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8 **UNITED STATES DISTRICT COURT**

9 **SOUTHERN DISTRICT OF CALIFORNIA**

10

11 PERSIS KNIPE, on behalf of the State  
of California, as a private attorney  
12 general,

13 Plaintiff,

14 vs.

15 AMAZON.COM, INC., a Corporation;  
16 AMAZON LOGISTICS, INC., a  
Corporation; and DOES 1 through 50,  
inclusive,

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18 Defendants.

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Case No. 3:17-cv-01889-WQH-LL

**SECOND AMENDED  
REPRESENTATIVE ACTION  
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 204, 226(a), 226.7, 226.8, 256, 510, 512, 1194, 1197, 1197.1, 1198, 2802; and the Applicable Wage Order.

1 Plaintiff Persis Knipe ("PLAINTIFF"), on behalf of the people of the State of  
2 California and as an "aggrieved employee" acting as a private attorney general under the  
3 Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only,  
4 alleges on information and belief, except for her own acts and knowledge which are  
5 based on personal knowledge, the following:

### 6 7 **INTRODUCTION**

8 1. Defendant Amazon.com, Inc. and Amazon Logistics, Inc. (collectively  
9 "DEFENDANT") in order to service customers hires workers to aid DEFENDANT in  
10 providing delivery services to DEFENDANT's customers. The cost, as proscribed by  
11 law, of the personnel hired to work for DEFENDANT, includes not only the pay of these  
12 employees but the cost of the employer's share of tax payments to the federal and state  
13 governments for income taxes, social security taxes, medicare insurance, unemployment  
14 insurance and payments for workers' compensation insurance ("Business Related  
15 Expenses"). To avoid the payment of these legally proscribed Business Related  
16 Expenses to the fullest extent possible, DEFENDANT devised a scheme to place the  
17 responsibility for the payment of these costs and expenses of DEFENDANT on the  
18 shoulders of PLAINTIFF and other Delivery Drivers. As employer, DEFENDANT is  
19 legally responsible for the payment of all these Business Related Expenses. This lawsuit  
20 is brought on behalf of these Delivery Drivers who worked for DEFENDANT in  
21 California and were classified as independent contractors, in order to collect the wages  
22 due them as employees of DEFENDANT, the cost of the employer's share of payments  
23 to the federal and state governments for income taxes, social security taxes, medicare  
24 insurance, unemployment insurance and payments for workers' compensation insurance,  
25 plus penalties and interest.

26 2. PLAINTIFF, and such persons that may be added from time to time who  
27 satisfy the requirements and exhaust the administrative procedures under the Private  
28 Attorney General Act, brings this Representative Action on behalf of the State of

1 California with respect to herself and all individuals who worked for DEFENDANT in  
2 California as Delivery Drivers and who were classified as independent contractors  
3 (“AGGRIEVED EMPLOYEES”) during the time period of August 9, 2016 until a date  
4 as determined by the Court (the “PAGA PERIOD”).

5 3. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES  
6 presently of formerly employed by DEFENDANT during the PAGA PERIOD, brings  
7 this representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for  
8 DEFENDANT’s violation of California Labor Code §§ 204, 226(a), 226.7, 226.8, 256,  
9 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the applicable Wage Order. Based upon  
10 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved  
11 employees within the meaning of Labor Code § 2699, *et seq.*

### 12 THE PARTIES

13  
14 4. DEFENDANT is a corporation which, at all relevant times mentioned  
15 herein, conducted and continues to conduct substantial and regular business in the State  
16 of California.

17 5. PLAINTIFF has worked for DEFENDANT as a Delivery Driver since June  
18 of 2017 and has been classified by DEFENDANT as an independent contractor during  
19 her entire employment with DEFENDANT.

20 6. California Labor Code Section 226.8 provides that “[i]t is unlawful for any  
21 person or employer to engage in . . . [w]illful misclassification of an individual as an  
22 independent contractor.” The penalty for willful misclassification of employees is a  
23 “civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen  
24 thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines  
25 permitted by law.” It is further provided that, in the event that an employer is found to  
26 have engaged in “a pattern or practice of these violations,” the penalties increase to “not  
27 less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars  
28 (\$25,000) for each violation, in addition to any other penalties or fines permitted by

1 law.” Cal. Labor Code § 226.8.

2 7. Here, DEFENDANT has willfully misclassified PLAINTIFF and other  
3 AGGRIEVED EMPLOYEES as described in Cal. Labor Code § 226.8, and further, that  
4 DEFENDANT has engaged in a “pattern or practice” of such violations as contemplated  
5 by the California Labor Code.

