

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
THE PEOPLE OF THE STATE OF NEW YORK by
LETITIA JAMES, Attorney General of the State of New
York,

Index No. 450362 / 2021

Plaintiff, **AMENDED COMPLAINT**

-against-

AMAZON.COM INC., AMAZON.COM SALES, INC.,
and AMAZON.COM SERVICES LLC,

Defendants.

----- X
Plaintiff, the People of the State of New York, by Letitia James, Attorney General of the
State of New York (the “Attorney General”) respectfully alleges:

INTRODUCTION

1. The Attorney General brings this action on behalf of the people of the State of New York pursuant to New York Executive Law § 63(12) against Defendants Amazon.com, Inc., Amazon.com Sales, Inc., and Amazon.com Services LLC (collectively, “Amazon”) to enjoin Amazon from conducting its business in violation of the New York Labor Law and to remedy violations of New York Labor Law § 200, New York’s workplace health and safety law, and Labor Laws § 215 and § 740, New York’s anti-retaliation and whistleblower protection laws, respectively.

2. New York Labor Law § 200 requires employers to provide reasonable and adequate protection to the lives, health, and safety of their employees. During the coronavirus pandemic, public health agencies have issued guidance that establishes the measures employers should institute to protect their employees from the virus and to satisfy their obligations under Labor Law § 200.

3. Throughout the historic pandemic, Amazon has repeatedly and persistently failed to comply with its obligation to institute reasonable and adequate measures to protect its workers from the spread of the virus in its New York City facilities JFK8, a Staten Island fulfillment center, and DBK1, a Queens distribution center. Amazon's flagrant disregard for health and safety requirements has threatened serious illness and grave harm to the thousands of workers in these facilities and poses a continued substantial and specific danger to the public health.

4. Since at least March 2020 when the COVID-19 outbreak began to devastate New York City, Amazon failed to comply with requirements for cleaning and disinfection when infected workers had been present in its facilities; Amazon failed to adequately identify and notify potential contacts of such infected workers; and Amazon failed to ensure that its discipline and productivity policies, and productivity rates automated by line-speeds, permitted its employees to take the time necessary to engage in hygiene, sanitation, social-distancing, and necessary cleaning practices.

5. When Amazon employees began to object to Amazon's inadequate practices and to make complaints to Amazon management, government agencies, and the media, Amazon took swift retaliatory action to silence workers' complaints. In late-March 2020, Amazon fired employee Christian Smalls, and in early-April 2020, Amazon issued a final written warning to employee Derrick Palmer. Amazon's actions against these visible critics who advocated for Amazon to fully comply with legal health requirements sent a chilling message to other Amazon employees.

6. Amazon's response to the pandemic continues to be deficient. First, Amazon has failed and continues to fail to close all or a portion of its facilities for the requisite ventilation, cleaning, and disinfection when an infected worker has been present in the facility within seven

days. By Amazon's own account, it has failed to undertake these measures on at least eighty occasions in the JFK8 facility alone.

7. Second, Amazon's process for identifying and notifying contacts of infected workers was legally deficient in several ways. For at least several months during the height of New York City's outbreak, Amazon failed to speak with infected employees to find out with which other employees they had close contact. In addition, Amazon failed and continues to fail to even attempt to identify potential close contacts of infected employees unless the infected employee provides Amazon with a test result or doctor's note. This practice fails to account for all cases in the facility and was dangerously underinclusive during early periods when COVID-19 tests were in extremely limited supply.

8. Third, during the pandemic, Amazon has continued tracking and disciplining employees based on their productivity rates and their time not engaged in filling customer orders ("time off task"), which has significantly limited employees' ability to take steps that are necessary to maintain social distancing, clean their workstations, and engage in sanitary and hygienic practices necessary to fully protect themselves and co-workers from the spread of the virus.

9. Amazon has cut corners in complying with the particular requirements that would most jeopardize its sales volume and productivity rates, thereby ensuring outsize profits at an unprecedented rate of growth for the company and its shareholders. Over the course of the pandemic (using the period Q2-2020 through Q1-2021), Amazon generated more than \$213 billion in revenues from its online sales—corresponding to a 44% growth from revenues generated for the same period the prior year (i.e., Q2-2019 through Q1-2020). This growth rate is about 29 percentage points higher than the 15% average growth rate that Amazon experienced in

the previous two years¹—and was achieved at the expense of its frontline workers who have experienced significant risks of COVID-19 infection while working at Amazon.

