

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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J. CHIU, *individually and on behalf of all  
those similarly situated*,  
602 N. Blackhorse Pike  
Williamstown, NJ 08094

Plaintiff,

v.

FEDEX GROUND PACKAGE SYSTEM,  
INC.,  
1000 FedEx Drive  
Moon Township, PA 15108

Defendant.

INDIVIDUAL AND CLASS ACTION FOR  
UNPAID OVERTIME UNDER NEW  
JERSEY WAGE AND HOUR LAW

Civil Action No.:

**JURY TRIAL DEMANDED**

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**INDIVIDUAL AND CLASS ACTION COMPLAINT**

Named Plaintiff J. Chiu (hereinafter referred to as “Named Plaintiff”), individually and on behalf of those similarly situated, by and through undersigned counsel, hereby complains as follows against Defendant FedEx Ground Package System, Inc. (hereinafter referred to as “Defendant”).

**INTRODUCTION**

1. Named Plaintiff has initiated the instant action to redress Defendant’s violations of the New Jersey Wage and Hour Law (“NJWHL”). Named Plaintiff asserts that Defendant failed to pay her and other similarly situated individuals at least one and one-half times their regular rates for all hours worked more than 40 hours in a workweek due to Defendant’s policy of not including time spent in security screenings (described below) as hours worked. As a result of Defendant’s unlawful actions, Named Plaintiff and those similarly situated have suffered damages.

**PARTIES**

2. The foregoing paragraphs are incorporated herein as if set forth in full.

3. Named Plaintiff is an adult individual with an address as set forth above.

4. Defendant is a company operating in New Jersey.

5. At all times relevant herein, Defendant acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

### **JURISDICTION AND VENUE**

6. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

7. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d), because it is a class action, the amount in controversy exceeds \$5,000,000, and Named Plaintiff and Defendant are citizens of different states.

8. This Court may properly maintain personal jurisdiction over Defendants because Defendants' contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendants to comply with traditional notions of fair play and substantial justice.

9. Venue is properly laid in this judicial district pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), because Defendants reside in and/or conduct business in this judicial district and because a substantial part of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district.

10. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

### **CLASS ACTION ALLEGATIONS**

11. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Named Plaintiff brings her claims for relief to redress Defendant's violations of the New Jersey Wage and Hour Law individually and on behalf of those similarly situated.

12. Specifically, Named Plaintiff seeks to represent a class of all persons presently and formerly employed by Defendant as package handlers and/or non-exempt hourly positions who

worked in one of Defendant's New Jersey distribution centers and were subject to the wage and hour policies of Defendant, as discussed *infra*, at any point during the applicable statute of limitations period<sup>1</sup> (hereinafter members of this putative class are referred to as "Class Plaintiffs").

13. Named Plaintiff is similarly situated to Class Plaintiffs in that Named Plaintiff, like Class Plaintiffs, was/is an hourly employee of Defendant and was subjected to the wage and hour policies discussed *infra*.

14. The class is so numerous that the joinder of all class members is impracticable. Named Plaintiff does not know the exact size of the class, as such information is in the exclusive control of Defendant; however, on information and belief, the number of potential class members is more than forty (40) individuals.

15. Named Plaintiff's claims are typical of the claims of the Class Plaintiffs, because Named Plaintiff, like all Class Plaintiffs, worked for Defendant in New Jersey during the period from October 1, 2013 through the present and was subject to the same wage and hour policies described herein.

16. Named Plaintiff will fairly and adequately protect the interests of the Class Plaintiffs, because Named Plaintiff's interests are coincident with and not antagonistic to those of the class. Named Plaintiff has retained counsel with substantial experience in the prosecution of claims involving employee wage disputes.

