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JUN 2 1 2016

SUPERIOR COURT CLERK
BY David Roberts
DEPUTY

SUPERIOR COURT OF WASHINGTON, COUNTY OF KING

ROBERT MINA and JOLENNE MINA, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., AMAZON FRESH, LLC, AF OPERATIONS LLC, and DOES 1-50, inclusive,

Defendants.

CLASS ACTION

Case No. 15-2-23879-5 SEA

[PROPOSED] First Amended Complaint for Failure to Pay Wages For Security Clearances in Violation of RCW §§ 49.46.020; 49.46.130; RCW Ch. 49.12; WAC § 296-126-092; and for Violation of RCW § 49.48.010

Plaintiffs, by and through their attorneys, on behalf of themselves and all others similarly situated, complain against Defendants as set forth below.

All allegations in this Complaint are based upon information and belief except for those allegations that pertain to the Plaintiffs named herein and their counsel. Each allegation in this Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

First Amended Class Action Complaint For Failure to Pay Wages For Security Clearances, etc.- $\mathbf{1}$

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JURISDICTION AND VENUE

1. This Court has jurisdiction over the claims alleged herein pursuant to RCW § 2.08.010. Venue is proper in King County pursuant to RCW § 4.12.020 and/or RCW § 4.12.025.

PARTIES

- 2. Plaintiff ROBERT MINA (also known as ROBERT DAVENPORT) is a resident of Enumclaw, King County, Washington, and was employed by Amazon as an hourly warehouse employee in its Seattle facility during the relevant time period alleged herein.
- 3. Plaintiff JOLENNE MINA is a resident of Enumelaw, King County, Washington, and was employed by Amazon as an hourly warehouse employee in its Seattle facility during the relevant time period alleged herein.
- 4. Defendant AMAZON.COM, INC. ("Amazon") is a Washington corporation and/or other business entity that operates one of the most well-known online marketplaces in the country. Amazon owns and operates over 75 warehouse distribution centers across the United States, including in the state of Washington.
- 5. Defendant AMAZON FRESH LLC ("Amazon Fresh) is a Delaware corporation and/or other business entity that is a subsidiary entity of Amazon.com Inc. that does business in the state of Washington. The Minas were paid by Amazon Fresh.
- 6. Defendant AF OPERATIONS LLC ("AF Ops") is a Delaware corporation and/or other business entity that does business in the state of Washington. The Minas were offered employment by AF Ops.
- 7. Amazon, Amazon Fresh, and AF Ops are collectively referred to herein as "Defendants".
- 8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1-10, but prays for leave to amend and serve such fictitiously named Defendants once their names and capacities become known. Plaintiff is informed and believes, and thereon alleges, that Does 1-10 are and were joint employers, partners, agents, owners, shareholders, managers or employees of Defendant, and were acting

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on behalf of Defendants. Any reference to "Defendant," "Defendants," or "Amazon" herein shall mean "Defendants and each of them."

BACKGROUND FACTS

- 9. Amazon directly employs warehouse personnel to work at its warehouses. Amazon was the direct employer of Plaintiffs. Upon information and belief, Amazon employs hundreds of hourly warehouse employees like these Plaintiffs.
- 10. Amazon also contracts labor services at its warehouse facilities to third party staffing companies, such as SMX LLC ("SMX") and Integrity Staffing Solutions, Inc. ("Integrity"). Amazon is thus both a direct employer of its employees and a joint-employer of all persons employed by staffing companies such as SMX and Integrity who performed labor at the Amazon warehouse locations. SMX and Integrity act in the interest of Amazon in relation to those employees on the payroll of these staffing companies by providing laborers to work at locations owned and/or maintained by Amazon. The services rendered by SMX and Integrity employees are the very core of Amazon's business, i.e., the selection of items from warehouse stock for shipment to customers. Amazon has the right to control the manner and means by which SMX and Integrity workers accomplish the work at Amazon locations. Amazon's supervisors often directed the work of SMX and Integrity employees. Amazon exercises direct control over the hours and other working conditions of all Plaintiffs and all similarly-situated hourly shift employees who are paid by SMX and Integrity and who work Amazon's warehouse locations in the state of Washington. Upon information and belief, employment data such as hours worked, hourly rates of pay, and other benefit information is recorded the same for SMX and Integrity contract employees and Amazon direct employees alike. The hourly paid, warehouse employees employed by SMX and Integrity at Amazon warehouse locations have no unique or special skills; the work of these hourly paid warehouse employees benefits Amazon as well as SMX and Integrity. As set forth below, persons directly employed by SMX, Integrity and Amazon were all subjected to the same illegal policies and practices.

