UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SIRKERRA FARRELL, individually and on behalf of those similarly situated, Plaintiff, v. FEDEX GROUND PACKAGE SYSTEM, INC., Defendant.	Civ. Action No. 19-19973 (FLW) **ORDER**

THIS MATTER having been opened to the Court on two separate motions: (1) the motion of Plaintiff Sirkerra Farrell ("Plaintiff") to remand this action to the Superior Court of New Jersey, Middlesex County, pursuant to 28 U.S.C. § 1447 ("Motion to Remand") [*see* ECF No. 7]; and (2) the motion of Defendant FedEx Ground Package System, Inc. ("FedEx Ground") to dismiss the Amended Complaint of Plaintiff, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Motion to Dismiss") [*see* ECF No. 9]; it appearing that FedEx Ground opposes the Motion to Remand [*see* ECF No. 14], and Plaintiff opposes the Motion to Dismiss [*see* ECF No. 15]; the Court, having considered the parties' submissions with respect to both motions, pursuant to Rule 78 of the Federal Rules of Civil Procedure, makes the following findings:

Background and Procedural History

1. On October 1, 2019, Plaintiff commenced this putative class action, on behalf of herself and those similarly situated, against FedEx Corporation by filing a complaint in the Superior Court of New Jersey, Middlesex County. [*See* ECF No. 1.] On October 18, 2019, Plaintiff amended her complaint (the "Amended Complaint") to substitute FedEx Ground as the only named defendant. [*Id.*]

2. In the operative Amended Complaint, Plaintiff asserts a single claim against FedEx Ground for violation of the New Jersey Wage and Hour Law ("NJWHL"). [Am. Compl. ¶¶ 34-40.] In support of her claim, Plaintiff alleges that FedEx Ground employed Plaintiff as a non-exempt "package handler . . . [f]or around three or four months ending in or around June 2019." [*Id.* ¶ 17, 20-21.] According to the Amended Complaint, FedEx Ground required Plaintiff to undergo required security screenings twice each workday: at the beginning of each workday to enter her workplace, before clocking in, and at the end of each workday to exit her workplace, after clocking out. (*Id.* ¶¶ 28-33.) Plaintiff alleges that FedEx Ground did not compensate her for the time she spent going through these security screenings. (*Id.* ¶ 32.) Plaintiff further asserts that, because she "regularly worked[] at least forty (40) hours each workweek, excluding the time [she] spent in security screenings," FedEx Ground violated the NJWHL by failing to include time spent in security screenings as "hours worked" for the purpose of calculating overtime wages. [*Id.* ¶¶ 33, 38.]

3. On November 7, 2019, FedEx Ground removed this action to the U.S. District Court for the District of New Jersey, pursuant to the federal Class Action Fairness Act ("CAFA"), 28 U.S.C. §§ 1332(d) and 1453. [*See* Not. of Removal, ECF No. 1.] In its Notice of Removal, FedEx Ground avers that this Court has jurisdiction under CAFA because: (i) diversity of citizenship exists between Plaintiff, a citizen of New Jersey, and FedEx Ground, a citizen of Delaware and Pennsylvania; (ii) the aggregate number of putative class members is 2,564, which exceeds CAFA's numerosity requirements of 100 putative class members; and (iii) the amount placed in controversy by Plaintiff's Amended Complaint exceeds, in the aggregate, $5,000,000, exclusive of interest and costs, for the 2,564 putative

class members. [*See* Not of Removal, ¶¶ 7, 15.] With regard to the amount-in-controversy requirement, FedEx Ground avers that the total amount of overtime, liquidated damages, and attorneys' fees placed in controversy equals or exceeds $2,676,001.80, $1,279,667.09, and $1,186,700.67, respectively, for a total amount in controversy of at least $5,142,369.56. [*See* Not. of Removal ¶¶ 33, 40, 46, 47.] FedEx Ground bases its calculations on allegations in the Amended Complaint that Plaintiff and members of the putative class "regularly" worked at least 40 hours per workweek and underwent unpaid security screenings twice "each workday." [*See id*. at ¶ 24 (citing Am. Compl. ¶¶ 19, 24, 33).] FedEx Ground further assumes that each putative class member spent a total of four-and-a-half (4.5) minutes per workday passing through the security screenings. [*Id.* at ¶ 33.] Along with its Notice of Removal and Motion, FedEx Ground has submitted declarations from its in-house counsel and a paralegal [*see* ECF No. 1-2; ECF No. 1-3] and from Debra L. Dorn, a Managing Director at FedEx Ground. [see ECF No. 14-1.] These declarations, according to FedEx Ground, provide proofs regarding FedEx Ground's calculations of the amount in controversy and, furthermore, suggest that those calculations were "conservative." [Def. Opp. to Mot. to Remand at 17-23.] Plaintiff did not submit any declaration or other evidence controverting these proofs.

