

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

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)	
In re FEDEX GROUND PACKAGE)	
SYSTEM, INC., EMPLOYMENT)	Case No. 3:05-MD-527 RM
PRACTICES LITIGATION)	(MDL 1700)
)	
-----)	CHIEF JUDGE MILLER
THIS DOCUMENT RELATES TO:)	MAGISTRATE NUECHTERLEIN
)	
<i>Genaro Vargas, et al. v. FedEx Ground</i>)	
<i>Package System, Inc.,</i>)	
Civil No. 3:07-cv-00325-RLM-CAN (MA))	
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FIRST AMENDED CLASS ACTION COMPLAINT

I. INTRODUCTION

This is a class action brought on behalf of current and former pickup and delivery drivers for FedEx Ground Package System, Inc. and FedEx Home Delivery (collectively “FedEx Ground” or “Defendants”) who have been eligible for overtime pay under the laws of the states where they work, but have been deprived of such pay based upon their misclassification as independent contractors. As set forth below, FedEx Ground has misclassified thousands of pick-up and delivery drivers across the country as independent contractors. Many of these drivers are eligible for overtime pay, as they fall under an exception to the Motor Carrier Act Exemption from overtime pay under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §213(b)(1). Under this exception, created August 10, 2005, trucks weighing less than 10,001 pounds are no longer defined to be “motor private carriers,” 49 U.S.C. § 13105, and their drivers are

thus entitled to overtime pay under the FLSA. Many states have adopted the Motor Carrier Act Exemption for their own overtime laws, or utilize an equivalent motor carrier exemption, and, thus, those laws now require overtime pay for drivers whose trucks are under 10,001 pounds. Plaintiff Genaro Vargas and the other named plaintiffs listed below bring this class action on behalf of themselves and other similarly situated FedEx Ground and Home Delivery drivers who, since August 10, 2005, have driven trucks weighing less than 10,001 pounds in those states that have a motor carrier exemption in their overtime laws and thus are eligible for overtime pay under state law, or which otherwise require overtime pay for such work.

II. PARTIES

1. Plaintiff Genaro Vargas is an adult resident of Lawrence, Massachusetts. Mr. Vargas has worked as a FedEx Home Delivery driver since March 2001.

2. Andy Parker is an adult resident of Central Lake, Michigan. He worked as a FedEx Home Delivery driver from 2005 to June of 2006.

3. Michael Vosbein is an adult resident of West Frankfurt, Illinois. He worked as a FedEx Home Delivery driver from 2001 to February of 2006.

4. Tim Ketterhagen is an adult resident of Burlington, Wisconsin. He worked as a FedEx Home Delivery driver from 2004 until February of 2007.

5. Ya Vang is an adult resident of LaCrosse, Wisconsin. He has worked as a FedEx Home Delivery driver from June of 2006 through July of 2007.

6. Michael Wise is an adult resident of Kalispell, Montana. He has worked as a FedEx Home Delivery driver since 2006.

7. Jeff Smith is an adult resident of Williamstown, New Jersey. He has worked as a FedEx Home Delivery driver since March 2003.

8. Ernest Neal III is an adult resident of Collingswood, New Jersey. He has worked as a FedEx Home Delivery driver since April 2004.

9. All of the named plaintiffs have driven vehicles for FedEx weighing less than 10,001 pounds.

10. The named plaintiffs brings this action on their own behalf and on behalf of others similarly situated, including FedEx Ground and Home Delivery drivers who have driven trucks weighing less than 10,001 pounds in those states that have adopted the federal Motor Carrier Act Exemption or which otherwise require overtime pay for such drivers. The class meets all of the requirements of Rule 23 of the Federal Rules of Civil Procedure. Drivers who are members of classes for whom this claim has already been asserted and certified as a class claim may be excluded from this class.

11. Defendant FedEx Ground Package System, Inc. and its division, FedEx Ground Package System, Inc. d/b/a FedEx Home Delivery is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania. At all times relevant, FedEx Ground, an affiliate of Defendant FedEx Corp., engaged in transportation and delivery services in every state in the United States.

