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Attorneys for Plaintiff BRIANA GALLARDO, Individually and on behalf of all other employees similarly situated

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Superior Court of California,
County of San Diego
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By Malka Manneh, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

BRIANA GALLARDO, Individually and
on behalf of all employees similarly
situated,

Plaintiffs,

v.

AMAZON.COM SERVICES, LLC, A
Delaware Limited Liability Company
f.k.a. AMAZON.COM SERVICES, INC.;
and DOES 1 through 25, inclusive,

Defendants.

CASE NO. 37-2022-00001593-CU-OE-CTL

CLASS ACTION COMPLAINT FOR
DAMAGES

DEMAND FOR JURY

Plaintiff BRIANA GALLARDO ("Plaintiff"), for herself and all others similarly situated, alleges as follows:

1. Plaintiff is an individual and is now and at all times referenced mentioned in this complaint was a resident of San Diego County, California. At all times herein mentioned Plaintiff was employed by Defendant AMAZON.COM SERVICES LLC.

2. Defendant AMAZON.COM SERVICES, LLC is and at all times mentioned herein was a Delaware limited liability company organized, existing, and conducting business in California under and by virtue of the laws of California (Entity Number

202001010303). Defendant AMAZON was formerly known as AMAZON.COM SERVICES, INC. (California Secretary of State Entity Number C3678136) before reorganizing itself in January 2020. Because the claims asserted herein pre-date the reorganization both the LLC and INC entities are referred to herein as "Defendant AMAZON."

3. Plaintiff is unaware of the true identities and/or capacities of those defendants sued herein as "DOES 1 through 25, inclusive," and are for that reason sued by such fictitious names. Plaintiff will amend this complaint to allege the true names, capacities and identities of such "DOE" defendants if, and when, ascertained. Plaintiff is informed, believes and thereon alleges that each of the fictitiously named defendant(s) is/are thereon responsible in some manner for the occurrences herein alleged, and that Plaintiffs' injuries as herein alleged were proximately caused by such acts.

4. Plaintiff is informed, believes and thereon alleges that at all times mentioned herein, each of the defendants was the agent, employee, servant, partner and/or representative of each of the remaining defendants, and in doing the things hereinafter alleged, was acting within the course and scope of such agency, employment, servitude, partnership and/or other relationship and with the consent of each other.

I.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

5. Plaintiff was employed by Defendant AMAZON in a position titled "Area Manager." Plaintiff was hired by AMAZON in January 2021.

6. In the position of "Area Manager" Plaintiff and all other similarly situated employees were designated and categorized by Defendant AMAZON as exempt from receiving overtime compensation for hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek. Defendant AMAZON stated on Plaintiff's wage statements/pay stubs, as well as those of all other similarly situated employees, that their "Basis of Pay" was "salary." Throughout Plaintiff's employment she was paid \$28.00 per hour.

1 7. Plaintiff alleges based on the job duties and/or responsibilities of an “Area
2 Manager” she and all other similarly situated employees did not meet the criteria of any
3 recognized test in California for being exempt from receiving overtime compensation.
4 Plaintiff alleges neither she nor any similarly situated “Area Managers” met the criteria for
5 Executive Exemption, Administrative Exemption, and/or Professional Exemption
6 regardless of whether she/they were/are paid an hourly rate equivalent to two times the
7 applicable minimum wage.

8 8. Plaintiff alleges that at no time during her and all other “Area Manager”
9 employees’ employment by Defendant AMAZON were they paid overtime wages at the
10 statutory rate of one and one-half (1½) times their regular rate of pay when they were
11 employed for more than eight (8) hours any workday or in excess of forty (40) hours in a
12 workweek.

13 9. Plaintiff alleges throughout her and all similarly situated employees’
14 employment Defendant AMAZON stated on their wage statements/pay stubs that they
15 were paid, at most, eighty (80) hours per two-week pay period without regard to the actual
16 number of hours Plaintiff and all other similarly situated employees were employed in a
17 given day or workweek.

18 10. Plaintiff alleges not only did Defendant AMAZON fail to pay overtime
19 wages, but Defendant AMAZON also failed to pay minimum wage to Plaintiff and all
20 others similarly situated for all hours they worked and were employed in excess of eighty
21 (80) in any given pay period.

22 11. Plaintiff alleges Defendant AMAZON failed to maintain records of hours
23 worked by Plaintiff and all other similarly situated employees including but not limited
24 to all hours worked beyond eighty (80) in a two week pay period.