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11. Defendants implemented, maintained, and/or enforced a uniform Security Clearance policy at all Amazon warehouse locations throughout the state of Washington which required Plaintiffs and all other hourly paid, non-exempt employee of either SMX, Integrity, or Amazon to undergo a daily security clearance check in order to leave the secured area to discover and/or deter employee theft of the employer's property and to reduce inventory "shrinkage". Plaintiffs and all other hourly paid, non-exempt warehouse workers were not compensated for the time spent undergoing the security clearance before they were released from work and permitted to leave the secured warehouse area. Defendants' policy of requiring hourly warehouse employees to undergo a thorough security clearance before being released from work and permitted to leave the employer's secured area was solely for the benefit of the employers and their customers. The search was to prevent employee theft, and it is an essential part of the job of a warehouse worker that they not take items from the warehouse out of the warehouse other than in the ways prescribed by the company. In fact, not contributing to "shrinkage" and abiding by company procedures for inventory control is an integral aspect of the Plaintiffs' job. Upon information and belief, Defendants maintained, enforced and/or implemented this same policy at all warehouse locations throughout the state of Washington.

12. At the end of their respective shifts, hundreds, if not thousands, of warehouse employees would walk to the timekeeping system to clock out and were then required to wait in line in order to be searched for possible warehouse items taken without permission and/or other contraband. Thus, at the direction and control of the Defendants, and solely for the benefit of the employer and/or their customers, Plaintiffs and all other similarly-situated warehouse workers were required to wait at the end of each shift without any compensation in order to undergo a search for possible contraband or pilferage of inventory of his or her person. Defendants forced Plaintiffs and all other similarly situated warehouse workers to undergo a post 9/11 type of airport security clearance—i.e., warehouse employees were required to remove all personal belongings from their person such as wallets, keys, and belts, and pass through metal detectors before being released from work and allowed to leave the facility.

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Defendants' policies and practices required warehouse employees to leave their personal belongings such as cell phones in their vehicles. Thus, warehouse employees were unable to engage in any personal activities during the time spent waiting.

- 13. Plaintiffs were similarly forced to undergo this very same security clearance prior to taking their lunch breaks. Plaintiffs were only permitted to clock out, at most, 30-minutes for their meal period. As a result of having to undergo the security screening in order to leave the secured area and go to the cafeteria or leave the premises, Plaintiffs and other similarly situated employees were deprived a full 30-minute uninterrupted meal period.
- 14. Ultimately, Defendants did not pay any of their warehouse employees anything for the time spent waiting for and undergoing such daily security clearances. Defendants did not pay any of their warehouse employees minimum, regular rate, and/or overtime wages at a rate equal to or greater than one and one-half their regular hourly rate of pay whenever Defendants required, suffered, or permitted the warehouse employees, including Plaintiffs, to work more than forty (40) hours per week by undergoing the security screenings. Defendants did not pay employees meal period wages when they did not take a full 30-minute uninterrupted meal period.

