

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

NOV 08 2019

JAMES W. McCORMACK, CLERK  
By:  DEP. CLERK  
PLAINTIFF

**CARL MARTINOUS, Individually and on  
Behalf of All Others Similarly Situated**

vs.

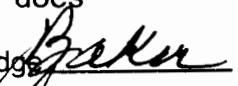

No. 4:19-cv-791-KGB

**FEDEX GROUND PACKAGE SYSTEM, INC.**

**DEFENDANT**

**ORIGINAL COMPLAINT—COLLECTIVE ACTION**

COMES now Plaintiff Carl Martinous, individually and on behalf of all others similarly situated, by and through his attorneys Sean Short and Josh Sanford of Sanford Law Firm, PLLC, and for his Original Complaint—Collective Action against Defendant FedEx Ground Package System, Inc. (“Defendant”), and in support thereof he does hereby state and allege as follows:

This case assigned to District Judge   
and to Magistrate Judge 

**I. PRELIMINARY STATEMENTS**

1. This is an action brought by Plaintiff individually and on behalf of all others similarly situated.

2. The proposed Section 216 class is composed entirely of employees who are or were a Human Resource Business Partner for Defendant, who, during the applicable time period, worked for Defendant and were denied their fundamental rights under the FLSA.

3. The proposed Section 216 class will seek recovery of monetary damages for all overtime worked by Plaintiff and the class members.

4. Plaintiff, both individually and on behalf of all others similarly situated,

brings this action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"), for declaratory judgment, monetary damages, liquidated damages, prejudgment interest, and costs, including reasonable attorney's fees as a result of Defendant's commonly applied policy and practice of failing to pay Plaintiff and all others similarly situated overtime compensation for the hours in excess of forty (40) hours in a single week that they were/are made to work.

5. Upon information and belief, for at least three (3) years prior to the filing of this Complaint, Defendant has willfully and intentionally committed violations of the FLSA as described, *infra*.

6. Plaintiff files herewith his own written Consent to Join this lawsuit pursuant to Section 216 of the FLSA.

## **II. JURISDICTION AND VENUE**

7. The United States District Court for the Eastern District of Arkansas has subject matter jurisdiction over this suit under the provisions of 28 U.S.C. § 1331 because this suit raises federal questions under the FLSA.

8. Plaintiff's claims under the AMWA form part of the same case or controversy and arise out of the same facts as the FLSA claims alleged in this Complaint.

9. Therefore, this Court has supplemental jurisdiction over Plaintiff's AMWA claims pursuant to 28 U.S.C. § 1367(a).

10. The acts complained of herein were committed and had their principal effect against Plaintiff within the Western Division of the Eastern District of Arkansas; therefore, venue is proper within this District pursuant to 28 U.S.C. § 1391.

11. Defendant does business in this district and a substantial part of the events alleged herein occurred in this District.

12. The witnesses to overtime violations alleged in this Complaint reside in this District.

13. On information and belief, the payroll records and other documents related to the payroll practices that Plaintiff challenges are located in this District.

### **III. THE PARTIES**

14. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

15. Plaintiff Carl Martinous is a citizen and resident of Saline County.

16. Plaintiff worked for Defendant as a Human Resource Business Partner from February 15, 2013, until August 2, 2018.

17. At all times material herein, Plaintiff has been entitled to the rights, protection and benefits provided under the FLSA and AMWA.

18. Defendant is a for-profit, foreign corporation, providing its customers with packaging, shipping and logistics services.

19. Defendant's annual gross volume of sales made or business done was not less than \$500,000.00 (exclusive of exercise taxes at the retail level that are separately stated) during each of the three calendar years preceding the filing of this Complaint.

20. During each of the three years preceding the filing of this Complaint, Defendant employed at least two individuals who were engaged in interstate commerce or in the production of goods for interstate commerce, or had employees handling,

selling, or otherwise working on goods or materials that had been moved in or produced for commerce by any person.

21. Defendant's foreign address is 1209 Orange Street, Wilmington, Delaware 19801.

22. Defendant's registered agent for service of process is CT Corporation System, 124 West Capitol Avenue, Suite 1900, Little Rock, Arkansas 72201.

23. Defendant was at all times relevant hereto Plaintiff's employer, as well as the employer of the members of the proposed class and is and has been engaged in interstate commerce as that term is defined under the FLSA and AMWA.

24. Within the past three (3) years preceding the filing of this Complaint, Defendant continuously employed at least four employees, including Plaintiff.

#### **V. FACTUAL ALLEGATIONS**

25. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated herein.

