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7 UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 RICHARD AUSTIN, an individual, on behalf
11 of himself, the general public, and all others
12 similarly situated,

12 Plaintiff,

13 vs.

14 AMAZON.COM, INC., a Delaware
15 Corporation authorized to do business in the
16 State of Washington,

16 Defendant.

Case No.

COLLECTIVE ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION AND INJUNCTIVE
RELIEF FOR:**

**(1) FAILURE TO PAY OVERTIME IN
VIOLATION OF FAIR LABOR
STANDARDS ACT, 29 U.S.C. §§ 201, 207,
216 (“FLSA”)**

18 Plaintiff, RICHARD AUSTIN, on behalf of himself, the general public, and all others
19 similarly situated, allege as follows:

20 This collective action is brought on behalf of all “Warehouse Associates” in the United
21 States by defendant AMAZON.COM, INC. (hereinafter “AMAZON”). All allegations in this
22 Complaint are based upon information and belief except for those allegations which pertain to
23 the Plaintiff named herein, RICHARD AUSTIN, and his counsel. Each allegation in this
24 Complaint either has evidentiary support or is likely to have evidentiary support after a
25 reasonable opportunity for further investigation and discovery.

1 **JURISDICTION AND VENUE**

2 1. This Court has jurisdiction of this action pursuant to the provisions of the Fair
3 Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201 et seq., including under 29 U.S.C. §§
4 207, 216, and 217. This Court also has jurisdiction in light of the existence of a controversy
5 arising under the laws of the United States pursuant to 28 U.S.C. § 1131.

6 2. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b) because
7 AMAZON does business in this District and maintains its principal place of business/national
8 headquarters in Seattle, Washington.

9 **COLLECTIVE ACTION DEFINITION**

10 3. Plaintiff brings this action as a Collective Action under the FLSA, 29 U.S.C. §
11 201, et seq., on behalf of all persons who were, are, or will be employed by AMAZON as
12 “Warehouse Associates”, including any of the Defendant’s job positions with substantially
13 similar titles and duties in the United States within the three years preceding the filing of this
14 Complaint to the date of entry of judgment, who clocked in to work at any interval of time
15 before or after their scheduled start time and/or who clocked out of work at any interval of time
16 before or after their scheduled end time, and who were not compensated for such time
17 (hereinafter “Collective Class”).

18 **COLLECTIVE ACTION ALLEGATIONS**

19 4. Plaintiff RICHARD AUSTIN (“Plaintiff”) alleges that at all material times
20 mentioned herein, he is and was:

- 21 (a) An individual who resides in Las Vegas, Nevada;
- 22 (b) Employed as a “Warehouse Associate” for defendant AMAZON in the State
23 of Nevada from approximately September 2008 to approximately August 2009;
- 24 (c) Worked more than forty (40) hours in any given week;
- 25 (d) Did not receive overtime compensation for all hours worked over forty (40)
26 hours in any given week;

1 (e) Is a member of the Collective Class as defined in Paragraph 3 of this
2 Complaint.

3 5. All claims involving the Collective Class have been brought and may properly be
4 maintained as a collective action under 29 U.S.C. § 216 because there is a well defined
5 community of interest in the litigation and the proposed Collective Class is easily ascertainable.

6 **DEFENDANT**

7 6. Plaintiff is informed and believes and thereupon alleges that at all times
8 mentioned herein that Defendant AMAZON.COM, INC., is and was a Delaware corporation
9 licensed to do business and actually doing business in the State of Washington. Additionally,
10 Plaintiff is informed and believes that Defendant maintains its principal place of business and/or
11 national headquarters in the State of Washington. Defendant owns and operates “Distribution
12 Centers” similar to the one Plaintiff was employed in numerous separate geographic locations
13 throughout the United States, including, but not limited to, the States of Arizona, Delaware,
14 Indiana, Kansas, Kentucky, Nevada, Pennsylvania, Texas, and Virginia.

15 **THE CONDUCT**

16 7. 29 CFR § 790.6 provides in part that: “If an employee is required to report at the
17 actual place of performance of his principal activity at a certain specific time, his ‘workday’
18 commences at the time he reports there for work in accordance with the employer’s requirement,
19 even though through a cause beyond the employee’s control, he is not able to commence
20 performance of his productive activities until a later time.” 29 CFR § 790.6(b). “Periods of time
21 between the commencement of the employee’s first ‘principal activity’ and the completion of his
22 last ‘principal activity’ on any workday must be included in the computation of hours
23 worked...” 29 CFR § 790.6(b).

24 8. 29 CFR § 790.8(b)(2) provides in part: “The term ‘principal activities’ includes
25 all activities which are an integral part of a principal activity.” Two examples of what is meant
26 by an integral part of a principal activity are found in the Report of the Judiciary Committee of

1 the Senate on the Portal-to-Portal Bill. They are the following: "...garment workers who arrive
2 early to distribute clothing to workbenches or to get machines 'in readiness for operation'..."

3 9. Plaintiff RICHARD AUSTIN was employed as a "Warehouse Associate", a non-
4 exempt hourly position, for defendant AMAZON at its Nevada Distribution Center from
5 approximately September 2008 to approximately August 2009. As hourly employees,
6 AMAZON required Mr. AUSTIN and other members of the Collective Class to start/end work
7 on a set schedule. When Mr. AUSTIN and/or other members of the Collective Class clocked in
8 or out before their scheduled start/end time, it was the defendant's policy to "round" their time
9 to the nearest quarter hour. For example, if an employee clocked in seven (7) minutes or less
10 before their scheduled start time, AMAZON would treat the employee's time as though he/she
11 clocked in at their scheduled start time and consequently would not compensate the employee
12 for the preliminary time prior to their scheduled start time. Conversely, if an employee clocked
13 out seven (7) minutes or less after their scheduled end time, AMAZON would treat the
14 employee's time as though he/she clocked out at their scheduled end time and consequently
15 would not compensate the employee for that postliminary time.