CLASS ACTION ALLEGATIONS

- 15. Plaintiffs reallege and incorporate by this reference all the paragraphs above in this Complaint as though fully set forth herein.
 - 16. Plaintiffs seek to represent the following Class:
 - All person employed directly by Defendants, or a third party staffing company such as SMX LLC or Integrity Staffing Solutions, Inc., as hourly paid warehouse employees who worked at an Amazon warehouse in the state of Washington at any time from February 18, 2011 to the present.
- 17. **Numerosity**. The Class consists of thousands of employees of Defendants and third party staffing companies such as SMX LLC and Integrity Staffing Solutions, Inc., such that the Class is so numerous that joinder of the class members is impracticable. The Class is easily ascertainable from the records that the employer is required by law to maintain. When

available, a true opt-out class action is superior to individual actions because it would be unjust to allow the Defendants to benefit from their unlawful behavior solely because the cost of litigating individual claims would be prohibitive compared to the expected damages unless aggregated.

- 18. Commonality. There is a well-defined community of interest in the question of law and fact affecting the class members Plaintiffs seek to represent. The class members' claims against Defendants involve questions of common or general interest that predominate over any questions affection only individual Class Members. These common questions of law and fact include, without limitation:
 - a. Whether Washington law provides greater protections for employees than those guaranteed under federal law;
 - b. Whether Washington law contains an equivalent limitation regarding the compensability of work, as expressed federally by the Portal-to-Portal Act, 29 U.S.C. § 254;
 - c. Whether Defendants violated RCW § 49.46.020; RCW § 49.46.130; RCW Ch. 49.12; & WAC 296-126-092 by failing to compensate Class Members for the time spent undergoing the anti-theft screening before leaving the secured area for breaks, meal periods, and at the end of the workday; and
 - d. Whether Defendants' conduct of failing to pay employees as a result of its anti-theft screening policy was a willful violation of Washington's wage and hour laws under RCW § 49.52.050(2).
- 19. **Typicality.** The claims of the named Plaintiffs are typical of the claims of the Class. Plaintiffs and all members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged.
- 20. Adequacy. Plaintiffs have each agreed to serve as representatives of all similarly situated employees to raise common claims. Each understands that they owe a fiduciary obligation to obtain competent counsel and take action to promote, advance and

prevail on the claims being made, not just individually, but for the collective group or employees as a whole. Plaintiffs will fairly and adequately represent the interests of the class members because Plaintiffs are members of each class, have common issues of law and/or fact with all members of the class, and their claims are typical of those in the proposed class. (Plaintiffs request permission to amend the Complaint to include additional class representatives if Plaintiffs individually or collectively are deemed not to be adequate representatives of any class.) Counsel who represent Plaintiffs are competent and experienced in litigation large employment class actions.

21. Superiority/Predominance. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over questions affecting only individual Class Members. Each Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to pay straight, minimum, overtime and double-time wages, and provide meal periods. A Class action will allow those similarly situated to litigate their claims in the most efficient and economical manner for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

Failure to Pay Wages For Security Clearances in Violation of RCW § 49.46.020; RCW § 49.46.130; RCW Ch. 49.12; & WAC 296-126-092 (On behalf of Plaintiffs and the Class Against Defendants)

- 22. Plaintiffs reallege and incorporate by this reference all allegations contained above as though fully set forth herein.
- 23. This cause of action is brought against Defendants by all named-Plaintiffs on behalf of the Class.

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24. Washington law mandates that all employees receive at least the minimum wage for all the hours they work and that they receive the overtime rate of 1 ½ times their regular rate of pay for all hours worked in excess of 40 in a workweek. See RCW § 49.46.020; RCW § 49.46.130.

