

1 MICHELE L. MARYOTT, SBN 191993
mmaryott@gibsondunn.com
2 RACHEL S. BRASS, SBN 219301
rbrass@gibsondunn.com
3 GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
4 Irvine, CA 92612-4412
Telephone: 949.451.3800
5 Facsimile: 949.451.4220

6 JASON C. SCHWARTZ (*pro hac vice application to be submitted*)
jschwartz@gibsondunn.com
7 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
8 Washington, DC 20036-5306
Telephone: 202.955.8500
9 Facsimile: 202.467.0539

10 Attorneys for Defendant
AMAZON.COM SERVICES, INC.

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 SOUTHERN DIVISION

15 SAMILLE R. JOHNSON, MARIE C.
LEACH, DARIUS BOYD, and HUSSAM
16 ALJAWAD as individuals, on behalf of
themselves, and on behalf all others
17 similarly situated,

18 Plaintiffs,

19 vs.

20 AMAZON.COM SERVICES, INC., a
Delaware corporation; GOLDEN STATE
21 FC LLC, a Delaware limited liability
company, and DOES 1 through 50,
22 inclusive,

23 Defendants.
24
25
26
27
28

CASE NO. 8:19-cv-00711

**DEFENDANT AMAZON.COM
SERVICES, INC.'S NOTICE OF
REMOVAL OF CLASS ACTION**

[Removal from the Superior Court of
California, County of Orange, Case No.
30-2019-01053847-CU-OE-CXC]

Action Filed: April 15, 2019

TABLE OF CONTENTS

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. PROCEDURAL BACKGROUND 1

II. REMOVAL IS TIMELY..... 3

III. THIS COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION UNDER CAFA..... 4

 A. The Amount in Controversy Exceeds \$5 Million 5

 1. Plaintiffs’ Request for Back Pay Alone, Calculated Based on a Mere Two Weeks of Back Pay and Including Only Members of the Purported Age Discrimination Class Who Held White Badges, Places the Amount in Controversy Over \$5 Million 6

 2. Plaintiffs’ Requests for Attorneys’ Fees and Punitive Damages Place Additional Amounts in Controversy, Further Exceeding the CAFA Threshold..... 7

 B. Diversity of Citizenship as Defined by CAFA Exists 8

 C. The Aggregate Number of Putative Class Members is 100 or Greater 10

IV. ALTERNATIVELY THIS COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION UNDER TRADITIONAL DIVERSITY JURISDICTION 11

V. VENUE..... 11

VI. NOTICE..... 11

VII. CONCLUSION 11

TABLE OF AUTHORITIES

Page(s)

Cases

1

2

3

4 *Anderson v. State Farm Mut. Auto. Ins. Co.*,

5 917 F.3d 1126 (9th Cir. 2019) 4

6 *Bayol v. Zipcar, Inc.*,

7 No. 14–cv–02483–TEH2015 WL 4931756 (N.D. Cal. Aug. 18, 2015) 8

8 *Campbell v. Vitran Exp., Inc.*,

9 471 F. App’x 646 (9th Cir. 2012) 5

10 *Dart Cherokee Basin Operating Co., LLC v. Owens*,

11 135 S. Ct. 547 (2014)..... 5

12 *Galt G/S v. JSS Scandinavia*,

13 142 F.3d 1150 (9th Cir. 1998) 7

14 *Giannini v. Northwestern Mut. Life Ins. Co.*,

15 No. C 12-77 CW, 2012 WL 1535196 (N.D. Cal. Apr. 30, 2012) 7

16 *Guglielmino v. McKee Foods Corp.*,

17 506 F.3d 696 (9th Cir. 2007) 5, 7, 8

18 *Hanlon v. Chrysler Corp.*,

19 150 F.3d 1011 (9th Cir. 1998) 8

20 *Hertz Corp. v. Friend*,

21 559 U.S. 77 (2010)..... 9

22 *Jordan v. Nationstar Mortg., LLC*,

23 781 F.3d 1178 (9th Cir. 2015) 5

24 *Kanter v. Warner-Lambert Co.*,

25 265 F.3d 853 (9th Cir. 2001) 9, 10

26 *Kenneth Rothschild Tr. v. Morgan Stanley Dean Witter*,

27 199 F. Supp. 2d 993 (C.D. Cal. 2002) 5

28 *Korn v. Polo Ralph Lauren Corp.*,

536 F. Supp. 2d 1199 (E.D. Cal. 2008) 6

TABLE OF AUTHORITIES
(continued)

Page(s)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LaCross v. Knight Transportation Inc.,
775 F.3d 1200 (9th Cir. 2015) 6

Lew v. Moss,
797 F.2d 747 (9th Cir. 1986) 9

Lewis v. Verizon Commc’ns., Inc.,
627 F.3d 395 (9th Cir. 2010) 4

Molnar v. 1-800-Flowers.com, Inc.,
No. CV 08-0542 CAS, 2009 WL 481618 (C.D Cal. Feb. 23, 2009) 8

Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.,
526 U.S. 344 (1999)..... 4

Oda, et al. v. Gucci Am., Inc.,
No. 2:14-cv-7468-SVW, 2015 WL 93335 (C.D. Cal. Jan. 7, 2015)..... 5

Owens v. Huntling,
115 F.2d 160 (9th Cir. 1940) 9

In re Quintus Sec. Litig.,
148 F. Supp. 2d 967 (N.D. Cal. 2001)..... 8

Rippee v. Boston Mkt. Corp.,
408 F. Supp. 2d 982 (S.D. Cal. 2005) 6

Sanchez v. Russell Sigler, Inc.,
No. CV 15-01350-AB, 2015 WL 12765359 (C.D. Cal. April 28, 2015)..... 5

Sasso v. Noble Utah Long Beach, LLC,
No. CV 14-09154-AB AJWX, 2015 WL 898468 (C.D. Cal. Mar. 3,
2015) 7

Singer v. State Farm Mut. Auto. Ins. Co.,
116 F.3d 373 (9th Cir. 1997) 5

*United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. &
Serv. Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co.*,
602 F.3d 1087 (9th Cir. 2010) 8

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes

28 U.S.C. § 1332(a)	11
28 U.S.C. § 1332(c)	9
28 U.S.C. § 1332(d)	5, 8, 10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **TO THE CLERK OF THE CENTRAL DISTRICT OF CALIFORNIA AND TO**
2 **PLAINTIFFS AND THEIR COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** Defendant Amazon.com Services, Inc.
4 (“Amazon”)¹ removes the above-entitled action to this Court—from the Superior Court
5 of the State of California, County of Orange—pursuant to 28 U.S.C. § 1332(d)(2) (the
6 Class Action Fairness Act of 2005 (“CAFA”)), and removal jurisdiction under 28
7 U.S.C. §§, 1441(a) and 1446, on the following grounds.

8 **I. PROCEDURAL BACKGROUND**

9 1. On February 27, 2019, Plaintiffs Samille R. Johnson, Marie C. Leach,
10 Darius Boyd, and Hussam Aljawad filed an unverified putative class action complaint
11 in the Superior Court of the State of California, County of Orange, entitled *Samille R.*
12 *Johnson, Marie C. Leach, Darius Boyd, and Hussam Aljawad as individuals, on behalf*
13 *of themselves, and on behalf all others similarly situated vs. Amazon.com Services,*
14 *Inc., a Delaware corporation, Golden State FC, LLC, a Delaware limited liability*
15 *company; and Does 1-50, inclusive*, Case No. 30-2019-01053847-CU-OE-CXC.

16 2. On March 15, 2019, Plaintiffs served copies of the Summons, Complaint,
17 Civil Case Cover Sheet, Alternative Dispute Resolution (ADR) Information Package,
18 and ADR Stipulation on Amazon. Copies of these documents, as well as the Proof of
19 Service filed on April 10, 2019 and the Court’s minute order entered on March 18,
20 2019 are attached as Exhibits A through G to the Declaration of Michele L. Maryott
21 (“Maryott Decl.”) in Support of Defendant’s Notice of Removal.

22 3. In their Complaint, Plaintiffs assert seven claims on behalf of themselves
23 and members of the following two purported subclasses:

- 24 • **Age Discrimination Subclass:** All persons over the age of 40 and
25 who were employed by Defendants, AMAZON.COM SERVICES,

26
27 ¹ Effective January 1, 2018, Amazon.com Fulfillment Services, Inc. changed its name
28 to Amazon.com Services, Inc. Effective January 1, 2019, Golden State FC LLC
merged with Amazon.com Services, Inc. and retained the name Amazon.com
Services, Inc.

1 INC. and GOLDEN STATE FC, LLC in the State of California, and
2 who at any time within four (4) years of the filing of this Complaint
3 worked in Defendants' joint-venture fulfillment centers in the State of
4 California and who, because of their age suffered adverse employment
5 actions, including but not limited to discrimination in terms and
6 conditions of their employment and termination.

7 Compl. ¶ 82, and

- 8 • **Disability Discrimination Subclass:** All persons who have or had a
9 disabling condition and who were employed by Defendants,
10 AMAZON.COM SERVICES, INC. and GOLDEN STATE FC, LLC
11 in the State of California, and who at any time within four (4) years of
12 the filing of this Complaint worked in Defendants' joint venture
13 fulfillment centers in the State of California and who because of a
14 work related injury and/or a disabling condition suffered an adverse
15 employment action, including but not limited to one or more of the
16 following actions: accrual of points for missing work due to work-
17 related injury, which accrual of points led to discharge for accruing too
18 many points; forced resignation, discrimination in terms and conditions
19 of their employment; prohibited from and/or deemed ineligible to earn
20 a permanent blue badge status after sustaining a work related injury or
21 because of a disabling condition; retaliation after filing a workers
22 compensation claim or request for accommodation; and/or termination.

23 Compl. ¶ 83.

24 4. The seven claims alleged are: (1) Disability Discrimination in violation of
25 Gov't Code section 12940(a); (2) Age Discrimination in violation of Gov't Code
26 sections 12940, 12946; (3) Failure to Accommodate in violation of Gov't Code section
27 12940(m); (4) Failure to Engage in the Interactive Process in violation of Gov't Code
28 section 12940(n); (5) Retaliation in violation of Gov't Code section 12940(h); (6)

1 Wrongful Termination in Violation of Public Policy; and (7) Unlawful, Unfair, and
2 Fraudulent Business Practices in violation of California Business and Professions Code
3 section 17200 *et seq.*

4 5. Plaintiffs allege that Amazon maintained “various operational policies and
5 practices,” including internal incentives and attitudes, that prevented injured or
6 disabled workers from moving from a white badge—given to temporary, part time, or
7 seasonal workers—to a blue badge—given to “permanent employees.”² Compl.
8 ¶¶ 27, 29, 31. Specifically, Plaintiffs allege that “Defendants’ policies and practices
9 insure that only employees who are demonstrably strong, fit, who are not injured and
10 not disabled and able to maintain Defendants’ demanding production quotas, and who
11 don’t accrue ‘points’ as described herein, are able to obtain a blue badge and
12 permanent employment.” Compl. ¶ 27. Plaintiffs further allege that Amazon “did not
13 terminate or take same or similar adverse employment actions against Plaintiffs’
14 younger associates who were performing same or similar work, under same and similar
15 conditions, even when such younger employee’s production rates were also considered
16 low.” Compl. ¶ 109.

17 6. Plaintiffs also allege that Amazon failed to engage in an interactive
18 process in order to find an accommodation for Plaintiffs supposed injuries and
19 disabilities, and that Amazon failed to actually accommodate Plaintiffs’ supposed
20 injuries and disabilities. Compl. ¶ 3. According to Plaintiffs, Amazon “‘thin[ne]d] the
21 herd’” of injured and disabled workers through chronic and improper coding of
22 Plaintiffs’ leave status. Compl. ¶¶ 29–31.

23 7. For purposes of this removal only, Amazon assumes Plaintiffs’
24 allegations as true.

25 **II. REMOVAL IS TIMELY**

26 8. Plaintiffs served Amazon on March 15, 2019 through its authorized agent
27 for service. Because this Notice of Removal is filed within thirty days of service of the
28

² All of the putative class members were employed at-will.

1 Summons and Complaint, it is timely under 28 U.S.C. §§ 1446(b) and 1453. *See*
 2 *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999); *see also*
 3 *Anderson v. State Farm Mut. Auto. Ins. Co.*, 917 F.3d 1126, 1128 n.2 (9th Cir. 2019)
 4 (“Thirty days from February 13, 2015, was Sunday March 15, 2015, so the notice of
 5 removal would have been timely filed on Monday, March 16, 2015.” (citing Fed. R.
 6 Civ. P. 6(a)(1)(C))).

7 **III. THIS COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION**
 8 **UNDER CAFA**

9 9. Plaintiffs bring this action as a putative class action. Compl. ¶ 1.
 10 Removal based on CAFA diversity jurisdiction is proper because: (A) the amount
 11 placed in controversy by the Complaint exceeds, in the aggregate, \$5 million,
 12 exclusive of interest and costs; (B) diversity of citizenship exists between one or more
 13 plaintiffs and one or more defendants; and (C) the aggregate number of putative class
 14 members is 100 or greater. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B), & 1453.
 15 Removal is therefore proper under 28 U.S.C. § 1441(a).

16 10. Amazon denies Plaintiffs’ factual allegations and denies that Plaintiffs or
 17 the class they purport to represent are entitled to the relief requested.³ However, based
 18 on the allegations in the Complaint and the prayer for relief, all requirements for
 19 jurisdiction under CAFA have been met. Accordingly, diversity of citizenship exists
 20 under CAFA and this Court has original jurisdiction over this action.

21
 22
 23 ³ Amazon denies that liability or damages can be established either as to Plaintiffs or
 24 on a class-wide basis. Amazon does not concede, and reserves the right to contest, at
 25 the appropriate time, Plaintiffs’ allegations that this action may properly proceed as a
 26 class action. Amazon does not concede and reserves the right to contest, at the
 27 appropriate time, that any of Plaintiffs’ allegations constitute a cause of action
 28 against it under applicable California law. No statement or reference contained
 herein shall constitute an admission of liability or a suggestion that Plaintiffs will or
 could actually recover any damages based upon the allegations contained in the
 Complaint or otherwise. Amazon’s notice seeks only to establish that the amount in
 controversy is more likely than not in excess of CAFA’s jurisdictional minimum.
 “The amount in controversy is simply an estimate of the total amount in dispute, not
 a prospective assessment of [Defendant’s] liability.” *Lewis v. Verizon Commc’ns.,*
Inc., 627 F.3d 395, 400 (9th Cir. 2010).

