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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Daniel Curry; Tyrone Harris; Nicholas Mason;
and Tyechia Webb; Individually and on behalf
of others similarly situated

Plaintiffs,

vs.

Amazon.com, Inc., a Delaware Corporation;
Courier Logistics Services, L.L.C. a Florida
limited liability company;

Defendant.

Case No.:

COLLECTIVE ACTION COMPLAINT

JURY DEMAND

Plaintiffs, Daniel Curry, Becky Lawrence, Nicholas Mason, Tyechia Webb, and all
similarly situated employees (“Plaintiffs and all similarly situated employees”), on behalf of
themselves and other employees and former employees similarly situated (“Plaintiffs and all
similarly situated employees and all similarly situated former employees”), for their
Complaint against Defendants allege as follows:

NATURE OF THE CASE

1
2 1. The Fair Labor Standards Act ("FLSA") is designed to eliminate "labor
3 conditions detrimental to the maintenance of the minimum standard of living necessary for
4 health, efficiency and general well-being of workers" 29 U.S.C. § 202(a). To achieve its goals,
5 the FLSA sets minimum wage and overtime pay requirements for covered employers. 29
6 U.S.C. §§ 206(a) & 207(a).

7
8 2. Employers must compensate employees for all work that employers permit
9 employees to perform. See 29 C.F.R. § 785.11. In such cases, it is the responsibility of
10 employers' management to ensure that work is not performed if management does not desire
11 for such work to be performed. 29 C.F.R. § 785.13. Employers may not accept the benefits of
12 employees performing work without compensating the employees for their work. *Id.*

13
14 3. Plaintiffs and all similarly situated employees bring this action against
15 Defendants for unlawful failure to pay overtime wages in direct violation of the Fair Labor
16 Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") and specifically the overtime provision of the
17 Act found at §207(a).

18
19 4. For at least three (3) years prior to the filing of this action, Defendants had a
20 consistent policy and practice of requiring its employees to work well in excess of forty (40)
21 hours per week without paying them time and a half for hours worked over forty (40) hours per
22 week.

23
24 5. For at least three (3) years prior to the filing of this action, Plaintiffs worked at
25 least five to ten (5-10) hours in excess of forty (40) hours per week and were not paid time and
a half.

1 in the State of Florida and regularly conducts business in Arizona.

2 **FACTUAL BACKGROUND**

3 14. Courier Logistics Services, L.L.C. is a courier and delivery service that has a
4 contract with Amazon, Inc.

5 15. Courier Logistics Services, L.L.C. has been engaged by Amazon.com, Inc. to
6 provide one to two hour deliveries to Amazon's "Prime Now" customers based on orders
7 placed via the Amazon Prime Now mobile application.
8

9 16. Amazon customers place their order in the Prime Now mobile application and
10 pick a two-hour delivery window or a one-hour deliver window for an additional fee.

11 17. The customer can then use the Prime Now mobile application to track the
12 Delivery Driver's progress and route from the warehouse to their home in real-time.

13 18. The Prime Now mobile application suggests a default tip of \$5.00 for the
14 Delivery Driver, which the customer can modify. The Prime Now mobile application tells
15 customers that: "If you elect to leave a tip, the entire tip goes to your courier." Couriers are
16 prohibited from accepting cash tips.
17

18 19. Courier Logistics Services, L.L.C. received a contract with Amazon and upon
19 information and belief currently employs hundreds of drivers in Phoenix to perform courier
20 and delivery services.

21 20. Delivery drivers reported to and worked exclusively out of an Amazon
22 warehouse.
23

24 21. Delivery drivers received multiple days of training in making Amazon Prime
25 Now deliveries at the Amazon warehouse.

1 22. Delivery drivers are required to wear shirts and hats bearing the Amazon Prime
2 Now logo and Amazon and Courier Logistics provide delivery drivers with a smart phone pre-
3 loaded with the Prime Now mobile application.

4 23. Delivery drivers are scheduled to work fixed shifts during Amazon's Prime Now
5 service hours. Delivery Drivers are mandated and required to report to the Amazon warehouse
6 15 minutes before their scheduled start time, time for which they receive no compensation at
7 all.
8

9 24. Delivery drivers check in with a dispatcher at the beginning of the shift and
10 check out with the dispatcher at the end of the shift.

11 25. After checking-in at the Amazon warehouse, delivery drivers then wait for the
12 Amazon dispatcher to assign packages for delivery. The delivery drivers then scan each
13 package into the App for real time tracking.
14

15 26. Amazon decides which packages will be assigned to delivery drivers and makes
16 their work assignments.