6 8. Upon hire, the position of a Delivery Driver was represented by  
7 DEFENDANT to PLAINTIFF and the other AGGRIEVED EMPLOYEES as an  
8 independent contractor position capable of paying a flat rate of pay for certain shifts.  
9 PLAINTIFF and other AGGRIEVED EMPLOYEES are not compensated overtime  
10 wages for any of their time spent working in excess of eight (8) hours in a workday,  
11 twelve (12) hours in a workday, and/or forty (40) hours in a workweek. PLAINTIFF  
12 and other AGGRIEVED EMPLOYEES are paid the hourly rate to perform delivery  
13 services on DEFENDANT’s behalf. PLAINTIFF and other AGGRIEVED  
14 EMPLOYEES are not compensated any other wages besides the flat rate. However, it  
15 often takes PLAINTIFF and the other AGGRIEVED EMPLOYEES more time to  
16 complete their deliveries than their scheduled shifts, but AGGRIEVED EMPLOYEES  
17 do not receive additional compensation for this extra time.

18 9. To perform their job duties, PLAINTIFF and the other AGGRIEVED  
19 EMPLOYEES perform work subject to the control of DEFENDANT in that  
20 DEFENDANT has the authority to exercise complete control over the work performed  
21 and the manner and means in which the work is performed. DEFENDANT provides the  
22 customers, DEFENDANT provides the instructions regarding where to make deliveries,  
23 in what order, and which route to take. PLAINTIFF and other AGGRIEVED  
24 EMPLOYEES can be penalized or terminated for missing scheduled shifts.  
25 DEFENDANT also instructs PLAINTIFF and other AGGRIEVED EMPLOYEES as  
26 to how to conduct themselves with DEFENDANT’s customers, what time to make their  
27 deliveries, how to scan packages, and how to properly pick up and return packages at  
28 DEFENDANT’s warehouses.

1           10. California Labor Code § 3357 defines “employee” as “every person in the  
2 service of an employer under any appointment or contract of hire or apprenticeship,  
3 express or implied, oral or written, whether lawfully or unlawfully employed.” In  
4 addition to the California Labor Code’s presumption that workers are employees, the  
5 California Supreme Court has determined the most significant factor to be considered  
6 in distinguishing an independent contractor from an employee is whether the *employer*  
7 *or principal has control or the right to control the work both as to the work performed*  
8 *and the manner and means in which the work is performed.* DEFENDANT heavily  
9 controls both the work performed and the manner and means in which PLAINTIFF and  
10 the other Delivery Drivers perform their work in that:

11           (a) PLAINTIFF and other AGGRIEVED EMPLOYEES are not involved  
12 in a distinct business, but instead are provided with instructions as to how to perform  
13 their work and the manner and means in which the work is to be performed by means of  
14 DEFENDANT’s manuals and written instructions;

15           (b) PLAINTIFF and other AGGRIEVED EMPLOYEES are continuously  
16 provided with training and supervision, including following DEFENDANT’s company  
17 documents and receive training from DEFENDANT as to how and in what way to  
18 perform the delivery services;

19           (c) DEFENDANT sets the requirements as to what policies and  
20 procedures all of the AGGRIEVED EMPLOYEES were to follow, including how and  
21 when to deliver DEFENDANT’s packages;

22           (d) PLAINTIFF and other AGGRIEVED EMPLOYEES have no  
23 opportunity for profit or loss because DEFENDANT only pays these workers based on  
24 their scheduled shifts;

25           (e) PLAINTIFF and other AGGRIEVED EMPLOYEES perform  
26 delivery services which is part of DEFENDANT’s principal business and is closely  
27 integrated with and essential to the employer's business of providing on demand delivery  
28 services to their customers;

1 (f) PLAINTIFF and other AGGRIEVED EMPLOYEES perform the  
2 work themselves and do not hire others to perform their work for them;

3 (g) PLAINTIFF and other AGGRIEVED EMPLOYEES do not have the  
4 authority to make employment-related personnel decisions;

5 (h) PLAINTIFF and other AGGRIEVED EMPLOYEES perform their  
6 work in a particular order and sequence in accordance with DEFENDANT's company  
7 policy; and,

8 (i) DEFENDANT has the "right" to control every critical aspect of  
9 DEFENDANT's daily delivery services operations.

