

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

Jessica Austin, individually and on  
behalf of all those similarly situated,

Plaintiffs,

v.

SMX, LLC, Amazon.com, Inc., and DOEs 1-  
50, jointly and severally,

Defendants.

NO. 14-2-09205-9 SEA

CLASS ACTION COMPLAINT FOR  
DAMAGES

Plaintiff claims against Defendants as follows:

**INTRODUCTION**

1. Plaintiff brings this class action for money damages and statutory penalties for wage law violations on behalf of current and former employees of Defendants SMX, LLC (“SMX”), Amazon.com, Inc. (“Amazon”), and DOEs 1-50 (collectively, the “Defendants”), jointly and severally, for breach of contract and violations of the Washington Minimum Wage Act (“WMWA”), RCW 49.46, the Washington Industrial Welfare Act (“IWA”), RCW 49.12, and the Washington Administrative Code (“WAC”), WAC 296-126-092.

2. Plaintiff complains that Defendants violated the WMWA, IWA, and WAC 296-126-092 by requiring their hourly workers at Amazon’s fulfillment centers to pass

1 through a security clearance before taking lunch and again at the end of each shift, for which  
2 they were not compensated.

### 3 JURISDICTION AND VENUE

4 3. The Superior Court of Washington has jurisdiction of Plaintiff's claims  
5 pursuant to RCW 2.08.010.

6 4. Venue in King County is appropriate pursuant to RCW 4.12.025.

7 5. A significant portion of the acts and omissions alleged herein took place in the  
8 state of Washington and King County and one or more of the Defendants reside in King  
9 County.

10 6. At least two thirds of the Class members, as alleged herein, are citizens of  
11 Washington State.

### 12 PARTIES

13 7. Plaintiff Jessica Austin is an individual who resides in Sumner, Washington,  
14 and worked for SMX at Amazon from November 11, 2012 until May 6, 2013.

15 8. Defendant Amazon.com, Inc. is a Washington corporation headquartered in  
16 Seattle, Washington, doing business in King County and in the State of Washington.  
17 Amazon is an employer for purposes of the WMWA and IWA.

18 9. Defendant SMX is an Illinois corporation headquartered in Chicago, Illinois,  
19 doing business in King County and in the State of Washington. SMX is an employer for  
20 purposes of the WMWA and IWA.

### 21 COMMON ALLEGATIONS

22 10. Amazon is in the business of selling various goods to consumers around the  
23 world by way of the internet. In order to meet its substantial sales demands, Amazon keeps  
24 its inventory in enormous fulfillment centers (i.e., warehouses).

25 11. SMX provides "sustainable workforce management solutions across the  
26 Americas, Europe and the Asia-Pacific region" and is "the leading workforce management  
provider with deep domain expertise supporting clients in the manufacturing, distribution and

1 logistics segments.”<sup>1</sup>

2 12. Plaintiff and the Class members work and have worked for Defendants in  
3 fulfillment centers operated by Amazon.

4 13. There exists a written contract between Amazon and SMX to staff fulfillment  
5 centers operated by Amazon whereby SMX is paid an hourly rate for the amount of hours its  
6 employees work at Amazon’s fulfillment centers.

7 14. Defendants share a joint employment relationship in connection with Plaintiff  
8 and the Class members who were direct employees of SMX.

9 15. SMX specifically solicited Plaintiff and the Class members for employment in  
10 fulfillment centers operated by Amazon. Plaintiff’s and the Class’s employment by SMX was  
11 for the specific purpose of working for Amazon.

12 16. SMX hired employees exclusively for the purpose of working in Amazon  
13 warehouses. Amazon could, and in fact did, hire SMX employees as permanent Amazon  
14 employees.

15 17. Many warehouse workers are direct employees of, receive their schedule from,  
16 and are directly paid by SMX. SMX receives instruction from Amazon regarding specific  
17 scheduling and staffing requirements which it, in turn, impose upon their employees.

18 18. Upon information and belief, Amazon directs SMX with regard to its staffing  
19 needs at the respective fulfillment centers. This includes identifying the employees’ work  
20 schedules and conditions of employment for all warehouse employees directly employed with  
21 SMX. Amazon, by directing and monitoring SMX, supervises and controls which shifts and  
22 what hours will be worked by all warehouse employees, their specific work assignments, the  
23 provision of rest and meal breaks, and all security clearance measures for all warehouse  
24 employees directly employed by SMX.