25 12. Plaintiff alleges Defendant AMAZON stated on her and all other similarly
26 situated employees’ wage statements/pay stubs that she/they performed work in
27 categories identified as “Regular Hours”, “Personal Time”, and/or “Vacation Pay” for
28 which they were compensated at their regular hourly rate of pay. Plaintiff alleges that, to

1 her knowledge and understanding, she did not perform work which would be properly
2 and accurately categorized as “Personal Time” for which she and all other similarly
3 situated employees would be compensated in their pay checks.

4 13. Plaintiff alleges that, to her knowledge and understanding, she did not
5 perform work which would be properly and accurately categorized as “Vacation Pay” for
6 which she and all other similarly situated employees would be compensated in her pay
7 check.

8 14. Plaintiff alleges “Personal Time” is an employment benefit offered by
9 Defendant AMAZON which accrues incrementally during the course of employment
10 which can be used by the employee for situations such as when they have a last minute
11 absence and want to be paid for that time and preserve other benefits such as Unpaid Time
12 Off and/or Vacation Time. Plaintiff alleges “Personal Time” is not a category of labor or
13 services for which an employee would be compensated, as opposed to accruing the benefit
14 for later use, during any given pay period. Plaintiff and all other similarly situated
15 employees are therefore unable to readily ascertain from their wage statement/pay stubs
16 the information about why they are paid “Personal Time” without reference to other
17 documents or information and they are unable to identify what labor or services they
18 performed in the “Personal Time” category which is separate and apart from their Regular
19 Hours worked as identified on their wage statements/pay stubs.

20 15. Plaintiff alleges “Vacation Pay” is an employment benefit offered by
21 Defendant AMAZON which accrues incrementally during the course of employment and
22 which can be used by the employee for situations such as a preplanned vacation. Plaintiff
23 alleges “Vacation Pay” is not a category of labor or services for which an employee would
24 be compensated, as opposed to accruing the benefit for later use, during any given pay
25 period. Plaintiff and all other similarly situated employees are therefore unable to readily
26 ascertain the information about why they are paid “Vacation Pay” without reference to
27 other documents or information and they are unable to identify what labor or services they
28 performed in the “Vacation Pay” category which is separate and apart from their Regular

1 Hours worked as identified on their wage statements/pay stubs.

2 16. Plaintiff alleges that throughout her employment Defendant AMAZON failed
3 and/or refused to provide Plaintiff and all other similarly situated employees with
4 adequate seating even though the nature of the work reasonably permits the use of seats.

5 **II.**

6 **CLASS ACTION ALLEGATIONS**

7 **(California Code of Civil Procedure §382)**

8 17. Plaintiff incorporates by this reference each and every previous paragraph
9 and all allegations contained therein as though set forth in full herein.

10 18. Plaintiff alleges the number of employees affected by Defendant AMAZON's
11 actions, conduct and unlawful policy and/or practice as herein alleged are so numerous
12 as to make joinder of individual cases impractical, a waste of judicial resources, and not
13 judicially economical. Based on information and belief Plaintiff alleges there are more than
14 500 employees of Defendant AMAZON located in California who during the applicable
15 limitations period were affected by Defendant AMAZON's practice of not paying overtime
16 compensation to Area Managers, failing to pay Area Managers minimum wage for hours
17 they were employed but did not receive compensation, Defendant AMAZON's failure to
18 provide accurate wage statements/pay stubs, failure to maintain records, and failing to
19 provide adequate seating, as herein alleged.

20 19. Plaintiff alleges for herself and all other employees similarly situated the
21 actions of AMAZON as herein alleged involve common questions of law and fact including
22 but not limited to whether AMAZON violated the provisions of California Labor Code
23 §204 (failure to pay wages earned), §226 (failure to provide accurate wage statements), §510
24 (failure to pay overtime wages), §1194 (failure to pay minimum wage and overtime wages),
25 §226 and §1174 (failure to maintain records) and California Business & Professions Code
26 §17200 (unlawful business practice).

24. At all times herein mentioned Defendant AMAZON and/or DOES failed to pay Plaintiff and all other similarly situated employees wages for all overtime hours worked, permitted, directed and/or suffered in excess of eight (8) hours in any workday or in excess of 40 hours in any workweek as herein alleged.

25. At all times herein mentioned Defendant AMAZON and/or DOES failed to pay Plaintiff and all other similarly situated employees minimum wages for all hours worked, permitted, directed and/or suffered in excess of the eighty (80) hours that are identified on Plaintiff's and all other similarly situated employees' wages statements/pay stubs as herein alleged.

