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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

MITCH SPENCER, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

FEDEX GROUND PACKAGE SYSTEM,
INC.

Defendant.

NO.

CLASS ACTION COMPLAINT

Plaintiff Mitch Spencer, by his undersigned attorneys, for this class action complaint against Defendant FedEx Ground Package System, Inc. (“FedEx”), alleges as follows:

I. INTRODUCTION

1.1 Nature of Action. Plaintiff Mitch Spencer brings this class action against FedEx for engaging in a systematic scheme of wage and hour abuse against FedEx drivers in Washington who pick up and deliver packages for FedEx but who are paid by nominal employers that FedEx identifies as “Delivery Contractors.” FedEx’s scheme has involved, among other things, failing to pay drivers required overtime compensation for hours worked beyond 40 each week and failing to provide drivers required rest breaks and meal breaks.

II. JURISDICTION AND VENUE

1
2 2.1 Jurisdiction. FedEx is within the jurisdiction of this Court. FedEx is registered
3 to do business in Washington State and does business in Washington State. Thus, FedEx has
4 obtained the benefits of the laws of Washington as well as Washington's commercial and labor
5 markets.

6 2.2 Venue. Venue is proper in King County because FedEx operates and transacts
7 business in King County, and Plaintiff performed work for FedEx in King County.

8 2.3 Governing Law. The claims of Plaintiff and the Class members asserted in this
9 class action complaint are brought solely under state law causes of action and are governed
10 exclusively by Washington law.

III. PARTIES

11 3.1 Plaintiff Mitch Spencer. Plaintiff is a citizen of Washington State. He has
12 worked as a second-tier package pick-up and delivery driver for FedEx on a single route since
13 2011. During this time, Plaintiff's duties for FedEx have not changed. Plaintiff has driven
14 essentially the same single route for FedEx, though different so-called "contractor" companies
15 have "owned the route" at different times and have paid Plaintiff. Plaintiff has had very little
16 contact with these "contractor" companies, but Plaintiff has had regular contact with FedEx
17 every day he has delivered packages for FedEx. Plaintiff has often worked between 65 and 70
18 hours per week (and has almost always worked over 40 hours per week) as a delivery driver for
19 FedEx, but he has never received overtime pay. In addition, FedEx has failed to provide
20 Plaintiff with a paid ten-minute rest break for every four hours of work and has required
21 Plaintiff to work more than three consecutive hours without a rest break. FedEx has also failed
22 to provide Plaintiff with a thirty-minute meal break for every five hours worked and has failed
23 to provide Plaintiff a second thirty-minute meal break when he works more than eleven hours
24 in a day. Plaintiff is an employee of FedEx for purposes of the Washington Minimum Wage
25 Act ("MWA").
26

- 1 b. Whether FedEx has engaged in a common course of failing to properly
2 compensate Class members for all hours worked, including overtime;
- 3 c. Whether FedEx has engaged in a common course of failing to provide
4 Class members with a ten-minute rest break for every four hours of work;
- 5 d. Whether FedEx has engaged in a common course of requiring Class
6 members to work more than three consecutive hours without a rest break;
- 7 e. Whether FedEx has engaged in a common course of failing to pay Class
8 members an additional ten minutes of compensation for each rest break the members miss;
- 9 f. Whether FedEx has engaged in a common course of failing to provide
10 Class members with a thirty-minute meal break for every five hours of work;
- 11 g. Whether FedEx has engaged in a common course of failing to provide
12 Class members with a second thirty-minute meal break when they work more than eleven hours
13 in a day;
- 14 h. Whether FedEx has violated RCW 49.46.130;
- 15 i. Whether FedEx has violated RCW 49.46.090;
- 16 j. Whether FedEx has violated RCW 49.52.050;
- 17 k. Whether FedEx has violated RCW 49.12.020;
- 18 l. Whether FedEx has violated WAC 296-126-092; and
- 19 m. The nature and extent of class-wide injury and the measure of
20 compensation for such injury.

21 4.4 Typicality. Plaintiff's claims are typical of the claims of the Class. Plaintiff has
22 performed services for FedEx in Washington as a package pick-up and delivery driver and has
23 worked directly for FedEx "Delivery Contractors" that have Operating Agreements with
24 FedEx, and thus Plaintiff is a member of the Class. Plaintiff's claims, like the claims of the
25 Class, arise out of the same common course of conduct by FedEx and are based on the same
26 legal and remedial theories, including that FedEx is a joint employer under the MWA.