25  
26 <sup>1</sup> See <http://www.staffmanagement.com/Staffing/Company.aspx> (last visited March 28, 2014).

1           19.     SMX employees were monitored, directed, and trained by Amazon.

2           20.     SMX employees report to and are supervised directly by Amazon during the  
3 course of their workdays, and Amazon managers and supervisors directly oversee and direct the  
4 daily work activities of all warehouse employees, including employees of SMX.

5           21.     Temporary warehouse employees, including those directly employed by SMX,  
6 use the facilities and equipment of Amazon to perform their work tasks. Such temporary  
7 employees are also subject to limitations set by Amazon on the number of hours that can be  
8 worked for those companies before they are either hired as permanent employees or terminated  
9 from their positions in the fulfillment centers.

10          22.     Amazon determines the hourly compensation structure and hourly rate of pay for  
11 all warehouse employees, including those directly employed by SMX, and maintains  
12 employment records, including timekeeping and payroll records, for all such employees.

13          23.     Upon information and belief, Amazon retains the right to instruct its contractors,  
14 including SMX, to terminate any warehouse employee who fails to comply with the standards  
15 of conduct and productivity set by Amazon, including those employees caught or suspected of  
16 stealing from the facility as a result of the security checks.

17          24.     Amazon maintained, enforced, and implemented a security clearance policy  
18 for all hourly fulfillment center employees who worked at Amazon in Washington. Neither  
19 Amazon nor SMX pays their employees for time spent in the security clearance lines.

20          25.     SMX is a vendor that contracts with Amazon for staffing services. SMX has  
21 knowledge of the security clearance policy implemented by Amazon and requires its  
22 employees to adhere to it so as to retain its contractual relationship with Amazon.

23          26.     SMX employees are a third party beneficiary to the contract between SMX  
24 and Amazon. The benefit to SMX employees flows directly from the contract between SMX  
25 and Amazon and is not merely incidental.

26          27.     Plaintiff and the Class members are required to undergo a daily security  
clearance before leaving for lunch and again at the end of each shift. Plaintiff and the Class

1 members were not compensated for the time spent undergoing the security clearance before  
2 they were released from work and permitted to leave the fulfillment center facility.

3 28. Defendants' requirement that hourly fulfillment center workers undergo a  
4 thorough security clearance before being released from work and permitted to leave the  
5 facility was solely for the benefit of the employers and their customers.

6 29. During the class period, Plaintiff and the Class members routinely worked 40  
7 hours per week, not including time spent passing through the security clearance lines, and  
8 routinely worked more than 40 hours per week when such security clearance time is  
9 included.

10 30. At the direction and control of Defendants, and solely for the benefit of the  
11 Defendants and/or their customers, Plaintiff and the Class members were required to wait  
12 before each lunch period and again at the end of each shift for approximately 10 minutes  
13 each day without any compensation in order to undergo a search for possible contraband or  
14 pilferage of inventory.

15 31. Defendants forced Plaintiff and the Class members to undergo an intense  
16 security clearance: fulfillment center workers were required to remove all personal  
17 belongings like wallets, keys, and belts and would then pass through metal detectors before  
18 being released from work and permitted to leave the facility. Fulfillment center workers  
19 were unable to engage in any personal activities during the wait.

20 32. Plaintiff and the Class members were required to undergo security clearances  
21 at the beginning of their meal break that resulted in less than a 30-minute uninterrupted meal  
22 break even though they were forced to clock-out for 30-minutes.

23 33. Defendant SMX knew that its employees assigned to work in Amazon  
24 fulfillment centers were required to pass through security clearances at the beginning of meal  
25 periods and at the end of daily shifts and knew that its employees were not paid for this time.  
26 As a result, SMX knowingly suffered or permitted its employees to engage in uncompensated  
hours worked and failed to assure that its employees received the full 30-minute

uninterrupted meals periods required by Washington law.

