

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

2018 SEP 18 AM 11:36  
CLERK OF DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DISTRICT

LINDA BURNS on behalf of herself and all  
similarly situated individuals,

Plaintiff,

v.

MLK EXPRESS SERVICES LLC,  
and AMAZON.COM SERVICES, INC.,

Defendants.

Case No. 2:18-cv-625-PTM-9aMRM

Judge

Magistrate Judge

**COLLECTIVE ACTIVE COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Linda Burns (“Burns” or “Plaintiff”), by and through the undersigned attorneys, bring this Complaint against Defendants Amazon.com Services, Inc. (“Amazon”) and MLK Express Services LLC (“MLK Express”) (collectively, “Defendants”), upon personal knowledge of the facts pertaining to herself and on information and belief as to all other matters, on behalf of herself and all similarly situated individuals, and states as follows:

**INTRODUCTION**

1. This is a collective action brought by Plaintiff on behalf of herself and all similarly situated current and former employees of Defendants to recover for Defendants’ willful violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*

**JURISDICTION AND VENUE**

2. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b) because this action involves a federal question under the FLSA.

3. This Court has personal jurisdiction over Defendants because Defendants do business within the State of Florida.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this District.

5. Plaintiff resides in this District.

6. Plaintiff worked for Defendants in this District during the relevant time period.

### **PARTIES**

7. During the relevant time period, Plaintiff was a non-exempt driver employed by Defendants delivering items purchased from Amazon.com to the customers who purchased those items. Plaintiff's written consent to join this action is attached as Exhibit 1, hereto.

8. Plaintiff was hired by Defendants on or around August 3, 2017 and her employment ended on or around April 24, 2018.

9. Plaintiff worked at a facility owned and/or operated by Amazon and located at 4638 Elevation Way, Fort Myers, Florida 33905.

10. MLK Express is a Florida Limited Liability Company that operates a carrier and logistics business and, among other activities, provides trucks and/or drivers to deliver goods for its client companies' customers in Florida, including customers of Amazon in Florida.

11. Amazon is a Delaware company that is an electronic commerce and cloud computing company and one of the largest internet retailers in the world.

12. At all relevant times, Amazon has been associated with and/or related to MLK Express respect to Plaintiff and other similarly situated employees such that Amazon is a "joint employer" of Plaintiff and other similarly situated employees in that, *inter alia*:

- a. After being hired, Plaintiff and other similarly situated employees were provided training by Amazon and/or were trained on how to use Amazon-proprietary devices and software;
- b. Amazon has authority to make decisions regarding the hiring, retention, and termination of Plaintiff and similarly situated employees;

- c. Each day, Plaintiff and other similarly situated employees report to warehouses operated by Amazon where vehicles are loaded with Amazon products and where they receive work instruction and direction from Amazon personnel;
- d. Plaintiff and other similarly situated employees are required to wear Amazon-branded uniforms, including shirts bearing the Amazon logo;
- e. At the end of the day, Plaintiff and other similarly situated employees are required to report delivery issues directly to Amazon;
- f. On information and belief, Amazon tracks the performance of Plaintiff and other similarly situated employees; and
- g. On information and belief, Amazon has procedures in place to evaluate and discipline Plaintiff and similarly situated employees.

#### **COVERAGE UNDER THE FLSA**

13. At all relevant times, Defendants were and are each an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

14. At all relevant times, Defendants were and are each an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

15. At all relevant times, Defendants were and are each an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s) of the FLSA, 29 U.S.C. § 203(s)(1).

16. At all relevant times, Plaintiff and similarly situated employees were engaged in commerce or in the production of goods for commerce within the meaning of Sections 6 and 7 of the FLSA, 29 U.S.C. §§ 206-207.

#### **COLLECTIVE ACTION ALLEGATIONS**

17. Plaintiff brings this action on behalf of herself and other similarly situated employees who were not paid an overtime premium for all hours worked over 40 in a work week.

18. The class of similarly situated employees sought to be certified as a collective action under the FLSA is defined as:

**All current and former drivers paid by MLK Express Services LLC who delivered for Amazon in Florida at any time from three years before the filing of the complaint through the date of judgment (“FLSA Collective”).**

19. Plaintiff seeks conditional and final certification of this collective action under 29 U.S.C. § 216(b).

20. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiff and other similarly situated employees.

21. There are many similarly situated current and former drivers who have been underpaid in violation of the FLSA and who would benefit from issuance of Court-supervised notice of this lawsuit and the opportunity to join the lawsuit. Thus, notice should be sent to FLSA collective action members pursuant to 29 U.S.C. § 216(b).

22. The similarly situated employees are known to Defendants, are readily-identifiable, and can be located through Defendants’ records.

### **FACTS**

23. MLK Express operates a carrier and logistics business and, among other activities, provides vehicles and drivers to deliver goods for Amazon to Amazon customers in Florida.

24. At all relevant times, MLK Express and Amazon have been associated and/or related to one another with respect to Plaintiff and other similarly situated employees such that they are “joint employers” of Plaintiff and other similarly situated employees.

