



Electronically issued : 12-Jun-2020
Délivré par voie électronique :
Toronto

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

DENVER DAVIS

Plaintiff

and

AMAZON CANADA FULFILLMENT SERVICES, ULC, AMAZON.COM,
INC. and AMAZON.COM.CA, INC.

Defendants

Proceeding under the *Class Proceedings Act*, 1992

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

-2-

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: Amazon Canada Fulfillment Services, ULC
120 Bremner Boulevard, Suite 2600
Toronto ON M5J 0A8

AND TO: Amazon.com, Inc.
251 Little Falls Drive
Wilmington DE 19808-1674
United States of America

AND TO: Amazon.com.ca, Inc.
2400, 525-8 Avenue SW
Calgary AB T2P 1G1

-3-

CLAIM

1. The Plaintiff, on his own behalf and on behalf of all Class Members seeks:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff;
 - (b) \$200,000,000 in general damages for the Class or such other sum as this Honourable Court deems just;
 - (c) a declaration that Amazon is or was a common employer of Class Members at common law and pursuant to the *ESA* and Equivalent Legislation;
 - (d) a declaration that all Class Members are or were employees of Amazon;
 - (e) a declaration that the provisions of the *ESA* and Equivalent Legislation are express or implied terms of the contracts of employment of the Class Members, except to the extent that Class Members' contracts of employment provide for greater benefits;
 - (f) a declaration that Amazon breached the terms of the *ESA* and Equivalent Legislation when it failed to:
 - (i) pay Class Members for all hours worked;
 - (ii) pay Class Members overtime pay;
 - (iii) pay Class Members wages equivalent to at least minimum wage;

-4-

- (iv) pay Class Members vacation pay;
- (v) pay Class Members public holiday pay;
- (vi) pay Class Members premium pay;
- (vii) pay Class Members for meal breaks not taken;
- (viii) pay Class Members termination pay; and,
- (ix) comply with the minimum standards in the *ESA* and Equivalent legislation including record keeping and notifying employees of their rights under the *ESA* and Equivalent Legislation;
- (g) an interim, interlocutory and final mandatory order directing that Amazon comply with the *ESA* and Equivalent Legislation and, in particular, accurately record all hours worked by Class Members and pay Class Members for all hours worked and pay overtime pay, wages equivalent to at least minimum wage, vacation pay, statutory holiday pay, premium pay, meal breaks not taken, and termination pay, as applicable;
- (h) a declaration that Amazon breached its duty of good faith to all Class Members and breached the duty of care owed to the Contract Driver Subclass Members by failing to comply with its contractual obligations towards Class Members, failing to comply with the *ESA* and Equivalent Legislation, misclassifying the employment relationship of the Contract Driver Subclass, and failing to reimburse Contract

-5-

Driver Subclass members for out-of-pocket expenses incurred in performing work for Amazon;

- (i) an order pursuant to section 23 of the *Class Proceedings Act, 1992*, SO 1992, c 6, admitting into evidence statistical information, including statistical information concerning hours of work performed by Class Members, and an order directing Amazon to preserve, and disclose to the Plaintiff all records relating to the hours of work performed by Class Members, including data stored in the Amazon Flex app;
- (j) a declaration that any agreement that purports to exclude Contract Driver Subclass Members from the provisions and protections of the *ESA* and Equivalent Legislation is void and unenforceable;
- (k) a declaration that Amazon is liable and must reimburse Contract Driver Subclass Members for out-of-pocket expenses paid for gas, insurance, maintenance, parking fines and cell phone data in connection to the use of personal vehicles and/or mobile phones used to perform work for Amazon;
- (l) a declaration that Amazon is liable for any damages resulting from the determination that Contract Driver Subclass Members are or were employees of Amazon and not independent contractors;
- (m) a declaration that Amazon is liable for any adverse income tax liability sustained by Contract Driver Subclass Members resulting from a determination that the Class Members are or were employees of Amazon and not independent contractors;

-6-

- (n) a declaration that Amazon is liable, and must reimburse Contract Driver Subclass Members for any Canada Pension Plan or Employment Insurance contributions which may have been paid or are owed resulting from a determination that Contract Driver Subclass Members are or were employees of Amazon and not independent contractors;
- (o) a declaration that Amazon has been unjustly enriched, to the deprivation of Class Members by the value of the work performed by Class Members, and an order requiring Amazon to disgorge to Class Members all amounts withheld by it in respect of such unpaid wages and other minimum statutory entitlements under the *ESA* and Equivalent Legislation, in respect of which it has been unjustly enriched;
- (p) punitive, aggravated, and exemplary damages in the amount of \$50,000,000;
- (q) pre-judgment and post-judgement interest on the amounts payable as set out above in equity or otherwise at common law, or alternatively pursuant to sections 128 and 129 of the *Courts of Justice Act*, RSO 1990, c C.43, compounded annually;
- (r) costs of this action pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, or alternatively, on a full or substantial indemnity basis together with applicable HST thereon,
- (s) the costs of administration of a plan of distribution of the recovery in this action and notice pursuant to section 26(9) of the *Class Proceedings Act, 1992*, SO 1992, c 6 plus applicable taxes; and,

-7-

- (t) such further and other relief as may be required by the *Class Proceedings Act, 1992*, SO 1992, c 6 or as this Honourable Court may deem just.