1 these duties while wearing FedEx uniforms, using FedEx scanners, and driving FedEx trucks.
2 Indeed, Plaintiff and Class members have been dependent on FedEx for virtually every aspect
3 of their jobs. Although Plaintiff and Class members ostensibly work for so-called “Delivery
4 Contractors” who “own” FedEx routes, FedEx has retained and exercised control over the
5 manner and means by which Plaintiff and Class members perform their jobs.

6 5.1.2. All Class members work for one of two divisions of FedEx: FedEx
7 Ground or FedEx Home Delivery. In all material respects, the terms and conditions of
8 employment of Class members are substantially the same regardless of the division for which
9 they work.

10 5.1.3. FedEx controls employee schedules and work hours by, among other
11 things, (1) requiring drivers to abide by Department of Transportation work-hour limitations;
12 (2) disciplining drivers who record more than the allowable number of hours per day on their
13 scanners; (3) requiring drivers to deliver or pick up packages within certain time frames; (4)
14 requiring drivers to begin their work days at the FedEx terminal, where they must sort their
15 packages alongside FedEx terminal employees; (5) requiring drivers to check in with FedEx
16 management employees each morning to pick up scanners and documentation necessary for
17 their work (including, for example, pick-up lists and delivery maps); and (6) determining which
18 and how many packages the drivers have to deliver each day.

19 5.1.4. FedEx requires drivers to inform FedEx officials when they cannot
20 deliver packages.

21 5.1.5. FedEx maintains detailed records through its scanner systems and
22 security gates that track each driver’s status, start time, end time, and package delivery times.

23 5.1.6. FedEx requires that drivers obtain FedEx approval—including passing a
24 strict FedEx background check—to deliver packages for FedEx.

25 5.1.7. FedEx maintains customer complaint and satisfaction records for drivers.
26

1 5.1.8. The work of drivers is one small step—collecting and delivering
2 packages—in the sequence of steps necessary to FedEx’s business model. This job does not
3 require a high level of skill.

4 5.1.9. Responsibility for package pick-up and delivery along a single route
5 passes from one “Delivery Contractor” to another without any material changes; indeed,
6 Plaintiff has performed package pick-up and delivery along the same route for FedEx for over
7 three years even though three different “Delivery Contractors” have ostensibly “owned” the
8 route and paid Plaintiff for his work. Regardless of who acted as the “Delivery Contractor,” the
9 work Plaintiff and Class members performed for FedEx remained the same. Route contracts
10 are routinely transferred to new “Delivery Contractors” without any change to the second-tier
11 drivers who actually deliver the packages on those routes.

12 5.1.10. Drivers use the premises and equipment of FedEx for their work.
13 Plaintiff and Class members regularly start and end their workday at the FedEx terminal. They
14 interact with terminal employees when sorting packages at the FedEx terminal, and they
15 interact with terminal managers each morning when picking up their scanners and daily pick-up
16 list.

17 5.1.11. FedEx has made a considerable investment in equipment and materials
18 necessary for the work of Plaintiff and Class members. Among other things, FedEx provides
19 scanners for drivers to record their work time and deliveries, customer service department
20 employees to handle customer complaints and inquiries, the package delivery infrastructure in
21 which drivers work, and the terminal necessary for the drivers’ work.

22 5.1.12. Plaintiff and Class members do not have the ability to service multiple
23 delivery companies simultaneously. Their work is limited to delivery for FedEx, and they
24 cannot work for other delivery companies while servicing FedEx routes. The drivers have no
25 opportunity for profit or loss depending on their managerial skill.

1 5.1.13. Plaintiff and Class members have had no possibility of promotion within
2 FedEx based on their work efficiency.

3 5.1.14. The economic reality is that Plaintiff and Class members are dependent
4 on FedEx—the entity to which they render package pick-up and delivery services—for
5 virtually every aspect of their jobs.

6 5.1.15. The package pick-up and delivery services of Plaintiff and Class
7 members are an integral part of the FedEx’s business.

8 5.2 Common Course of Conduct: Overtime Violations. As the joint employer of
9 Plaintiff and Class members, FedEx has engaged in, and continues to engage in, a common
10 course of wage and hour abuse against second-tier package pick-up and delivery drivers in
11 Washington, including as described below:

12 5.2.1. FedEx’s common course of wage and hour abuse includes failing and
13 refusing to pay overtime compensation to Plaintiff and Class members—that is, one and one-
14 half times the regular rate for all hours worked over 40 in any workweek.

15 5.2.2. Plaintiff and Class members are entitled to one and one-half times the
16 regular rate of pay for all hours worked in excess of 40 hours per week.

17 5.2.3. FedEx refuses to recognize Plaintiff and Class members as employees
18 and thus fails to pay them overtime wages when they work over 40 hours per week.