### **WASHINGTON CLASS ACTION ALLEGATIONS**

34. Plaintiff brings this action pursuant to Civil Rule 23(b)(3) and (c)(4) on behalf of a Class defined to include:

All current and former hourly fulfillment center workers who worked for Amazon.com, Inc. and/or SMX, LLC in Washington during the three years prior to February 28, 2014, and thereafter, who were not paid for time spent waiting for and undergoing mandatory daily security clearances and/or had their 30-minute meal periods truncated or interrupted by mandatory security clearance procedures.

35. *Numerosity*: The members of the Class are so numerous that joinder of all members in the case would be impracticable. On information and belief, the number of putative Class members is greater than 100.

36. *Commonality/Predominance*: There is a well-defined community of interest among Class members and common questions of *both* law and fact predominate in the action over any questions affecting individual members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether the time Class members spent waiting for and undergoing mandatory daily security clearances is compensable under the Washington Minimum Wage Act and/or the Washington Industrial Welfare Act;
- b. Whether Class members are owed wages for time spent waiting for and undergoing mandatory daily security clearances;
- c. Whether Class members were deprived of proper meal periods under the Washington Industrial Welfare Act and the Washington Administrative Code, WAC 296-126-092, as a result of the time spent on security clearances, and, if so, whether they are owed compensation for such deprivation; and
- d. Whether Defendants breached their employment agreements with Class members by paying them less than their regular agreed-upon rate of pay for work as a result of undergoing mandatory daily security clearances.

37. *Typicality:* Plaintiff's claims are typical of those of the Class in that Plaintiff and all other Class members suffered damages as a direct and proximate result of Defendants' common and systemic payroll policies and practices. Plaintiff's claims arise from Defendants' similar policies, practices, and course of conduct as all other Class members' claims and Plaintiff's legal theories are based on the same legal theories as all other Class members.

38. *Adequacy:* Plaintiff will fully and adequately protect the interests of the Class and Plaintiff has retained national counsel and Washington counsel who are qualified and experienced in the prosecution of wage-and-hour class actions. Neither Plaintiff nor their counsel have interests that are contrary to, or conflicting with, the interests of the Class.

39. *Superiority:* A class action is superior to other available methods for the fair and efficient adjudication of the controversy, because, *inter alia*, it is economically infeasible for Class members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual along with the fear of employer reprisals.

40. The case will be manageable as a class action. Plaintiff and her counsel know of no unusual difficulties in the case and Defendants have advanced networked computer and payroll systems that will allow the class, wage, and damages issues in the case to be resolved with relative ease.

**COUNT I**

**VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT**  
**(All Defendants)**

41. Plaintiff re-alleges and incorporates all previous paragraphs herein.

42. The time spent by Plaintiff and the Class members on security clearances, as alleged above, are “hours worked” within the meaning of RCW 49.46 and associated state

1 wage laws and regulations.

2 43. Plaintiff and the Class members are non-exempt employees entitled to be paid  
3 a minimum wage for all hours worked and overtime compensation for all hours worked in  
4 excess of 40 in a workweek.

5 44. Defendants' failure to pay Plaintiff and the Class members for time spent in  
6 security clearance lines at one and one-half times their regular rate of pay for hours worked  
7 in excess of forty in their workweeks constitutes a violation of RCW 49.46.130.

8 45. Defendants' failure to pay Plaintiff and the Class members for time spent in  
9 security clearance lines at least at the minimum wage for hours worked less than forty in their  
10 workweeks constitutes a violation of RCW 49.46.020.

11 46. Defendants' failure to pay Plaintiff and the Class members for the time  
12 represented by legally insufficient meal periods at one and one-half times their regular rate of  
13 pay for hours worked in excess of forty in their workweeks constitutes a violation of RCW  
14 49.46.130.

15 47. Defendants' failure to pay Plaintiff and the Class members for the time  
16 represented by legally insufficient meal periods at least at minimum wage for hours worked  
17 less than forty in their workweeks constitutes a violation of RCW 49.46.020.

18 48. As a result of Defendants' acts and omissions, Plaintiff and the Class  
19 members have been damaged in amounts as will be proven at trial.

## 20 COUNT II

### 21 **VIOLATION OF THE WASHINGTON INDUSTRIAL WELFARE ACT** 22 **(All Defendants)**

23 49. Plaintiff re-alleges and incorporates all previous paragraphs herein.

24 50. Defendants' failure to provide and pay for legally sufficient meal periods, as



1 alleged above, constitutes a violation of RCW 49.12 and WAC 296-126-092.