17 27. Delivery drivers cannot reject work assignments.

18 28. The Prime Now mobile application creates the routes and directions for each
19 delivery. Defendants track the delivery drivers while they are on deliveries.

20 29. After making a delivery, delivery drivers are required to ask customers to
21 complete an Amazon customer service survey.
22

23 30. Plaintiffs are paid by the hour as alleged independent contractors at rates solely
24 determined by the Defendants.

25 31. Delivery drivers perform the deliveries in their own personal vehicles.

1 32. On information and belief, Defendants Amazon.com, Inc. and Courier Logistics
2 Services, L.L.C. entered into an agreement with one another to provide the services that
3 Plaintiff and the putative Plaintiffs provided. As such they shall collectively be referred to as
4 “Defendants” for purposes of this Complaint.

5 33. Defendants Amazon.com, Inc. and Courier Logistics Services, L.L.C. each could
6 hire or fire delivery drivers.

7 34. Defendants Amazon.com, Inc. and Courier Logistics Services, L.L.C. each had
8 authority to set the wages of delivery drivers.

9 35. Defendants Amazon.com, Inc. and Courier Logistics Services, L.L.C. each had
10 authority to control the manner in which delivery drivers performed their work, including
11 instructing delivery drivers when and where to report to work.

12 36. Defendants Amazon.com, Inc. and Courier Logistics Services, L.L.C. each had
13 control over delivery driver’s working conditions.

14 37. Defendants Amazon.com, Inc. and Courier Logistics Services, L.L.C. each
15 suffered and permitted Plaintiffs to work.

16 38. Defendants Amazon.com, Inc. and Courier Logistics Services, L.L.C. each
17 engaged Plaintiffs to perform the work of a delivery driver.

18 39. Plaintiffs were always under the understanding that they worked for Defendants
19 as a whole, not any single entity. Both Defendants are joint employers of Plaintiffs under the
20 FLSA.

21 40. Defendants hired Plaintiff Daniel Curry as an hourly paid delivery driver from
22 approximately October 27, 2015 through December 5, 2015.

23 41. Defendants paid Plaintiff Daniel Curry \$16 per hour.

24 42. Defendants hired Plaintiff Tyrone Harris as an hourly paid delivery driver from
25

1 approximately October 10, 2015 through December 5, 2015.

2 43. Defendants paid Plaintiff Tyrone Harris \$16 per hour.

3 44. Defendants hired Plaintiff Tyechia Webb as an hourly paid delivery driver from
4 approximately October 19, 2015 through December 5, 2015.

5 45. Defendants paid Plaintiff Tyechia Webb \$16 per hour.

6 46. Defendants hired Plaintiff Nicholas Mason as an hourly paid delivery driver from
7 approximately October 31, 2015 through December 8, 2015.

8 47. Defendants paid Plaintiff Nicholas Mason \$16 per hour.

9 48. Defendants misclassified Plaintiffs as independent contractors.

10 49. Defendants attempted to create an independent contractor relationship with
11 Plaintiffs even though they were employees.

12 50. Defendants suffered and permitted Plaintiffs to work for Defendants without
13 properly compensating Plaintiffs for all their time spent working.

14 51. Defendants had complete control over the manner in which Plaintiffs would
15 complete their work. Plaintiffs followed Defendants' strict and rigid requirements for the
16 performance of their work.

17 52. Defendants had the complete authority to exercise complete control with respect
18 to all details of the employment relationship between the parties.

19 53. The work Plaintiffs performed was not for a finite period of time as Plaintiffs
20 were directed to report to the warehouse daily.

21 54. Plaintiffs were not allowed to take on any other work while in the employ of
22 Defendants.
23
24
25

1 55. Plaintiffs had no opportunity for profit or loss depending upon their skill as they
2 were paid a consistent, hourly wage for the work they did for Defendants. Plaintiffs were not
3 given the opportunity to earn more based on their skill.

4 56. Plaintiffs made no investment in equipment to perform their work with
5 Defendants.

6 57. Plaintiffs' work was integral to Defendants' operation.

7 58. Defendants were in the operation of a courier and delivery service

8 59. Plaintiffs' tasks were directly related to the actual courier and delivery services.

9 60. If Defendants did not employ delivery drivers, Defendants' business would cease
10 to operate.

11 61. Plaintiffs were non-exempt employees.

12 62. Plaintiffs were not managers.

13 63. Plaintiffs did not exercise discretion and independent judgment with respect to
14 matters of significance.