10 11. As a result, stripped of all the legal fictions and artificial barriers to an  
11 honest classification of the relationship between PLAINTIFF and all the other  
12 AGGRIEVED EMPLOYEES on the one hand, and DEFENDANT on the other hand,  
13 PLAINTIFF and all the other AGGRIEVED EMPLOYEES are and were employees of  
14 DEFENDANT and not independent contractors of DEFENDANT and should therefore  
15 be properly classified as non-exempt, hourly employees.

16 12. As a matter of company policy, practice and procedure, DEFENDANT has  
17 unlawfully, unfairly and/or deceptively classified every AGGRIEVED EMPLOYEES  
18 as "independent contractors" in order to unlawfully avoid compliance with all applicable  
19 federal and state laws that require payment for all time worked, business expenses, and  
20 the employer's share of payroll taxes and mandatory insurance. As a result of the scheme  
21 to defraud the federal and state governments and the AGGRIEVED EMPLOYEES ,  
22 PLAINTIFF and the AGGRIEVED EMPLOYEES are underpaid throughout their  
23 employment with DEFENDANT.

24 13. The true names and capacities, whether individual, corporate, associate or  
25 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently  
26 unknown to PLAINTIFF who therefore sue these Defendants by such fictitious names  
27 pursuant to Fed. R. Civ. Proc. 17. PLAINTIFF is informed and believe, and based  
28 thereon, allege that each of the Defendants designated herein is legally responsible in

1 some manner for the unlawful acts referred to herein. PLAINTIFF will seek leave of  
2 Court to amend this Complaint to reflect the true names and capacities of the Defendants  
3 when they have been ascertained and become known.

4 14. The agents, servants and/or employees of the Defendants and each of them  
5 acting on behalf of the Defendants acted within the course and scope of his, her or its  
6 authority as the agent, servant and/or employee of the Defendants, and personally  
7 participated in the conduct alleged herein on behalf of the Defendants with respect to the  
8 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable  
9 to the other Defendants and all Defendants are jointly and severally liable to the  
10 PLAINTIFF and the other AGGRIEVED EMPLOYEES , for the loss sustained as a  
11 proximate result of the conduct of the Defendants' agents, servants and/or employees.

### 12 13 **THE CONDUCT**

14 15. The finite set of tasks required of PLAINTIFF and the other AGGRIEVED  
15 EMPLOYEES as defined by DEFENDANT is executed by them through the  
16 performance of non-exempt labor.

17 16. Although PLAINTIFF and the other AGGRIEVED EMPLOYEES perform  
18 non-exempt labor subject to DEFENDANT's complete control over the manner and  
19 means of performance, DEFENDANT instituted a blanket classification policy, practice  
20 and procedure by which all of the AGGRIEVED EMPLOYEES are classified as  
21 "independent contractors" exempt from compensation for overtime worked, meal breaks  
22 and rest breaks, and reimbursement for business related expenses. By reason of this  
23 uniform misclassification, the AGGRIEVED EMPLOYEES are also required to pay  
24 DEFENDANT 's share of payroll taxes and mandatory insurance premiums. By  
25 engaging in a company policy that required PLAINTIFF and other AGGRIEVED  
26 EMPLOYEES to record their time worked only when performing delivery services for  
27 DEFENDANT's customers, DEFENDANT failed to pay PLAINTIFF and other  
28 AGGRIEVED EMPLOYEES wages for all time worked, including minimum wages due

1 and overtime wages due for work that was done before and after performing delivery  
2 services for DEFENDANT.

3 17. During the PAGA PERIOD, as a result of their rigorous work schedules,  
4 PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time unable to  
5 take off duty meal breaks and were not fully relieved of duty for meal periods.  
6 PLAINTIFF and other AGGRIEVED EMPLOYEES were required to perform work as  
7 ordered by DEFENDANT for more than five (5) hours during a shift without receiving  
8 an off-duty meal break. The nature of the work performed by PLAINTIFF and the  
9 AGGRIEVED EMPLOYEES did not prevent these employees from being relieved of  
10 all of their duties for the legally required off-duty meal periods. DEFENDANT did not  
11 have a policy or practice which provided meal periods to the PLAINTIFF and the other  
12 AGGRIEVED EMPLOYEES. Further, DEFENDANT failed to provide PLAINTIFF and  
13 AGGRIEVED EMPLOYEES with a second off-duty meal period each workday in which  
14 these employees were required by DEFENDANT to work ten (10) hours of work. As  
15 a result, DEFENDANT's failure to provide the PLAINTIFF and the AGGRIEVED  
16 EMPLOYEES with legally required meal periods is evidenced by DEFENDANT's  
17 business records. DEFENDANT also failed to accurately calculate and pay PLAINTIFF  
18 and the other AGGRIEVED EMPLOYEES the correct rate for missed meal premiums.  
19 PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks  
20 without correct compensation and in accordance with DEFENDANT's strict corporate  
21 policy and practice.