JURISDICTION AND VENUE

10. This Court has jurisdiction over Defendants pursuant to N.Y. C.P.L.R. § 301.

11. Venue is proper in New York County pursuant to N.Y. C.P.L.R. § 503 because Plaintiff has a principal office in New York County and because Amazon maintains offices at 410 Tenth Avenue, 450 West 33rd Street, and 7 West 34th Street, all in New York County.

PARTIES

12. Plaintiff is the Attorney General of the State of New York and is empowered to seek, on behalf of the People of the State of New York, injunctive relief, disgorgement, restitution, and damages for repeated and persistent illegality in the transaction of business in the State of New York. Plaintiff brings this action on behalf of the People of the State of New York.

13. The Attorney General has a principal place of business at 28 Liberty Street, New York, New York, 10005.

14. Defendant Amazon.com Services LLC has a principal place of business at 410 Terry Avenue North, Seattle, Washington 98109-5210 and is licensed to conduct business as a corporation within New York State, and maintains multiple business facilities within New York State, including a warehouse and distribution center in Staten Island and a distribution center in Queens, and maintains offices at 410 Tenth Avenue, 450 West 33rd Street, and 7 West 34th Street, all in New York, New York.

¹ Amazon's online sales were \$112 billion during the period Q2-2017 through Q1-2018; \$125 billion during the period Q2-2018 through Q1-2019; and \$148 billion during the period Q2-2019 through Q1-2020.

15. Defendant Amazon.com Sales, Inc. is the sole member of Amazon.com Services LLC, and is a Delaware corporation with its principal place of business in Seattle, Washington.

16. Defendant Amazon.com, Inc., is the sole owner of Amazon.com Sales, Inc., and is also a Delaware corporation with its principal place of business at 410 Terry Avenue North, Seattle, Washington 98109-5210.

FACTUAL ALLEGATIONS

The COVID-19 Pandemic

17. COVID-19 is an infectious respiratory disease caused by a novel coronavirus. COVID-19 can result in serious, long-term health complications and has resulted in nearly 600,000 reported deaths in the United States to date. Among these serious health complications, COVID-19 can cause inflammation in the lungs, clogging the air sacs in the lungs, limiting the body's oxygen supply and blood clots, organ failure, intestinal damage, heart inflammation, problems with the liver, neurological malfunction, and acute kidney disease.

18. The novel coronavirus that causes COVID-19 is highly contagious. The virus spreads mainly person to person, primarily through respiratory droplets produced by infected persons. Spread is more likely when people are in close contact with one another (within about 6 feet for longer than a total of 15 minutes during a 24-hour period).

19. The virus can be spread even by people who are "asymptomatic," meaning they carry the active virus in their body but never develop any symptoms; "pre-symptomatic," meaning they have been infected and are incubating the virus but do not yet show symptoms; or very mildly symptomatic, meaning they feel unwell but often do not realize they have the virus.

20. Research from the U.S. Centers for Disease Control and Prevention (“CDC”) suggests that a single person with COVID-19 is likely to infect five or six other individuals absent aggressive social distancing practices.

21. The best way to prevent illness is to avoid being exposed to this virus.

22. New York’s first confirmed case of COVID-19 was announced on March 1, 2020.²

23. In the following weeks, New York State became the global epicenter of the pandemic, and as of February 14, 2021, New York has had over 50,000 reported deaths due to COVID-19. Officials estimate there are many more unconfirmed cases of the virus that resulted in many additional deaths.

The New York State and Public Health Response to COVID-19 Outbreak

24. Starting in March 2020, New York State instituted requirements and issued guidance intended to protect the health and safety of workers, as well as the public, against infection by COVID-19 and to minimize deaths, illness, and other devastating impacts of the virus.

Authorization of Relevant Health and Safety Requirements

25. On March 3, the Legislature amended Executive Law § 29-a effective immediately to authorize the Governor, in disasters including epidemics and disease outbreaks, to issue “any directive... necessary,” including “procedures reasonably necessary to enforce such directive.” *See* Ch. 23, N.Y. Laws 2020, § 2, eff. March 3, 2020. The broadened Executive Law § 29-a remained in effect for over a year until the Legislature restored “the pre-pandemic balance of power of the governor and legislature, . . . while maintaining the authority of public-health

² All dates below refer to 2020, unless otherwise noted.

focused directives taken by the Governor” and providing for extension of previously issued directives. *See* Ch. 71, N.Y. Laws 2021, eff. March 8, 2021.