A. DEFINED TERMS

2. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Amazon**” means, collectively, the Defendants Amazon Canada Fulfillment Services, ULC, Amazon.com.ca, Inc., and Amazon.com, Inc.;
- (b) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C.43;
- (c) “**Class**” or “**Class Members**” means, collectively:
- (i) all current and former workers delivering packages for Amazon in Canada employed by a Delivery Service Partner during the Class Period; and,
- (ii) all current and former workers delivering packages for Amazon in Canada through the Amazon Flex app during the Class Period.
- (d) “**Class Period**” means the period of time between January 1, 2016 and the certification of this lawsuit as a class proceeding;
- (e) “**Contract Driver Subclass**” or “**Contract Driver Subclass Members**” means:

-8-

- (i) all current and former workers employed by a DSP who are or were classified and remunerated as independent contractors during the Class Period; or,
 - (ii) all current and former workers engaged directly by Amazon as independent contractors, pursuant to independent contractor agreements, to make deliveries through the Amazon Flex app during the Class Period.
- (f) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6;
- (g) “**CPP**” means benefits or contributions under the *Canada Pension Plan*, RSC 1985 c C-8;
- (h) “**DSP**” means an Amazon Delivery Service Partner in Canada and/or the Amazon Delivery Service Partner program offered by **Amazon** in Canada;
- (i) “**EI**” means benefits or contributions under the *Employment Insurance Act*, SC 1996, c 23;
- (j) “**Employment Standards Regulations**” means the Exemptions, Special Rules and Establishment of Minimum Wage, O Reg 285/01; Public Holiday Pay, O Reg 375/18; Termination and Severance of Employment, O Reg 288/01; the Labour Standards Regulations, CNLR 781/96; the General Labour Standards Code Regulations, NS Reg 298/901; the Minimum Wage Order (General), NS Reg 5/99, Sch A; the General Regulation, NB Reg 85-179; Minimum Wage, NB Reg 2019-

-9-

2; the Employment Standards Act General Regulations, PEI Reg EC588/10; the Minimum Wage Order, PEI Reg EC572/98; the Regulation respecting labour standards, CQLR c N-1.1, r 3; the Regulation respecting a registration system or the keeping of a register, CQLR c N-1.1, r 6; the Employment Standards Regulation, Man Reg 6/2007; The Employment Standards Regulations, RRS c S-15.1 Reg 5; The Minimum Wage Regulations, 2014, RRS c s-15.1 Reg 3; the Employment Standards Regulation, Alta Reg 14/1997; and, the Employment Standards Regulation, BC Reg 396/95;

- (k) “**ESA**” means the *Employment Standards Act, 2000*, SO 2000, c 41;
- (l) “**Equivalent Legislation**” means, the *Labour Standards Act*, RSNL 1990, c L-2, the *Labour Standards Code*, RSNS 1989, c 246, the *Employment Standards Act*, SNB 1982, c E-7.2, *Employment Standards Act*, RSPEI 1988, c E-6.2, the *Act respecting labour standards*, CQLR c N-1.1; the *Civil Code of Québec*, CQLR c CCQ-1991, *The Employment Standards Code*, CCSM c E110, *The Saskatchewan Employment Act*, SS 2013, c S-15.1, the *Employment Standards Code*, RSA 2000, c E-9, and, the *Employment Standards Act*, RSBC 1996, c 113;
- (m) “**Fulfilment Centre**” means an Amazon Fulfillment Centre and includes, but is not limited to, the Amazon Fulfilment Centre located at 6363 Millcreek Drive in Mississauga, Ontario;
- (n) “**ITA**” means *Income Tax Act*, RSC, 1985, c 1 (5th Supp;) and,

-10-

(o) “**Plaintiff**” means the plaintiff Denver Davis.

B. THE DEFENDANTS

3. Amazon is Canada’s largest online retailer. Amazon’s stated corporate mission is “to be Earth’s most customer-centric company, where customers can find and discover anything they might want to buy online, [at] the lowest possible prices.”

4. Amazon has established a web of corporate entities to carry out its complex logistics operations which enable it to quickly deliver products to its customers, including, in many cases, on the same day or the day after it was ordered.