1 **A. The Amount in Controversy Exceeds \$5 Million**

2 11. Pursuant to CAFA, the claims of the individual members in a class action
3 are aggregated to determine if the amount in controversy exceeds \$5 million exclusive
4 of interest and costs. 28 U.S.C. § 1332(d)(6).

5 12. Where a plaintiff does not expressly plead a specific amount in damages,
6 as is the case here, a defendant seeking to remove under CAFA need only “provide
7 evidence establishing that it is ‘more likely than not’ that the amount in controversy
8 exceeds [the jurisdictional] amount” of \$5 million. *See Guglielmino v. McKee Foods*
9 *Corp.*, 506 F.3d 696, 700 (9th Cir. 2007); *see Singer v. State Farm Mut. Auto. Ins. Co.*,
10 116 F.3d 373, 376 (9th Cir. 1997). A defendant’s burden to establish the amount in
11 controversy is by a preponderance of the evidence. *Dart Cherokee Basin Operating*
12 *Co., LLC v. Owens*, 135 S. Ct. 547, 553–54 (2014); *see also Jordan v. Nationstar*
13 *Mortg., LLC*, 781 F.3d 1178, 1183 (9th Cir. 2015) (citing *Dart Cherokee* and noting
14 there is no anti-removal presumption against CAFA cases). Moreover, a removing
15 party seeking to invoke CAFA jurisdiction “need include only a plausible allegation
16 that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee*,
17 135 S. Ct. at 554.

18 13. A removing defendant is “not required to comb through its records to
19 identify and calculate the exact frequency of [alleged] violations.” *Oda, et al. v. Gucci*
20 *Am., Inc.*, No. 2:14-cv-7468-SVW (JPRx), 2015 WL 93335, at *12 (C.D. Cal. Jan. 7,
21 2015). Nor is a removing defendant required to “research, state, [or attempt to] prove
22 the plaintiff’s claims for damages.” *Sanchez v. Russell Sigler, Inc.*, No. CV 15-01350-
23 AB (PLAx), 2015 WL 12765359, at *2 (C.D. Cal. April 28, 2015) (citation omitted).

24 14. Moreover, in assessing whether the amount in controversy requirement
25 has been satisfied, “a court must ‘assume that the allegations of the complaint are true
26 and assume that a jury will return a verdict for the plaintiff on all claims made in the
27 complaint.’” *Campbell v. Vitran Exp., Inc.*, 471 F. App’x 646, 648 (9th Cir. 2012)
28 (quoting *Kenneth Rothschild Tr. v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993,

1 1001 (C.D. Cal. 2002)). In other words, the focus of the Court’s inquiry must be on
2 “what amount is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant
3 will actually owe.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205
4 (E.D. Cal. 2008) (citing *Rippee v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D.
5 Cal. 2005)).

6 15. Finally, a plaintiff cannot defeat removal by contending that the damages
7 ultimately recoverable may fall below the \$5 million dollar threshold. *See LaCross v.*
8 *Knight Transportation Inc.*, 775 F.3d 1200, 1203 (9th Cir. 2015) (rejecting plaintiff’s
9 argument for remand based on the contention that the class may not be able to prove
10 all amounts claimed: “Plaintiffs are conflating the amount in controversy with the
11 amount of damages ultimately recoverable.”).

12 16. As discussed more fully below, the amount in controversy here exceeds
13 \$5 million.

14 **1. Plaintiffs’ Request for Back Pay Alone, Calculated Based on a**
15 **Mere Two Weeks of Back Pay and Including Only Members of**
16 **the Purported Age Discrimination Class Who Held White**
17 **Badges, Places the Amount in Controversy Over \$5 Million**

18 17. There are 34,440 non-exempt Amazon associates employed in facilities in
19 California who, during the purported class period of February 27, 2015 to February 27,
20 2019, were either 40 years of age at the outset or turned 40 years of age during that
21 time period. Declaration of Liseth Gomez-Garcia (“Gomez-Garcia Decl.”) ¶ 5e. Of
22 those Amazon associates, 13,493 of them held “white badges,” as opposed to, for
23 example, “blue badges,” which Plaintiffs allege signify “permanent employment.”
24 Gomez-Garcia Decl. ¶ 5f; Compl. ¶ 27.

25 18. All named Plaintiffs representing the purported class were full time, non-
26 exempt employees . Compl. ¶¶ 35, 49, 58. *See also* Compl. of Employment
27 Discrimination Before the State of California Dep’t of Fair Employment and Housing
28 at 2 (attached as Exhibit D to the Complaint).

1 19. The average minimum wage in California during the relevant period was
2 approximately \$10.00. See Exhibit H to Maryott Decl. Based on that average, the
3 weekly pay for a full time employee can be estimated at \$400.00.

4 20. Three of the named Plaintiffs, Samille Johnson, Marie Leach and Hussam
5 Aljawad, were over 40 years of age during their employment. The average of their
6 weekly pay was \$253.00.

7 21. Assuming a mere two weeks of back pay for only “white badge” holders
8 who fall within the purported class at the average weekly pay of \$253.00, the amount
9 in controversy would be **\$6,827,458** (13,493 employees x \$253.00 x 2).⁴ And using
10 \$400.00 per week to calculate the amount in controversy based on two weeks’ back
11 pay per putative class member over the age of 40 would exceed \$10 million.

12 **2. Plaintiffs’ Requests for Attorneys’ Fees and Punitive Damages**
13 **Place Additional Amounts in Controversy, Further Exceeding**
14 **the CAFA Threshold**

15 22. Plaintiffs also seek recovery of attorneys’ fees, punitive damages, and
16 non-economic damages. See, e.g., Compl., ¶¶ 7, 113; Prayer for Relief ¶ 8.

17 23. Claims for attorneys’ fees are properly included in determining the
18 amount in controversy. See *Guglielmino*, 506 F.3d at 700 (citing *Galt G/S v. JSS*
19 *Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998)); see also *Sasso v. Noble Utah Long*
20 *Beach, LLC*, No. CV 14-09154-AB AJWX, 2015 WL 898468, at *5–6 (C.D. Cal. Mar.
21 3, 2015) (“The Court believes that, when authorized by an underlying statute, the
22 better view is to consider post-removal attorneys’ fees because they are part of the total
23 ‘amount at stake.’” (citation omitted)); *Giannini v. Northwestern Mut. Life Ins. Co.*,
24 No. C 12-77 CW, 2012 WL 1535196, at *4 (N.D. Cal. Apr. 30, 2012) (finding

25
26
27 ⁴ This calculation excludes the other 20,947 “non-white badge” Amazon
28 associates who were over the age of 40 and working in a California facility during
the putative class period. It also excludes individuals who would fall within the
putative “disability discrimination subclass” as well as the value of any benefits that
may have been claimed by members of that purported class.

1 reasonable estimate of future attorneys' fees can be used in calculating the amount in
2 controversy).

3 24. For purposes of removal, the Ninth Circuit uses a benchmark rate of 25
4 percent of the potential damages as the amount of attorneys' fees, and courts may
5 include that fee in the CAFA amount in controversy. *Hanlon v. Chrysler Corp.*, 150
6 F.3d 1011, 1029 (9th Cir. 1998); *In re Quintus Sec. Litig.*, 148 F. Supp. 2d 967, 973
7 (N.D. Cal. 2001) (benchmark for attorneys' fees is 25% of the common fund).

8 25. Amazon has plausibly demonstrated by a preponderance of the evidence
9 that the amount in controversy conservatively exceeds \$5 million, but the inclusion of
10 attorneys' fees, just to the calculation detailed above, would add another \$1,706,864.50
11 to the amount in controversy bringing that total number to **\$8,534,322.50**.

12 26. This Court may also consider Plaintiffs' request for punitive damages in
13 determining the amount in controversy. *Molnar v. 1-800-Flowers.com, Inc.*, No. CV
14 08-0542 CAS (JCx), 2009 WL 481618, at *4 (C.D Cal. Feb. 23, 2009) ("In general,
15 claims for punitive damages are considered in determining the amount in controversy,
16 as long as punitive damages are available under the applicable law."). Assuming a
17 conservative punitive damages award based upon a one to one ratio would place an
18 additional roughly \$6.8 million in controversy. *See Bayol v. Zipcar, Inc.*, No. 14-cv-
19 02483-TEH2015 WL 4931756, at *9 (N.D. Cal. Aug. 18, 2015) (assuming "a
20 conservative" 1:1 ratio for punitive to compensatory damages for determining whether
21 the CAFA \$5 million threshold was met (citing *Guglielmino*, 506 F.3d at 701)).

22 **B. Diversity of Citizenship as Defined by CAFA Exists**

23 27. To satisfy CAFA's diversity requirement, a party need only show that
24 minimal diversity exists—that is that one putative class member is a citizen of a state
25 different from that of one defendant. 28 U.S.C. § 1332(d)(2); *United Steel, Paper &*
26 *Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO,*
27 *CLC v. Shell Oil Co.*, 602 F.3d 1087, 1090–91 (9th Cir. 2010).

28

1 28. “An individual is a citizen of the state in which he is domiciled”
2 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). For the purposes of
3 assessing diversity, courts look to the individual’s domicile at the time that the lawsuit
4 is filed. *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986).

5 29. A person is “domiciled” in a location where he or she has established a
6 “fixed habitation or abode in a particular place, and [intends] to remain there
7 permanently or indefinitely.” *Owens v. Huntling*, 115 F.2d 160, 162 (9th Cir. 1940)
8 (internal quotation and citation omitted).

9 30. Plaintiffs’ class allegations state, “Plaintiffs and those similarly situated
10 are residents of California. . . .” Compl. ¶ 9. Plaintiffs also all worked at Amazon
11 facilities in California and pleaded a desire to remain employed at those jobs in
12 California. Compl. at *passim*. None of the named Plaintiffs has pleaded that he or she
13 has left or intends to leave California. Thus, at least one putative class member is a
14 citizen of California for diversity jurisdiction purposes.

15 31. Pursuant to 28 U.S.C. § 1332, “a corporation shall be deemed to be a
16 citizen of every State and foreign state by which it has been incorporated and of the
17 State or foreign state where it has its principal place of business.” 28 U.S.C.
18 § 1332(c)(1). The “principal place of business” for the purpose of determining
19 diversity subject matter jurisdiction refers to “the place where a corporation’s officers
20 direct, control, and coordinate the corporation’s activities [I]n practice it should
21 normally be the place where the corporation maintains its headquarters—provided that
22 the headquarters is the actual center of direction, control, and coordination, *i.e.*, the
23 ‘nerve center,’ and not simply an office where the corporation holds its board meetings
24” *See Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010). Amazon is incorporated
25 under the laws of Delaware and has its headquarters in Seattle, Washington. Gomez-
26 Garcia Decl. ¶¶ 3–; Compl. ¶ 16. Accordingly, Amazon is a citizen of the States of
27 Washington and Delaware for the purpose of determining diversity. 28 U.S.C. §
28 1332(c)(1).

1 32. As noted above, effective January 1, 2019, Golden State FC LLC merged
2 with Amazon.com Services, Inc. and retained the name Amazon.com Services, Inc.
3 Maryott Decl. ¶ 9.

4 33. Therefore, based on the Complaint, at least one member of the putative
5 plaintiff class is a citizen of a state different than at least one defendant. As a result,
6 diversity jurisdiction exists under CAFA. 28 U.S.C. § 1332(d)(2)(A) (requiring only
7 “minimal diversity” under which “any member of a class of plaintiffs is a citizen of a
8 State different from any Defendant”).

9 **C. The Aggregate Number of Putative Class Members is 100 or Greater**

10 34. Plaintiff asserts claims on behalf of a putative class made up of “[a]ll
11 persons over the age of 40 and who were employed by Defendants . . . in the State of
12 California, and who . . . worked in Defendants’ joint-venture fulfillment centers,” and
13 suffered adverse employment consequences as described in the Complaint, Compl. ¶
14 82, and “[a]ll persons who have or had a disabling condition and who were employed
15 by Defendants . . . in the State of California, and who . . . worked in Defendants’ joint-
16 venture fulfillment centers in the State of California,” and who suffered adverse
17 employment consequences as described in the Complaint, Compl. ¶ 83.

18 35. Based on Amazon’s internal records, the putative class contains more than
19 100 putative class members. Gomez-Garcia Decl. ¶ 5.⁵

20 36. The class as alleged in the Complaint therefore satisfies the number of
21 required members for the purposes of CAFA. 28 U.S.C. § 1332(d)(5)(B).⁶

22
23 ⁵ Plaintiffs’ Complaint is ambiguous as to whether the class is to include only non-
24 exempt hourly-paid employees. Although all named Plaintiffs are non-exempt,
25 hourly-paid, the class definition is not so restricted. *Compare* Compl. ¶¶ 35–72 with
26 Compl. ¶¶ 82–83. But of course, including exempt employees would only increase
both the number of Plaintiffs included in the class definition and the amount in
controversy.

27 ⁶ Amazon reserves the right to supplement or provide the Court with additional
28 briefing or information as necessary to appropriately assess CAFA’s jurisdictional
requirements or traditional diversity requirements with respect to the named
Plaintiffs. *Kanter*, 265 F.3d 853, 858 (9th Cir. 2001) (noting that a party may “cure[]
its defective allegations . . . by amending its notice of removal”).

1 **IV. ALTERNATIVELY THIS COURT HAS ORIGINAL SUBJECT MATTER**
2 **JURISDICTION UNDER TRADITIONAL DIVERSITY JURISDICTION**

3 37. In addition to removal under CAFA, removal is independently proper
4 based upon traditional diversity jurisdiction. “The district courts shall have original
5 jurisdiction of all civil actions where the matter in controversy exceeds the sum or
6 value of \$75,000, exclusive of interest and costs, and is between . . . citizens of
7 different States.” 28 U.S.C. §§ 1332(a)–(a)(1). Both requirements are met here.