26. As a direct and proximate result of Defendants' and each of their failure to pay wages in violation of California Labor Code §204, §510 and/or §1194, *et seq.*, Plaintiff and all other similarly situated employees suffered damages in an amount according to proof at trial including interest thereon.

27. As a further direct and proximate result of Defendants' and each of their conduct as herein alleged, Plaintiffs and each of them have retained legal counsel and are thereon entitled to an award of attorney's fees and costs of suit pursuant to applicable statute(s) including but not limited to California Labor Code §98.2(c), §218.5, §1194(a), in an amount according to proof at trial.

IV.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGE

(Cal. Labor Code §1194, §510, §204, et seq.)

28. Plaintiff incorporates by this reference each and every previous paragraph and all allegations contained therein as though set forth in full herein.

29. Plaintiff alleges Defendant AMAZON and/or DOES failed to pay Plaintiff and all other similarly situated employees minimum wage for all hours worked, permitted, directed and/or suffered in excess of the eighty (80) hours identified on Plaintiff's and all other similarly situated employees' wages statements/pay stubs as herein alleged.

30. As a direct and proximate result of Defendants' and each of their failure to pay wages in violation of California Labor Code §204, §510 and/or §1194, *et seq.*, Plaintiff and all other similarly situated employees suffered damages in an amount according to proof at trial including interest thereon.

31. As a further direct and proximate result of Defendants' and each of their conduct as herein alleged, Plaintiffs and each of them have retained legal counsel and are thereon entitled to an award of attorney's fees and costs of suit pursuant to applicable statute(s) including but not limited to California Labor Code §98.2(c), §218.5, §1194(a), in an amount according to proof at trial.

V.

THIRD CAUSE OF ACTION

INACCURATE PAY STUBS /WAGE STATEMENTS

(Cal. Labor Code §226, et seq.)

32. Plaintiff incorporates by this reference each and every previous paragraph and all allegations contained therein as though set forth in full herein.

33. Defendant AMAZON and/or DOES failed to provide Plaintiff and all other similarly situated employees accurate itemized pay stubs/wage statements in violation of California Labor Code §226 as herein alleged.

34. Plaintiff and all other similarly situated employees allege Defendant AMAZON and/or DOES provided Plaintiff and all other similarly situated employees with inaccurate wage statements/pay stubs to the extent Defendant paid Plaintiff and all other similarly situated employees for “Personal Time” and/or “Vacation Pay” as identified on their wage statements/pay stubs when Plaintiff and all other similarly situated employees, to the best of their knowledge, did not work the categories of hours referred to as “Personal Time” and/or “Vacation Pay” as herein alleged.

35. Plaintiff alleges that, to the best of her/their knowledge “Personal Time” and/or “Vacation Pay” are benefits which are accrued as opposed to hours worked for which they would be paid on a regular wage statement/pay stub.

1 36. Based thereon, Plaintiff and all other similarly situated employees are unable
2 to readily ascertain from their wage statements/pay stubs information about why they
3 were paid "Personal Time" and/or "Vacation Pay" without reference to other documents
4 or information and they are unable to identify what labor or services they performed in the
5 "Personal Time" and/or "Vacation Pay" category which is separate and apart from their
6 Regular Hours worked as identified on their wage statements/pay stubs.

7 37. Plaintiff and all other similarly situated employees allege Defendant
8 AMAZON's and/or DOES' conduct in failing to provide accurate wage statements/pay
9 stubs as required, as herein alleged, was knowing and intentional.

10 38. As a direct and proximate result of Defendant AMAZON's and/or DOES'
11 failure to provide accurate wage statements/pay stubs as required Plaintiff and all other
12 similarly situated employees are entitled to recover a civil penalty of \$500 in accordance
13 with California Labor Code §1174.5.

14 39. As a direct and proximate result of Defendants' and each of their failure to
15 provide itemized accurate wage statements/pay stubs as required Plaintiffs and each of
16 them are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the
17 initial pay period in which a violation occurs and one hundred dollars (\$100) per employee
18 for each violation in a subsequent pay period, not to exceed an aggregate penalty of four
19 thousand dollars (\$4,000) in accordance with California Labor Code §226(e)(1).