19 5.2.4. FedEx fails to pay its “Delivery Contractors” a sufficient amount to
20 ensure the Delivery Contractors can pay all required overtime wages to second-tier package
21 pick-up and delivery drivers.

22 5.2.5. FedEx has had actual or constructive knowledge of the fact that Plaintiff
23 and Class members work more than 40 hours per week and are not being properly compensated
24 for all overtime hours worked.

25 5.3 Common Course of Conduct: Failure to Provide Proper Rest Breaks. FedEx
26 does not provide Plaintiff and Class members with a ten-minute rest break for every four hours

1 of work and requires or permits Plaintiff and Class members to work more than three
2 consecutive hours without a rest break.

3 5.3.1. FedEx does not provide ten minutes of additional pay for each rest break
4 Plaintiff and Class members miss.

5 5.3.2 Each time an employee misses a rest break, FedEx receives the benefit of
6 10 minutes of work without paying for the hours worked.

7 5.3.3 Plaintiff and Class members do not have time to take the rest breaks to
8 which they are entitled because they have so many packages to deliver and/or pick up each day.

9 5.3.4 FedEx has had actual or constructive knowledge of the fact that Plaintiff
10 and Class members are not provided with a ten-minute rest break for every four hours of work,
11 are required to work more than three consecutive hours without a rest break, and are not
12 provided ten minutes of additional pay for each rest break they miss.

13 5.4 Common Course of Conduct: Failure to Provide Proper Meal Breaks. FedEx
14 does not provide Plaintiff and Class members with a thirty-minute meal break for every five
15 hours of work and requires or permits Plaintiff and Class members to work more than five
16 consecutive hours without a meal break. Moreover, FedEx does not provide Plaintiff and Class
17 members with a second thirty-minute meal break when they work more than eleven hours in a
18 day.

19 5.4.1 FedEx requires or permits Plaintiff and Class Members to remain on
20 duty in the interest of FedEx while driving a FedEx truck and delivering packages for FedEx.

21 5.4.2 Plaintiff and Class Members regularly are not able to take the thirty-
22 minute meal breaks to which they are entitled because of the amount of work they must do each
23 day, and they regularly must eat while “on-the-go” and while driving in order to ensure that
24 they can deliver all packages FedEx requires them to deliver.

1 sovereign power declares that inadequate wages and unsanitary conditions of labor exert such
2 pernicious effect.”

3 7.4 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in
4 any industry or occupation within the state of Washington under conditions of labor detrimental
5 to their health.”

6 7.5 Pursuant to RCW 49.12.005 and WAC 296-126-002, “conditions of labor”
7 “means and includes the conditions of rest and meal periods” for employees.

8 7.6 WAC 296-126-092 provides that employees shall be allowed certain paid rest
9 periods during their shifts. WAC 296-126-092 further provides that employees shall be
10 allowed certain meal periods during their shifts.

11 7.7 By the actions alleged above, including the failure to provide Plaintiff and Class
12 members with proper rest and meal periods, FedEx has violated the provisions of
13 RCW 49.12.020 and WAC 296-126-092.

14 7.8 As a result of these unlawful, Plaintiff and the Class have been deprived of
15 compensation in amounts to be determined at trial, and Plaintiff and the Class are entitled to the
16 recovery of such damages, including interest thereon, as well as attorneys’ fees pursuant to
17 RCW 49.48.030 and costs.

18 **VIII. THIRD CLAIM FOR RELIEF**
19 **(Violation of RCW 49.52.050 — Willful Refusal to Pay Wages)**

20 8.1 Plaintiff realleges and incorporates by reference each and every allegation set
21 forth in the preceding paragraphs.

22 8.2 RCW 49.52.050 provides that any employer or agent of any employer who,
23 “[w]ilfully and with intent to deprive the employee of any party of his wages, shall pay any
24 employee a lower wage than the wage such employer is obligated to pay such employee by any
25 statute, ordinance, or contract” shall be guilty of a misdemeanor.
26

1 G. Award Plaintiff and the Class compensatory and exemplary damages, as allowed
2 by law;

3 H. Award Plaintiff and the Class attorneys' fees and costs, as allowed by law;

4 I. Award Plaintiff and the Class prejudgment and post-judgment interest, as
5 provided by law;

6 J. Permit Plaintiff and the Class leave to amend the Complaint to conform to the
7 evidence presented at trial; and

8 K. Grant such other and further relief as the Court deems necessary, just, and
9 proper.

10 RESPECTFULLY SUBMITTED AND DATED this 4th day of November, 2014.

11 TERRELL MARSHALL DAUDT & WILLIE PLLC

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