8 38. Complete diversity exists between the parties because Plaintiffs are each
9 domiciled in California as they are residents of the State with an intent to remain as
10 such. Section III.B, *supra*. Amazon is incorporated and organized under the laws of
11 Delaware and maintains its principal place of business in Seattle, Washington.
12 Gomez-Garcia Decl. ¶¶ 3–4.

13 **V. VENUE**

14 39. This action was originally filed in the Superior Court for the County of
15 Orange. Initial venue is therefore proper in this district, pursuant to 28 U.S.C.
16 § 1441(a), because it encompasses the county in which this action has been pending.

17 **VI. NOTICE**

18 40. Amazon will promptly serve this Notice of Removal on Plaintiffs and will
19 promptly file a copy of this Notice of Removal with the Clerk of the Superior Court of
20 the State of California, County of Orange, in which the action is pending, as required
21 under 28 U.S.C. § 1446(d).

22 41. Pursuant 28 U.S.C. §1446(a), true and correct copies of all “process,
23 pleadings, and orders served” upon Amazon as well as other documents filed in the
24 state court action are filed concurrently with this Notice of Removal as exhibits to the
25 Maryott Declaration.

26 **VII. CONCLUSION**

27 Based on the foregoing, Amazon requests that this action be removed to this
28 Court. If any question arises as to the propriety of the removal of this action, Amazon

1 requests the opportunity to present a brief and oral argument in support of their
2 position that this case is subject to removal.

3
4 Dated: April 15, 2019

5 MICHELE L. MARYOTT
6 JASON C. SCHWARTZ
7 RACHEL S. BRASS
8 GIBSON, DUNN & CRUTCHER LLP

9 By: /s/ Michele L. Maryott
Michele L. Maryott

10 Attorneys for Defendant
11 AMAZON.COM SERVICES, INC.

12 103270280.5
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MICHELE L. MARYOTT, SBN 191993
mmaryott@gibsondunn.com
2 RACHEL S. BRASS, SBN 219301
rbrass@gibsondunn.com
3 GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
4 Irvine, CA 92612-4412
Telephone: 949.451.3800
5 Facsimile: 949.451.4220

6 JASON C. SCHWARTZ (*pro hac vice application to be submitted*)
jschwartz@gibsondunn.com
7 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
8 Washington, DC 20036-5306
Telephone: 202.955.8500
9 Facsimile: 202.467.0539

10 Attorneys for Defendant
AMAZON.COM SERVICES, INC.

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 SOUTHERN DIVISION

15 SAMILLE R. JOHNSON, MARIE C.
LEACH, DARIUS BOYD, and
16 HUSSAM ALJAWAD as individuals,
on behalf of themselves, and on behalf
17 all others similarly situated,

18 Plaintiffs,

19 v.

20 AMAZON.COM SERVICES, INC., a
Delaware corporation; GOLDEN
21 STATE FC, LLC, a Delaware limited
liability company, and DOES 1 through
22 50, inclusive,

23 Defendants.
24
25
26
27
28

CASE NO. 8:19-cv-00711

**DECLARATION OF LISETH
GOMEZ-GARCIA IN SUPPORT OF
DEFENDANT AMAZON.COM
SERVICES, INC.'S NOTICE OF
REMOVAL OF CLASS ACTION**

(Superior Court of California for the
County of Orange, Case No. 30-2019-
01053847-CU-OE-CXC)

1 I, Liseth Gomez-Garcia, hereby declare and state:

2 1. I am over the age of 18, and am competent to attest to the facts set forth
3 herein. Unless otherwise stated, the following facts are within my personal knowledge
4 and, if called and sworn as a witness, I could and would testify competently thereto.

5 2. I am currently employed by Amazon.com Services, Inc. (“Amazon”) as
6 Senior Human Resources Business Partner. In this role, I have been responsible for,
7 among other things, providing general human resources support to Amazon associates
8 at all job levels at various facilities in California. I have been employed by Amazon
9 since August 2014. In my position as Senior Human Resources Business Partner, I
10 have access to certain employment related-information as well as corporate records for
11 Amazon.

12 3. Amazon is organized under the laws of Delaware and has its principal
13 place of business in Seattle, Washington.

14 4. Amazon is headquartered in Seattle, Washington. Amazon directs,
15 controls, and manages its business from Washington. Senior leadership of Amazon is
16 based in Washington.

17 5. Information maintained by Amazon reflects the following:

- 18 a. Plaintiff Samille R. Johnson earned \$1,497.75 during his
19 approximately five weeks of employment with Amazon from
20 December 4, 2018 to January 5, 2019, which was the second time he
21 worked for Amazon.
- 22 b. Plaintiff Marie C. Leach earned \$620.16 during the three weeks she
23 performed work for Amazon, from November 16, 2017 to December
24 6, 2017.
- 25 c. Plaintiff Hussam Aljawad earned \$252.73 during his approximately
26 one week of employment with Amazon from September 29, 2017 to
27 October 5, 2017.
- 28 d. The average weekly pay for those three named Plaintiffs is \$253.00.

- 1 e. There were approximately 34,440 non-exempt Amazon associates
2 (Levels 1-3) employed in facilities in California by Amazon or Golden
3 State FC LLC during the period between February 27, 2015 and
4 February 27, 2019 who were either 40 years of age at the outset of that
5 time period or turned 40 years of age during that time period.
6 f. Of these approximately 34,440 Amazon associates, approximately
7 13,493 were identified as “white badge” holders.

8 I declare under penalty of perjury under the laws of the United States of
9 America that the foregoing is true and correct.

10 Executed on the 15th of April, 2019 at Eastvale, California.

11
12
13 
14 Liseth Gomez-Garcia
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MICHELE L. MARYOTT, SBN 191993
mmaryott@gibsondunn.com
2 RACHEL S. BRASS, SBN 219301
rbrass@gibsondunn.com
3 GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
4 Irvine, CA 92612-4412
Telephone: 949.451.3800
5 Facsimile: 949.451.4220

6 JASON C. SCHWARTZ (*pro hac vice application to be submitted*)
jschwartz@gibsondunn.com
7 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
8 Washington, DC 20036-5306
Telephone: 202.955.8500
9 Facsimile: 202.467.0539

10 Attorneys for Defendant
AMAZON.COM SERVICES, INC.

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 SOUTHERN DIVISION

15 SAMILLE R. JOHNSON, MARIE C.
LEACH, DARIUS BOYD, and
16 HUSSAM ALJAWAD as individuals,
on behalf of themselves, and on behalf
17 all others similarly situated,

18 Plaintiffs,

19 v.

20 AMAZON.COM SERVICES, INC., a
Delaware corporation; GOLDEN
21 STATE FC, LLC, a Delaware limited
liability company, and DOES 1 through
22 50, inclusive,

23 Defendants.

CASE NO. 8:19-cv-00711

**DECLARATION OF MICHELE L.
MARYOTT IN SUPPORT OF
DEFENDANT AMAZON.COM
SERVICES, INC.'S NOTICE OF
REMOVAL OF CLASS ACTION**

(Superior Court of California for the
County of Orange, Case No. 30-2019-
01053847-CU-OE-CXC)

1 I, Michele L. Maryott, hereby declare and state:

2 1. I am an attorney duly licensed to practice law before all the courts of the
3 State of California as well as the United States District Court for the Central District of
4 California. I am a partner at the law firm of Gibson, Dunn & Crutcher LLP, and am
5 one of the attorneys representing Amazon.com Services, Inc. (“Amazon”) in the
6 above-entitled action. Unless otherwise stated, I have personal knowledge of the
7 matters stated herein, and if asked to testify thereto, I would do so competently.

8 2. Attached hereto as **Exhibit A** is a true and correct copy of the Summons
9 in *Johnson v. Amazon.com Services, Inc. et al.*, Case No. 30-2019-01053847-CU-OE-
10 CXC, filed on February 27, 2019.

11 3. Attached hereto as **Exhibit B** is a true and correct copy of the Class
12 Action Complaint in *Johnson v. Amazon.com Services, Inc. et al.*, Case No. 30-2019-
13 01053847-CU-OE-CXC, filed on February 27, 2019.

14 4. Attached hereto as **Exhibit C** is a true and correct copy of the Civil Cover
15 Sheet in *Johnson v. Amazon.com Services, Inc. et al.*, Case No. 30-2019-01053847-
16 CU-OE-CXC, filed on February 27, 2019.

17 5. Attached hereto as **Exhibit D** is a true and correct copy of the Alternative
18 Dispute Resolution (ADR) Information Package in *Johnson v. Amazon.com Services,*
19 *Inc. et al.*, Case No. 30-2019-01053847-CU-OE-CXC, filed on February 27, 2019.

20 6. Attached hereto as **Exhibit E** is a true and correct copy of the Alternative
21 Dispute Resolution (ADR) Stipulation in *Johnson v. Amazon.com Services, Inc. et al.*,
22 Case No. 30-2019-01053847-CU-OE-CXC, filed on February 27, 2019.

23 7. Attached hereto as **Exhibit F** is a true and correct copy of the Proof of
24 Service of Summons, filed on April 10, 2019 in *Johnson v. Amazon.com Services, Inc.*
25 *et al.*, Case No. 30-2019-01053847-CU-OE-CXC, and reflecting that Plaintiffs
26 effected service of the Summons and Class Action Complaint on March 15, 2019.

EXHIBIT A

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

AMAZON.COM SERVICES, INC., a Delaware corporation;

~~"Additional Parties form is attached."~~

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SAMILLE R. JOHNSON; MARIE C. LEACH, DARIUS BOYD and....

"Additional Parties form is attached."

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

02/27/2019 at 12:21:35 PM

Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): **CIVIL COMPLEX CENTER**
751 WEST SANTA ANA BLVD.
SANTA ANA, CA 92701

CASE NUMBER:
(Número del Caso):
30-2019-01053847-CU-OE-CXC

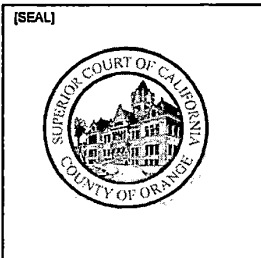
Judge Randall J. Sherman

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jacob N. Whitehead, 15615 Alton Pkwy., Ste. 175, Irvine 92618, 949-936-4001

DATE: **02/27/2019**
(Fecha)

DAVID H. YAMASAKI, Clerk of the Court
Clerk, by S. Loose, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)). Sarah Loose



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **AMAZON.COM SERVICES, INC., a Delaware corporation**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

Page 1 of 1

SUM-200(A)

SHORT TITLE: SAMILLE R. JOHNSON vs. AMAZON.COM SERVICES, INC., et al.	CASE NUMBER:
--	--------------

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

GOLDEN STATE FC LLC, a Delaware limited liability company; and DOES 1- 50, inclusive

SUM-200(A)

SHORT TITLE: SAMILLE R. JOHNSON vs. AMAZON.COM SERVICES, INC.,et al.	CASE NUMBER:
---	--------------

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

HUSSAM ALJAWAD as individuals, on behalf of themselves, and on behalf of all others similarly situated

EXHIBIT B

Jacob N. Whitehead, Esq. SBN 266123
jacob@jnwpc.com
Nicole Jacobsen, Esq. SBN 211672
nicole@jnwpc.com
WHITEHEAD EMPLOYMENT LAW
15615 Alton Pkwy, Suite 175
Irvine, CA 92618
Tel. (949) 936-4001
Fax (949) 450-1588

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
02/27/2019 at 12:21:35 PM
Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

Attorneys for Plaintiffs, SAMILLE ROBERT JOHNSON, MARIE C. LEACH,
DARIUS BOYD, and HUSSAM ALJAWAD as individuals, and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

SAMILLE R. JOHNSON; MARIE C. LEACH,
DARIUS BOYD and HUSSAM ALJAWAD as
individuals, on behalf of themselves, and on behalf
all others similarly situated,

Plaintiffs,

vs.

AMAZON.COM SERVICES, INC., a Delaware
corporation; GOLDEN STATE FC LLC, a Delaware
limited liability company; and DOES 1- 50, inclusive)

Defendants

Case No.: 30-2019-01053847-CU-OE-CXC

CLASS ACTION COMPLAINT

1. Disability Discrimination (Violation of Gov't Code Section 12940 et seq.)
2. Age Discrimination (Violation of Gov't Code Sections 12940; 12946)
3. Failure to Accommodate (Violation of Gov't Code Section 12940(m))
4. Failure to Engage in the Interactive Process (Violation of Gov't Code Section 12940 (n))
5. Unlawful Retaliation (Violation of Gov't Code Section 12940(h))
6. Wrongful Termination in Violation of Public Policy
7. Unlawful Business Practices (Violation of Bus. & Prof. Code §17200, et seq.)

JURY TRIAL DEMANDED

Assigned: Judge Randall J. Sherman

Dept: CX105

1 Plaintiffs, SAMILLE ROBERT JOHNSON (“Plaintiff Johnson”), MARIE C. LEACH,
2 (“Plaintiff Leach”) and DARIUS BOYD (“Plaintiff Boyd”) and HUSSAM ALJAWAD (“Plaintiff
3 Aljawad”) (collectively as, “Plaintiffs”), on behalf of themselves and all others similarly situated
4 allege as follows:

5
6 **I. INTRODUCTION**

7 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, on behalf of
8 Plaintiffs, and all employees, including but not limited to, all non-exempt employees currently or
9 formerly employed by Amazon.com Services, Inc., a Delaware corporation and/or Golden State FC,
10 LLC a Delaware limited liability company. The non-exempt employees employed by or formerly
11 employed by Defendants within the State of California are hereinafter referred to individually as
12 “Class Members” and collectively as the “Class” or “Classes.”

13 2. Upon information and belief, Defendants employ and have employed individuals in positions
14 as regular hourly-paid non-exempt employees, including positions in its fulfillment warehouse
15 centers. Any differences in job duties or activities as between different individuals are legally
16 insignificant to the issues present by this action.

17 3. Defendants have violated numerous provisions of California’s Fair Employment and Housing
18 Act (the “FEHA”) including disability discrimination against an actual or perceived disability, age
19 discrimination, failure to accommodate, failure to engage in the interactive process, as well as
20 wrongful termination in violation of the public policy of the State of California.