20 40. As a further direct and proximate result of Defendants' and each of their
21 conduct as herein alleged, Plaintiffs and each of them have retained legal counsel and are
22 thereon entitled to an award of attorney's fees and costs of suit pursuant to applicable
23 statute(s) including but not limited to California Labor Code §226(e)(1), in an amount
24 according to proof at trial.

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1 VI.

2 FOURTH CAUSE OF ACTION

3 FAILURE TO MAINTAIN ACCURATE RECORDS

4 (Cal. Labor Code §226, §1174, §1174.5, et seq.)

5 41. Plaintiff incorporates by this reference each and every previous paragraph
6 and all allegations contained therein as though set forth in full herein.

7 42. Defendant AMAZON and/or DOES failed to maintain accurate records of
8 the hours Plaintiff and all other similarly situated employees worked in violation of
9 California Labor Code §226 and/or §1174 as herein alleged.

10 43. Plaintiff and all other similarly situated employees allege Defendant
11 AMAZON and/or DOES failed to maintain accurate records of all hours worked by
12 Plaintiff and all other similarly situated employees beyond the eighty (80) hours as
13 identified on their wage statements/pay stubs regardless of how many hours they worked.

14 44. Plaintiff and all other similarly situated employees allege Defendant
15 AMAZON's and/or DOES' conduct in failing to maintain accurate records as required, as
16 herein alleged, was knowing and intentional.

17 45. As a direct and proximate result of Defendant AMAZON's and/or DOES'
18 failure to maintain accurate records as required Plaintiff and all other similarly situated
19 employees are entitled to recover a civil penalty of \$500 in accordance with California
20 Labor Code §1174.5.

21 46. As a direct and proximate result of Defendants' and each of their failure to
22 provide itemized accurate pay stubs as required Plaintiffs and each of them are entitled to
23 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
24 which a violation occurs and one hundred dollars (\$100) per employee for each violation
25 in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars
26 (\$4,000) in accordance with California Labor Code §226(e)(1).

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47. As a further direct and proximate result of Defendants' and each of their conduct as herein alleged, Plaintiffs and each of them have retained legal counsel and are thereon entitled to an award of attorney's fees and costs of suit pursuant to applicable statute(s) including but not limited to California Labor Code § 226(e)(1), in an amount according to proof at trial.

VII.

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Cal. Labor Code §203)

48. Plaintiff incorporates by this reference each and every previous paragraph and all allegations contained therein as though set forth in full herein.

49. Plaintiff alleges for herself and all other similarly situated employees their unpaid overtime and/or minimum wage compensation constitute wages in accordance with California Labor Code §200, §515 and/or §1194.

50. Defendant AMAZON and/or DOES failed to pay Plaintiff and all other similarly situated employees overtime and/or minimum wages when due in violation of California Labor Code §204, §510, and/or §1194.

51. Plaintiff for herself and all other employees similarly situated alleges Defendant AMAZON violated California Labor Code §203 by willfully failing to pay Plaintiff and all other similarly situated employees all earned and accrued overtime and/or minimum wages as required by California Labor Code §204, §510 and/or §1194.

52. Plaintiff alleges for herself and all employees similarly situated Defendant AMAZON's and/or DOES' conduct in failing to pay overtime and/or minimum wages as herein alleged was willful or intentional because AMAZON and/or DOES knew Plaintiff and all other similarly situated employees were not exempt from overtime compensation under any applicable test and as such Defendant AMAZON had a legal obligation law to pay such overtime and/or minimum wages in accordance with California Labor Code §204, §510, §1194.

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2 53. Plaintiff alleges for herself and all other employees similarly situated that as
3 a direct and proximate result of Defendant AMAZON'S and/or DOES' actions as herein
4 alleged Plaintiff and all other similarly situated employees are entitled to recover all
5 additional and continuing wages provided by California Labor Code §203 including
6 interest thereon in an amount according to proof at trial.

7 54. Plaintiff alleges for herself and all other similarly situated employees that as
8 a direct and proximate result of Defendant AMAZON's and/or DOES' conduct as herein
9 alleged Plaintiff and all other employees were denied use and benefit of their wages,
10 including but not limited to having lost interest on those monies, all in an amount
11 according to proof at trial.

12 55. In addition, as a proximate result of Defendant AMAZON's and/or DOES'
13 conduct as herein alleged Plaintiff did employ attorneys and/or other legal professionals
14 to prosecute this action and is thereon entitled to an award of attorney fees in an amount
15 according to proof in accordance with California Labor Code §218.5.

