

**SATTIRAJU & THARNEY, LLP**

Ravi Sattiraju, Esq. (Attorney Id. No. 035251998)  
50 Millstone Road  
Building 300, Suite 202  
East Windsor, New Jersey 08520  
Tel: (609) 469-2110  
Fax: (609) 228-5649  
Email: rsattiraju@s-tlawfirm.com

*Attorneys for Plaintiffs and the Putative Class*

EDGAR GUIMARAES,

On behalf of himself and all other  
similarly situated persons,

Plaintiff,

v.

TMX INTERMODAL LOGISTICS LLC and  
ABC CORPS. 1-10 and JOHN/JANE DOES 1-  
10,

Defendant.

Civil Action No.:

**CLASS ACTION COMPLAINT  
AND JURY TRIAL DEMAND**

Plaintiff Edgar Guimaraes, on behalf of himself and all other similarly situated persons, by way of Class Action Complaint against Defendant TMX Intermodal Logistics LLC and ABC Corps 1-10 and John/Jane Does 1-10, alleges as follows:

**INTRODUCTION**

1. Plaintiff Edgar Guimaraes (hereinafter “Plaintiff”), a truck driver, on behalf of himself and all other similarly situated persons, brings this putative class action lawsuit against Defendant TMX Intermodal Logistics LLC (hereinafter “TMX”) alleging that he and the putative class members were misclassified as independent contractors by Defendant and consequently seek to recover significant economic damages sustained as a result of Defendant’s unlawful

withholdings or deductions from, and/or unlawful diversions of, their wages and compensation in violation of the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1 to -4.14 (the “NJWPL”) and New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a, et seq. (the “NJWHL”).

2. As set forth below, the Plaintiff and other similarly situated individuals have been improperly misclassified as independent contractor “owner/operators”, rather than employees of Defendant and have been denied various benefits to which they are entitled as employees under New Jersey law. Based on their misclassification, they have also been required to pay large fees in order to obtain truck driving work from Defendant, which effectively amounts to Defendant charging them for a job. They have also had numerous improper deductions taken from their pay and they have been required to pay the expenses necessary to perform their jobs.

### **THE PARTIES**

3. Plaintiff resides in the City of Sayreville in the County of Middlesex in the State of New Jersey.

4. At all relevant times hereto, Plaintiff was a truck driver for Defendant TMX Intermodal Logistics LLC.

5. Defendant TMX Intermodal Logistics LLC is a for-profit business, organized and existing under the laws of the State of New Jersey, with its principal place of business located at 1418 East Linden Avenue, in the city of Linden in the County of Union in the State of New Jersey.

6. Defendant TMX provides transportation and delivery services for its clients or customers.

7. Defendant TMX delivers cargo from its facility/lot located on East Linden Avenue in Linden, New Jersey (the “Linden Facility”), to various ports in New Jersey, including but not

limited to, the Port Newark Container Terminal located in the City of Newark in the County of Essex in the State of New Jersey.

8. Defendant TMX was at all relevant times herein an “employer” of Plaintiff and certain other similarly situated employees, as defined by the NJWPL.

9. The putative class of similarly situated persons Plaintiff seeks to represent in this putative class action is defined herein as:

All individuals that contracted as “owner-operators” with TMX and provided truck driving services in the State of New Jersey from July 2017 through to the present. (Hereinafter the “Putative Class Members”).

10. Defendants ABC Corps. 1-10 and/or John/Jane Does 1-10 are currently unknown entities and/or natural persons, designated by fictitious names herein, who may also be liable to Plaintiff and the Putative Class Members under the NJWPL.

11. Venue is proper in this Court as Defendant regularly conducts business in Essex County on a daily basis.

### **MISCLASSIFICATION ALLEGATIONS**

12. Plaintiff and all of the Putative Class Members contracted with TMX and its predecessor-in-interest entities to provide truck driving services out of the Linden Facility. (hereinafter the “Agreement”).

13. The Agreement is made by and between the Putative Class Member, as “Lessor”, and Defendant TMX, as “Lessee”.

14. The Agreement purports to classify the Putative Class Member’s relationship with Defendant TMX as one in which Defendant “leases” a tractor trailer from Plaintiff.

15. Notwithstanding this façade, the Agreement then provides for payment of services provided by the Putative Class Member pursuant to a compensation schedule.

16. The Agreement also expressly defines the relationship between the Putative Class Member and Defendant TMX as an “independent contractor” relationship.

17. However, Plaintiff and the Putative Class Members were/are not independent contractors as defined by N.J.S.A. 43:21-19(i)(6)(A)(B)(C) pursuant to Hargrove v. Sleepy’s, LLC, 220 N.J. 289 (2015), for purposes of the NJWPL (hereinafter the “ABC Test”).