21 4. Plaintiffs also allege that these acts, constitute predicate unlawful and unfair business
22 practices in violation of the California Unfair Competition Laws.

23 5. Plaintiffs are informed and believe, and based thereon allege that Defendant currently
24 employs, and during the relevant period has employed hundreds of employees in the State of
25 California in hourly full time or part time, non-exempt positions.

1 6. The acts complained of herein occurred, occur and will occur at least in part within the time
2 period from four (4) years preceding the filing of the Complaint, up to and through the time of trial
3 for this matter.

4 7. Plaintiffs, SAMILLE JOHNSON, MARIE C. LEACH, DARIUS BOYD and HUSSAM
5 ALJAWAD bring this action as individuals on behalf of themselves and on behalf of all others
6 similarly situated, and seek damages as permitted by applicable law, including compensatory and
7 punitive damages, attorneys' fees, costs and expenses to redress Defendants' discriminatory
8 business policies, practices and/or procedures.

9 **II. JURISDICTION AND VENUE**

10 8. The Court has jurisdiction over Plaintiffs' and Class Members' claims pursuant to Business and
11 Professions Code sections 17200-17208, who also seek injunctive relief and restitution of ill-gotten
12 benefits arising from Defendant's unlawful business acts and practices under California Business and
13 Professions Code sections 17200-17208.

14 9. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section 395.
15 Plaintiffs and those similarly situated are residents of California and worked for Defendants in
16 Orange County and other counties in California. Defendants conduct business in Orange County and
17 the unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly situated within
18 the State of California and within the County of Orange.

19 **III. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 10. On March 30, 2018, Plaintiff Johnson timely filed a charge of discrimination with the
21 California Department of Fair Employment and Housing ("DFEH"). The DFEH issued a Right-To-
22 Sue Notice on March 30, 2018. On September 27, 2018, Marie C. Leach timely filed her complaint
23 with the California Department of Fair Employment and Housing and the DFEH issued a Right-to-
24 Sue-Notice on September 27, 2018. On October 1, 2018, Darius Boyd timely filed his complaint
25 with the DFEH and the DFEH issued a Right-to-Sue Notice on October 1, 2018. On October 2, 2018
26 Hussam Aljawad timely filed his complaint with the DFEH and the DFEH issue a Right-to-Sue
27

1 Notice On October 1, 2018. Accordingly, Plaintiffs have each timely exhausted their administrative
2 remedies. True and correct copies of Plaintiffs' Right-to-Sue Notices are attached to this complaint:
3 for Samille Johnson as **Exhibit A**, for Marie C. Leach as **Exhibit B**, and for Darius Boyd, as **Exhibit**
4 **C**, and for Hussam Aljawad, as **Exhibit D**, respectively.

5
6 **IV. THE PARTIES**

7 11. Plaintiff, SAMILLE JOHNSON was at all times relevant to this complaint an employee of
8 Defendants. He is and was at all relevant times a resident of San Bernardino County, California. He
9 was an employee working in Defendants' San Bernardino County warehouse fulfillment center
10 during the class period as a warehouse associate from March 1, 2017 to April 22, 2017. He will
11 serve as an adequate, typical and active participant and class representative for the proposed Class.

12 12. Plaintiff, MARIE C. LEACH was at all times relevant to this complaint an employee of
13 Defendants. She is an was at all relevant times a resident of Orange County, California. She was an
14 employee working in Defendants' Irvine, California warehouse fulfillment center during the class
15 period from November 21, 2017 to December 1, 2017. She will serve as an adequate, typical and
16 active participant and class representative for the proposed Class.

17 13. Plaintiff, DARIUS BOYD was at all times relevant to this complaint a resident of Riverside
18 County, California. He was an employee working as a warehouse associate in Defendants' Eastvale,
19 California warehouse fulfillment center in the County of Riverside, during the class period from May
20 3, 2018 to August 29, 2018. He will serve as an adequate, typical and active participant and class
21 representative for the proposed Class.

22 14. Plaintiff, HUSSAM ALJAWAD was at all times relevant to this complaint an employee of
23 Defendants. He was at all relevant times a resident of Orange County, California. He was an
24 employee working in Defendants' Irvine, California warehouse fulfillment center during the class
25 period from September 29, 2017 to October 5, 2017. He will serve as an adequate, typical and active
26 participant and class representative for the proposed Class.

1 15. The Class Members were or are employed by Defendants as regular, non-exempt hourly
2 employees during the Class Period and both worked and lived in the State of California.

3 16. Defendant, Amazon.com Services, Inc. was a corporation organized under the laws of
4 Delaware, and qualified to conduct business in the State of California, with its principal place of
5 business located at 410 Terry Avenue North, Seattle, Washington, 98109.

6 17. Defendant Amazon.com Services, Inc. maintains an online ecommerce storefront and is
7 engaged in the provision of retail sales and distribution of consumer merchandise goods and services
8 of merchant partners, throughout the United States and in many parts of Europe.

9 18. Defendant, Golden State FC, LLC is a limited liability company organized under the laws
10 of Delaware and qualified to conduct business in the State of California, with its principal place of
11 business located at 410 Terry Avenue North, Seattle, Washington 98109.

12 19. Defendant, Golden State FC, LLC operates the inventory warehouse and fulfillment /
13 shipping centers, and in joint venture with Defendant, Amazon.com, Services, Inc. manages
14 Amazon's fulfillment and distribution services and out of which fulfillment and shipping centers,
15 Plaintiffs and thousands of employees are or were formerly employed, picking, sorting, packing and
16 shipping Amazon.com retail sales products.

17 20. Defendant, Amazon.com Services, Inc. handles the management of all business functions of
18 Amazon.com, including, but not limited to procurement, marketing, and managing the supply chain
19 infrastructure of its global ecommerce sales. Accordingly, upon information and belief, and
20 thereupon Plaintiffs allege that Defendant Golden State FC, LLC is an agent in fact for Defendant,
21 Amazon.com Services, Inc. and that Defendants are jointly and vicariously liable for the wrongful
22 conduct alleged herein.

23 21. The true names and capacities, whether individual, corporate, associate, or otherwise, of
24 defendants sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiffs, who
25 therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
26

27
28

1 22. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants
2 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
3 herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
4 capacities of the Defendants designated hereinafter as DOES when such identities become known.

5 23. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all
6 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
7 business plan or policy in all respects pertinent hereto. In doing the things alleged herein, each and
8 every Defendant was acting within the course and scope of this agency relationship and was acting
9 with the consent, permission and authorization of each of the remaining Defendants. All actions of
10 each defendant alleged in the causes of action (into which this paragraph is incorporated by
11 reference) were ratified and approved by the officers or managing agents of each of the other
12 Defendants.

13 24. Plaintiffs are informed and believe that at all times herein mentioned, each of the Defendants,
14 including the fictitious Doe Defendants, was the representative, agent and/or employee of each of the
15 remaining Defendants and in doing the things mentioned herein was acting with the consent, permission
16 and authorization of each of the remaining Defendants. All actions of each alleged in the causes of
17 action (into which this paragraph is incorporated by reference) were ratified and approved by the
18 officers or managing agents of every other.

19 25. The amount in controversy is in excess of the minimum jurisdiction of this court.

20 **V. FACTUAL BACKGROUND**

21 26. Plaintiffs bring this action on behalf of all persons who either were employed by Defendants
22 in California (the "Class") and who were subject to the same or similar illegal policies and practices
23 as set forth herein during the Class Period.

24 27. During the Class Period, most of the employees who are/were hired by defendant begin as
25 temporary, part time or seasonal workers. They begin with a white badge, designating them as such
26 and the goal and objective of these new employees is to earn a blue badge, signifying permanent
27

1 employment. However, because of Defendants' various operational policies and practices alleged
2 herein, injured or disabled workers are prohibited from achieving the coveted blue badge permanent
3 employment status. The net effect of Defendants' policies and practices insure that only employees
4 who are demonstrably strong, fit, who are not injured and not disabled and able to maintain
5 Defendants' demanding production quotas, and who don't accrue "points" as described herein, are
6 able to obtain a blue badge and permanent employment. Thus, the Plaintiffs and Class Members
7 were/are consistently denied the same conditions and benefits and opportunities of employment as
8 those employees who are not injured or who do not suffer from disabling medical condition or
9 impairment.

10 28. During the Class Period Defendants maintained a "points" policy. Unless or until an
11 employee has accrued their statutorily-entitled sick leave, pursuant to the "points" policy, other than a
12 one-time medical allowance waiver to keep a medical appointment, employees who are late or who
13 miss work are given a half point or a whole point. Depending on how long or how much work is
14 missed, the points are accorded on a sliding scale. At the point an employee accrues their maximum
15 allowable six points for missed hours or days of work, they are terminated.

16 29. Further, Defendants frequently fail to accommodate employees who are injured and on
17 medical leave because of light duty restrictions by their doctors, and due to the aforementioned points
18 system are frequently and wrongfully terminated. They are very frequently terminated because the
19 personnel who are employed by Defendants and whose duties it is to process and track work-related
20 injury documentation, workers compensation claims, medical status reports and related leaves of
21 absence *chronically* forget, delay, or fail, and otherwise, altogether *untimely fail to properly "code"*
22 *the employees medical leave status* in the computer system. When an employee is not correctly
23 coded in the system, they continue to be wrongly accorded points pursuant to Defendants' point
24 policy described supra. Defendants' personnel who track the points are often unaware of any work-
25 related injury or workers compensation claim. Thus, based upon the improper, failed and/or delayed
26 updating of proper coding in the system, such personnel issue points for missed hours and days of
27

1 work which quickly add up. When they reach the six points for missed hours or days of work, the
2 employee who is on medical leave, is then processed for termination, simply because the employee
3 has not been properly coded. Defendants are highly aware that is occurring within their system and
4 in their operations. Yet they place performance and production metrics above all other focus, and in
5 so doing, perpetuate and facilitate many, many wrongful terminations of its injured employees.

6 30. The chronic miscoding in the computer system is not as inadvertent as it first appears. When
7 viewed on a systemic and chronic basis, it is obvious that these miscoding “errors,” and “delays”
8 week over week, month over month, and year over year, resultantly and quite naturally, “thins the
9 herd” of Defendants’ injured and disabled workers.

10 31. Further fostering the discrimination and wrongful termination of their employees who suffer
11 work-related injuries, is Defendants’ reporting system for their department managers. Because of the
12 extreme focus on the Amazon brand and its notoriously market-driven production metrics, managers
13 and supervisors don’t want injured employees on their teams, who are on a medical leave that will
14 consequently affect their daily, weekly and monthly production reports. Because of these various
15 policies of Defendants, it fosters a naturally, discriminatory attitude and creates incentive and a
16 motive in managers and supervisors to rid themselves - whenever and however possible of such
17 injured or disabled employees. Thus, managers and supervisors engage in practices, as alleged and
18 described further herein, to insure and fast-track the injured or disabled employees’ path to
19 termination as well, which terminations were/are often documented as a “performance issue” for
20 failure to meet quotas and production metrics.

21 32. Therefore upon such information and belief, Plaintiffs’ allege, Defendants have and continue
22 to violate the law by intentionally discriminating by and through their maintenance and manipulation
23 of policies, procedures and practices that chronically, systemically, and on an operational-whole-
24 basis work to such blatant detriment of its injured and disabled employees’ and their legally-protected
25 rights to be accommodated and keep their jobs.
26

1 33. Any differences in job activities between Plaintiffs and the Class Members they seek to
2 represent were and are legally insignificant to the issues presented by this action. The same policies,
3 procedures, practices, trainings, manuals, and compensation plan were distributed to the Plaintiffs
4 and each of the Class Members they seek to represent. As such, the policies, practices and
5 procedures were and are uniformly applied to the entire Class, which means individual issues will not
6 predominate, and in fact, all issues are systematically linked, related and common, both in terms of
7 facts and law, for Plaintiffs and each of the members of the Class Members they seek to represent
8 during the Class Period.

9 34. Plaintiffs further allege, upon knowledge as to themselves, and otherwise upon information and
10 belief, as follows:

11 **Plaintiff, Samille R. Johnson's Experience Working at Defendants' Joint-Venture Fulfillment**
12 **Center**

13 35. Plaintiff, SAMILLE JOHNSON was a 52-year-old male hired by Defendants' on March 1,
14 2017 and was employed as a full time, non-exempt employee as a warehouse packing associate at
15 Defendants' joint-venture fulfillment center in San Bernardino, California.

16 36. Plaintiff Johnson has medical disabilities (anxiety disorder, duodenitis, essential hypertension,
17 a left posterior subcapsular cataract, and hyperlipidemia) which he revealed on his employment
18 application. Defendants were thus aware of his disability.

19 37. During orientation, Plaintiff Johnson was advised by orientation management that his identity
20 could not be verified through eVerify. Plaintiff duly presented his California driver's license and
21 social security card identification so that they could verify his identity. When the orientation manager
22 returned with his ID, they said, "Okay, we know who you are," and handed Plaintiff Johnson a
23 document to sign that listed the "Sedgwick Claims Management" as Defendants' workers
24 compensation claims administrator. In 2013, Plaintiff had filed a workers compensation claim
25 through Sedgwick while working for a former employer. On information and belief, and thereupon
26 Plaintiff Johnson alleges that while verifying his identity, Defendants' discovered Plaintiff Johnson's
27

1 previously-filed workers' compensation claim on record with Sedgwick.

2 38. Moreover, on information and belief and thereupon Plaintiff further alleges that while they
3 were verifying his identity, Defendants also discovered that Plaintiff Johnson had previously worked
4 at the exact same fulfillment facility in San Bernardino where he was now working, but that he had
5 previously been placed at the fulfillment facility through SMX Staffing Management agency.

6 39. Thereafter, within days of his hire, in an early bid to rid themselves of Plaintiff, Plaintiff was
7 brought to Human Resources and threatened with termination for being absent four days in a row.
8 However, Plaintiff Johnson had *not* been absent and respectfully said so. He was sent back to his
9 supervisor Nathan Jenkins who checked the Employee Badge Terminal (which is utilized by
10 employees to gain access to the facility) and it was confirmed that Plaintiff Johnson was always on
11 time and had never been absent a single day.

