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

R. Martin Saenz, Esq.; Saenz & Anderson, PLLC, 20900 NE 30th Ave.,
 Ste. 800, Aventura, FL 33180; (305) 503-5131

DEFENDANTS

PROGRESSIVE WASTE SOLUTIONS OF FL, INC.,

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 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)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input 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 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 (Excludes 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	PERSONAL INJURY <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 - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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))	<input type="checkbox"/> 375 False Claims Act <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"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<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	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		FEDERAL TAX SUITS <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 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Fair Labor Standards Act, 29 U.S.C. § 201-219
 Brief description of cause:
Unpaid wages and retaliation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE **May 15, 2017** SIGNATURE OF ATTORNEY OF RECORD
s/ R. Martin Saenz, 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.Cv.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; **NOTE: 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 clerk(s) 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 six 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.
- 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 actual dollar amount 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. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

EULEXIS HERNANDEZ, and other similarly situated individuals,

Plaintiff(s)

v.

PROGRESSIVE WASTE SOLUTIONS OF FL, INC.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) PROGRESSIVE WASTE SOLUTIONS OF FL, INC. c/o CORPORATION SERVICE COMPANY 1201 HAYS STREET TALLAHASSEE, FL 32301

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: R. Martin Saenz, Esq. Saenz & Anderson, PLLC 20900 NE 30th Ave., Ste. 800 Aventura, FL 33180

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: _____

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. 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: [Progressive Waste Solutions of FL Sued for Unpaid OT, Retaliation](#)