15 64. Upon information and belief, delivery drivers also never received the full amount
16 of tips customers left for them on the Prime Now mobile application.

17 65. From 2015 and continuing through the present, Defendants failed to properly
18 compensate Plaintiffs and all similarly situated employees for any of their overtime hours.

19 66. During this time, Plaintiffs and all similarly situated employees were regularly scheduled to
20 work approximately 41-55 hours per week. Plaintiffs also routinely worked additional shifts.

21 67. Upon information and belief, the records concerning the number of hours worked
22 and amounts paid to Plaintiffs and all similarly situated employees are in the possession and
23
24
25

1 custody of the Defendants.

2 67. Defendants' failure and/or refusal to properly compensate Plaintiffs and all
3 similarly situated employees at the rates and amounts required by the FSLA were/was willful.

4 68. Defendants refused and/or failed to properly disclose to or apprise Plaintiffs and
5 all similarly situated employees of their rights under the FLSA.

6 69. At all relevant times, Plaintiffs and all similarly situated employees were
7 "employees" of Defendants, as defined by 29 U.S.C. §203(e)(1).
8

9 70. The provisions set forth in 29 U.S.C § 206 and § 207, respectively, of the FLSA
10 apply to Defendants.

11 71. At all relevant times, Defendants were and continue to be an employer as defined
12 in 29 U.S.C. § 203(d).

13 72. At all times material to this action, each of the Defendants was and continues to be
14 an "enterprise engaged in commerce or in the production of goods for commerce" as defined
15 by 29 U.S.C. § 203(s)(1).
16

17 73. On information and belief, at all relevant times, the annual gross revenue of
18 Defendants exceeded, and continues to exceed, \$500,000.00.

19 74. The additional persons who may become Plaintiffs in this action "worked" for
20 Defendants, held similar positions as delivery drivers as Plaintiffs, and worked at least one (1)
21 hours in excess of forty (40) hours during one or more work weeks during the relevant time
22 periods, and did not receive pay at one and one-half times their regular rate of pay for all of
23 their hours worked in excess of forty (40) hours, or were misclassified as independent
24 contractors.
25

1 83. Those similarly situated employees are known to Defendants and are readily
2 identifiable and locatable through Defendants' records. Specifically, all current employees and
3 former employees of Defendant who have been employed with Defendants in the roles of
4 delivery drivers would benefit from Court Supervised Notice and the opportunity to join the
5 present lawsuit and should be so notified.

6 84. As a result of Defendants' violations of the FLSA, Plaintiffs and all similarly
7 situated employees have suffered damages by failing to receive compensation in accordance
8 with § 207 of the FLSA.

9 85. Under 20 U.S.C. §216 Defendants are liable to Plaintiffs and all similarly
10 situated employees for an amount equal to one and one-half times their regular pay rate for
11 each hour of overtime worked per week.

12 86. In addition to the amount of unpaid wages owed to Plaintiffs and all similarly
13 situated employees are also entitled to recover an additional equal amount as liquidated
14 damages pursuant to 29 U.S.C. § 216(b).

15 87. Defendants' actions in failing to compensate Plaintiffs and all similarly situated
16 employees, in violation of the FLSA, were willful.

17 88. Defendants have not made a good faith effort to comply with the FLSA.

18 89. Plaintiffs are also entitled to an award of attorneys' fees pursuant to 29 U.S.C. §
19 216(b).

20 WHEREFORE, Plaintiffs respectfully requests that judgment be entered in his favor
21 against Defendants:

- 22 a. Awarding Plaintiffs and all similarly situated employees overtime
23 compensation in the amount due to him for all of Plaintiffs and all similarly
24
25

- 1 situated employees 's time worked in excess of forty (40) hours per work
2 week at an amount equal to one and one-half times Plaintiffs and all similarly
3 situated employees 's regular rate while at work at Defendant Defendants;
4 b. Awarding Plaintiffs and all similarly situated employees liquidated damages
5 in an amount equal to the overtime award;
6
7 c. Awarding Plaintiffs and all similarly situated employees reasonable
8 attorneys' fees and costs and expenses of the litigation pursuant to 29 U.S.C.
9 § 216(b);
10 d. For Plaintiffs' and all similarly situated employees 's costs incurred in this
11 action;
12
13 e. Awarding Plaintiffs and all similarly situated employees pre-judgment
14 interest, at the highest legal rate, on all amounts set forth in subsections (a)
15 and (b) above from the date of the payment due for that pay period until paid
16 in full;
17
18 f. Awarding Plaintiffs and all similarly situated employees post-judgment
19 interest, at the highest legal rate, on all awards from the date of such award
20 until paid in full;
21
22 g. Granting Plaintiffs an Order, on an expedited basis, allowing him to send
23 Notice of this action, pursuant to 29 U.S.C. § 216(b) , to those similarly
24 situated to Plaintiff; and
25 h. For such other and further relief as the Court deems just and proper.