22 18. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED  
23 EMPLOYEES from time to time were also required to work in excess of four (4) hours  
24 without being provided ten (10) minute rest periods. Further, these employees were  
25 denied their first rest periods of at least ten (10) minutes for some shifts worked of at  
26 least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes  
27 for some shifts worked of between six (6) and eight (8) hours, and a first, second and  
28 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or

1 more. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with  
2 one hour wages in lieu thereof. As a result of their rigorous work schedules,  
3 PLAINTIFF and other AGGRIEVED EMPLOYEES were periodically denied their  
4 proper rest periods by DEFENDANT and DEFENDANT's managers.

5  
6 19. DEFENDANT, as a matter of law, has the burden of proving that employees  
7 are properly classified and that DEFENDANT otherwise complies with applicable laws.  
8 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified  
9 all the AGGRIEVED EMPLOYEES as independent contractors.

10 20. PLAINTIFF and all the AGGRIEVED EMPLOYEES are and were  
11 uniformly classified and treated by DEFENDANT as independent contractors at the time  
12 of hire and thereafter, DEFENDANT failed to take proper steps to determine whether the  
13 PLAINTIFF and the AGGRIEVED EMPLOYEES are properly classified under the  
14 applicable Industrial Welfare Commission Wage Order and Cal. Lab. Code §§ 510, *et*  
15 *seq.* as exempt from applicable labor laws. Since DEFENDANT affirmatively and  
16 willfully misclassified PLAINTIFF and AGGRIEVED EMPLOYEES in compliance  
17 with California labor laws, DEFENDANT's practices violated and continue to violate  
18 California law.

19 21. DEFENDANT as a matter of corporate policy, practice and procedure,  
20 intentionally, knowingly and systematically fails to reimburse and indemnify  
21 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses  
22 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence  
23 of discharging their duties on behalf of DEFENDANT. Under California Labor Code  
24 Section 2802, employers are required to indemnify employees for all expenses incurred  
25 in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that  
26 "an employer shall indemnify his or her employee for all necessary expenditures or  
27 losses incurred by the employee in direct consequence of the discharge of his or her  
28 duties, or of his or her obedience to the directions of the employer, even though

1 unlawful, unless the employee, at the time of obeying the directions, believed them to  
2 be unlawful."

3       22. In the course of their employment PLAINTIFF and other AGGRIEVED  
4 EMPLOYEES as a business expense, are required by DEFENDANT to use personal  
5 cellular phones as a result of and in furtherance of their job duties as employees for  
6 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost  
7 associated with the use of the personal cellular phones for DEFENDANT's benefit. In  
8 order to work as a Delivery Driver for DEFENDANT, PLAINTIFF and other  
9 AGGRIEVED EMPLOYEES are required to use DEFENDANT's mobile application  
10 and as such it is mandatory to have a cell phone that is compatible with DEFENDANT's  
11 mobile application. As a result, in the course of their employment with DEFENDANT  
12 PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business  
13 expenses which include, but are not limited to, costs related to the use of their personal  
14 cellular phones all on behalf of and for the benefit of DEFENDANT. Further,  
15 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not reimbursed or  
16 indemnified by DEFENDANT for the cost associated with using their personal vehicles  
17 while performing for DEFENDANT. As a result, in the course of their employment with  
18 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred  
19 unreimbursed business expenses which include, but are not limited to, costs related to  
20 travel all on behalf of and for the benefit of DEFENDANT.

21       23. From time to time, DEFENDANT also fails to provide PLAINTIFF and the  
22 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which  
23 fail to show, among other things, the correct amount of time worked, including, work  
24 performed in excess of eight (8) hours in a workday and/or forty (40) hours in any  
25 workweek. Cal. Lab. Code § 226 provides that every employer shall furnish each of his  
26 or her employees with an accurate itemized wage statement in writing showing, among  
27 other things, gross wages earned and all applicable hourly rates in effect during the pay  
28 period and the corresponding amount of time worked at each hourly rate. As a result,

1 DEFENDANT provides PLAINTIFF and the other AGGRIEVED EMPLOYEES with  
2 wage statements which violated Cal. Lab. Code § 226.