- 25. Washington law further provides that an employer's obligation to pay wages (minimum, regular, or overtime rate wages, whichever is applicable) shall continue during meal periods unless the employer ensures that an employee is granted a full uninterrupted 30-minute meal period. See WAC 296-126-092; Pellino v. Brink's, 164 Wn. App. 668, 267 P.3d 383 (Wn. App. 2011); Washington State Nurses Ass'n v. Sacred Heart Med. Ctr., 175 Wn. 2d 822, 287 P.3d 516 (2012).
- 26. By failing to compensate Plaintiffs and Class Members for the time spent undergoing the mandatory anti-theft screenings at the end of the workday and during their meal period, Defendants failed to pay Plaintiffs and other members of the Class their correct wages owed and failed to provide full 30-minute uninterrupted meal periods.
- 27. Defendants' conduct of failing to pay Plaintiffs and all Class Members their correct wages and all their wages upon termination was willful and in conscious disregard of Washington statutory authority. See RCW § 49.52.050(2). As such, double damages are recoverable. RCW § 49.52.070 ("Any employer and any officer, vice principal or agent of any employer who shall violate any of the provisions of RCW § 49.52.050 (1) and (2) shall be liable in a civil action by the aggrieved employee or his or her assignee to judgment for twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees: PROVIDED, HOWEVER, That the benefits of this section shall not be available to any employee who has knowingly submitted to such violations.").
- 28. Therefore, Plaintiffs demand that they and the members of the Class be paid wages at the applicable minimum, regular, or overtime rate, for all hours worked including time spent waiting for and undergoing security clearances, including meal period wages, together with double damages, attorneys' fees, costs, and interest as provided by law.

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SECOND CAUSE OF ACTION

Failure to Timely Pay All Wages Due Upon

Termination in Violation of RCW § 49.48.010

(On behalf of Plaintiffs and the Class Against Defendants)

- 29. Plaintiffs reallege and incorporate by this reference all allegations contained above as though fully set forth herein.
- 30. This cause of action is brought against Defendants by all named-Plaintiffs on behalf of the Class.
 - 31. RCW § 49.48.010 states as follows:

When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his employment shall be paid to him at the end of the established pay period: PROVIDED, HOWEVER, That this paragraph shall not apply when workers are engaged in an employment that normally involves working for several employers in the same industry interchangeably, and the several employers or some of them cooperate to establish a plan for the weekly payment of wages at a central place or places and in accordance with a unified schedule of paydays providing for at least one payday each week; but this subsection shall not apply to any such plan until ten days after notice of their intention to set up such a plan shall have been given to the director of labor and industries by the employers who cooperate to establish the plan; and having once been established, no such plan can be abandoned except after notice of their intention to abandon such plan has been given to the director of labor and industries by the employers intending to abandon the plan: PROVIDED FURTHER, That the duty to pay an employee forthwith shall not apply if the labor-management agreement under which the employee has been employed provides otherwise.

- 32. By failing to pay Plaintiffs and Class Members who no longer are employed by Defendants for all hours worked in violation of state law, Defendants have failed to timely remit all wages due and owing to Plaintiffs and Class Members who are former employees.
- 33. Defendants' conduct of failing to pay Plaintiffs and all Class Members their correct wages and all their wages upon termination was willful and in conscious disregard of Washington statutory authority. See RCW § 49.52.050(2). As such, double damages are

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recoverable. RCW § 49.52.070 ("Any employer and any officer, vice principal or agent of any employer who shall violate any of the provisions of RCW 49.52.050 (1) and (2) shall be liable in a civil action by the aggrieved employee or his or her assignee to judgment for twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees: PROVIDED, HOWEVER, That the benefits of this section shall not be available to any employee who has knowingly submitted to such violations.").

34. Thus, Plaintiffs demand, that themselves and members of the Class who have been terminated or laid off from employment without having been paid all wages due and owing to them, all damages allowable under the law together with attorneys' fees, costs, and interest as provided by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request of this Court the following relief:

- A. An order pursuant to Washington Superior Court Civil Rule 23, certifying the Class as alleged and prayed herein or on such terms as the Court deems applicable to this case;
- B. Damages according to proof for minimum rate pay, regular rate pay, and/or overtime compensation for all hours worked and meal period wages during the relevant time period;
 - C. For all statutory double damages according to proof;
 - D. For reasonable attorney's fees according to proof;
 - E. For reasonable costs according to proof; and
 - F. For such other relief as the Court deems just and proper.

Dated: June 20, 2016 THIERMAN BUCK LLP.

s/Joshua D. Buck (admitted pro hac vice)
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