18. Plaintiff and the Putative Class Members were purposefully misclassified as independent contractors by Defendant TMX to conceal and thwart the fact that there existed an employer-employee relationship between Defendant TMX and the Putative Class Members.

19. Defendant TMX exercised significant control both directly over Plaintiff and the Putative Class Members as well as the ability of Plaintiff and the Putative Class Members to complete their work of delivering Defendant’s Cargo for Defendant to Defendant’s customers and clients. This control included, but was not limited to, Defendant’s dispatchers providing Plaintiff and the Putative Class Members with the daily work they were required to perform (i.e. providing delivery manifests, bills of lading, shipping invoices, etc.); determining what time they had to arrive at the Linden Facility; requiring that the Plaintiff and the Putative Class Members had to return to the Linden Facility at the end of each workday to bring back paperwork and containers/chassis; requiring that the Plaintiff and the Putative Class Members complete specific shipping invoices which identified Defendant’s place of business; requiring that the Plaintiff and the Putative Class Members to utilize electronic logging devices; and maintaining the ability to terminate the services and work provided by Plaintiff and the Putative Class Members at Defendant’s discretion.

20. The work performed by Plaintiff and the Putative Class Members, i.e. driving trucks and making deliveries, was performed within the usual course of Defendant’s business.

21. The work performed by Plaintiff and the Putative Class Members was performed within Defendant's places of business, including the Linden Facility and Defendant's Cargo routes.

22. The Plaintiff and the Putative Class Members do not work in an independently established trade, occupation, profession, or business.

23. The Plaintiff and the Putative Class Members do not have their own clientele and rely/relied exclusively upon Defendant for work.

24. Once the Defendant decided to terminate the Plaintiff or Putative Class Member's Agreement, Plaintiff and the Putative Class Member joined the ranks of the unemployed.

#### **NJWPL & NJWHL ALLEGATIONS**

25. The NJWPL prohibits employers from withholding or diverting any portion of an employee's wages (hereinafter "unlawful deductions") unless the deductions fall into one of eleven (11) specifically enumerated statutory categories. See N.J.S.A. 34:11-4.4.

26. Defendant made deductions from Plaintiff and the Putative Class Members' wages that are illegal under the NJWPL, which include but are not limited to:

- a) Deisel fuel;
- b) Taxes;
- c) EZ Pass and all tolls;
- d) Escrow accounts;
- e) Occupational Accident Insurance;
- f) Electronic Logging Devices;
- g) ACH fees; and
- h) other unlawful deductions.

27. Defendant TMX's aforementioned unlawful deductions from the Plaintiff and the Putative Class Members' compensation ultimately decreased the amount of wages they were entitled to under the NJWPL.

28. Defendant's unlawful deductions from the Plaintiff and the Putative Class Members' wages denied/denies them compensation to which they were/are legally entitled to receive.

29. The NJWHL requires trucking industry employers, such as Defendant, to compensate Plaintiff and the Putative Class Members with an overtime rate of pay when they worked over forty (40) hours per week.

30. Plaintiff and the Putative Class Members regularly worked well over forty (40) hours per week at the instruction of Defendant.

31. Defendant never compensated Plaintiff and the Putative Class Members an overtime rate of pay as required under the NJWHL.

### **CLASS ACTION ALLEGATIONS**

32. This action is brought and may properly proceed as a class action, pursuant to Rule 4:32 of the Rules Governing the Courts of the State of New Jersey.

33. The Class for whose benefit this action is brought is so numerous that joinder of all members is impracticable.

34. There are questions of law and fact common to all members of the Putative Class that predominate over questions affecting only individuals. These common questions include:

- a. Whether the Putative Class Members were misclassified as independent contractors for purposes of the NJWPL & NJWHL pursuant to Hargrove v. Sleepy's, LLC, 220 N.J. 289 (2015);

- b. Whether Defendant TMX reduced the Putative Class Members' compensation by making, taking or requiring unlawful deductions from their wages and whether this conduct violates the NJWPL; and
- c. Whether Defendant TMX failed to pay Plaintiff and the Putative Class Members an overtime rate of pay when they work over forty (40) hours per week and whether this conduct violates the NJWHL.

35. Plaintiff does not have interests antagonistic to those of the Putative Class Members. Plaintiff's claims are typical of the claims of the Putative Class Members.

36. Plaintiff will fairly and adequately protect the interests of the Putative Class Members and has retained competent counsel experienced in this type of matter, specifically class action litigation and independent contractor misclassification in particular.

37. Common questions of law and fact predominate over any questions that only affect individual Putative Class Members.

38. A class action is superior to other available methods for the fair and efficient adjudication of this controversy and will cause an orderly and expeditious administration of the Putative Class Members' claims.