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<sup>1</sup> On October 1, 2019, a class action was filed in the Superior Court of New Jersey and removed to the U.S. District Court for the District of New Jersey, alleging claims under the NJWHL identical to those in the instant Complaint. *See Farrell v. FedEx Ground Package System, Inc.* No. 3:19-cv-19973 (D.N.J.). On January 14, 2021, the District Court dismissed *Farrell* without prejudice following the death of the named plaintiff for whom no appropriate person to proceed in her place was identified. *See Farrell*, Doc. 34. At the time of dismissal, the District Court had not yet ruled on whether the case was suitable to proceed as a class action pursuant to Rule 23. Accordingly, the statute of limitations for the claims brought in the instant Complaint was tolled during the pendency of the *Farrell* case for Named Plaintiff and the putative class she seeks to represent here.

17. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action. The class will be easily identifiable from Defendant's records.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Such treatment will allow all similarly situated individuals to prosecute their common claims in a single forum simultaneously. Prosecution of separate actions by individual members of the putative class would create the risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for Defendant. Furthermore, the amount at stake for individual putative class members may not be great enough to enable all the individual putative class members to maintain separate actions against Defendant.

19. Questions of law and fact that are common to the members of the class predominate over questions that affect only individual members of the class. Among the questions of law and fact that are common to the class are, *inter alia*, 1) whether Defendant's failure to pay Named Plaintiff and Class Plaintiffs overtime wages for the time spent in mandatory security screenings at the beginning and end of their shifts violated the NJWHL, 2) whether Defendant had a good faith basis for failing to pay Named Plaintiff wages for time spent in the mandatory security screenings.

#### **FACTUAL BACKGROUND**

20. The foregoing paragraphs are incorporated herein as if set forth in full.

21. For several months ending in or around the winter of 2019, Named Plaintiff worked for Defendant as a package handler.

22. Named Plaintiff earned an hourly rate.

23. Throughout her employment, Named Plaintiff regularly worked at least forty (40) hours in a workweek according to Defendant's determination of her hours worked (i.e. excluding the unpaid hours worked at-issue).

24. Defendant classified Named Plaintiff as a non-exempt employee under the NJWHL.

25. Accordingly, Named Plaintiff was a non-exempt employee under the NJWHL.

26. Class Plaintiffs worked/work for Defendant in non-exempt, hourly positions and were/are subject to the same policies described herein.

27. Class Plaintiffs earned/earn an hourly wage.

28. Class Plaintiffs regularly worked/work at least 40 hours in a workweek according to Defendant's determination of their hours worked (i.e. excluding the unpaid hours worked at-issue).

29. Defendant classified/classifies Class Plaintiffs as non-exempt employees under NJWHL.

30. Accordingly, Class Plaintiffs were/are non-exempt employees under the NJWHL.

**Failure to Pay Overtime for Time Spent in Security Screenings**

31. The foregoing paragraphs are incorporated herein as if set forth in full.

32. At the beginning of each workday, Defendant required/requires Named Plaintiff and Class Plaintiffs (hereinafter collectively referred to as "Plaintiffs") to go through a security screening.

33. Defendant required/requires Plaintiffs to go through the security screening prior to clocking in.

34. At the end of each workday, Defendant required/requires Plaintiffs to go through the same security screening after clocking out.

35. Defendant compensated/compensates Plaintiffs only for hours recorded in its time clock system.

36. As Plaintiffs went/go through the security screenings off-the-clock, Defendant did/does not compensate Plaintiffs for the time it took/takes Plaintiffs to go through the security screening.

37. As Plaintiffs regularly worked/work at least forty (40) hours each workweek, excluding the time spent in security screenings, Defendant's failure to pay them for the additional time spent in the screenings resulted in Defendant paying Plaintiffs less than one and one-half times their regular rate for all hours worked over forty (40) hours in a workweek.

#### **COUNT I**

**Violations of the New Jersey Wage and Hour Law ("NJWHL")**  
**(Named Plaintiff and Class Plaintiffs v. Defendant)**  
**(Failure to Pay Overtime Wages for Time Spent in Security Screenings)**

38. The foregoing paragraphs are incorporated herein as if set forth in full.

39. At all times relevant herein, Defendant stand/stood in an Employer/Employee relationship with Named Plaintiff and Class Plaintiffs under the NJWHL.