COUNT TWO
MISCLASSIFICATION AS INDEPENDENT CONTRACTOR

1
2 90. Plaintiffs incorporate and adopt paragraphs 1 through 89 above as if fully set
3 forth herein.

4 91. Plaintiffs and all similarly situated employees' working relationships with
5 Defendants as described above were as employees.

6 92. Defendants misclassified Plaintiffs and all similarly situated employees as
7 independent contractors.

8 93. In addition to providing Defendants with presumed justification to violate the
9 FLSA, the misclassification also allowed Defendants not to pay employment taxes, shifting the
10 burden onto the Plaintiffs and all similarly situated employees in the form of self-employment
11 taxes.
12

13 94. As a direct and proximate result of the misclassification, Plaintiffs and all
14 similarly situated employees are entitled to compensation for payment of excess taxes and
15 other lost benefits of the employer/employee relationship.

16 WHEREFORE, Plaintiffs respectfully requests that judgment be entered in their favor
17 against Defendants:

- 18
- 19 a. Awarding Plaintiffs and all similarly situated employees the difference
20 between the amount that should have been taxed if Plaintiffs were
21 appropriately classified and the amount that Plaintiffs actually paid in self
22 employment tax.
 - 23 b. Awarding Plaintiffs and all similarly situated employees liquidated damages
24 in an amount equal to the self-employment tax award;
25

- 1 c. Awarding Plaintiffs and all similarly situated employees reasonable
2 attorneys' fees and costs and expenses of the litigation pursuant to 29 U.S.C.
3 § 216(b);
- 4 d. For Plaintiffs' and all similarly situated employees 's costs incurred in this
5 action;
- 6 e. Awarding Plaintiffs and all similarly situated employees pre-judgment
7 interest, at the highest legal rate, on all amounts set forth in subsections (a)
8 and (b) above from the date of the payment due for that pay period until paid
9 in full;
- 10
11 f. Awarding Plaintiffs and all similarly situated employees post-judgment
12 interest, at the highest legal rate, on all awards from the date of such award
13 until paid in full;
- 14
15 g. Granting Plaintiffs an Order, on an expedited basis, allowing him to send
16 Notice of this action, pursuant to 29 U.S.C. § 216(b) , to those similarly
17 situated to Plaintiff; and
- 18 h. For such other and further relief as the Court deems just and proper.

19 **COUNT THREE**
20 **DECLARATORY JUDGMENT**

21 95. Plaintiffs incorporate and adopt paragraphs 1 through 94 above as if fully set
22 forth herein.

23 96. Plaintiffs and Defendants have an overtime compensation dispute pending.

24 97. The Court has jurisdiction to hear Plaintiffs' request for declaratory relief pursuant
25 to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

1 98. Plaintiffs are entitled to declarations, and requests that the Court make
2 declarations as to the following matters and as to other matters deemed appropriate by the
3 Court:

- 4 a. Defendants employed Plaintiffs.
- 5 b. Defendants are engaged in an enterprise covered by the overtime provisions of
6 the FLSA.
- 7 c. Plaintiffs individually are covered by the overtime provisions of the FLSA.
- 8 d. Plaintiffs were non- exempt employees pursuant to the FLSA.
- 9 e. Defendants failed to maintain accurate time records in violation of the FLSA.
- 10 f. Defendants failed and refused to make payments of overtime compensation to
11 Plaintiffs, in violation of the provisions of the FLSA.
- 12 g. Defendants' failures to pay overtime compensation to Plaintiffs were willful.
- 13 h. Plaintiffs are entitled to damages in the amount of overtime compensation not
14 paid by Defendants at the rate of one and one-half times Plaintiffs' regular rate of
15 pay.
- 16 i. Plaintiffs are entitled to an equal amount as liquidated damages.
- 17 j. Plaintiffs are entitled to recover their costs and a reasonable attorney's fee
18 incurred in prosecuting their claims.

19 99. It is in the public interest to have these declarations of rights recorded as
20 Plaintiffs' declaratory judgment action serves the useful purposes of clarifying and settling the
21 legal relations at issue, preventing future harm, and promoting the remedial purposes of the
22 FLSA.
23
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25