12 40. At the fulfillment center, Defendants keep track of employee performance utilizing computer
13 software that tracks each employee's package production. The software is frequently known to be
14 clunky and inaccurate and is capable of being manipulated by management at will for corrections,
15 errors, equipment malfunctions or any other problems that may occur on the packing lines.

16 41. Two weeks after Plaintiff Johnson's hire date, on or about March 15, 2017, his immediate
17 supervisor, Nathan Jenkins gave him a write up, stating "associate needs to speed up when scanning
18 items." The target production quota was to package and scan at least 170 packages per hour. Plaintiff
19 Johnson told Mr. Jenkins that he had various medical disabilities that prevented him from packing and
20 scanning as fast as younger associates, but that he was working as hard and fast as he possibly could.
21 Mr. Jenkins acknowledged that he was aware of Plaintiff Johnson's medical disabilities as he noted it
22 on the "Re-Train Results Form" he issued.

23 42. Defendants assigned Plaintiff to be "re-trained" with Mr. Barrazat who was to observe
24 Plaintiff Johnson's packaging techniques and provide him with tips on how to speed up his
25 production. On April 5, 2017, Plaintiff Johnson was provided with another write up for not
26 "speeding up the process." Plaintiff Johnson also explained to his trainer, Mr. Barrazat, that he had
27

1 medical disabilities and assured him that he was working as fast as he could. Defendants approached
2 Plaintiff Johnson's disability as a "training issue," foregoing any reasonable discussion or
3 consideration to a reasonable accommodation, such as a reasonable adjustment to his production rate
4 quota.

5 43. Shortly thereafter, Plaintiff Johnson's immediate supervisor, Nathan Jenkins approached him
6 and stated, "You should quit in order to be eligible for rehire," hinting that Plaintiff Johnson was
7 slated to be soon terminated.

8 44. There were other positions available (e.g. restocking pack lines, replenishing boxes and tape
9 for the tape machines) that Plaintiff could have worked and with such a reasonable accommodation,
10 he could have performed the essential duties of his job. Instead, Plaintiff Johnson was the assigned to
11 binning, whereby an employee is required to place items into chutes for the line packers to pick,
12 *which required an even greater production rate* of 200 plus items per hour.

13 45. On April 12, 2017, Plaintiff Johnson was written up a third time for "low production rates."
14 Plaintiff Johnson spoke with another supervisor, Ryan, and was told "you have never hit your rates
15 and you will be terminated on next contact." Plaintiff Johnson had in fact hit the required production
16 rates multiple times and had documented proof, which he showed his supervisor, Ryan, according to
17 Golden State FC's posted Rate Progress Sheets, displayed on a bulletin board three times each day
18 for all employees to view.

19 46. Nevertheless, Plaintiff Johnson diligently attempted to work faster and injured his right hand
20 and forearm as a result. Plaintiff reported the injury to the employer plant hospital and asked for
21 some ice to relieve the swelling. He was told that unless he first filed a workers compensation claim
22 no ice could be administered. Plaintiff Johnson did not want to file a workers compensation claim.
23 He only wanted ice, so he returned to work, despite the painful swelling.

24 47. Plaintiff Johnson was thereafter approached by Oggy, a supervisory assistant, who said to
25 Plaintiff Johnson, "You're always busy and working, so why are your production rates low?" Mr.
26 Johnson also informed Oggy of his medical disabilities, to which Oggy responded, "*You should stop*
27

1 *taking your medications and your rates will improve.*” Plaintiff Johnson’s medications did not affect
2 his work performance and he informed Oggy that he could not just simply stop taking his
3 medications. Clearly, Plaintiff Johnson was an otherwise qualified individual with a disability, who
4 was capable of performing his duties with reasonable accommodation.

5 48. Approximately one week after he injured his hand, Plaintiff Johnson reported to work wearing
6 a medical brace on his injured right hand in the hopes that it would stabilize his thumb arm and hand
7 as he attempted to work faster. Two hours later, he was brought by his supervisor, Ryan to Human
8 Resources and terminated.

9 **Plaintiff, Marie C. Leach’s Experience Working at Defendants’ Joint-Venture Fulfillment**
10 **Center**

11 49. Plaintiff, Marie C. Leach was a 68-year-old, full-time, non-exempt, seasonal employee
12 working as a Warehouse Picker Associate at Defendants’ joint-venture fulfillment center in Irvine,
13 California.

14 50. Ms. Leach was employed from November 21, 2017 until her termination on December 1,
15 2017.

16 51. On December 1, 2017, Ms. Leach was working in a narrow aisle unloading bags of
17 merchandise from her cart and putting them on shelves, when another associate passed by with a
18 fully loaded cart, knocking his cart into hers. When he did so, a large heavy bag full of merchandise
19 on the top of her cart, toppled down, hitting her on the head, bounced down, hitting her on her neck
20 and shoulders.

21 52. Ms. Leach immediately advised her supervisor of the accident injury. A workers
22 compensation claim was filed and Ms. Leach was sent to see a doctor. An MRI confirmed that she
23 had sustained a torn tendon in her right shoulder. She was released by her doctor to return to work
24 with a work restriction of lifting no more than 15 pounds and no overhead lifting.

25 53. When Ms. Leach presented her doctor’s note to her supervisor, her supervisor told her that
26 they could not accommodate her, but offered no other alternatives.
27

1 54. Ms. Leach asked if she could work as an associate in sorting, as this was the position for
2 which she was supposed to have been originally hired, and the duties associated with sorting were
3 tasks she would have been able to perform, even with her injuries. She was also declined this request
4 for accommodation.

5 55. That same day, Ms. Leach applied for another position as a flex dispatch (traffic director in
6 the warehouse) as she had prior experience in that capacity, but she was also declined by Defendants
7 for that position.

8 56. At no time did Defendants' supervisors, managers or HR personnel discuss any kind of
9 reasonable accommodation with Ms. Leach, nor did they bother to engage in the interactive process.
10 They simply denied her requests for accommodation, barred her from applying for another position
11 and effectively barred her from returning to work.

12 57. Unquestionably, Ms. Leach's termination was motivated by the fact that she was an older
13 employee (68 years old) who had suffered an injury, who filed a workers compensation claim as a
14 result of her injury and who was now perceived as disabled, and who, because of her age and
15 disability was unable to work as fast as her younger, non-disabled counterparts and because she had
16 requested an accommodation.

17 **Plaintiff, Darius Boyd's Experience Working at Defendants' Joint-Venture Fulfillment Center**

18 58. Plaintiff, Darius Boyd, was a full-time, non-exempt, employee working as a Warehouse
19 Associate at Respondent Amazon, Inc.'s and Respondent Golden State FC, LLC's joint-venture
20 fulfillment center located at 5250 Goodman Road, Eastvale, California 91752 in the County of
21 Riverside. The Eastvale, California facility is dedicated to picking and packing larger packages and
22 containers for shipping.

23 59. Mr. Boyd was employed from May 3, 2018 to August 29, 2018.

24 60. On July 14, Mr. Boyd injured his back at work lifting heavy boxes. Because he was not able
25 to obtain an appointment to see a doctor until October 15, 2018, Defendants told him he could sit in
26 their on-premises medical infirmary stretching and icing his back.
27

28

1 61. After fourteen days, Defendants told Mr. Boyd he had to be able to return to his normal work
2 duties without any more icing and stretching. Even though he had not yet seen his doctor and
3 remained in a great deal of pain, Defendants told him that he must return to work regardless of his
4 pain from his work-related injury.

5 62. Mr. Boyd returned to his duties and worked to the very best of his abilities, but there were
6 days when his pain was so severe that it was completely disabling. On such occasions, he sometimes
7 could only make it through a half a day of work and then needed to go home to ice his back and rest.
8 By forcing Mr. Boyd to return to his normal duties without any accommodation, it was plain to
9 anyone, including Defendants that he was daily re-injuring himself. On other days, (a total of five,
10 altogether) he missed work entirely because the pain in his back, neck, and shoulders was too
11 excruciating to work.

12 63. Throughout the post-July 14, 2018, date of injury, Mr. Boyd kept trying to cooperatively
13 work through the pain while waiting to see the doctor. However, other than offering him ice in their
14 on-premises medical facility for two weeks, Defendants did nothing in the way of offering him an
15 accommodation. In fact, fourteen days later, when the pain was clearly unabated, they told him he had
16 to go back and resume his normal duties and no more icing and stretching.

17 64. On August 29, 2018, Defendants terminated Mr. Boyd. They told him that he had too many
18 points as he had taken too many days off, even though Defendants were completely aware that he had
19 been injured and was not able to get an appointment to even see a doctor until October 15, 2018.
20 They were also aware that he had not yet had the chance to file his workers compensation claim and
21 no one bothered to assist him in opening or reporting his claim.

22 65. Because Mr. Boyd, became injured he was clearly perceived by Defendants as disabled.
23 Rather than engage in the interactive process to determine further reasonable accommodations,
24 including allowing him additional time off as necessary or allowing him to continue icing and
25 stretching to try and manage the pain until he could get in to see the doctor, in retaliation and
26 discrimination, they simply terminated him.
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff, Hussam Aljawad’s Experience Working at Defendants’ Joint-Venture Fulfillment Center

66. Plaintiff, Hussam Aljawad was a fifty-four (54) year-old, non-exempt, hourly employee working as a Warehouse Associate at Defendants’ joint-venture fulfillment/sortation center located at 17871 Von Karman Avenue, Irvine, California 92614.

67. Plaintiff Hussam Aljawad was employed from September 29, 2017 to October 5, 2017 sorting packages in the warehouse to make sure they were routed to their proper destination.

68. Every day, there were about sixty (60) diesel trucks in the warehouse starting and running their engines every morning. When their engines were running, the diesel trucks filled the air inside the warehouse with thick, toxic fumes and diesel exhaust particles which, when inhaled by Plaintiff Aljawad, severely affected his breathing and made him sick. Because of the noxious, concentrated diesel fumes and exhaust being expelled by the trucks into the confines of the warehouse, Mr. Aljawad was daily ingesting the black diesel particles which burned his throat and gave him severe headaches. Each day black diesel particles accumulated in and blackened the inside of his nostrils and black diesel soot and ash were all over his face and his clothing.

69. Early in the morning of October 5, 2017, Plaintiff Aljawad complained to his manager Alexis Curtis that he was having extreme difficulty breathing and he told her that he had been sick every day because of the diesel fumes and exhaust from the trucks in the warehouse. His manager instructed him to go and speak with the Human Resources (“HR”) representative on duty.

70. Plaintiff Aljawad went to HR and speaking with Cindy Quach, complained about how the diesel fumes and exhaust in the warehouse had impacted his ability to breathe and were making him sick. Ms. Quach warned him that if he could not tolerate the working conditions and began to call in sick because of the air quality in the warehouse, he would accumulate “points” and would be fired, if he acquired too many points, whereupon Ms. Quach handed Mr. Aljawad a form and insisted that he sign it. It was a resignation form. Ms. Quach made it very clear to Mr. Aljawad that signing the form

1 was not a choice; it was an instruction. He was being terminated because he complained that he
2 could not tolerate the air conditions in the warehouse because he was having breathing problems.
3 Mr. Aljawad signed the form and handed it back to her.

4 71. The time of Mr. Aljawad's termination on October 5, 2017 was approximately six a.m.
5 That was the totality of their conversation. At no time, did Ms. Quach, nor his supervisors or
6 managers offer any suggestions or discuss any kind of accommodation that would have helped
7 alleviate his breathing problem, such as transferring him or assigning him different duties in another
8 location away from the diesel fumes and exhaust. There was no good faith effort made by anyone to
9 engage Plaintiff Aljawad in the interactive process. Instead Mr. Aljawad was forced to resign
10 because he had complained. He was 53 years old at the time of his termination. Ms. Quach did not
11 offer Mr. Aljawad a workers compensation claim form to fill out when he met with her.

12 72. The following day Mr. Aljawad contacted HR and requested a workers compensation claim
13 form which was then provided.

14 **Other Similarly Situated, Injured or Disabled Employees and/or Employees over the Age of 40**
15 **Share Plaintiffs' Common Experiences**

16 73. Other employees at Defendants' joint-venture fulfillment centers in California have
17 experienced the same pattern and practice of age and disability discrimination.

18 74. After Plaintiff Johnson was escorted out of the facility the day he was terminated, a co-worker
19 telephoned him and said that the supervisor Ryan had also approached him and had similarly
20 harassed him about a work-related injury he had sustained.

21 75. Relying on its computerized software to track employees' production rates, Defendants' have
22 terminated and have continued to terminate older or disabled employees to whom the software
23 attributes low production rates, regardless of whether such employees suffer from a known injury or
24 disability.

25 76. Defendants' Managements' ability to manually manipulate the software data the "low
26 production" rate can be artificially and discriminately manipulated to weed out older or disabled
27

1 employees.

2 77. Unfortunately, even when employees advise or have formerly advised Defendants of their
3 disabilities, Defendants remain heedless and such disabled employees were or are fired rather than
4 accommodated because of their slower production rates.

5 78. With reasonable accommodation, these otherwise qualified individuals with disabilities are
6 and/or were able to perform the essential duties of their jobs with reasonable accommodation.
7 Despite their awareness of their employees' disabilities, Defendants' as a policy, pattern and practice
8 systemically refuse to accommodate its injured or disabled workers.

9 79. This behavior is in line with Defendants' managers and supervisors who ignored Plaintiff
10 Johnson's application on which he disclosed his medical disability and supervisors who repeatedly
11 shrugged off his explanation of his medical disabilities, going so far as to suggest he should just stop
12 taking his medication. Plaintiff Johnson was 52 years old. With Plaintiff, Leach, who was 68 years of
13 age at the time she was injured at work, she was flatly refused a requested accommodation or
14 consideration for any other duties or position, even denying her application for a position with duties
15 she could have performed. For Plaintiff Boyd, before he was even able to file his workers
16 compensation claim and be seen by a doctor and begin treatment for his work-related back injury,
17 they terminated him because he asked for and needed an accommodation. For Plaintiff Aljawad, he
18 was an older, 53 year-old employee who was forced to involuntarily resign because he dared to
19 complain to his manager and HR about a breathing problem.
20

21 80. As a result of the foregoing procedures, policies and actions, Defendants are intentionally and
22 callously cultivating an unlawful environment of disability and age discrimination.