40. At all times relevant herein, Defendant is/was responsible for paying wages to Named Plaintiff and Class Plaintiffs.

41. Pursuant to the NJWHL, all the time an employee is required to be at his or her place of work shall be counted as hours worked.

42. Defendant violated the NJWHL by failing to include the time Named Plaintiff and Class Plaintiffs spent/spend in security screenings as hours worked for the purpose of paying overtime wages.

43. Defendant's conduct in failing to pay Named Plaintiffs and Collective Plaintiffs properly was and is not an inadvertent error made in and good faith, and Defendant had no reasonable grounds for believing that the conduct was not a violation of the NJWHL.

44. As a result of Defendant's conduct, Named Plaintiff and Class Plaintiffs have suffered damages as set forth herein.

**WHEREFORE**, Named Plaintiff and Class Plaintiffs pray that this Court enter an Order providing that:

(1) Defendant is to be prohibited from continuing to maintain its illegal policy, practice or customs in violation of the New Jersey Wage and Hour Law;

(2) Defendant is to compensate, reimburse, and make Named Plaintiff and Class Plaintiffs whole for any and all pay they would have received had it not been for Defendant's illegal actions, including but not limited to past lost earnings;

(3) Named Plaintiff and Class Plaintiffs are to be awarded liquidated damages as provided by the NJWHL;

(4) Named Plaintiff and Class Plaintiffs are to be awarded the costs and expenses of this action and reasonable legal fees as provided by the NJWHL;

(5) Named Plaintiff and Class Plaintiffs are to be awarded all other relief this Court deems just and proper.

(6) Named Plaintiff's and Class Plaintiffs' claims are to receive a jury trial.

Respectfully Submitted,

*/s/ Matthew D. Miller*

Matthew D. Miller, Esq.

Justin L. Swidler, Esq.

Richard S. Swartz, Esq.

**SWARTZ SWIDLER, LLC**

1101 Kings Highway N., Ste. 402

Cherry Hill, NJ 08034

Phone: (856) 685-7420

Fax: (856) 685-7417

Date: January 26, 2021

**DEMAND TO PRESERVE EVIDENCE**

Defendant is hereby directed to preserve all physical and electronic information pertaining in any way to Named Plaintiff's and Class Plaintiffs' employment, to Named Plaintiff's and Class Plaintiffs' cause of action and/or prayers for relief, and to any defenses to same, including, but not limited to, electronic data storage, closed circuit TV footage, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages, any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, Twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

By way of example, but not limitation, Defendant is directed to preserve all video showing Named Plaintiff and/or Class Plaintiffs clocking out and passing through security screenings.

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
J. Chiu, individually and on behalf of all those similarly situated
(b) County of Residence of First Listed Plaintiff Gloucester
(c) Attorneys (Firm Name, Address, and Telephone Number) Swartz Swidler LLC Matthew D. Miller, Esq.

DEFENDANTS
Fedex Ground Package System, Inc.
County of Residence of First Listed Defendant Allegheny
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
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
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
REAL PROPERTY
TORTS
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

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 - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Violations of the New Jersey Wage and Hour Law
Brief description of cause:
Failure to pay overtime wages

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 Honorable Freda L. Wolfson, DOCKET NUMBER 3:19-cv-19973-FLW-DEA

DATE 01/26/2021 SIGNATURE OF ATTORNEY OF RECORD /s/ Matthew D. Miller

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- 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.  
 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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

District of New Jersey

J. Chiu, individually and on behalf of all those
similarly situated

Plaintiff(s)

v.

Fedex Ground Package System, Inc.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Fedex Ground Package System, Inc.,
1000 FedEx Drive
Moon Township, PA 15108

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:

Matthew D. Miller, Esq.
SWARTZ SWIDLER LLC
1101 Kings Highway North Suite 402
Cherry Hill, NJ 08034
Ph: 856-685-7420 Email: mmiller@swartz-legal.com

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: 01/26/2021

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:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims New Jersey FedEx Package Handlers Owed Unpaid OT for Security Screenings](#)

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