3  
4 **JURISDICTION AND VENUE**

5 24. This Court has supplemental jurisdiction over PLAINTIFF's state law  
6 claims pursuant to 28 U.S.C. § 1367.

7 25. Venue is proper in this Court and judicial district pursuant to 28 U.S.C. §  
8 1391 because (i) DEFENDANT conducts and conducted substantial business within this  
9 judicial district and maintains offices in this judicial district, (ii) the causes of action  
10 alleged herein arise in whole or in part in this judicial district, and (iii) DEFENDANT  
11 committed wrongful conduct in this district against PLAINTIFF and the AGGRIEVED  
12 EMPLOYEES. Venue is also proper in this district because the complaint was initially  
13 filed in the Superior Court of California, County of San Diego, but was later removed  
14 by DEFENDANT to this Court.

15  
16 **FIRST CAUSE OF ACTION**

17 **For Violation of the Private Attorneys General Act**

18 **[Cal. Lab. Code §§ 2698, et seq.]**

19 **(By PLAINTIFF and Against All Defendants)**

20 26. PLAINTIFF incorporates by reference the allegations set forth in  
21 paragraphs 1-25, supra, as though fully set forth at this point.

22 27. PAGA is a mechanism by which the State of California itself can enforce  
23 state labor laws through the employee suing under the PAGA who do so as the proxy or  
24 agent of the state's labor law enforcement agencies. An action to recover civil penalties  
25 under PAGA is fundamentally a law enforcement action designed to protect the public  
26 and not to benefit private parties. The purpose of the PAGA is not to recover damages  
27 or restitution, but to create a means of "deputizing" citizens as private attorneys general  
28 to enforce the Labor Code. In enacting PAGA, the California Legislature specified that

1 "it was ... in the public interest to allow aggrieved employees, acting as private attorneys  
2 general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1.

3  
4 28. PLAINTIFF, and such persons that may be added from time to time who  
5 satisfy the requirements and exhaust the administrative procedures under the Private  
6 Attorney General Act, brings this Representative Action on behalf of the State of  
7 California with respect to herself and all individuals who are or previously were  
8 employed by DEFENDANT as Delivery Drivers and classified as independent  
9 contractors in California during the time period of August 9, 2016 until the present (the  
10 "AGGRIEVED EMPLOYEES").

11 29. On August 11, 2017, PLAINTIFF gave written notice by electronic mail to  
12 the Labor and Workforce Development Agency (the "Agency") and by certified mail  
13 to the employer of the specific provisions of this code alleged to have been violated as  
14 required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by  
15 this reference herein. The statutory waiting period for PLAINTIFF to add these  
16 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,  
17 PLAINTIFF may now commence a representative civil action under PAGA pursuant to  
18 Section 2699 as the proxy of the State of California with respect to all AGGRIEVED  
19 EMPLOYEES as herein defined.

20 30. The policies, acts and practices heretofore described were and are an  
21 unlawful business act or practice because Defendant (a) failed to properly record and pay  
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they  
23 worked, including minimum wages and overtime hours in violation of the Wage Order,  
24 (b) failed to provide accurate itemized wage statements, (c) failed to properly record and  
25 provide legally required meal and rest periods, and (d) failed to reimburse employees for  
26 required expenses, all in violation of the applicable Labor Code sections listed in Labor  
27 Code §2699.5, including but not limited to Labor Code §§ 204, 226(a), 226.7, 226.8,  
28 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the applicable Industrial Wage Order(s),

1 and thereby gives rise to statutory penalties as a result of such conduct. PLAINTIFF  
2 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private  
3 Attorney General Act of 2004 as the representative of the State of California for the  
4 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

5 31. Some or all of the conduct and violations alleged herein occurred during the  
6 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did  
7 not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those  
8 violations that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v.*  
9 *Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/2018).

10  
11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFF prays for judgment against each Defendant,  
13 jointly and severally, as follows:

14 1. On behalf of the State of California and with respect to all AGGRIEVED  
15 EMPLOYEES:

16 A) Recovery of civil penalties as prescribed by the Labor Code Private  
17 Attorneys General Act of 2004; and,

18 B) An award of attorneys' fees and cost of suit, as allowable under the law,  
19 including, but not limited to, pursuant to Labor Code §2699.

20  
21 Dated: June 3, 2019

BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP

22  
23  
24 By: /s/ Norman Blumenthal  
Norman B. Blumenthal  
Attorneys for Plaintiff