23 **VI. CLASS ALLEGATIONS**

24 81. Each of the following allegations pertain and apply to Plaintiffs and the Class equally
25 throughout all or a substantial part of the Class Period. Defendants engaged in and enforced the
26 following additional unlawful practices and policies against Plaintiffs and the Class Members they
27 seek to represent:

28

1 82. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class
2 action pursuant to California Code of Civil Procedure Section 382. Plaintiffs seek to represent on
3 behalf of themselves and a portion of the class composed of and defined as the Age Discrimination
4 Subclass as follows under California Labor Code Section 203 (a):

5 **“All persons over the age of 40 and who were employed by**
6 **Defendants, AMAZON.COM SERVICES, INC. and GOLDEN**
7 **STATE FC, LLC in the State of California, and who at any time**
8 **within four (4) years of the filing of this Complaint worked in**
9 **Defendants’ joint-venture fulfillment centers in the State of**
10 **California and who, because of their age suffered adverse**
11 **employment actions, including but not limited to discrimination in**
12 **terms and conditions of their employment and termination.”**

13 83. The Plaintiffs also brings certain of the claims, identified on behalf of
14 themselves and a portion of the Class described as the Disability Discrimination
15 Subclass as follows:

16 **“All persons who have or had a disabling condition and who were**
17 **employed by Defendants, AMAZON.COM SERVICES, INC. and**
18 **GOLDEN STATE FC, LLC in the State of California, and who at**
19 **any time within four (4) years of the filing of this Complaint worked**
20 **in Defendants’ joint-venture fulfillment centers in the State of**
21 **California and who because of a work related injury and/or a**
22 **disabling condition suffered an adverse employment action,**
23 **including but not limited to one or more of the following actions:**
24 **accrual of points for missing work due to a work-related injury,**
25 **which accrual of points led to discharge for accruing too many**
26 **points; forced resignation, discrimination in terms and conditions**
27 **of their employment; prohibited from and/or deemed ineligible to**
28 **earn a permanent blue badge status after sustaining a work related**
injury or because of a disabling condition; retaliation after filing a
workers compensation claim or request for accommodation; and/or
termination.”

84. Plaintiffs reserve the right under Rule 3.764, California Rules of Court, to
amend or modify the class description with greater specificity or further division into
subclasses or limitation to particular issues.

1 85. This action has been brought and may properly be maintained as a class action
2 under the provisions of section 382 of the California Code of Civil Procedure
3 because there is a well-defined community of interest in the litigation and the proposed Class
4 Members are easily ascertainable.

5 86. Numerosity: Plaintiffs are informed and believe and based on such information and belief
6 allege that the potential members of the Class as defined are so numerous that joinder of all the
7 members of the Class is impracticable. The exact number of the members of the class is presently
8 unknown to Plaintiffs, but upon information and belief, Plaintiffs allege that the exact number and
9 specific identities of the members of the Class may be readily ascertained through inspection of
10 Defendants' business records, but it is estimated that there are in excess of 100 Class Members.

11 87. Commonality: There are questions of law and fact common to the Plaintiffs and to the
12 Class that predominate over any questions affecting only individual members of the Class. These
13 common questions of law and fact include, inter alia:

- 14 a.) Whether Defendants' policy and practices of its human resources and management
15 personnel including 1.) failure to train and implement anti-discrimination policies; 2.)
16 failure to maintain or implement policies and procedural practices when it becomes
17 known that an employee is or becomes disabled or is perceived as disabled; 3.) and
18 Defendants' utilization of a software production tracking system used to discriminate
19 against employees who are disabled, constitute unlawful discrimination under FEHA;
20 b.) Whether Defendants' policy and practices of discriminating against employees who are
21 older than the age of 40, constitutes unlawful age discrimination under FEHA
22 c.) Whether Defendants' policy and practice of failing to accommodate disabled
23 employees, who with reasonable accommodation could otherwise perform the essential
24 duties of their job, violates the FEHA;
25 d.) Whether Defendants' policy and practice of weeding out and terminating employees
26 when it is discovered that they have filed workers compensation claims because they
27

28

1 are deemed or perceived as disabled is an unlawful retaliation and violation of
2 California's Labor Code Statutes and the FEHA;

3 e.) Whether Defendants' policy and practice of terminating a disabled employee or an
4 employee who becomes injured at work without first engaging in the good faith
5 interactive process violates the FEHA.

6 f.) Whether such terminations described in paragraph 50, subsection e.) supra, constitute
7 wrongful termination in violation of the public policy of California.

8 g.) Whether Defendants violated Business and Professions Code Sections 17200 *et. seq.* of
9 and whether such violations constitute a violation of fundamental public policy; and

10 h.) Whether Plaintiffs and Class Members are entitled to equitable relief pursuant to
11 Business and Professions Code sections 17200, *et. seq.*

12 88. Typicality: Plaintiffs' claims are typical of the claims of the Class. Defendants' common
13 course of conduct in violation of law as alleged herein has caused Plaintiffs and Class Members to
14 sustain the same or similar injuries and damages. Thus, the relief sought by Plaintiffs are
15 representative of and typical of the relief sought on behalf of the proposed Class.

16 89. Adequacy of Representation: Plaintiffs are members of the Class and do not have any
17 conflicts of interest with other Class Members. Plaintiffs will prosecute the case vigorously on
18 behalf of the Class. Plaintiffs have engaged Counsel who is competent and experienced in litigating
19 employment class actions. Plaintiffs will fairly and adequately protect the interest of Class
20 Members.

21 90. Superiority of Class Action: The nature of this action and the nature of the laws available to
22 Plaintiffs make the use of the class action format particularly efficient and the appropriate procedure
23 to afford relief to Plaintiffs and the members of the Class and Subclasses for the wrongs alleged herein,
24 for the following reasons:

25 a.) The State of California, for which there is a named representative, has a public policy
26 which encourages the use of the class action device.
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- b.) By establishing a technique whereby, the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation.
- c.) This case involves large corporate Defendants and a large number of individual Class Members with many relatively small claims and common issues of law and fact.
- d.) If each individual member of the Class was required to file an individual lawsuit, the large corporate Defendants would necessarily gain an unconscionable advantage because Defendants would be able to exploit and overwhelm the limited resources of each individual member of the Class with Defendants' vastly superior financial and legal resources.
- e.) Requiring each individual member of the Class to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the Class who would be disinclined to pursue action against Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers and well-being.
- f.) Proof of a common policy and practice or factual pattern, of which the members of the Class experienced, is representative of the Class herein and will establish the right of each of the members of the Class to recover on the causes of action alleged herein.
- g.) Absent class treatment, the prosecution of separate actions by the individual members of the Class, even if possible, would likely create:
 - i) a substantial risk of each individual plaintiff presenting in separate, duplicative proceedings the same or essentially similar arguments and evidence, including expert testimony;
 - ii) a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- iii) inconsistent or varying verdicts or adjudications with respect to the individual members of the Class against Defendants;
 - iv) potentially incompatible standards of conduct for Defendants; and
 - v) potentially incompatible legal determinations with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members of the Class who are not parties to the adjudications or which would substantially impair or impede the ability of the members of the Class to protect their interests.
- h.) The claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution, considering all of the concomitant costs and expenses attendant thereto.
- i.) Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions.
- j.) Judicial precedent urges trial courts, which have an obligation to consider the use of innovative procedural tools to certify a manageable class, to be procedurally innovative in managing class actions.

91. Manageability of Class and Common Proof: The nature of this action and the nature of laws available to Plaintiffs make use of the class action format and procedure a particularly efficient and appropriate procedure to afford relief to Plaintiffs and members of the Class for the wrongs alleged herein. Specifically, liability will turn on Defendants' own uniform, systematic practices of disability and age discrimination, failing to accommodate disabled employees, failing to engage in the interactive process and wrongfully terminating such employees in violation of California law during the Class Period. Therefore, the violations are predominant questions of fact that are easily capable of being determined through manageable devices of common proof, such as statistical random sampling, survey evidence based on scientific principles, representative testimony, documentary evidence and common practices/procedures of Defendants in treating each of the members of the Class as a homogeneous

1 group. Once the predominant issues are determined, then each of the derivative subclass claims and
2 damages suffered by each member of the Class will be capable of being shown by several means of
3 common proof, and limited by individual showings of entitlement to recovery that can be professionally
4 administered and tailored to the facts and circumstances of the case.

5 92. Class certification of the First through the Seventh causes of action is appropriate under Cal.
6 Civ. Proc. Code § 382 because questions of law and fact common to the Class and Subclasses
7 predominate over any questions affecting only individual members of the Class and Subclasses of this
8 litigation. Defendants' policies and practices unlawfully treated members of the Class and Subclasses
9 in a uniform fashion. The damages suffered by individual members of the Class and Subclasses are
10 small compared to the expense and burden of individual prosecution of this litigation. In addition, class
11 certification is superior because it will obviate the need for unduly duplicative litigation that might
12 result in inconsistent judgments about Defendants' practices.

13 93. Class certification of the First through Seventh causes of action is also appropriate pursuant to
14 Cal. Civ. Proc. Code § 382 because Defendants have acted or refused to act on grounds generally
15 applicable to the Class, making appropriate declaratory relief with respect to the Class and any
16 subsequently defined Subclasses as a whole.

17 94. Plaintiffs intend to send notice to all members of the Class and Subclasses to the extent required
18 by law and each will be given an opportunity to opt out of the proceedings.

19
20 **CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION**

22 **DISABILITY DISCRIMINATION**

23 **In Violation of Gov't Code § 12940 (a)**

24 **(As to Defendants, and Does 1 through 50, inclusive)**

25 95. Plaintiffs reallege and incorporate by this reference each of the preceding and foregoing
26 paragraphs as if fully set forth herein.

27 96. At all times hereto, California Government Code § 12940 et seq., (the FEHA) was in full force
28 and effect and were binding upon Defendants, and each of them.

1 97. The FEHA provides that it is unlawful for an employer to discriminate against an employee in
2 the terms and conditions of employment because of a disability. It requires employees to refrain from:

- 3 (a) discriminating against any employee because of his/her actual or perceived disability; or
4 (b) wrongfully terminating any employee based upon that employee's disability; and/or
5 (c) failing to return an employee back to work after a medical leave of absence.

6 98. Plaintiffs and the Class Members were actually disabled or perceived as disabled and are thus
7 members of a protected class.

8 99. FEHA defines "employer" broadly to encompass "any person regularly employing five or more
9 persons, or any person acting as an agent of an employer, directly or indirectly." (California Gov't
10 Code Section 12926(d). Here Defendants were employers of Plaintiffs and the Class Members as
11 defined by FEHA because they regularly employed five or more persons.

12 100. As set forth above, Defendants violated the FEHA and the public policy of the State of
13 California which is embodied in the FEHA by discriminating against Plaintiffs because of his disability
14 or perceived disability.

15 101. The above-stated acts of Defendant constitute violations of the FEHA and violations of the
16 public policy of the State of California. Such violations were a direct, legal and proximate result of the
17 discrimination causing Plaintiffs' and the proposed Class Members' damages, including emotional
18 distress, lost wages and other economic damages in an amount to be proven at trial.

19 102. Plaintiffs and the Class were at all times subject to California's laws and regulations
20 protecting the employees' entitlement to be paid and presumption to be paid all wages earned for labor
21 performed, including an hourly wage for each and every hour worked.

22 103. By reason of the conduct of Defendants, Plaintiffs have necessarily retained attorneys to
23 prosecute the action on behalf of himself and the proposed Class Members. Pursuant to California
24 Government Code Section 12965 (b), as a result of Defendants' discrimination, Plaintiffs and the
25 class are entitled to recover damages for economic harm, and emotional distress, attorneys' fees,
26 costs and expert witness fees.

1 104. Plaintiffs and the class are also entitled to attorneys’ fees pursuant to California Code of Civil
2 Procedure Section 1021.5.

3 105. Defendants’ actions were ratified by managing agents and were willful, malicious, fraudulent
4 and oppressive and were committed with wrongful intent to harm Plaintiffs and the Class Members in
5 conscious disregard of their rights. Plaintiffs and the Class Members are therefore entitled to recover
6 punitive damages from defendants in an amount according to proof at trial.

7 **SECOND CAUSE OF ACTION**
8 **AGE DISCRIMINATION**
9 **In Violation of Gov’t Code Section 12940 and 12946**
10 **(Against Defendants and Does 1-50, Inclusive)**

11 106. Plaintiffs reallege each and every allegation contained in this Complaint and incorporate
12 the same as though set forth in full herein.

13 107. At all times hereto, California Government Code § 12940 et seq., (“FEHA”) was in full
14 force and effect and was binding upon Defendants.

15 108. The FEHA requires Defendants to refrain from:

- 16 (a) discriminating against any employee because of his/her age (over 40);
- 17 (b) retaliating against an employee for protected class such as age (over 40); and
- 18 (c) wrongfully terminating any employee based upon that employee’s age (over 40).

19 109. On information and belief Defendants fired Plaintiffs due to their age based on the
20 following. At the time of Plaintiff Johnson’s termination, he was fifty-two years old. At the time
21 of Plaintiff Leach’s termination she was 68 years old. At the time of Plaintiff Aljawad’s
22 termination he was 53 years old. Defendants terminated Plaintiffs, which is an adverse
23 employment action. At the time of Plaintiffs’ terminations, each of them was satisfactorily
24 performing their job duties and meeting rates (or with reasonable accommodations that were
25 requested could have performed the essential duties of their jobs) but each was terminated.
26 Defendants did not terminate or take same or similar adverse employment actions against
27 Plaintiffs’ younger associates who were performing same or similar work, under same and

1 similar conditions, even when such younger employee's production rates were also considered
2 low.

3 110. Defendants violated the FEHA and the public policy of the State of California which is
4 embodied in the FEHA by discriminating against Plaintiffs and similarly situated Class Members
5 who were over the age of 40 because of their age and by wrongfully terminating Plaintiffs and
6 Class Members from employment due to their age.