16 9.1. While clocked in prior to and/or after their scheduled start/end times, Mr.
17 AUSTIN and other members of the Collective Class were subject to the control of AMAZON
18 and engaged in activities that were (1) not undertaken for their own convenience (2) necessary
19 for the performance of their duties for AMAZON and (3) integral and indispensable to their
20 principal activities. Despite this, Mr. AUSTIN and other members of the Collective Class
21 regularly were required to work "off the clock" as set forth hereinabove that entitles them to
22 compensation therefore.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of FLSA, 29 U.S.C. §201, et seq.**

3 **(By Plaintiff and the Collective Class against Defendant)**

4 10. Plaintiff realleges and incorporates by this reference, as though fully set forth
5 herein, paragraphs 1 through 9 of this Complaint.

6 11. Defendant is engaged in communication, business, and transmission throughout
7 the United States and is, therefore, engaged in commerce within the meaning of 29 U.S.C. §
8 203(b).

9 12. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful
10 violations of the FLSA.

11 13. 29 U.S.C. § 207(a) (1) provides in pertinent part:

12 Except as otherwise provided in this section, no employer shall employ any of his
13 employees who in any workweek is engaged in commerce or in the production of
14 goods for commerce, or is employed in an enterprise engaged in commerce or in
15 the production of goods for commerce, for a workweek longer than forty hours
unless such employee receives compensation for his employment in excess of the
hours above specified at a rate not less than one and one-half times the regular
rate at which he is employed.

16 14. Section 213(a)(1) of FLSA provides that the overtime pay requirement does not
17 apply to:

18 Any employee employed in a bona fide executive, administrative, or professional
19 capacity (including any employee employed in the capacity of academic
20 administrative personnel or teacher in elementary or secondary schools), or in the
21 capacity of outside salesman (as such terms are defined and delimited from time
22 to time by regulations of the Secretary, subject to the provisions of the
23 Administrative Procedure Act [5 USC §§ 551 et seq] except [that] an employee
24 of a retail or service establishment shall not be excluded from the definition of
employee employed in a bona tide executive or administrative capacity because
of the number of hours in his workweek which he devotes to activities not
directly or closely related to the performance of executive or administrative
activities, if less than 40 per centum of his hours worked in the workweek are
devoted to such activities).

25 15. Defendant has willfully engaged in a widespread pattern and practice of violating
26 the provisions of the FLSA, as detailed above, without regard to the fact that Defendant does not

1 qualify as a retail establishment within the meaning of FLSA, including Plaintiff and the other
2 members of the Class who worked on the production side of the Defendant's business enterprise.
3 This was done in an illegal attempt to avoid payment of overtime wages and other benefits in
4 violation of the FLSA and Code of Federal Regulations requirements.

5 16. Pursuant to the FLSA, 29 U.S.C. § 201, *et seq*, Plaintiff and the members of the
6 Class are entitled to compensation for all hours actually worked, and are also entitled to wages at
7 a rate not less than one and one-half times their regular rate of pay for all hours worked in excess
8 of forty (40) hours in any workweek.

9 17. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the
10 exempt status of an employee. The exempt or nonexempt status of any particular employee must
11 be determined on the basis of whether the employee's salary and duties meet the requirements of
12 the regulations in this part.

13 18. The exemptions of FLSA as listed in section 13(a), and as explained by 29 C.F.R.
14 541.3 do not apply to the members of the Class, because their work consists of non-
15 management, production line labor performed with skills and knowledge acquired from on-the-
16 job training. Plaintiff is informed and believes there are no other exemptions applicable to
17 Plaintiff or to the members of the Collective Class.

18 19. At all relevant times, Defendant failed to pay Plaintiff and other members of the
19 Class overtime compensation for the hours they have worked in excess of the maximum hours
20 permissible by law as required by section 207 of FLSA, even though members of the Class
21 regularly worked, and did in fact work overtime hours.

22 20. For purposes of FLSA, the employment practices of Defendant were and are
23 uniform throughout the United States in all respects material to the claims asserted in this
24 Complaint.

1 21. Plaintiff proposes to undertake the appropriate proceedings to have the Collective
2 Class members, aggrieved by Defendant's unlawful conduct, notified of the pendency of this
3 action and join this action as Plaintiffs, pursuant to 29 U.S.C. § 216(b).

4 22. Therefore, Plaintiff demands that he and the members of the Class be paid
5 overtime compensation as required by the FLSA for every hour of overtime worked in any work
6 week for which they were not compensated, regular compensation for every hour worked
7 primarily for the benefit of Defendant for which they were not compensated, plus interest and
8 attorneys' fees as provided by law.

9 **PRAYER**

10 WHEREFORE, PLAINTIFF prays for judgment against the Defendant as follows:

- 11 1. An order conditionally certifying the Collective Class as a collective action and
12 certifying the Collective Class as alleged and prayed herein;
- 13 2. Damages according to proof for overtime compensation under federal law for all
14 hours worked overtime within three years of the filing of the complaint until the
15 date of entry of judgment;
- 16 3. For all statutory damages according to proof;
- 17 4. For interest at the maximum legal rate on all amounts found due from the date of
18 the undue overtime until paid in full;
- 19 5. For reasonable attorney's fees according to proof;
- 20 6. For such other relief as the Court deems just and proper.

21 DATED: November 25, 2009

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