5. The Defendant Amazon.com, Inc. is a corporation organized and existing under the General Corporation Law of the State of Delaware in the United States. Its registered office is located in the State of Delaware in the United States.

6. The Defendant Amazon.com.ca, Inc. is a limited liability corporation. Its head office is located in the State of Delaware in the United States. It is extra-provincially registered in the province of Alberta, Canada.

7. The Defendant Amazon Canada Fulfilment Services, ULC is an unlimited liability corporation. Its head office is located in Vancouver, British Columbia. It is extra-provincially registered in the province of Ontario, Canada.

8. Prior to 2018, Amazon predominately subcontracted its package deliveries to postal services like Canada Post and established logistics companies.

-11-

9. In or about 2018, Amazon shifted its package delivery model towards its Amazon Delivery Service Partner Program.

10. Amazon advertises the DSP program as an “opportunity” for entrepreneurs and represents that it will help DSPs operate out of a local Amazon Fulfilment Centre and provide consistent coaching and support to drivers to ensure that packages are delivered to Amazon customers seven days a week, 365 days a year.

11. Amazon has structured the Delivery Service Partner Program so that Amazon DSPs are ostensibly distinct corporate entities owned and operated by small business owners and that the drivers they employ maintain no direct legal relationship with Amazon.

12. In substance, however, Amazon effectively functions as the employer, or a common employer, of Class Members. It exercises substantial control over conditions of their working lives through the imposition of mandatory policies and practices on the DSP program. In particular, and without restricting the generality of the forgoing:

- (a) Under the DSP program, Amazon retains effective control over DSPs and Class Members through the use of the Amazon Flex app which all Amazon DSPs and Class Members are required to use in the performance of their job duties. The Amazon Flex app is the primary source of direction for Class Members in performing their job duties and monitors Class Members’ movements continuously. The Amazon Flex app:

-12-

- (i) requires Class Members to input data concerning their starting mileage prior to making any deliveries;
 - (ii) provides Class Members with an exact itinerary to follow in delivering packages for Amazon, including turn-by-turn driving directions, time required to travel from one location to another, and the order in which the packages must be delivered;
 - (iii) provides Class Members with notes and instructions from Amazon customers regarding where packages should be left or phone numbers to call upon arrival;
 - (iv) requires Class Members to input data concerning failed delivery attempts, customer service issues, road accidents, physical injuries, or technical difficulties with the Amazon Flex app; and,
 - (v) monitors Class Members movements through the use of GPS technology linked to the Amazon Flex app and Class Members' devices including the "Rabbit", allowing Amazon to instruct Class Members to pick up the pace of their deliveries if it is noted that they are falling behind schedule or are stationary in one location for a duration that Amazon determines is too long;
- (b) Amazon will impose sanctions against Amazon DSPs for Amazon policy violations by Class Members; and,

-13-

- (c) Amazon DSPs will typically have Amazon as their sole or primary “client” and coordinate the delivery of Amazon packages subject to Amazon’s policies, surveillance and control.

C. THE PLAINTIFF

13. The Plaintiff, Denver Davis, is an individual residing in Brampton, Ontario. He worked as an Amazon delivery driver between the summer of 2017 and March 2018. The Plaintiff was employed by the Amazon DSP All Canadian Courier.

D. THE CLASS

14. All Class Members work as Amazon delivery drivers.

15. Class Members perform substantially the same work at various locations across Canada. Class Members pick up packages at an Amazon Fulfilment Centre or a distribution centre and drive a vehicle to make deliveries to Amazon customers based on an itinerary generated by the Amazon Flex app.

16. The performance of Class Members’ work is continuously monitored, controlled and directed by Amazon through the Amazon Flex app which provides Class Members with an exact itinerary to follow in delivering packages for Amazon, including turn-by-turn driving directions, time required to travel from one location to another, and the order in which the packages must be delivered. Class Members are further subject to Amazon’s direct control while they are on site at Fulfilment Centres.

-14-

17. Class Members are required to complete unpaid training to familiarize themselves with Amazon's policies and procedures for making deliveries and are instructed to identify themselves as being representatives of Amazon while making deliveries to Amazon's customers.

18. Amazon and Amazon DSPs routinely direct, require or permit Class Members to work hours in excess of the overtime threshold prescribed in the applicable Employment Standards Regulations and Equivalent Legislation and do not compensate Class Members at the overtime rate of pay for the hours they work in excess of the overtime threshold.

19. Amazon and Amazon DSPs routinely direct, require or permit Class Members to work through unpaid meal breaks, depriving Class Members of mandatory breaks.

20. Amazon and Amazon DSPs have not or do not compensate Class Members for other minimum statutory entitlements under the *ESA* and Equivalent Legislation including payment of wages equivalent to at least minimum wage, vacation pay, statutory holiday pay, premium pay, meal breaks not taken, and termination pay, where applicable.