7 111. The above-stated acts of Defendants constitute violations of the FEHA, and therefore
8 violations of the public policy of the State of California. Such violations were a legal, direct and
9 proximate cause of Plaintiffs and the Class Members damages as stated below.

10 112. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and the Class
11 Members have suffered economic damages in an amount to be proven at trial, which include but
12 are not limited to back pay and front pay.

13 113. As a further direct and proximate cause of Defendants' unlawful conduct, Plaintiffs and
14 the Class Members have suffered emotional distress, emotional pain, suffering, inconvenience,
15 mental anguish and other non-pecuniary losses.

16 114. Defendants' actions, listed above, were done with malice, fraud and/or oppression, and
17 in reckless disregard of Plaintiffs' and the Class Members' rights with the intent, design, and
18 purpose of injuring Plaintiffs and the Class Members.

19 115. Defendants, through their officers, managing agents, and/or supervisors, authorized,
20 condoned and/or ratified the unlawful conduct listed above. Accordingly, Plaintiffs and the
21 Class Members are entitled to recover and seek punitive damages.

22 116. Pursuant to California Government Code § 12965(b), Plaintiffs and the Class Members
23 request a reasonable award of attorneys' fees and costs. Plaintiffs and the class are also entitled
24 to attorneys' fees pursuant to California Code of Civil Procedure Section 1021.5

25 /
26 //
27 ///

THIRD CAUSE OF ACTION
FAILURE TO ACCOMMODATE
In Violation of Gov't Code Section 12940(m)
(Against Defendants and Does 1-50, Inclusive)

1
2
3
4 117. Plaintiffs, on their own behalf and on behalf of the Class Members re-allege and
5 incorporate by reference all of the foregoing paragraphs, as though fully set forth herein.

6 118. At all times hereto, California Government Code § 12940 (m) was in full force and effect
7 and was binding upon Defendants.

8 119. When a disability becomes known to an employer, the FEHA requires employers to
9 engage employees in the interactive process to determine whether or not it can reasonably
10 accommodate the disability.

11 120. Defendants were employers of Plaintiffs and the Class Members as defined under the
12 FEHA, who regularly employ more than five employees.

13 121. Defendants knew of Plaintiff Johnson's disability because he had disclosed his disability
14 on his job application and thereafter informed multiple supervisors and managers of his medical
15 disabilities when they told him he was not making his production rates to their satisfaction. Even
16 though Plaintiff Johnson's disability was acknowledged as "known" by his supervisor, Mr. Jenkins,
17 his medical condition which limited a major life activity (e.g. work) was shrugged off and he was
18 sent for re-training and then he was subsequently reassigned to a position that demanded even faster
19 production rates.

20 122. Defendants likewise knew of Plaintiff Leach's disability because she was injured at work
21 and immediately notified her supervisor who sent her to see a doctor. After her visit with the
22 doctor, Plaintiff Leach presented her doctor's work status report, with indicated work restrictions of
23 no lifting anything over 15 pounds and no overhead lifting at which time Plaintiff Leach requested
24 and was denied an accommodation.

25 123. Defendants were also aware of Darius Boyd's disability or perceived disability because
26 they had him sitting in the facility's medical infirmary ice his back for fourteen days after he
27 injured himself, knowing full well that he was unable to see a doctor until the middle of October of

1 2018. After the two weeks they would no longer allow him to take breaks to apply ice to his back
2 and shoulders and terminated him for missing five days of work because he was in so much pain
3 from his work-injury.

4 124. Defendants were aware of Plaintiff Aljawad's breathing disability because he complained
5 to his manager and to HR that the noxious diesel exhausts and fumes were making him sick and
6 unable to breathe. He was immediately forced to resign the very same hour he complained.

7 125. Plaintiffs and Class Members had disabilities that limited a major life activity.

8 126. After Plaintiffs explained their disabling conditions, no accommodation was discussed or
9 provided. No 'magic words' are needed when a Plaintiff is seeking an accommodation. Thus,
10 Defendants were fully aware of Plaintiffs' disabilities and limitations through these discussions
11 between Plaintiffs and managers and/or supervisors or HR personnel and expressed their need for
12 an accommodation. Nevertheless, rather than reasonably accommodate Plaintiffs, Defendants
13 wrote up Plaintiff Johnson for low production rates and then terminated him. Defendants
14 summarily denied Plaintiff Leach any accommodation and denied her application for an alternative
15 position in the company as an in-warehouse traffic director and terminated her instead. They fired
16 Darius Boyd and said he took too much time off of work for his injury and they forced Plaintiff
17 Aljawad to involuntarily resign when he informed them he was having a severe breathing problem.

18 127. Accommodation of Plaintiffs or other disabled Class Members, would not have imposed
19 an undue hardship on Defendants as there were thousands of employees employed in the fulfillment
20 centers and many positions available in the fulfillment centers to which Plaintiffs and similarly
21 situated Class Members could have been assigned. With such reasonable accommodation,
22 Plaintiffs and Class Members could have performed the essential duties of their jobs.

23 128. Defendants ultimately failed to accommodate Plaintiffs and similarly-situated Class
24 Members.

25 129. As to Plaintiff Johnson, Defendants assigned Plaintiff Johnson to an even more
26 demanding position which was clearly designed to *guarantee* a greater struggle and his failure.
27 Indeed, in his new assignment, while trying to work even faster Plaintiff Johnson injured his right
28

1 hand. As a result, Plaintiff Johnson was terminated one week later after he showed up at work
2 wearing a medical brace on his right hand in order to stabilize his hand, so he could work.

3 130. As to Plaintiff Leach, after sustaining a work-related injury, even when she asked to be
4 permitted to perform other duties and formally applied for a position in the warehouse in flex
5 dispatch, she was denied reassignment to any other duties she could have performed; her
6 application for flex dispatch was denied, and was completely denied any accommodation
7 whatsoever.

8 131. As to Plaintiff Boyd, he was terminated for accruing too many “points” before he had a
9 chance to see a doctor or to file a worker compensations claim for his work related injury after
10 Defendants refused to allow him to continue icing his injuries at work insisting he resume
11 performing his full duties, and the resultant accrual of too many points for missing work because of
12 his work-related injuries, while waiting for his October 15, 2018 medical appointment.

13 132. As to Plaintiff Aljawad, Defendants simply terminated him by forcing him to involuntarily
14 resign the morning he went to his manager and HR about his breathing difficulty due to inhaling
15 noxious diesel fumes and exhaust.

16 133. Rather than accommodate Plaintiffs and similarly-situated Class Members, Defendants
17 either manually manipulated the computer software production tracking system to make it appear
18 that Plaintiffs and similarly situated Class Members weren’t performing their jobs to create a
19 fictionalized excuse for termination and/or assigned them to more demanding job duties so that they
20 could terminate them if they couldn’t keep up, and in many instances, such as in the case of
21 Plaintiffs Leach, Boyd and Aljawad, simply terminated them because of their actual or perceived
22 disabilities.

23 134. As a legal, direct and proximate result of the actions of Defendants, Plaintiffs and the Class
24 Members were harmed.

25 135. Defendants’ failure to accommodate Plaintiffs and the Class Members was a substantial
26 factor in causing Plaintiffs and the Class Members harm.

27
28

1 136. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have suffered,
2 and continue to suffer, economic damages in an amount to be proven at trial, which include but are
3 not limited to back pay and front pay.

4 137. As a further direct and proximate cause of Defendants' unlawful conduct, Plaintiffs and
5 the Class Members have suffered and continue to suffer emotional distress, emotional pain,
6 suffering, inconvenience, mental anguish and other non-pecuniary losses.

7 138. Defendants' actions, listed above, were done with malice, fraud and/or oppression, and in
8 reckless disregard of Plaintiffs and the Class Members' rights with the intent, design, and purpose
9 of injuring Plaintiffs and the Class Members.

10 139. Defendants, by and through their officers, managing agents, and/or supervisors,
11 authorized, condoned and/or ratified the unlawful conduct listed above. Accordingly, Plaintiffs and
12 the Class Members are entitled to recover and seek punitive damages in an amount according to
13 proof at trial.

14 140. Pursuant to California Government Code § 12965(b), Plaintiffs and the Class Members
15 they seek to represent, request a reasonable award of attorney's fees and costs. Plaintiffs and the
16 class are also entitled to attorneys' fees pursuant to California Code of Civil Procedure Section
17 1021.5.

18 **FOURTH CAUSE OF ACTION**
19 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**
20 **In Violation of Gov't Code Section 12940 (n)**
21 **(Against Defendants and Does 1-50, Inclusive)**

22 141. Plaintiffs, on their own behalf and on behalf of the Class Members re-allege and
23 incorporate by reference all of the foregoing paragraphs, as though fully set forth herein.

24 142. At all times hereto, California Government Code § 12940 (n), (the FEHA) was in full force
25 and effect and were binding upon Defendants.

26 143. Section 12940 (n) of the FEHA requires Defendants to engage Plaintiffs and the Class
27 Members in a timely, good faith interactive process to determine effective reasonable

1 accommodations, if any, in response to a request for reasonable accommodation by an employee
2 with a known physical or mental disability or known medical condition.

3 144. Plaintiffs and those similarly situated Class Members had a disability or medical condition
4 of which Defendants were aware.

5 145. When Defendants asked Plaintiff Johnson why he was working and performing his duties
6 but not making his expected production rates, Plaintiff explained that he had a medical disability
7 and was working as fast as he could. While he explained all of this to managers and supervisors, on
8 multiple occasions they continued to write him up for low rates even though they knew or
9 reasonably should have known that he needed an accommodation.

10 146. This went on for over a month, and while Defendants were well aware of Plaintiff
11 Johnson's medical disabilities, at no point in time did Defendants make so much as a single effort to
12 engage in the interactive process. Defendants' only response when Plaintiff repeatedly told his
13 supervisors about his disabilities was to send Plaintiff to re-train where his packing and scanning
14 techniques were observed and then they subsequently assigned him to binning where his production
15 rates were actually increased demanding 200 items were to be chuted to the line workers per hour.

16 147. As a result of the increased speed and production expectations, Plaintiff Johnson injured
17 himself on the job. One week later, with no discussion whatsoever concerning a reasonable
18 accommodation for his injury and for his medical condition, Defendants abruptly terminated him,
19 when he showed up to work with a medical brace on his injured hand.

20 148. Defendants were also aware of Plaintiff Leach's disability because she was injured at work
21 and immediately notified her supervisor who sent her to see a doctor. After her visit with the
22 doctor, Plaintiff Leach presented her doctor's work status report, with indicated work restrictions of
23 no lifting anything over 15 pounds and no overhead lifting at which time Plaintiff Leach requested
24 and was denied an accommodation.

25 149. When Plaintiff Leach requested accommodation and reassignment as a sorter and applied
26 for another position in the warehouse she was flatly refused and denied any accommodation and
27 simply immediately terminated the same day she presented her doctor's note with work restrictions,
28

1 with no effort to engage with her in discussion whatsoever concerning her disabling condition to
2 explore any possible alternative options or resolutions to accommodate her.

3 150. When Plaintiff Boyd asked for accommodation after he injured himself lifting heavy
4 boxes, the only accommodation he was offered was to sit in the medical infirmary on premises ad
5 ice his injury. After two weeks Defendants told him he had to resume his full duties with no more
6 icing and no more accommodation. He tried valiantly to work through the pain, but when it was too
7 excruciating to come to work or he had to leave after working just a half a day, they simply
8 terminated him. Apart from handing him ice packs for two weeks, no accommodation was
9 discussed or offered.

10 151. Plaintiff Aljawad had a very strong and adverse response to breathing in the noxious
11 diesel exhaust, soot and fumes being expelled into the warehouse every day from sixty diesel
12 trucks. When it made him so sick and unable to breathe, he reported his condition to his manager
13 who sent him to HR. HR forced him to sign a resignation that very day, with no discussion or even
14 an attempt to work out some kind of accommodation for his disabling breathing condition.

15 152. Similarly situated Class Members were also and similarly terminated when Defendants
16 became aware of their disabilities without any good faith effort by Defendants to engage in the
17 interactive process to determine whether or not a reasonable accommodation could be made.

18 153. Defendants failure to engage in the interactive process as required under Section 12940 (n)
19 was a proximate cause in Plaintiffs' damages as stated below.

20 154. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and the Class
21 Members they seek to represent have suffered economic damages in an amount to be proven at trial,
22 which include but are not limited to back pay and front pay.

23 155. As a further legal, direct and proximate cause of Defendants' unlawful conduct, Plaintiffs
24 and the Class Members have suffered emotional distress, emotional pain, suffering, inconvenience,
25 mental anguish and other non-pecuniary losses.

26 156. Defendants' actions, were done with malice, fraud and/or oppression, and in reckless
27 disregard of Plaintiffs and the Class Members' rights with the intent, design, and purpose of

28

1 injuring Plaintiffs and the Class Members. Defendants, by and through their officers, managing
2 agents, and/or supervisors, authorized, condoned and/or ratified the unlawful conduct listed above.
3 Accordingly, Plaintiffs and the Class Members are entitled to recover and seeks punitive damages
4 in an amount to be proven at trial.

5 157. Pursuant to California Government Code § 12965(b), Plaintiffs and the Class Members
6 they seek to represent request a reasonable award off front pay, back pay, emotional distress
7 damages and attorney's fees and costs. Plaintiffs and the class are also entitled to attorneys' fees
8 pursuant to California Code of Civil Procedure Section 1021.5.

9
10 **FIFTH CAUSE OF ACTION**

11 **RETALIATION**

12 **In Violation of Gov. Code § 12940 (h)**
13 **(Against Defendants and Does 1-50, Inclusive)**

14 158. Plaintiffs reallege each and every allegation contained in this Complaint and incorporate
15 the same as though set forth in full herein.

16 159. The foregoing conduct further violates the Fair Employment and Housing Act,
17 Government Code §§12940 (h) which provides that provides that it is unlawful to retaliate against
18 a person "because the person has opposed any practices forbidden under Government Code sections
19 12900 through 12966 or because the person has filed a complaint, testified, or assisted in any
20 proceeding under the FEHA."