III. JURISDICTION

12. Jurisdiction is invoked pursuant to 28 U.S.C. § 1332(d)(2), as amended by Public Law 109-2, 119 Stat. 4 (2005).

IV. STATEMENT OF FACTS

13. FedEx Ground, as an affiliate of FedEx Corporation, employs thousands of drivers across the United States to pick up and deliver packages to customers of the Defendants.

14. FedEx Ground purports to classify its pickup and delivery drivers as independent contractors. However, these workers are in fact employees under the Fair Labor Standards Act and state overtime laws (1) that have adopted the FLSA Motor Carrier Act Exemption, or (2) which otherwise require such drivers to be paid overtime.

15. These laws generally utilize an “economic reality test” for determining whether workers are employees or independent contractors.

16. Under the “economic reality test,” and other tests for determining employee status, FedEx Ground drivers are employees.

17. Though FedEx Ground drivers sign an Operating Agreement that labels them as independent contractors, the behavioral and financial control manifested over the drivers by the Defendants demonstrates that the drivers are employees rather than independent contractors. Such control includes, but is not limited to, the following matters:

- A. Defendants employ supervisors and managers who have supervisory responsibility over the drivers and assign and direct

their work. These supervisors and managers work in the terminals where the drivers report to retrieve the packages that they deliver for the Defendants' customers in furtherance of the Defendants' business operations.

- B. The drivers are required to comply with the Defendants' instructions in terms of written and unwritten policies, procedures, and directives appearing in the Agreement and unilaterally promulgated by the Defendants from time to time regarding the completion of the drivers' duties. Drivers suffer financial penalties and/or disciplinary actions for failure to comply with such policies, procedures, and directives.
- C. Upon starting to work for the Defendants, the drivers receive training in the Defendants' policies and procedures, in the documentation the Defendants require of drivers, and in the technology the Defendants' mandate the drivers to use in the performance of their work for the Defendants.
- D. Though the drivers are required to purchase the vehicles they use in working for the Defendants and to purchase the uniforms they wear in performing said work, the Defendants require that the drivers adorn their vehicles and uniforms with the Defendants' logo and effectively prohibit the drivers from using their vehicles or uniforms for other business while so adorned. Such requirement

prevents the drivers from using their purchased vehicles and uniforms to offer services to the general public.

- E. In addition to paying the drivers for each package picked up and/or delivered, the Agreement provides that the Defendants will pay the drivers a set amount for each day that the driver provides services to the Defendants as well as a premium for the drivers' time when the drivers' route contains a small amount of package deliveries. Such payments are made to the drivers each week. Thus, their pay is based, not simply by the job, but by the time spent working.
- F. Though the Agreement purports to give the drivers proprietary control over their routes, the Defendants change the drivers' routes from time to time without the drivers' permission and prohibit the drivers from selling their routes or having other individuals perform in their place without the express prior approval of the Defendants.

18. FedEx Ground drivers routinely work in excess of 40 hours per week.

19. However, because of their misclassification as independent contractors, even those eligible for overtime pay do not receive one and one-half times their regular rate for hours worked in excess of 40 hours per week.

COUNT I

(Overtime Violations)

Defendants' knowing and willful failure to pay one and one half times the regular rate for hours in excess of forty per week to drivers who are eligible for overtime pay (namely those who have driven trucks weighing less than 10,001 pounds since August 10, 2005) violates the laws of the states that (1) have adopted the federal Motor Carrier Act Exemption, or (2) otherwise require that such drivers be paid overtime.

JURY DEMAND

Plaintiffs request a trial by jury on all their claims.

WHEREFORE, Plaintiffs request that this Court enter the following relief:

1. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
2. Certification of subclasses of FedEx Ground drivers who performed work in states for which subclasses may contribute to the manageability of this litigation;
3. Restitution for all overtime pay owed to class members;
4. Statutory enhancement of damages as allowed by law;
5. Any other relief to which the plaintiffs and class members may be entitled.

Dated: August 30, 2007

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

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CERTIFICATE OF SERVICE

I, Susan E. Ellingstad, hereby certify that on August 30, 2007, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which sent notification of such filings to the following:

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