21. Class Members' contracts of employment contain express and/or implied terms which impose contractual duties and other common law duties on Amazon. As particularized below, these duties have been breached by Amazon, causing damages to the Class.

22. Contract Driver Subclass Members perform the same job duties and use the Amazon Flex app like all other Class Members but may use their personal vehicle and/or personal mobile phone to perform work for Amazon.

-15-

23. Contract Driver Subclass Members are responsible for paying for gas, insurance, maintenance, parking fines and cell phone data in connection to the use of personal vehicles and/or mobile phones used to perform work for Amazon.

24. As a result of systemic misclassification by Amazon and Amazon DSPs, Contract Driver Subclass Members receive no payment for overtime pay, wages equivalent to minimum wage, vacation pay, statutory holiday pay, premium pay, meal breaks not taken, and termination pay, where applicable or any of the protections of the *ESA* or Equivalent Legislation. Further, Contract Driver Subclass members receive no reimbursement for gas, insurance, maintenance, parking fines and cell phone data used to perform work for Amazon.

25. Contract Driver Subclass Members do not have EI and CPP or income tax deducted at source, nor do they receive EI and CPP contributions as part of their remuneration.

E. THE PLAINTIFF'S EMPLOYMENT HISTORY AS AN AMAZON DRIVER

(i) The Plaintiff's Recruitment and Onboarding

26. In 2017, the Plaintiff applied to an Amazon delivery driver job posted by All Canadian Courier, an Amazon DSP based in Ontario, on the website "indeed.com".

27. The Plaintiff was contacted by All Canadian Courier and met with an operations manager of All Canadian Courier for a brief interview.

28. In or about the summer of 2017, the Plaintiff was hired as an employee of All Canadian Courier following the completion of a background check.

-16-

29. The Plaintiff's orientation and training as an Amazon delivery driver consisted of: (1) watching a series of Amazon training videos, (2) shadowing an experienced driver while the driver performed deliveries; (3) completing one shift that required the Plaintiff to deliver about 50 packages and, (4) completion of an online course in handling hazardous materials including lithium batteries.

30. The training videos were created by Amazon for the purpose of training Amazon delivery drivers on how to perform their job duties in accordance with Amazon's policies. The Plaintiff watched these videos on an Amazon branded tablet at All Canadian Courier's administrative office.

31. Throughout his training, the Plaintiff was told to identify himself as being "from Amazon" when interacting with Amazon's customers and to hold Amazon packages in front of him so that the Amazon logo was visible.

32. The Plaintiff completed all required training and received no compensation during the training period.

(ii) *The Plaintiff's Job Duties and Hours of Work*

33. During the course of his employment with All Canadian Courier, the Plaintiff typically worked five days per week, Monday to Friday. He was paid a flat rate of \$160 per day, no matter how long he worked.

34. The Plaintiff routinely worked 55 to 70 hours per week.

-17-

35. The Plaintiff's scheduled shift started at 8:00 a.m. in Mississauga, Ontario and typically ended between 7:00 p.m. and 10:00 p.m., depending on a number of factors including the volume of packages and if any complications or delays arose in the course of the day. There was no scheduled end to the Plaintiff's shift.

36. The Plaintiff's shifts were scheduled by an DSP operations manager at All Canadian Courier and sent by email to the Plaintiff on a weekly basis each Sunday evening for the following week. Drivers classified as DSP employees, like the Plaintiff, were consistently scheduled for shifts that commenced at 8:00 a.m. and drivers classified as independent contractors were consistently scheduled for shifts that commenced at 3:00 p.m.

37. At the outset of his employment, the Plaintiff would attend Amazon's Fulfilment Centre at 6363 Millcreek Drive in Mississauga, Ontario to pick up packages assigned to him for delivery. These assigned packages were termed "carts" and the Plaintiff and all other Amazon delivery drivers were given a number which corresponded with a specific area located in the Fulfilment Centre where they would pick up their carts.

38. Each set of carts would contain approximately 150 packages on a typical day, and upwards of 200 to 300 packages during peak times.

39. The Plaintiff would learn of his assigned cart from an All Canadian Courier dispatcher which operated from a covered tent in the parking lot of the Fulfillment Centre. At some time during the Plaintiff's tenure, All Canadian Courier relocated its dispatchers to a nearby warehouse building located at 5425 Dixie Road in Mississauga, Ontario.

-18-

40. The Plaintiff was responsible for loading the packages from his assigned carts into the rental vehicle that he used to make the deliveries in accordance with Amazon's policies regarding "load-outs".

41. The rental vehicle, typically a cube van rented from the rental company Enterprise, was paid for by All Canadian Courier and provided to the Plaintiff for his use in performing his job duties for Amazon.