4. On December 6, 2019, Plaintiff filed her Motion to Remand, arguing that FedEx Ground has failed to establish CAFA's amount in controversy requirement of $5 million. [*See* ECF No. 7.] While opposing Plaintiff's Motion to Remand, FedEx Ground filed its Motion to Dismiss, on December 9, 2019, arguing that Plaintiff's time spent in security screenings is not compensable under the NJWHL and, therefore, that Plaintiff has failed to state a claim. [S*ee* ECF No. 9.]

Motion to Remand
[28 U.S.C. § 1447]

5. Under 28 U.S.C. § 1441, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court." The defendant seeking to remove the matter bears the burden of showing that (1) federal subject matter jurisdiction exists, (2) removal was timely filed, and (3) removal was proper. *See* 28 U.S.C. §§ 1441, 1446, 1447; *Boyer v. Snap-on Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990), *cert. denied*, 498 U.S. 1085 (1991). After a case has been removed, the district court, however, may nonetheless remand it to state court if the removal was procedurally defective or subject matter jurisdiction is lacking. *See* 28 U.S.C. § 1447(c).

6. Pursuant to CAFA, federal district courts have original jurisdiction over class actions where (1) the matter in controversy (*i.e.*, the aggregated claims of the individual class members) exceeds the sum or value of $5,000,000, exclusive of interest and costs, (2) any member of a class of plaintiffs is a citizen of a state different from any defendant (*i.e.*, minimal diversity), and (3) the class has at least 100 members. *See* 28 U.S.C. § 1332(d)(2)(A), (d)(5)(B), (d)(6); *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1348 (2013); *Neale v. Volvo Cars of N. Am., LLC*, 794 F.3d 353, 358 (3d Cir. 2015). "A party asserting federal jurisdiction in a removal case bears the burden of showing 'that the case is properly before the federal court.'" *Judon v. Travelers Prop. Cas. Co. of Am.*, 773 F.3d 495, 500 (3d Cir. 2014) (quoting *Frederico v. Home Depot*, 507 F.3d 188, 193 (3rd Cir. 2007)); *see also Morgan v. Gay*, 471 F.3d 469, 473 (3rd Cir. 2006), *cert. denied*, 552 U.S. 940 (2007).

7. "[A] defendant's notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co.*,

LLC v. Owens, 135 S. Ct. 547, 554 (2014). "Thus, the grounds for removal should be made in 'a short plain statement,' just as required of pleadings under Fed. R. Civ. P. 8(a)." *Grace v. T.G.I. Fridays, Inc.*, No. 14-7233, 2015 U.S. Dist. LEXIS 97408, at *8-9 (D.N.J. July 27, 2015) (citing *Dart Cherokee*, 135 S. Ct. at 553). No evidentiary support is required, and the Court should accept a removing defendant's allegations unless they are contested by the plaintiff or questioned by the Court. *See Dart Cherokee*, 135 S. Ct. at 553. When the sufficiency of the jurisdictional allegations in a notice of removal is challenged, the parties must submit proofs for the court to decide, by a preponderance of the evidence, whether the jurisdictional requirements are satisfied. *See id*. at 554.

8. To "determine whether the matter in controversy" exceeds the $5,000,000 jurisdictional threshold, courts must aggregate "the claims of the individual class members." 28 U.S.C. § 1332(d)(6). In other words, CAFA instructs "the District Court to determine whether it has jurisdiction by adding up the value of the claim of each person who falls within the definition of [the] proposed class and determine whether the resulting sum exceeds $5 million." *Std. Fire Ins. Co. v. Knowles*, 568 U.S. 588, 591 (2013). This calculation involves examining both "the dollar figure offered by the plaintiff" and the plaintiff's "actual legal claims" to determine whether "the amount in controversy exceeds the statutory threshold," *see Morgan*, 471 F.3d at 474-75, as well as considering the parties' proofs, when appropriate, to adjudicate "by a preponderance of the evidence, whether the amount-in-controversy requirement has been satisfied." *Dart Cherokee*, 135 S. Ct. at 554.