16 56. As a direct and proximate result of Defendant AMAZON's and/or DOES'
17 conduct and actions as alleged herein the court shall award pursuant to California Labor
18 Code §218.6, interest on all due and unpaid wages at the rate of interest specified in
19 subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the
20 wages were due and payable as provided in Part 1 (commencing with Section 200) of
21 Division 2, in an amount according to proof at trial.

22 57. As a further direct and proximate result of Defendant AMAZON's and/or
23 DOES' actions as herein alleged Plaintiff was required to and did retain attorneys and other
24 legal professionals to represent her in this action and because this action confers a
25 substantial benefit on a large group of persons and/or the general public and enforces
26 significant rights Plaintiff is entitled to an award of attorney fees and costs in accordance
27 with C.C.P. §1021.5.
28

VIII.

SIXTH CAUSE OF ACTION

UNLAWFUL BUSINESS PRACTICE

(Cal. Bus. & Prof. Code §17200)

58. Plaintiff incorporates by this reference each and every previous paragraph and all allegations contained therein as though set forth in full herein.

59. Plaintiff alleges Defendant AMAZON and/or DOES engaged in an unlawful business practice by categorizing Plaintiff and all other similarly situated employees as exempt from being paid overtime and/or minimum wage compensation when Plaintiff and all other similarly situated employees did not meet the criteria under any test for exempt status including but not limited to the fact neither Plaintiff nor any similarly situated "Area Managers" met the criteria for Executive Exemption, Administrative Exemption, and/or Professional Exemption regardless of whether she/they were/are paid an hourly rate equivalent to two times the applicable minimum wage.

60. Defendant AMAZON and/or DOES failed to pay Plaintiff and all other employees similarly situated their earned and accrued overtime and/or minimum wages as required by California Labor Code §204, §510, §1194.

61. Plaintiff alleges as a result of Defendant AMAZON's and/or DOES's actions and conduct as herein alleged Plaintiff has suffered an injury in fact and actual damage in the form of lost wages and money.

62. Plaintiff alleges Defendant AMAZON's and/or DOES's conduct as herein alleged constitutes an unlawful business practice in violation of California Business & Professions Code §17200.

63. Plaintiff alleges for herself and all other employees similarly situated that Defendant AMAZON and/or DOES engaged in the unlawful business practice herein alleged within four (4) years of the date of filing this action as specified in Cal. Bus. & Prof. Code §17208, and Defendant AMAZON continues to engage in the unlawful business practice(s) that are alleged in this complaint.

64. As a direct and proximate result of Defendant AMAZON's and/or DOES's unlawful business practice of violating California Labor Code §204, §510, and/or §1194, as herein alleged, Plaintiff and all other employees similarly situated are entitled to restitution of all unpaid wages and other benefits including interest thereon in an amount according to proof at trial so as to restore Plaintiff and all other employees to the money acquired by Defendant AMAZON's and/or DOES's from its unlawful business practice as herein alleged.

65. Pursuant to California Business & Professions Code §17204, Defendant AMAZON and/or DOES should be enjoined from engaging in or continuing its unlawful business practice as herein alleged.

66. As a further direct and proximate result of Defendant AMAZON's and/or DOES's actions as herein alleged Plaintiff was required to and did retain attorneys and other legal professionals to represent him and all other employees similarly situated in this action and because this action confers a substantial benefit on a large group of persons and enforces significant rights Plaintiff is entitled to an award of attorney fees and costs in accordance with C.C.P. §1021.5.

IX.

PRAYER FOR RELIEF

Plaintiff BRIANA GALLARDO, for herself and all other similarly situated employees, hereby prays for the following relief:

1. That this action be certified as a class action;

2. For special and/or economic damages in an amount according to proof at trial;

3. For restitution of Plaintiff's and all similarly situated employees' unpaid overtime and/or minimum wages including interest thereon as specified in California Labor Code §200, §204, §510, and/or §1194 for Defendant AMAZON's and/or DOES's violation of California Business & Professions Code §17200 in an amount according to proof at trial;

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2 X.

3 DEMAND FOR JURY

4 Plaintiff BRIANA GALLARDO for herself and all other employees similarly situated
5 hereby demands a jury trial on each and every cause of action for which a jury trial is
6 available.

7 By,

8 Dated: January 13, 2022

9 /s/ Robert A. Waller, Jr.

10 ROBERT A. WALLER, JR.

11 Attorneys for Plaintiff

12 BRIANA GALLARDO Individually and
13 on behalf of all other employees similarly
14 situated
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