42. A pre-paid gas card used to fuel the rental vehicle was paid for and provided to All Canadian Courier by Amazon.

43. Once the Plaintiff had loaded his vehicle with the packages from his cart, he would log in to the Amazon Flex app which is loaded onto a device called a "Rabbit".

44. The Rabbit is a handheld personal computer that functions as a barcode scanner, camera, GPS, telephone, and has Wi-Fi and internet connectivity.

45. Once he logged into the Amazon Flex app, the Plaintiff entered his starting mileage. The Amazon Flex app then generated an exact itinerary for the Plaintiff to follow in delivering the packages, including turn-by-turn driving directions, time required to travel from one location to another, and the order in which the packages were to be delivered.

46. Amazon expected the Plaintiff to complete deliveries within a specified period of time. When the Plaintiff would be delayed in making deliveries on Amazon's schedule, the Plaintiff

-19-

would be contacted through the Rabbit and instructed to increase his pace. The Plaintiff was responsible for delivering each assigned package to Amazon's customers by the end of the day.

47. On occasion, a package would be undeliverable due to a wrong address or factors beyond the Plaintiff's control. In such an event, the Plaintiff would be required to drop off the undelivered package at the Fulfilment Centre after making the last delivery on his assigned route. When this happened, Amazon would frequently ask the Plaintiff to "re-attempt" the delivery. This had the effect of extending the Plaintiff's hours of work.

48. The Plaintiff would also routinely be asked to "rescue" other Amazon delivery drivers who had fallen behind on making their deliveries by the end of the day. This also had the effect of extending the Plaintiff's hours of work.

(iii) The Plaintiff's Contract of Employment

49. The Plaintiff was employed as an employee of All Canadian Courier as an Amazon delivery driver between the summer of 2017 and March 23, 2018 pursuant to an oral contract of employment.

50. It is an implied term that the *ESA* formed part of the Plaintiff's contract of employment.

51. The Plaintiff was paid a flat rate of \$160 per day in gross wages.

52. The Plaintiff was entitled to take a half hour unpaid lunch break but would typically work through his break in order to complete his deliveries. He was never provided any additional compensation for this time.

-20-

53. The Plaintiff received health and dental benefits from All Canadian Courier following a three month probationary period.

54. All Canadian Courier deducted income tax at source and deducted EI and CPP contributions from the Plaintiff's pay.

55. All Canadian Courier paid the Plaintiff vacation pay equivalent to 4% of his salary.

56. The Plaintiff was never paid overtime pay or statutory holiday pay or premium pay despite working overtime hours and working on statutory holidays.

57. The Plaintiff would, from time to time, receive an Amazon gift card as a "bonus" in fiscal quarters when Amazon's profits increased.

58. Neither Amazon nor All Canadian Courier had a system or policy in place to monitor or record the Plaintiff's hours of work including overtime hours, although was aware, or ought to have been aware of the of the Plaintiff's hours of work through data it obtained and kept from the Rabbit and Amazon Flex app.

(iv) Termination of the Plaintiff's Employment

59. In late 2017, a union organizing drive took place at All Canadian Courier.

60. Sometime in late 2017, a representation vote was directed by the Ontario Labour Relations Board and more than 50% of the ballots cast by All Canadian Courier employees in the proposed

-21-

bargaining unit were cast in favour of the United Food and Commercial Workers International Union, Local 175. The Plaintiff voted in the representation vote.

61. In January 2018, the Plaintiff took an unpaid bereavement leave to attend his mother's funeral in Trinidad. The Plaintiff was on unpaid bereavement leave for a period of approximately two weeks.

62. In response to the unionization of All Canadian Courier employees working as Amazon drivers, All Canadian Courier began withholding shifts from its existing staff complement and, instead, engaged workers through a temporary help agency. This had the effect of reducing the total number of shifts available to drivers in the bargaining unit, including the Plaintiff.

63. The Plaintiff's last day of work as an Amazon delivery driver for All Canadian Courier was March 23, 2018, following which he was not offered any further shifts.

64. The Plaintiff was provided with no notice of termination of his employment or pay in lieu thereof.

65. In the spring of 2018, All Canadian Courier ceased operations as a result of Amazon ceasing to provide delivery routes to it following the unionization of its Amazon delivery drivers.

-22-

F. AMAZON IS THE COMMON EMPLOYER OF THE PLAINTIFF AND THE CLASS

66. Amazon and Amazon DSPs are related or common employers of the Plaintiff and Class Members at common law and under the *ESA* and Equivalent Legislation.

67. Amazon carries on its business of delivering Amazon packages to its customers through the use of Amazon DSPs and the Amazon Flex app.

68. Amazon and Amazon DSPs should be treated as one employer for the purposes of the *ESA* and Equivalent Legislation and the Plaintiff and Class Members' entitlement to statutory minimum payments under it and their entitlements at common law.