26. Plaintiff worked as a Human Resource Business Partner for Defendant from February 15, 2013, until August 2, 2018.

27. Plaintiff was classified as a salaried employee for the duration of his employment.

28. Upon commencement of work for Defendant, Plaintiff did not sign any contract of employment setting forth his hours or wages. His annual compensation was not less than \$455.00 per week nor more than \$100,000.00 per year.

29. In performing his services for Defendant, Plaintiff was not required to utilize any professional education relevant to his job duties.

30. Plaintiff's primary duties as a Human Resource Business Partner involved taking orders from one of Defendant's Human Resource Managers.

31. As a Human Resource Business Partner, Plaintiff's work was closely observed and Plaintiff had no authority in his role.

32. Plaintiff had no authority to bind Defendant financially or otherwise.

33. Plaintiff did not devise, implement, or propose changes employment policies.

34. During the course of his employment, Plaintiff did not manage the enterprise or a customarily recognized subdivision of the enterprise.

35. Plaintiff did not select any employees for hire nor did he provide any formal training for any employee. Plaintiff had no ability to hire and fire any employee.

36. Plaintiff did not have any control of or authority over any employee's rate of pay or working hours.

37. Plaintiff did not maintain or prepare production reports or sales records for use in supervision or control of the business.

38. Plaintiff did not have any responsibility for planning or controlling budgets.

39. Plaintiff and Defendant had no agreement that his salary would be the entirety of his pay, nor did they agree that Plaintiff's salary was intended to cover all hours worked.

40. Plaintiff did not receive overtime premiums for hours worked in excess of 40 in a workweek.

41. Plaintiff worked more than 40 hours in almost all workweeks during which he was employed by Defendant.

## **VI. REPRESENTATIVE ACTION ALLEGATIONS**

42. Plaintiff brings this claim for relief for violation of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons similarly situated as Human Resource Business Partners who were, are or will be employed by Defendant and were improperly misclassified as exempt from payment of the overtime premium at any time within the applicable statute of limitations period, who are entitled to payment for overtime wages which Defendant failed to pay due to the intentional misclassification of Plaintiff and of those similarly situated.

43. Plaintiff asserts violations of the FLSA on behalf of all persons who were employed by Defendant as Human Resource Business Partners and who were misclassified (as exempt, but were in fact non-exempt) salaried employees from three years prior to the date of the filing of this lawsuit, through the time of the trial of this case.

44. Plaintiff is unable to state the exact number of the class but believe that the class membership exceeds 50 persons. Defendant can readily identify the members of the class, who are a certain portion of the current and former employees.

45. The names and physical and mailing addresses of the probable FLSA collective action Plaintiffs are available from Defendant, and notice should be provided to the probable FLSA collective action Plaintiffs via first class mail to their last known physical and mailing addresses as soon as possible.

46. The email addresses of many of the probable FLSA collective action Plaintiffs are available from Defendant, and notice should be provided to the probable

FLSA collective action Plaintiffs via email to their last known email address as soon as possible.

47. The proposed FLSA class members are similarly situated in that they have been subject to uniform practices by Defendant which violated the FLSA, including:

A. Defendant's uniform misclassification of them as exempt employees under the FLSA; and

B. Defendant's failure to pay members of the class overtime compensation in violation of the FLSA, 29 U.S.C. § 201 et seq.

**VII. FIRST CLAIM FOR RELIEF**  
**(Individual Claim for Violation of FLSA)**

48. Plaintiff repeats and re-alleges all the preceding paragraphs of this Original Complaint above, as if fully set forth herein.

49. Defendant intentionally misclassified Plaintiff as exempt from overtime compensation.

50. Defendant deprived Plaintiff of overtime compensation for all of the hours over forty (40) per week in violation of the FLSA.

51. Defendant's conduct and practices, as described above, were willful, intentional, unreasonable, arbitrary and in bad faith.

52. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff for monetary damages, liquidated damages and costs, including reasonable attorney's fees provided by the FLSA for all violations which occurred beginning at least three (3) years preceding the filing of Plaintiff's initial complaint, plus periods of equitable tolling.

53. Alternatively, should the Court find that Defendant acted in good faith in

failing to pay Plaintiff as provided by the FLSA, Plaintiff is entitled to an award of prejudgment interest at the applicable legal rate.

**VIII. SECOND CLAIM FOR RELIEF  
(Individual Claim for Violation of the AMWA)**

54. Plaintiff repeats and re-alleges all the preceding paragraphs of this Original Complaint as if fully set forth in this section.

55. Plaintiff asserts this claim for damages and declaratory relief pursuant to the AMWA, Ark. Code Ann. §§ 11-4-201, et seq.