25. Plaintiff and other similarly situated employees worked for Defendants as drivers delivering items purchased from Amazon to customers who purchased the items.

26. During their employment, Plaintiff and other similarly situated employees regularly worked in excess of forty (40) hours in individual workweeks.

27. During her employment, Plaintiff routinely worked over sixty (60) hours in individual workweeks. Specifically, Plaintiff typically worked from 9:00 a.m. until 9:30 p.m., Wednesday through Sunday. She frequently worked past 9:30 p.m.

28. Defendants paid Plaintiff and other similarly situated employees a flat rate, per day. They did not pay Plaintiff and other similarly situated employees *any* overtime premium for their hours worked over 40 in individual workweeks. Sometimes Plaintiff would receive \$1 per package when she was required to deliver packages to assist other drivers after completing her own route. However, this additional \$1 per package did not come close to compensating her for all hours over 40 at the required overtime rate.

29. Defendants suffered or permitted Plaintiff and other similarly situated employees to work in excess of 40 hours in individual workweeks without paying them overtime at the rate of one and one-half times their regular rate of pay for hours worked over 40 in a workweek.

30. Defendants were aware or should have been aware of the overtime requirements of the FLSA.

31. Defendants knew, or acted with reckless disregard for whether, Plaintiff and other similarly situated employees worked in excess of 40 hours in individual workweeks without receiving overtime at the rate of one and one-half times their regular rate of pay for hours worked over 40 in a workweek.

**COUNT I**  
**FLSA – FAILURE TO PAY OVERTIME WAGES**

32. Plaintiff re-allege and incorporate paragraphs 1-31 herein.

33. With limited exception not applicable here, the FLSA requires an employer to pay its non-exempt employees one and one-half times their regular rate of pay for all hours worked over 40 hours in a workweek. 29 U.S.C. § 207.

34. By failing to pay Plaintiff and other similarly situated employees overtime compensation at a rate of one and one-half times their regular rate of pay for all hours worked over 40 in a workweek, Defendants violated the FLSA.

35. Defendants did not act in good faith when they engaged in the above-mentioned conduct.

36. By engaging in the above-mentioned conduct Defendants willfully, knowingly, and/or recklessly violated the FLSA.

37. Because of Defendants' practices and policies, Plaintiff and other similarly situated employees have been damaged in that they have not received wages due to them pursuant to the FLSA.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of herself and all similarly situated individuals, prays that this Honorable Court:

- a. Certify this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth above;
- b. Order prompt notice, pursuant to 29 U.S.C. § 216(b), to all FLSA collective members that this litigation is pending and that they have the right to "opt in" to this litigation;
- c. Declare that Defendants willfully violated the FLSA as set forth above;
- d. Award Plaintiff and similarly situated employees actual damages for unpaid wages;
- e. Award Plaintiff and similarly situated employees liquidated damages in an amount equal to the unpaid wages found due;
- f. Award reasonable attorneys' fees and costs incurred by Plaintiff in filing this action;
- g. Award pre- and post-judgment interest to Plaintiff on these damages; and
- h. Grant such further relief as this Court deems appropriate.

**JURY DEMAND**

Plaintiff demands a trial by jury of all claims asserted in this Complaint.

Dated: September 17, 2018

s/ Neil L. Henrichsen

Neil L. Henrichsen

**HENRICHSEN SIEGEL, P.L.L.C.**

Fla. Bar No.: 0111503

301 West Bay Street, 14th Floor

Jacksonville, Florida 32202

Telephone: (904) 381-8183

[nhenrichsen@hslawyers.com](mailto:nhenrichsen@hslawyers.com)

Laura E. Reasons\*

**DiCELLO LEVITT & CASEY LLC**

Ten North Dearborn Street, Eleventh Floor

Chicago, Illinois 60602

Telephone: (312) 214-7900

[lreasons@dlcfirm.com](mailto:lreasons@dlcfirm.com)

Kenneth P. Abbarno\*

Mark M. Abramowitz\*

**DiCELLO LEVITT & CASEY LLC**

7556 Mentor Avenue

Mentor, Ohio 44060

Telephone: (440) 953-8888

[kabbarno@dlcfirm.com](mailto:kabbarno@dlcfirm.com)

[mabramowitz@dlcfirm.com](mailto:mabramowitz@dlcfirm.com)

\*To seek admission *pro hac vice*

***Counsel for Plaintiff***

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

LINDA BURNS

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Henrichsen Siegel, P.L.L.C.  
301 W. Bay St., 14th Floor, Jacksonville, FL 32202 (904) 381.8183

**DEFENDANTS**

MLK EXPRESS SERVICES, L.L.C.  
AMAZON.COM SERVICES, INC.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
29 USC § 201, et seq.Brief description of cause:  
Failure to Pay Overtime Wages**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE

DOCKET NUMBER

DATE  
09/18/2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

09/20/2018 006

\$400

99

MRM

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [MLK Express, Amazon Sued by Ex-Delivery Driver for Allegedly Unpaid Overtime Wages](#)

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