69. The relationship between Amazon and Amazon DSPs is intertwined, proximate and characterized by Amazon exerting effective control over both Amazon DSPs and Class Members because:

- (a) Class Members must use the Amazon Flex app which provides Class Members with an exact itinerary to follow in delivering packages for Amazon, including turn-by-turn driving directions, time required to travel from one location to another and the order in which the packages must be delivered;
- (b) Class Members' movements are closely monitored and recorded by the Amazon Flex app;
- (c) Class Members must use the Rabbit or their personal mobile phone to call an Amazon representative if they encounter any issues in the course of making a

-23-

delivery or to report customer service issues, road accidents, physical injuries, or technical difficulties with the Amazon Flex app. Amazon then directly provides Class Members with direction on what course of action to take;

- (d) Amazon DSPs must follow Amazon's policies in respect of their business operations;
- (e) Class Members must follow Amazon's policies in the performance of their job duties;
- (f) Amazon will issue "concession cards" to Amazon DSPs and may refuse to supply delivery routes to Amazon DSPs if Amazon determines that the Amazon DSP and/or Class Members employed by the Amazon DSP are violating Amazon policies;
- (g) Amazon and Amazon DSPs operate out of the same premises or premises that are located in close geographical proximity to facilitate the high level of integration of their operations and to exert common control over Class Members;
- (h) Amazon and Amazon DSPs serve a common market which is Amazon customers;
- (i) Class Members receive instruction in their training to identify themselves as representatives of Amazon and are further instructed to make Amazon's logo visible at the time of making deliveries; and,

-24-

- (j) Class Members are surveilled by Amazon when they are at Fulfilment Centres through the use of video technology and through direct managerial oversight from Amazon managerial staff.

G. MISCLASSIFICATION OF THE CONTRACT DRIVER SUBCLASS MEMBERS

70. All Class Members are in an employment relationship with Amazon.

71. The employment relationship of the Contract Driver Subclass has been misclassified. Contract Driver Subclass Members should be classified as employees and not independent contractors because:

- (a) Contract Driver Subclass Members are assigned scheduled shifts or choose from time slots known as “blocks” made available on the Amazon Flex app and do not determine the days or times they perform their work;
- (b) Contract Driver Subclass Members are dependent on Amazon for their income and economic wellbeing;
- (c) Contract Driver Subclass Members must personally perform their job duties and cannot use substitute labour or subcontractors to complete assigned deliveries on their behalf;
- (d) Contract Driver Subclass Members must follow the itinerary generated by the Amazon Flex app and cannot make deliveries for other companies while they are making deliveries for Amazon;

-25-

- (e) Contract Driver Subclass Members are disciplined or “coached” by Amazon DSPs and/or Amazon directly for any violations of Amazon’s policies;
- (f) Contract Driver Subclass Members are required to use the Amazon Flex app and follow its itinerary and have no ability to direct the time, location or manner of their work;
- (g) The Amazon Flex app is the central and most important tool that Contract Driver Subclass Members use, without which the performance of their job duties would be impossible;
- (h) Contract Driver Subclass Members are paid a flat rate per “block” or a fixed rate per package for making deliveries for Amazon and have no ability to negotiate their rate of pay; and,
- (i) Contract Driver Subclass Members do not invoice Amazon or Amazon DSPs for their services and instead are paid directly in the same manner as employees.

H. LEGAL DUTIES OWED TO THE PLAINTIFF AND CLASS MEMBERS

72. Amazon owes the Plaintiff and Class Members statutory duties under the *ESA* and Equivalent Legislation, and contractual and other duties at common law.

73. Amazon has breached these duties causing the Plaintiff and Class Members to suffer damages for which Amazon is liable.

-26-

(i) ***Breach of Contract and the ESA and Equivalent Legislation***

74. The *ESA* and Equivalent Legislation forms either an express or implied term of the contracts of employment of the Plaintiff and Class Members.

75. As the common employer of the Plaintiff and the Class, Amazon has a duty to provide both the Plaintiff and Class Members with minimum statutory entitlements under the *ESA* and Equivalent Legislation, including:

- (a) Overtime pay;
- (b) Minimum wage;
- (c) Vacation pay;
- (d) Statutory holiday pay;
- (e) Premium pay;
- (f) Notice of termination or pay in lieu thereof;
- (g) Severance pay; and,
- (h) Paid meal breaks if Class Members perform work and are not permitted to take an unpaid meal break.

76. Amazon has further statutory obligations under the *ESA* and Equivalent Legislation including but not limited to the requirement to:

-27-

- (a) Provide information about employees' rights and entitlements under the *ESA* and Equivalent Legislation;
- (b) Record and retain records in respect of each employee including but not limited to the dates and times that the employee worked, and the number of the hours the employee worked in each day and each week; and,
- (c) Provide job protected leaves as prescribed by the *ESA* and Equivalent Legislation.