21 160. Plaintiff Johnson repeatedly told his supervisors that he had a disabling medical condition
22 and was required to take medication. One of his supervisors audaciously told him he should stop
23 taking his medication so that he could work faster. Initially Plaintiff Johnson was under a production
24 quota of 170 items per hour, whether conveyor belts jammed, stalled or broke down. Because he
25 was perceived as slow or disabled, Defendants intentionally created work conditions that put him
26 on the fast track for termination by sending him for retraining and then deliberately reassigned him
27 to an even more demanding position with an even greater production quota of 200 items per hour.
28 For three months Defendants ignored his explanations about his disability and ignored his dutiful

1 good faith efforts to work faster and faster, no matter what quotas they placed on him. Plaintiff
2 Johnson even showed one of his supervisors *written proof* that he was in fact meeting his production
3 quotas. It didn't matter. In retaliation Defendants continued to serially write him up for working
4 too slow and then terminated him after he injured his hand trying to work even faster.

5 161. Plaintiff Leach was injured when a heavy box fell and hit her in the head injuring her.
6 When she reported her injury, she was refused any and all accommodation and terminated in
7 retaliation.

8 162. Plaintiff Boyd was also injured at work when working in a facility designated for heavier
9 and larger boxes. He was only allowed to ice himself in the medical infirmary at the facility and
10 then terminated when he was in far too much pain to work a full shift or was unable to come to work
11 at all. Despite the fact that Defendants were aware that Plaintiff Boyd had to wait two months to
12 get a medical appointment to even be seen for his work related injury, they terminated him in
13 retaliation for "taking too much time off of work."

14 163. Defendants forced Plaintiff Aljawad's involuntary resignation because he engaged in
15 protected activity when he complained to his manager and to HR that the noxious diesel fumes and
16 exhaust in the warehouse where he worked rendered him unable to breathe.

17 164. In each of these instances Plaintiffs' and similarly situated Class members' were engaging
18 in statutorily protected conduct by requesting accommodation for a disability.

19 165. Under the FEHA, Plaintiffs and similarly situated Class members had a statutorily
20 protected right to file a workers compensation claim for work related injuries and to request an
21 accommodation for their disabilities. When Plaintiffs and the Class members engaged in these
22 protected activities, their right to hold their jobs was also protected.

23 166. The absence of effort on the part of Defendant to engage in the interactive process,
24 combined with the immediacy of Plaintiffs and similarly situated Class members' terminations
25 reveal the proscribed discriminatory and retaliatory motives for their termination. Defendants'
26 decision to terminate Plaintiffs and similarly situated Class members was motivated by their
27 engaging in protected activities under the FEHA – that of filing a workers compensation claim or

28

1 for complaining and opposing forbidden unlawful discriminatory practices, and/or requesting an
2 accommodation for their disabilities.

3 167. But for Plaintiffs' and similarly situated Class members engaging in such statutorily
4 protected activities, they would not have been discharged.

5 168. Plaintiffs' and similarly situated Class members' statutorily protected actions were the
6 motivating reason for Defendants' decision to discharge them.

7 169. Defendant's retaliatory conduct was a substantial factor in causing Plaintiffs' and the Class
8 members' harm.

9 170. Such retaliation and violation under Section 12940 (h) was a proximate cause in Plaintiff
10 and Class members' damages as stated below.

11 171. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and Class
12 members have suffered, and continue to suffer, economic damages in an amount to be proven at
13 trial, which include but are not limited to back pay and front pay.

14 172. As a further direct and proximate cause of Defendants' unlawful conduct, Plaintiffs and
15 Class members have suffered and continue to suffer emotional distress, emotional pain, suffering,
16 inconvenience, mental anguish and other non-pecuniary losses.

17 173. Defendants' actions, listed above, were done with malice, fraud and/or oppression, and in
18 reckless disregard of Plaintiffs' and Class members rights with the intent, design, and purpose of
19 injuring Plaintiffs and the Class members. Defendants, through its officers, managing agents, and/or
20 supervisors, authorized, condoned and/or ratified the unlawful conduct listed above. Accordingly,
21 Plaintiffs and Class members are entitled to recover and seek punitive damages in an amount
22 appropriate to punish Defendants and to make an example of Defendants to the community.

23 174. Pursuant to California Government Code § 12965(b), Plaintiffs and Class members request
24 a reasonable award off front pay, back pay, emotional distress damages and attorney's fees and
25 costs.

SIXTH CAUSE OF ACTION
WRONGFUL TERMINATION
In Violation of Public Policy
(Against Defendants and Does 1-50, Inclusive)

1
2
3
4 175. Plaintiffs on their own behalf and on behalf of the Class Members re-allege and incorporate
5 by reference all of the foregoing paragraphs, as though fully set forth herein.

6 176. On March 30, 2018 Plaintiff Samille R. Johnson received a right to sue letter (DFEH No.
7 201803-01762731) from the California Department of Fair Employment and Housing (DFEH). On
8 September 27, 2018, Plaintiff Marie C. Leach received a right to sue letter (DFEH No. 2018109-
9 03696827) from the DFEH. On October 1, 2018, Plaintiff, Darius Boyd received a right to sue
10 letter (DFEH No. 201810-03731701) from the DFEH. On October 2, 2018 Hussam Aljawad
11 received a right to sue letter (DFEH No. 201810-03757703) from the DFEH. Accordingly,
12 Plaintiffs have each timely exhausted their administrative remedies and have timely commenced
13 this lawsuit.

14 177. At all times hereto, California Government Code § 12940 et seq., (the FEHA) was in full
15 force and effect and were binding upon Defendants, and each of them.

16 178. The FEHA requires Defendants to refrain from:

- 17 (a) discriminating against any employee because of his/her disability or perceived
18 disability;
- 19 (b) failing or refusing to engage in good faith in the interactive process to explore whether
20 or not a reasonable accommodation can be provided when a need for accommodation is
21 requested or known;
- 22 (c) wrongfully terminating any employee who engaged in a statutorily protected activity
23 such as filing a workers' compensation claim for a work related injury and/or for
24 requesting a reasonable accommodation for his or her disability.

25 179. Defendants violated the FEHA and the public policy of the State of California which is
26 embodied in the FEHA by discriminating against Plaintiffs and the Class Members as alleged.

1 180. Defendants wrongfully terminated Plaintiffs and Class Members because of, including, but
2 not limited to any of the following reasons:

- 3 a.) Because the employee had filed a workers' compensation claim
4 b.) Because of a known actual or perceived disability.
5 c.) Because an employee was aged/over the age of 40.

6 181. But for Plaintiffs and the Class Members' disabilities and/or defendant's discovery of
7 Plaintiffs and Class Members' current or previous filing of workers compensation claims and/or
8 requests for accommodation, they would not have been discharged.

9 182. The above-stated acts of Defendants constitute violations of the FEHA and violations of
10 the public policy of the State of California. Such violations were the proximate cause of Plaintiffs
11 and the Class Members' damages as stated below.

12 183. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and the Class
13 Members have suffered economic damages in an amount to be proven at trial, which include, but
14 are not limited to back pay and front pay.

15 184. As a further legal, direct and proximate cause of Defendants' unlawful conduct, Plaintiffs
16 and the Class Members have suffered emotional distress, emotional pain, suffering, inconvenience,
17 mental anguish and other non-pecuniary losses.

18 185. Defendants' actions, listed above, were done with malice, fraud and/or oppression, and in
19 reckless disregard of Plaintiffs and the Class Members' rights with the intent, design, and purpose
20 of injuring Plaintiffs and the Class Members. Defendants, by and through their officers, managing
21 agents, and/or supervisors, authorized, condoned and/or ratified the unlawful conduct listed above.
22 Accordingly, Plaintiffs and the Class Members are entitled to recover and seek punitive damages in
23 an amount to be proven at trial.

24 186. Pursuant to California Government Code § 12965(b), Plaintiffs and the Class Members
25 request a reasonable award of front pay, back pay, emotional distress damages and attorney's fees
26 and costs. Plaintiffs and the class are also entitled to attorneys' fees pursuant to California Code of
27 Civil Procedure Section 1021.5.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SEVENTH CAUSE OF ACTION
UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS PRACTICES
In Violation of California Business and Professions Code Sections 17200 et seq.
(Against Defendants and Does 1-50, Inclusive)

187. Plaintiffs on their own behalf, and on behalf of the Class Members re-allege and incorporate by reference all of the foregoing paragraphs, as though fully set forth herein.

188. California Business and Professions Code Section 17200, et seq. prohibits unfair competition in the form of any unlawful, unfair or fraudulent business act or practice.

189. California Business and Professions Code Section 17202 provides: “Notwithstanding Section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in case of unfair competition.”

190. California Business and Professions Code Section 17203 provides in relevant part that the court may “restore to any person in interest any money or property, real or person, which may have been acquired by means of such unfair competition.”

191. California Business and Professions Code Section 17203 also provides that any person who meets the standing requirements of Section 17204 and complies with California Code of Civil Procedure Section 382 may pursue representative claims for relief on behalf of others.

192. California Business and Professions Code Section 17204 allows any “person who has suffered injury in fact and has lost money or property as a result of such unfair competition” to prosecute a civil action for violation of the Unfair Business Practices Act.

193. Pursuant to Section 17204, Plaintiffs and other similarly situated employees are entitled to enforce all applicable provisions of the FEHA.

194. Beginning at an exact date unknown to Plaintiffs, but at least since the date four years prior to the filing of this suit, Defendants have committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent practices and acts described in the Complaint, including, but not limited to violations of Gov’t Code Sections 12940

1 (a), (h), (m) and (n) and have wrongfully terminated employees because they were disabled or
2 because of their age in violation of the public policy of California.

3 195. The violations of these laws and statutes, as well as of fundamental California public
4 policies protecting workers, serve as unlawful predicate acts and practices for purposes of Business
5 and Professions Code Section 17200 et seq.

6 196. The acts and practices described above constitute unfair, unlawful and fraudulent business
7 practices, and unfair competition, within the meaning of Business and Professions Code Section
8 17200, et seq. Among other things, Defendants' acts and practices have forced Plaintiffs and other
9 similarly situated workers to labor without receiving the same benefits and conditions of
10 employment as their non-disabled or younger coworkers who were employed by Defendants and
11 performing same or similar job duties.

12 197. Plaintiffs and other similarly situated employees are therefore, entitled to restitution and
13 injunctive relief pursuant to Business and Professions Code Section 17203.

14 198. Plaintiffs are informed and believe, and based thereon allege, that Defendants are unjustly
15 enriched through the acts described above and that he and the Class have suffered and continue to
16 suffer irreparable prejudice by Defendants' unfair practices. Further, by engaging in such activities,
17 Defendants are illegally operating at an unfair advantage to other law-abiding employers in the State
18 of California.

19 199. The illegal conduct alleged herein is continuing, and there is no indication that Defendants
20 will not continue such activity into the future. Plaintiffs and the Class Members allege that if
21 Defendants are not enjoined from the conduct set forth in this complaint, they will continue to
22 unlawfully discriminate against disabled and aged employees.

23 200. Plaintiffs and the Class Members will request that the Court issue a preliminary and
24 permanent injunction prohibiting Defendant from continuing such unlawful acts of discrimination,
25 including failure and refusal to accommodate or engage in the interactive process with disabled,
26 injured or aged employees over the age of 40 and wrongfully terminating them in violation of public
27

1 policy and/or wrongfully terminating them in retaliation for engaging in protected activity such as
2 filing a workers compensation claim.

3 201. Plaintiffs and the Class Members' success in this action will enforce important rights
4 affecting the public interest. Therefore, Plaintiffs sues on behalf of himself and other similarly
5 situated employees.

6 202. An award of attorneys' fees is appropriate pursuant to California Civil Code Section
7 1021.5 because 1.) this action will confer a significant benefit upon a large class of persons; and
8 2.) there is a financial burden involved in pursuing this action; and 3.) it would be against the
9 interest of justice to force Plaintiffs to pay attorneys' fees from any amount recovered in this
10 action.

11 **PRAYER FOR RELIEF**

12 Plaintiffs on behalf of themselves and the Class Members they seek to represent, prays for
13 relief as follows:

14 1. For an order certifying the First through Seventh causes of action and maintaining said
15 causes of action as a class action pursuant to Cal. Civ. Proc. Code § 382 on behalf of the members of
16 the Class who were either employed or who performed work here in the State of California within the
17 Class Period and that notice of the pendency of this action be provided to members of the Class;

18 2. Designation of Plaintiffs as the Class Representatives for the Class and Plaintiffs' attorney
19 as Class Counsel for the Class.

20 3. For a declaratory judgment that Defendants have violated the FEHA and the public
21 policy of the State of California, as alleged herein.

22 4. For declaratory relief and judgment that Defendants have violated California Business
23 and Professions Code sections 17200 et seq. as a result of the aforementioned violations of the
24 FEHA and of California public policy protecting disabled workers and workers over the age of 40.
25
26
27

- 1 5. For a permanent and mandatory injunction prohibiting Defendants, their officers,
- 2 agents, employees, affiliated companies and all those working in concert with them from
- 3 committing future violations of the laws and public policies described herein;
- 4 6. For an award of restitution;
- 5 7. For an order awarding Plaintiffs and Class Members compensatory damages, including,
- 6 but not limited to back pay, back pay, and other compensation, according to proof at trial and
- 7 interest on these amounts.
- 8 8. For award of reasonable attorneys' fees as provided by Gov't Code Section 12965 (b)
- 9 and Section 1021.5;
- 10 9. For all costs of suit, including expert witness fees; and
- 11 10. For such other and further relief as this Court deems just and proper.

JURY DEMAND

14 Plaintiffs and the Class Members they seek to represent, demand trial by jury of all claims and
15 causes of action so triable.

16 DATED: February 27, 2019

WHITEHEAD EMPLOYMENT LAW

18 By: _____



Jacob N. Whitehead
Nicole Jacobsen
Attorneys for Plaintiffs
SAMILLE JOHNSON,
MARIE C. LEACH,
DARIUS BOYD,
HUSSAM ALJAWAD,
and Putative Class

28

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Warehouse Employees Claim Amazon 'Thins the Herd' by Discriminating Against Older, Injured, Disabled Workers](#)
