

THE HONORABLE JIM ROGERS
Hearing Date: September 30, 2016
Hearing Time: 10:00 a.m.

With Oral Argument

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

AMENDED [~~PROPOSED~~] ORDER
GRANTING CLASS CERTIFICATION

IN PART
one DENYING IN PART

Upon consideration of Plaintiffs' Motion for Class Certification pursuant to Washington Superior Court Rule ("CR") 23, and having reviewed the pleadings and the file and having considered the arguments of counsel regarding the required prerequisites and grounds set forth in CR 23(a) and CR 23 (b)(3) for class certification, it is hereby ORDERED that this Motion is GRANTED as follows:

1. The Class is certified as follows:

A. 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.

2. The Class is further divided into the following Subclasses as follows:

AMENDED PROPOSED ORDER GRANTING
CLASS CERTIFICATION-1

THIERMAN BUCK, LLP
7287 LAKESIDE DRIVE
RENO, NV 89511
PH.: 775-284-1500

1 Administrator (the "Third Party Administrator");

2 5. Defendants are ordered to produce to Class Counsel, in Microsoft Excel format,
3 the names, addresses, telephone number, personal e-mail addresses if available, and dates of
4 employment, for all potential Class Members, within fourteen (14) days from the date this Order
5 is filed;

6 6. An agreed upon Notice be sent out to all potential Class Members within twenty-
7 one (21) days from the date this Order is filed (In the event that the parties cannot agree upon a
8 form of Notice with seven (7) days from the date this Order is filed, the dispute shall be submitted
9 to this Court for resolution);

10 7. Class Members shall have thirty (30) days from the mailing of the Notice to submit
11 their requests to opt-out the class via U.S. mail or fax to the Third Party Administrator, who shall
12 promptly notify counsel for all parties; and

13 8. Upon expiration of the opt-out period, the Third Party Administrator shall provide
14 the list containing the names, addresses, telephone numbers, personal e-mail addresses (if
15 available), and dates of employment for all Class Members who have not requested exclusion
16 from the Class to Class Counsel.

17 *as ~~set~~ A class is constructed as noted on the*
18 IT IS SO ORDERED.

19 DATED: 8 Dec

20 
21 HONORABLE JIM ROGERS

22 *attached pages but counsel shall*
23 *propose a new order consistent*
24 *with the original class.*

1 Submitted by:

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AMENDED PROPOSED ORDER GRANTING
CLASS CERTIFICATION-4

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1 Order 15-2-23879-5

2
3 The Motion for Summary Judgement is Granted in Part and Denied in Part. The Motion
4 to Certify the Class is Granted in Part and Denied in Part.

5 Many cases were cited. Washington law applies, obviously, and it differs significantly
6 from that necessarily applied in other cases, especially federal law. This Court applies the
7 Washington Administrative Code and gives some weight to the interpretation of that Code by
8 DSHS. Also, certain cases cited by the parties such as the Nike case (cited by the Plaintiffs)
9 were factually distinguishable.
10

11 This Court viewed the issues and facts related to those screening when leaving work
12 and those screening at lunchtime very differently. The Court concludes as follows, on the
13 evidence, and with all inferences in the Plaintiff's favor on summary judgement, and in the
14 defendant's favor on class certification.

15 Summary Judgement Ruling

16 The passing through of the metal detectors for all employees is an activity controlled by
17 the employer and pursued primarily for the benefit of the employer and his business and
18 therefore constitutes work;
19

20 Those screening when leaving work are not "on duty" under WAC 296-126-002(8);

21 Those screening when leaving for a lunch break and required to return can be "on duty"
22 for purposes of the regulation if required to wait for the metal detector during their legally
23 required lunch break; and
24
25

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1 The *de minimis* defense applies to those leaving work and not on duty, but does not
2 apply to violations of the lunch break time as a matter of law.

3 Those Plaintiffs Leaving Work

4 This Court disagrees that those who are passing through metal detectors are “on duty”
5 under the facts of this case. In addition, even if they were on duty, the *de minimis* defense
6 would apply.
7

8 While Plaintiff’s Counsel argued that there were facts in dispute on the *de minimis*
9 defense as to those leaving, this Court disagrees, given the evidence presented in the case and
10 the test which this Court concludes applies. Corbin v. Time Warner Entertainment-
11 Advance/Newhouse Partnership, 821 F.3d 1069, 1081 (9th Cir. 2016) (adopting the three factor
12 test from Lindow v. United States). The evidence presented does not rise above a scintilla of
13 evidence. Summary Judgement is Granted as to this group of defined plaintiffs, and the claims
14 for screening when leaving are Dismissed.
15

16 Lunch Break

17 When Amazon requires an employee to pass through a metal detector, as is Amazon’s
18 right, yet requires the employee to be back in thirty minutes, as is also Amazon’s right, that
19 employee remains on duty if, during his legally mandated half-hour lunch time, he is waiting in
20 the metal detector line. As a matter of law, there is no *de minimis* defense for those who are
21 required by law to be allowed a thirty minute unpaid lunch break. WAC 296-126-092(1).
22

23 Summary Judgement as to this group of defined plaintiffs is Denied.

24 Counsel shall submit a final Order that lists all pleadings.
25

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1 Class Certification as to Lunch time Plaintiffs.

2 The Court Grants the Motion to Certify the Class related only to the lunch break issue.

3 The requirements of commonality and typicality are met for the lunch break issue.

4 There is no *de minimis* defense. With regard to the Kent location with an interior meal break
5 room, it is the understanding of this Court that the Plaintiffs' counsel agree that these plaintiffs
6 do not have a claim. Plaintiff's Reply, n.1 & 10. Finally, the variation in facts is very limited.
7 We are discussing a procedure of clocking in and out and associated screening. It is not that
8 complicated.
9

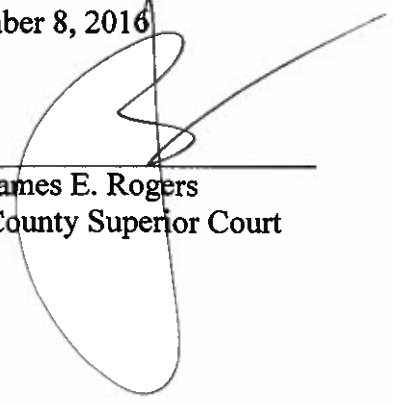
10 For a case like this, where the damages among plaintiffs are small, and the issues
11 discrete, the class action process is a superior method of litigating these claims, far superior to
12 an administrative agency process.
13

14 The Court has reviewed the proposed class counsel and class representatives'
15 qualifications and situations. They will adequately represent the class.

16 Counsel shall submit Orders that list all pleadings, and an Order on the class definition.

17 IT IS SO ORDERED.

18 December 8, 2016

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21 _____
22 Hon. James E. Rogers
23 King County Superior Court
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