9. With regard to the amount-in-controversy, an award of attorneys' fees also must be included as part of that determination where such an award is provided for by statute. *See, e.g., Alegre v. Atl. Cent. Logistics*, No. 15-2342, 2015 U.S. Dist. LEXIS 100214, at *16

(D.N.J. July 31, 2015) ("Plaintiff seeks reasonable attorneys' fees as part of the class recovery, and the assessment of the amount in controversy must account for that relief.") (citing *Suber v. Chrysler Corp.*, 104 F.3d 578, 585 (3d Cir. 1997); *Goldberg v. Healthport Techs., LLC*, No. 14-2810, 2014 U.S. Dist. LEXIS 104676, at *7-8 (D.N.J. July 30, 2014) (citing *Frederico*, 507 F.3d at 199). Importantly, the NJWHL permits recovery for reasonable attorney's fees. *See* N.J.S.A. 34:11-56a25 (stating that "[i]f any employee is paid by an employer less than the minimum fair wage to which the employee is entitled . . . under the provisions of [the NJWHL], the employee may recover in a civil action . . . costs and reasonable attorney's fees as determined by the court").

10. In her Motion to Remand, Plaintiff does not dispute that the diversity of citizenship and numerosity requirements of CAFA are satisfied. Instead, Plaintiff challenges FedEx Ground's averments that the amount in controversy exceeds $5 million. The crux of Plaintiff's argument centers on the reasonableness of FedEx Ground's estimate of the number of hours worked each workweek by Plaintiff and members of the putative class. According to Plaintiff, because Defendant makes various "problematic assumptions" when calculating the alleged amount of overtime wages and liquidated damages in controversy, Defendant's pleadings are not sufficiently reasonable to meet the Supreme Court's "plausibility" test in *Dart Cherokee*. [Mot. to Remand at 10.] More specifically, Plaintiff contends that "Plaintiff's allegation [in the Amended Complaint] is not that she and each putative class member 'always' [worked] 5 days per workweek and at least 40 hours per workweek, and indeed, Plaintiff's use of the word 'regularly' [in the Amended Complaint] implies that many workweeks were not 40-hour workweeks." [*Id.* at 9-10.]

11. The Court is not persuaded by Plaintiff's argument. In her effort to seek remand, Plaintiff redefines the term "regularly." However, Plaintiff's *ad hoc* definition of "regularly" is the opposite of its settled dictionary and legal meaning. Instead, "regularly" means "normally," "usually," and "customarily." *See, e.g.*, Merriam-Webster Dictionary (entry for "regular"), at https://www.merriam-webster.com/dictionary/regular (last visited July 10, 2020); Dictionary.com (entry for "regular"), at https://www.dictionary.com/browse/regular (last visited July 10, 2020); 8 K. LAPINE & B. BASH, BANKING LAW § 155.07[3] at 155–35–36 (1989) (defining "regularly" as "normally, usually, or customarily") (citing FTC Interpretive Letter No. 00073, Jan. 3, 1978); *James v. Wadas*, 724 F.3d 1312, 1316 (10th Cir. 2013) ("The term 'regularly' means '[a]t fixed and certain intervals, regular in point in time. In accordance with some consistent or periodical rule or practice.'") (quoting BLACK'S LAW DICTIONARY 1286 (6th ed.1990)). "Regularly" is also synonymous with these phrases or terms: "with little or no deviation," "always," "constantly," "continually," "daily," "incessantly," "ceaselessly," "invariably," "unbrokenly," "unvaryingly," "uninterruptedly," "unintermittently," "at all times," "without stopping." *See, e.g.*, Roget's Thesaurus (entry for "regularly"), at http://www.roget.org/ (last visited July 10, 2020); thesaurus.com (entry for "regularly"), at https://www.thesaurus.com/browse/regularly (last visited July 10, 2020).

12. Instead, when defining the term "regularly" to mean "normally, usually, or customarily," it is apparent that FedEx Ground's estimate of the alleged amount of overtime wages and liquidated damages in controversy is more than reasonable. As noted above, in calculating the amount in controversy, FedEx Ground supposes that Plaintiff and the putative class members each worked a "regular" five-day work week covering forty hours per week and