77. Amazon breached its duties under the *ESA* and Equivalent Legislation owed to the Plaintiff and Class Members by its failing to provide all of the entitlements above and failing to comply with minimum employment standards including recording and retaining accurate records concerning the Plaintiff and Class Members' hours of work.

(ii) Breach of Duty of Good Faith

78. As employees, the Plaintiff and Class Members are in a position of vulnerability in relation to Amazon. As a result, Amazon owes the Plaintiff and Class Members a duty to act in good faith and to honour its statutory and contractual obligations.

79. Amazon breached its duty of good faith by, *inter alia*:

- (a) failing to advise Class Members of their entitlements under the *ESA* and Equivalent Legislation;
- (b) creating a work environment and circumstances in which Class Members were directed, required or permitted to work hours in excess of the applicable overtime

-28-

threshold under the *ESA*, Employment Standards Regulations and Equivalent Legislation;

- (c) failing to pay Class Members overtime pay for hours worked in excess of the applicable overtime threshold under the *ESA*, Employment Standards Regulations and Equivalent Legislation,
- (d) failing to pay Class Members wages equivalent to at least minimum wage under the *ESA* and Equivalent Legislation;
- (e) failing to pay Class Members vacation pay under the *ESA* and Equivalent Legislation;
- (f) Failing to pay Class Members public holiday pay and premium pay under the *ESA* and Equivalent Legislation;
- (g) failing to provide notice of termination of employment or pay in lieu thereof at common law or under the *ESA* and Equivalent Legislation;
- (h) failing to pay wages to Class Members not permitted to take an unpaid meal break;
- (i) failing to ensure that Class Members do not work through their unpaid breaks;
- (j) failing to record and retain records of Class Members' hours of work, including the dates and times worked, and the number of the hours worked in each day and each week;

-29-

- (k) failing to pay Class Members for work performed at Fulfilment Centres or work performed outside of driving duties or while not logged into the Amazon Flex app;
- (l) misclassifying the employment relationship of the Contract Driver Subclass;
- (m) misleading or misrepresenting to Contract Driver Subclass Members that they are independent contractors and consequently have no minimum statutory entitlements under the *ESA* or Equivalent Legislation or at common law, or entitlement to reimbursement for gas, insurance, maintenance, parking fines and cell phone data used to perform work for Amazon; and,
- (n) failing to deduct and remit income tax and EI and CPP contributions on behalf of Contract Driver Subclass Members.

(iii) Negligence

80. Amazon owed a duty to Contract Driver Subclass Members to take reasonable steps to properly characterize their employment relationship. Amazon breached its duty to the Contract Driver Subclass Members by, *inter alia*:

- (a) failing to properly classify the employment relationship of the Contract Driver Subclass;
- (b) misclassifying the employment relationship of the Contract Driver Subclass;
- (c) misrepresenting to Contract Driver Subclass Members that they are independent contractors and consequently have no minimum statutory entitlements under the

-30-

ESA or Equivalent Legislation or at common law, or entitlement to reimbursement for gas, insurance, maintenance, parking fines and cell phone data used to perform work for Amazon;

- (d) failing to pay Contract Driver Subclass Members minimum statutory entitlements under the *ESA* or Equivalent Legislation or pursuant to the terms of their contracts of employment;
- (e) failing to deduct and remit income tax and EI and CPP contributions on behalf of Contract Driver Subclass Members;
- (f) failing to record and retain records of Contract Driver Subclass Members' hours of work, including the dates and times that Contract Driver Subclass Members worked, and the number of the hours they worked in each day and each week.

81. Damages were suffered by Contract Driver Subclass Members as a result of Amazon's negligence in misclassifying them as independent contractors and such damages were reasonably foreseeable to Amazon. These damages include but are not limited to:

- (a) Loss of minimum statutory payments under the *ESA* or Equivalent Legislation;
- (b) Loss of employer EI and CPP contributions;
- (c) Damages arising from a determination that Contract Driver Subclass Members are employees and not independent contractors for the purpose of the *ITA*; and,

-31-

- (d) Out-of-pocket expenses for gas, insurance, maintenance, parking fines and cell phone data in connection to the use of personal vehicles and/or mobile phones used to perform work for Amazon.

(iv) Unjust enrichment

82. Amazon has been unjustly enriched as a result of receiving the benefit of the unpaid work performed by the Plaintiff and Class Members and Class Members' payment for gas, insurance, maintenance, parking fines and cell phone data in connection to the use of their personal vehicles and/or mobile phones used to perform work for Amazon.