26. On March 7, Governor Cuomo issued Executive Order 202 declaring a disaster emergency.

27. On March 18, Governor Cuomo issued Executive Order 202.6 curtailing non-essential in-person work at New York businesses and committing authority to the Empire State Development Corporation (“ESD”) to issue guidance as to which businesses are determined to be essential. On March 20, he issued Executive Order 202.8, the “New York State On PAUSE” Executive Order (“NYSOP”), which included a 10-point plan, requiring all non-essential businesses in New York State to be closed effective 8:00 p.m. on March 22 and announcing social distancing requirements for essential businesses.

28. ESD’s guidance implementing Executive Order 202.6 and the NYSOP (the “ESD Guidance”) set forth the list of essential businesses in further detail, and went through various modifications over time. As set forth there, “warehouse/distribution and fulfillment” was an essential service and was exempt from curtailment of in-person work. Amazon’s JFK8 and DBK1 facilities were included in this category.

29. From the earliest version of its guidance pursuant to EO 202.6, published on March 20, ESD required, “Essential Businesses must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the Department of Health.”

30. On March 27, Governor Cuomo issued Executive Order 202.11 making “[a]ny guidance issued by the New York State Department of Health [DOH] related to prevention and infection control of COVID-19 . . . effective immediately.”

31. On May 14, Governor Cuomo issued Executive Order 202.31 (“EO 202.31”) authorizing a phased re-opening of non-essential businesses in accordance with DOH-prescribed metrics in designated regions of the state, provided that essential businesses that had remained open as well as non-essential businesses that were re-opening were required to continue to operate “subject to the guidelines promulgated by the Department of Health.” *See* EO 202.31.

32. Pursuant to EO 202.31, DOH promulgated detailed guidelines which included industry-specific guidelines, applicable “to both non-essential businesses in regions that are permitted to re-open and essential businesses throughout the state that were previously permitted to remain open.” This included, among other industry-specific guidelines, one for the wholesale trade sector, stating: “No wholesale trade business activity can occur without meeting the following minimum State standards.” *See*, NY Dep’t of Health, *Interim Guidance for the Wholesale Trade Sector During the COVID-19 Public Health Emergency* (June 26, 2020) (hereinafter, the “DOH WT Sector Guidance”).

33. The DOH WT Sector Guidance is applicable to Amazon’s warehouse and distribution centers, including JFK8 and DBK1.

Relevant Health and Safety Requirements

Cleaning and Disinfection

34. The DOH WT Sector Guidance incorporates by reference the CDC cleaning requirements found in “Cleaning and Disinfection for Community Facilities” (the “CDC Cleaning Guidance”). The CDC originally issued this guidance in February 2020. The CDC Cleaning Guidance provides that when a person suspected of or confirmed to have COVID-19 has been in a facility, a business should take the following steps: “Close off areas visited by the ill persons. Open outside doors and windows and use ventilating fans to increase air circulation in the area. Wait 24 hours or as long as practical before beginning cleaning.” The only instance

in which the CDC Cleaning Guidance provides that these steps are unnecessary is if “it has been more than 7 days since the person with suspected/confirmed COVID-19 visited or used the facility.” The DOH WT Sector Guidance quotes this language on pages 6 and 7.

35. The DOH WT Sector Guidance also incorporates by reference the DOH Guidance, “Interim Guidance for Cleaning and Disinfection of Public and Private Facilities for COVID-19,” (the “DOH Cleaning Guidance”). The DOH Cleaning Guidance provides, in relevant part, “If a laboratory confirmed case of COVID-19 was in a facility, perform cleaning and disinfection of all surfaces throughout the area. Cleaning and disinfection should be conducted by individuals who have been trained to use products in a safe and effective manner.” *Id.*, p. 4.

Identifying COVID-19 Cases and Stopping the Spread

36. The DOH WT Sector Guidance requires that employers “To the extent possible, . . . maintain a log of every person, including workers and visitors, who may have close or proximate contact with other individuals at the work site or area . . . such that all contacts may be identified, traced and notified in the event an employee is diagnosed with COVID-19.”