spend four-and-a-half (4.5) minutes per day in security screenings. FedEx Ground bases these assumptions on Plaintiff's allegations in the Amended Complaint that that Plaintiff and members of the putative class "regularly" worked at least 40 hours per workweek and underwent unpaid security screenings twice "each workday." Plaintiff does not offer her own estimate of the number of overtime hours worked and does not otherwise provide a limit on the overtime pay sought. As previously noted by a court in this District under similar circumstances, "[a] defendant facing this type of claim has no choice but to attempt to fairly project the [amount] of allegedly uncompensated time or uncompensated overtime." *Roundtree v. Primeflight Aviation Servs.*, No. 16-9609, 2017 U.S. Dist. LEXIS 118400, at *13 (D.N.J. July 28, 2017). Thus, faced with an open-ended claim referring to time that is "regularly" worked without compensation, this Court is satisfied that an estimate of 4.5 minutes of unpaid overtime for each class member per-week during the class period is reasonable. While it likely that some class members did not work *every* workday during the class period, it is also equally likely that some class members spent more than 4.5 minutes passing through security screenings on the days that they did work.[1] FedEx Ground has, therefore, reasonably estimated an amount in controversy that satisfies CAFA's jurisdictional requirement.

[1] The reasonableness of FedEx Ground's estimate is further bolstered by FedEx Ground's uncontroverted declaration, which suggests that FedEx Ground's calculations may have been "conservative." Indeed, the declaration shows that many class members often worked *more* than five days per workweek, resulting in an underestimation of the amount in controversy. (*See* Decl. of Debra Dorn, at ¶ 18, ECF No. 14-1.)

Motion to Dismiss
[Rule 12(b)(6)]

13. In its Motion to Dismiss, FedEx Ground principally relies upon the United States Supreme Court's decision in *Integrity Staffing Solutions, Inc. v. Busk*, 574 U.S. 27 (2014), which held that essentially the same security screenings as are at issue in this case were not compensable under the federal Fair Labor Standard Act ("FLSA"). FedEx Ground contends that the NJWHL should be interpreted in the same manner as the FLSA and, therefore, that Plaintiff cannot state a claim for overtime compensation based on allegations that she spent time in mandatory security screenings at her workplace. Plaintiff counters that the plain language of the NJWHL and its regulations, together with state decisional law, compels a different result.

14. This Court recently had occasion to address essentially the same legal issue as the one presented in this case in *Vaccaro v. Amazon*, No. 18-11852, 2020 U.S. Dist. LEXIS 114526 (D.N.J. June 29, 2020) (Wolfson, J.). In *Vaccaro*, I predicted that the New Jersey Supreme Court, if presented with the question, would conclude that "time spent undergoing mandatory security screenings at the end of the workday constitutes 'time the employee is required to be at his or her place of work,' and thus must be counted as 'hours worked' when calculating wages." *Id*. at *7 (quoting N.J.A.C. 12:56-5.2(a)). Thus, I found that mandatory post-shift security screenings at the end of the workday may be compensable under the NJWHL. *Id*. at *20. In arriving at my decision, I relied upon how the U.S. Supreme Court has defined "work" under the federal Fair Labor Standards Act: "any activity [that is] 'controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.'" *Id*. at *11 (citing *Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598 (1944)). I also

determined in *Vaccaro* that the NJWHL did not incorporate the federal Portal-to-Portal Act, such that security screenings are not excluded as "preliminary" and "postliminary" activities under the Supreme Court's reasoning in *Busk*. *Id*. at *19-20.

15. The same reasoning in *Vaccaro* is equally applicable to the instant case. Although Plaintiff in this case seeks compensation for both *pre*-shift and *post*-shift security screenings (whereas the plaintiff in *Vaccaro* only sought compensation for *post*-shift screenings), that distinction does not make a meaningful difference. Plaintiff alleges in this case that FedEx Ground requires Plaintiff and the putative class members to undergo a security screening both "prior to clocking in" and "after clocking out." [Am. Compl. ¶¶ 29-30.] Thus, the activity of undergoing a security screening is "required" by the employer in order for an employee to begin or end the workday. Furthermore, there is no suggestion that a security screening at the beginning or end of a workday benefits any person or entity other than the employer. Therefore, any time spent undergoing mandatory pre-shift and post-shift security screenings may be compensable under the NJWHL, and Plaintiff can state a claim based upon allegations that she was not compensated for time spent undergoing such screenings.

Accordingly, for the reasons set forth herein, and for good cause shown,

IT IS on this 10th day of July, 2020,

ORDERED that Plaintiff's Motion to Remand is **DENIED**; and

FURTHER ORDERED that FedEx Ground's Motion to Dismiss is **DENIED.**

/s/ Freda L. Wolfson
Hon. Freda L. Wolfson
U.S. Chief District Judge