2 51. Plaintiff and the Class members were required to spend a substantial amount  
3 of time every day during their 30-minute meal period undergoing security clearances.  
4 Thus, Plaintiff and the Class members were only permitted to take an uninterrupted meal  
5 period of less than 30-minutes even though they were forced to clock-out for 30-minutes.  
6

7 52. As a result of Defendants' acts and omissions, Plaintiff and the Class  
8 members have been damaged in amounts as will be proven at trial.

9 **COUNT III**

10 **BREACH OF CONTRACT**  
11 **(All Defendants)**

12 53. Plaintiff re-alleges and incorporates all previous paragraphs herein.

13 54. Defendants breached their employment agreements with Plaintiff and the Class  
14 members by paying them less than their regular agreed-upon rate of pay for time spent in  
15 mandatory security clearance lines.

16 55. As a result of Defendants' acts and omissions, Plaintiff and the Class members  
17 have been damaged in amounts as will be proven at trial.

18 **COUNT IV**

19 **RECOVERY AS THIRD-PARTY BENEFICIARY**  
20 **(Defendant Amazon)**

21 56. Plaintiff re-alleges and incorporates all previous paragraphs herein.

22 57. Amazon and SMX entered into a contract whereby SMX is paid an hourly rate  
23 for each employee it produces to work at fulfillment centers operated by Amazon predicated  
24 upon the time the SMX employee works at the facility. SMX, in turn, pays SMX employees  
25 the agreed-to hourly rate out of the funds it receives from Amazon. In short, SMX  
26 employees are the beneficiaries of the contract between Amazon and SMX.

1           58.     Plaintiff and the Class members who worked directly for SMX are third party  
2 beneficiaries of the contract between Amazon and SMX. The benefits from the contract flow  
3 directly to Plaintiff and the Class members and are not incidental or indirect. Instead, the  
4 contract was made for the direct benefit of a third person, i.e., Plaintiff and the Class  
5 members.  
6

7           59.     Amazon breached its contract with SMX by failing to pay SMX for each hour  
8 its employees worked at fulfillment centers operated by Amazon, thereby preventing SMX  
9 from paying its employees for each hour they worked. As a result, Plaintiff and the Class  
10 members have been damaged in amounts as will be proven at trial.

11                               **PRAYER FOR RELIEF**

12           WHEREFORE, Plaintiff requests the following relief:

- 13           a.     Certifying this action as a class action pursuant to Rule 23 (b)(3) or  
14               23(c)(4);
- 15           b.     Designating Plaintiff as the representative of the Class and undersigned  
16               counsel as Class Counsel;
- 17           c.     Damages for lost wages in amounts to be proven at trial;
- 18           d.     Attorneys' fees and costs pursuant to RCW 49.46.090 and RCW  
19               49.48.030;
- 20           e.     Prejudgment interest; and
- 21           f.     Such other and further relief as the Court deems just and proper.

22           DATED this 31<sup>st</sup> day of March, 2014.

23                               SCHROETER GOLDMARK & BENDER

24                                 
25                               Adam J. Berger, WSBA #20714  
26                               berger@sgb-law.com

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Jacob R. Rusch  
MN Bar No. 391892 (pro hac vice pending)  
Timothy J. Becker  
MN Bar No. 256663 (pro hac vice pending)  
JOHNSON BECKER, PLLC  
33 South Sixth Street, Suite 4530  
Minneapolis, Minnesota 55402  
Telephone: (612) 436-1800  
Facsimile: (612) 436-1801  
[jrusch@johnsonbecker.com](mailto:jrusch@johnsonbecker.com)  
[tbecker@johnsonbecker.com](mailto:tbecker@johnsonbecker.com)

Jason J. Thompson  
MI Bar No. P47184 (pro hac vice pending)  
Jesse L. Young  
MI Bar No. P72614 (pro hac vice pending)  
SOMMERS SCHWARTZ, P.C.  
One Towne Square, Suite 1700  
Southfield, Michigan 48076  
248-355-0300  
[jthompson@sommerspc.com](mailto:jthompson@sommerspc.com)  
[jyoung@sommerspc.com](mailto:jyoung@sommerspc.com)

*Counsel for Plaintiff*