56. At all relevant times, Defendant was Plaintiff's "employer" within the meaning of the AMWA, Ark. Code Ann. § 11-4-203(4).

57. Arkansas Code Annotated §§ 11-4-210 and 211 require employers to pay all employees a minimum wage for all hours worked up to forty in one week and to pay one and one-half times regular wages for all hours worked over forty hours in a week, unless an employee meets the exemption requirements of 29 U.S.C. § 213 and accompanying Department of Labor regulations.

58. Defendant failed to pay all wages owed, as required under the AMWA.

59. Despite the entitlement of Plaintiff to payment of a lawful minimum wage and overtime payments under the AMWA, Defendant failed to pay Plaintiff a lawful minimum wage and failed to pay Plaintiff a lawful overtime premium.

60. Defendant's conduct and practices, as described above, were willful, intentional, unreasonable, arbitrary and in bad faith.

61. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff for monetary damages, liquidated damages, costs, and a reasonable attorney's fee provided by the AMWA for all violations which occurred within the three (3) years



prior to the filing of this Complaint, plus periods of equitable tolling.

62. Alternatively, should the Court find that Defendant acted in good faith in failing to pay Plaintiff as provided by the AMWA, Plaintiff is entitled to an award of prejudgment interest at the applicable legal rate.

**IX. THIRD CLAIM FOR RELIEF**  
**(Collective Action Claim for Violation of FLSA)**

63. Plaintiff repeats and re-alleges all the preceding paragraphs of the Original Complaint above, as if fully set forth herein.

64. Defendant required Plaintiff and similarly situated members of the class to work in excess of forty (40) hours each week but failed to pay Plaintiff and the class members overtime compensation for all of the hours in excess of forty (40) in each workweek.

65. Defendant deprived Plaintiff and the class members overtime compensation for all of the hours over forty (40) per week, in violation of the FLSA.

66. Because these employees are similarly situated to Plaintiff, and are owed overtime for the same reasons, the proposed collective is properly defined as follows:

**All Human Resource Business Partners within the past three years.**

67. Defendant's conduct and practice, as described above, were/are willful, intentional, unreasonable, arbitrary and in bad faith.

68. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff and similarly situated members of the class for monetary damages, liquidated damages and costs, including reasonable attorney's fees provided by the FLSA.

## X. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff Carl Martinous, individually and on behalf of all others similarly situated, respectfully prays for declaratory relief and damages as follows:

(a) That Defendant be summoned to appear and answer herein;

(b) That Defendant be required to account to Plaintiff, the class members, and the Court for all of the hours worked by Plaintiff and the class members and all monies paid to them;

(c) A declaratory judgment that Defendant's practices alleged herein violate the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, and attendant regulations at 29 C.F.R. § 516 *et seq.*;

(d) Certification of, and proper notice to, together with an opportunity to participate in the litigation, all qualifying current and former employees;

(e) Judgment for damages for all unpaid overtime compensation under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, and attendant regulations at 29 C.F.R. § 516 *et seq.*;

(f) Judgment for liquidated damages pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, and attendant regulations at 29 C.F.R. § 516 *et seq.*, in an amount equal to all unpaid overtime compensation owed to Plaintiff and members of the Class during the applicable statutory period;

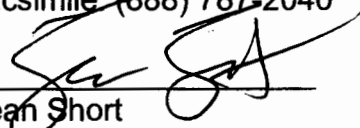
(g) An order directing Defendant to pay Plaintiff and members of the Class prejudgment interest, reasonable attorney's fees and all costs connected with this action; and

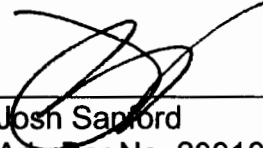
(h) Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

**CARL MARTINOUS, Individually  
and on Behalf of All Others  
Similarly Situated, PLAINTIFF**

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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

**CARL MARTINOUS, Individually and on  
Behalf of All Others Similarly Situated**

**PLAINTIFF**

vs.

No. 4:19-cv-791-BSM

**FEDEX GROUND PACKAGE SYSTEM, INC.**

**DEFENDANT**

**CONSENT TO JOIN COLLECTIVE ACTION**

I am/was employed as salaried Human Resource Business Partner for FedEx Ground Package System, Inc., during part of the three years prior to the signing of this Consent. I understand this lawsuit is brought under the Fair Labor Standards Act for unpaid wages and other relief. I consent to becoming a party-plaintiff in this lawsuit, to be represented by Sanford Law Firm, PLLC, and to be bound by any settlement of this action or adjudication by the Court.

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



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Date: November 8, 2019

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Collective Action Claims FedEx Owes Unpaid Overtime After Misclassifying Human Resource Workers](#)

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