83. The Plaintiff and Class Members have suffered a corresponding deprivation in the form of loss of wages and pay for overtime pay, wages equivalent to at least minimum wage, vacation pay, public holiday pay, premium pay, EI and CPP contributions, and the cost of gas, insurance, maintenance, parking fines and cell phone data.

84. There is no juristic reason for this unjust enrichment. Amazon's failure to pay Class Members for statutory minimum entitlements under the *ESA* and Equivalent Legislation, make EI and CPP contributions, and reimburse Class Members for vehicle and mobile phone costs is unlawful.

I. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

85. The Plaintiff pleads that Amazon's conduct as pleaded above is unlawful, high-handed and carried out in bad faith.

-32-

86. Amazon's conduct constitutes a disregard for the rights and interests of Class Members who were and are vulnerable to the actions, decisions and power of Amazon.

87. Amazon's conduct in failing to pay Class Members for all hours worked and failing to pay overtime pay, wages equivalent to at least minimum wage, vacation pay, statutory holiday pay, premium pay, paid breaks and termination pay where applicable, and by misclassifying the employment relationship of the Contract Driver Subclass warrants awards of aggravated, exemplary and punitive damages.

J. LEGISLATION RELIED UPON

88. The Plaintiff pleads and relies upon the following statutes:

- (a) *Act respecting labour standards*, CQLR c N-1.1;
- (b) *Civil Code of Québec*, CQLR c CCQ-1991;
- (c) *Class Proceedings Act*, 1992, SO 1992, c 6;
- (d) *Courts of Justice Act*, RSO 1990, c C.43;
- (e) *Employment Standards Act*, RSBC 1996, c 113;
- (f) *Employment Standards Act*, RSPEI 1988, c E-6.2;
- (g) *Employment Standards Act*, SNB 1982, c E-7.2;
- (h) *Employment Standards Act*, 2000, SO 2000, c 41;

-33-

- (i) *Employment Standards Code*, RSA 2000, c E-9;
- (j) *Labour Standards Act*, RSNL 1990, c L-2;
- (k) *Labour Standards Code*, RSNS 1989, c 246;
- (l) *The Employment Standards Code*, CCSM c E110; and,
- (m) *The Saskatchewan Employment Act*, SS 2013, c S-15.1.

89. The Plaintiff pleads and relies upon the following regulations:

- (a) Employment Standards Regulation, Alta Reg 14/1997;
- (b) Employment Standards Regulation, BC Reg 396/95;
- (c) Employment Standards Regulation, Man Reg 6/2007;
- (d) Employment Standards Act General Regulations, PEI Reg EC588/10;
- (e) Exemptions, Special Rules and Establishment of Minimum Wage, O Reg 285/01;
- (f) General Labour Standards Code Regulations, NS Reg 298/90l;
- (g) General Regulation, NB Reg 85-179;
- (h) Labour Standards Regulations, CNLR 781/96;
- (i) Minimum Wage Order (General), NS Reg 5/99, Sch A;

-34-

- (j) Minimum Wage Order, PEI Reg EC572/98;
- (k) Minimum Wage, NB Reg 2019-2;
- (l) Public Holiday Pay, O Reg 375/18;
- (m) Regulation respecting a registration system or the keeping of a register, CQLR c N-1.1, r 6;
- (n) Regulation respecting labour standards, CQLR c N-1.1, r 3;
- (o) Termination and Severance of Employment, O Reg 288/01;
- (p) The Employment Standards Regulations, RRS c S-15.1 Reg 5;
- (q) The Minimum Wage Regulations, 2014, RRS c s-15.1 Reg 3

K. SERVICE

90. This originating process may be served without court order outside Ontario because the claim is:

- (a) in respect of real or personal property in Ontario (Rule 17.02(a) of the *Rules of Civil Procedure*);
- (b) in respect of a tort committed in Ontario (Rule 17.02(g) of the *Rules of Civil Procedure*); and,

-35-

- (c) brought against a person ordinarily resident or carrying on business in Ontario
(Rule 17.02 (p) of the *Rules of Civil Procedure*).

June 11, 2020

SOTOS LLP
180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

Louis Sokolov (LSO # 34483L)
lsokolov@sotosllp.com
Tassia K. Poynter (LSO # 70722F)
tpoynter@sotosllp.com

Tel: 416-977-0007
Fax: 416-977-0717

Lawyers for the Plaintiff

DENVER DAVIS

Plaintiff

-and-

**AMAZON CANADA FULFILLMENT SERVICES, UI
al.
Defendants**

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

SOTOS LLP

180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

Louis Sokolov (LSO # 34483L)
lsokolov@sotosllp.com

Tassia K. Poynter (LSO # 70722F)
tpoynter@sotosllp.com

Tel: 416-977-0007

Fax: 416-977-0717

Lawyers for the Plaintiff