39. The prosecution of separate actions by individual members of the Putative Class would run the risk of inconsistent or varying adjudications. Prosecution as a class action will also eliminate the possibility of repetitious litigation.

### **COUNT ONE**

#### **(VIOLATION OF THE NEW JERSEY WAGE PAYMENT LAW)**

40. Plaintiff reasserts Paragraphs 1-39 as if set forth at length herein.

41. Defendant TMX is subject to the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1 to -4.14 (the "NJWPL").

42. Defendant's misclassification of the Plaintiff and the Putative Class Members as independent contractors is contrary to the NJWPL and Hargrove v. Sleepy's, LLC, 220 N.J. 289 (2015).

43. Any agreement(s) entered into by and between Defendant and the Plaintiff and the Putative Class Members that provide otherwise is/are unlawful, null and void to the extent they allow Defendants to circumvent their remedial and humanitarian legal obligations under the NJWPL. See N.J.S.A. 34:11-4.7.

44. Defendant's conduct against the Plaintiff and the Putative Class Members violates the NJWPL by requiring the Plaintiff the Putative Class Members to pay for the unlawful deductions listed above and/or directly deducting the cost of said unlawful deductions from their compensation. See N.J.S.A. 34:11-4.4; N.J.A.C. 12:55-2.1.

## **COUNT TWO**

### **(NEW JERSEY WAGE AND HOUR LAW)**

45. Plaintiff reasserts Paragraphs 1-44 as if set forth at length herein.

46. Defendants' conduct against the Plaintiffs and the Class Members violates the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a et seq., by failing to compensate the Plaintiff and the Putative Class Members for all hours worked, and/or not paying legally required overtime when the Plaintiffs and the Putative Class Members worked over forty (40) hours per week.

47. As a result of Defendants' conduct, the Plaintiffs and the Class Members have endured significant economic damages.

**WHEREFORE**, Plaintiff on behalf himself and the Putative Class Members, respectfully requests that the Court enter judgment in their favor and against Defendant TMX Intermodal Logistics LLC as follows:



- a. Certify a class action pursuant Rule 4:32 of the Rules Governing the Courts of the State of New Jersey and appoint Plaintiff and his counsel to represent the class;
- b. Declare and find that Defendant violated the NJWHL and NJWPL;
- c. Award compensatory damages, including all unpaid wages and underpaid wages as well as all expenses owed arising out of Defendant's violations of the NJWPL and NJWHL;
- d. Award treble damages and/or liquidated damages pursuant to the NJWHL;
- e. Award all costs, expenses and attorney's fees, with appropriate fee enhancement, incurred in prosecuting this claim;
- f. Award pre-judgment and post-judgment interest at the highest rates allowed by law;
- g. Injunctive relief in the form of an order directing Defendants to comply with New Jersey law; and
- h. Such other relief as in law or equity may pertain.

**DEMAND TO PRESERVE EVIDENCE**

**DEMAND IS HEREBY MADE** that Defendant preserve all physical and electronic information pertaining or relating in any way to: (a) Plaintiff and the Putative Class Members' labor and services performed; (b) their claims under the NJWHL and NJWPL; (c) any and all defenses thereto; and (d) pertaining or relating to any electronic data storage, digital images, computer images, cache memory, searchable data, emails, spreadsheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, Twitter, Myspace, LinkedIn, etc.) and any other information and/or data and/or things and/or documents which may pertain to any claim or defense

concerning this Class Action Complaint and Jury Trial Demand pleading. Failure to do so may result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 4:35-1, Plaintiff hereby demands a trial by jury as to all issues so triable.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:5-1(c), Ravi Sattiraju, Esq. is hereby designated as trial counsel for Plaintiff.

**CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)**

I hereby certify, pursuant to Rule 4:5-1, that the matter in controversy herein is the subject of no other pending legal proceeding or arbitration nor is any other legal proceeding contemplated to the best of my information and belief. Further, I know of no other party who should be joined in this lawsuit other than the currently unidentified John and Jane Does and ABC Corporations.

**CERTIFICATION PURSUANT TO R. 4:5-1(b)(3)**

I hereby certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Date: July 17, 2023  
East Windsor, New Jersey

Respectfully submitted,

By:                   *s/ Ravi Sattiraju*  
**SATTIRAJU & THARNEY, LLP**  
Ravi Sattiraju, Esq.  
50 Millstone Road  
Building 300, Suite 202  
East Windsor, New Jersey 08520  
Tel: (609) 469-2110  
Fax: (609) 228-5649  
Email: rsattiraju@s-tlawfirm.com

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges TMX Intermodal Misclassified New Jersey Drivers as Independent Contractors, Owes Unpaid Overtime](#)

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