37. In addition, the DOH WT Sector Guidance states that employers “must notify the state and local health department immediately upon being informed of any positive COVID-19 test result by a worker at their site.” In the case of a worker or visitor testing positive, the employer must cooperate with the state and local health department to trace all contacts in the workplace and notify the state and local health department of all workers and visitors who entered the facility dating back to 48 hours before the worker began experiencing COVID-19 symptoms or tested positive, whichever is earlier, but maintain confidentiality as required by federal and state law and regulations.

38. The CDC has also issued requirements for case investigation and notification to employees in non-healthcare workplaces. The CDC requires employers to “[d]etermine which employees may have been exposed to the virus and may need to take additional precautions,” and to “[i]nform employees of their possible close contact . . . with someone with confirmed or suspected SARS-CoV-2 infection in the workplace.”

Social Distancing Requirements

39. NYSOP specified social distancing requirements for essential businesses that were allowed to remain operating. NYSOP required that businesses and entities that provide essential services must implement rules that facilitate social distancing of at least six feet. The NYSOP requirements state that “Businesses and entities that provide other essential services must implement rules that help facilitate social distancing of at least six feet.”

40. The DOH WT Sector Guidance further incorporates by reference Executive Orders 202.8 and 202.11 and includes the same language: “Businesses and entities that provide other essential services must implement rules that help facilitate social distancing of at least six feet.”

Hygiene

41. The DOH WT Sector Guidance requires regular hand washing with soap and water in each of the following situations: before and after eating; after sneezing, coughing, or nose blowing; after using the restroom; after touching or cleaning services that may be contaminated; and after using shared equipment and supplies like electronic equipment such as keyboards, mice and phones. The DOH WT Sector Guidance incorporates by reference the hygiene and sanitation requirements advised by the CDC and DOH, including “Guidance for

Cleaning and Disinfection of Public and Private Facilities for COVID-19” and the “STOP THE SPREAD” poster.

42. The CDC issued similar requirements in February 2020, stating that employers should “[P]lace posters that encourage staying home when sick, cough and sneeze etiquette, and hand hygiene at the entrance to your workplace and in other workplace areas where they are likely to be seen. Provide tissues and no-touch disposal receptacles for use by employees. Instruct employees to clean their hands often with an alcohol-based hand sanitizer that contains at least 60-95% alcohol, or wash their hands with soap and water for at least 20 seconds. . . . Provide soap and water and alcohol-based hand rubs in the workplace. . . .”

The Attorney General’s Investigation of Amazon

43. The Attorney General began investigating Amazon in late March 2020 when she received several complaints from current and former Amazon employees. The complainants alleged serious health and safety concerns in relation to COVID-19, as well as unlawful retaliation for raising health and safety concerns to Amazon.

44. The Attorney General focused her investigation on the JFK8 fulfillment center in Staten Island and the DBK1 delivery station in Woodside.

45. JFK8 is a fulfillment center staffed by more than 5,000 employees who were deemed “essential” workers during the COVID-19 pandemic, and the vast majority of whom Amazon required to work on-site. At JFK8, online sales merchandise is stored, and a majority of work consists of fulfilling online sales orders where workers are tasked to pick, pack, count, stow and/or ship such items.

46. DBK1 is a delivery and sorting facility staffed by several hundred employees who were deemed “essential” workers during the COVID-19 pandemic, and the vast majority of whom Amazon required to work on-site. DBK1 is part of the distribution process where online

sales order merchandise packages are routed to their final delivery point and a majority of work consists of picking and sorting packages for delivery.

47. Over the course of the investigation, pursuant to her subpoena authority under Executive Law § 63(12), the Attorney General obtained documents concerning Amazon's COVID-19 health and safety practices, policies and complaints at JFK8, as well as adverse actions taken against JFK8 workers in retaliation for raising health and safety concerns. The Attorney General obtained a limited number of documents concerning Amazon's COVID-19 health and safety practices, policies and complaints at DBK1.

48. The Attorney General took testimony from multiple Amazon managers and representatives.

Amazon's Deficient and Unlawful Response to COVID-19

49. Under the Executive Orders and ESD Guidance described above, Amazon's warehouse, distribution, and fulfillment centers were deemed "essential" businesses permitted to remain operating with an in-person workforce. Amazon, however, was required to take reasonable and adequate measures to protect its employees from COVID-19.

50. As detailed below, Amazon failed to take adequate and reasonable health and safety precautions.

Amazon's Failure to Conduct Adequate Cleaning and Disinfection

51. Amazon's cleaning and disinfection practices failed to comply with guidance issued by New York State, the DOH, and the CDC.

52. Amazon failed to engage in adequate cleaning and disinfecting protocols in response to a probable or confirmed COVID case. As summarized above, public health guidance directed that employers should, whenever a person confirmed or suspected to have contracted COVID-19 had been at JFK8 within the past seven days, "Close off areas visited by the ill

persons. Open outside doors and windows and use ventilating fans to increase air circulation in the area. Wait 24 hours or as long as practical before beginning cleaning.” Amazon did not close off all areas visited, did not open outside doors and windows or use ventilating fans to increase ventilation, and did not wait 24 hours before cleaning and disinfecting such areas.

53. Amazon claimed that it conducted a partial cleaning process at JFK8 if Amazon learned of an infected worker’s diagnosis while the worker was in the facility, or if the infected worker had been in the facility within 24 hours—not seven days as the DOH WT Sector Guidance and CDC Cleaning Guidance provided. On occasions when an infected worker had been in the facility more than 24 hours before receiving a positive COVID-19 test or diagnosis, even if the worker had last been in the facility fewer than seven days before, Amazon did not close any portion of JFK8.

54. Amazon received written notification of at least 250 employees at the JFK8 facility who had positive COVID-19 tests or diagnoses, of which more than 90 involved workers who had been present in the facility within 7 days of notification to Amazon. In more than 80 of these instances, Amazon failed to close any portion of the JFK8 facility even after receiving documentation of the confirmed positive case.

55. Even with respect to cases where a worker had been at JFK8 within 24 hours of a positive test, on no occasion did Amazon close JFK8 due to the presence in the facility of infected workers, and occasionally closed portions of JFK8 only in insufficient and limited ways. Amazon only closed diagnosed employees’ workstations and immediately adjacent workstations, did not increase ventilation or wait an adequate time before cleaning, and only performed the partial and inadequate closings on seven occasions for a period of 90 minutes each. However, on

information and belief, infected workers were present in the facility within 24 hours of a positive COVID-19 test or diagnosis on more than thirty occasions.

Amazon's Relentless Focus on Productivity at the Expense of Allowing Employees to Take Appropriate Health Precautions

56. Amazon monitors productivity and time-off-task ("TOT") to assess worker performance. Productivity thresholds are set by Amazon management.

57. For many employees, Amazon tracks this information by utilizing technology from the digital scanners with which workers scan bins and packages for shipping. Amazon uses the scanners to measure and record each worker's productivity in terms of work units completed per hour. Based on these rates, employees may be subject to adverse consequences, including automatically-generated discipline, while those whose productivity exceeds a target rate may receive positive feedback.

58. "Feedback" is Amazon's term for discipline. The highest or most serious level of feedback is discharge, and lower levels include documented coaching, a first written warning, a second written warning, and a final written warning.

59. Amazon calculates TOT by counting the total number of minutes a worker is not actively completing work sequences throughout the work day, as measured by the scanners with which workers scan bins and packages for shipping. Amazon deems the total of intervals over five minutes (other than lunch and paid breaks) during which scanners do not show such work activity to constitute that worker's TOT for the day.

60. Employees know that if scanners do not show nearly-continuous activity, they may suffer adverse employment consequences, and in particular, Amazon may discipline the employee for TOT in excess of Amazon's established thresholds.

61. Amazon's non-managerial employees do not have access to their TOT or productivity rates. Asking their manager is the only recourse for workers who want to learn their accumulated TOT or productivity rates.

62. Amazon has continued the use of productivity and TOT monitoring through the COVID-19 pandemic.

63. Amazon claims that in March 2020, it "paused" productivity-related discipline. However, Amazon did not communicate this clearly and/or in writing to workers at any time before July 10, 2020, at the earliest.

64. The suspension of feedback based on productivity has since been lifted, and on information and belief, the practice of issuing productivity feedback and discipline resumed in or around October 2020.

65. Amazon's continued use of its productivity and TOT monitoring to assess worker performance and discipline employees has severely hampered the safe practices that are necessary for employees to maintain social distancing, clean their workstations, and engage in the sorts of hygiene and sanitation practices necessary to fully protect themselves and co-workers during the COVID-19 pandemic.

66. Employees know that if they take additional time to clean their work stations or take a break to wash their hands, or to engage in other hygiene and sanitation practices, their scanners will not show nearly-continuous activity, and this will impact their TOT metrics and they may suffer an adverse consequence as a result.

67. Employees also know that if they take additional time to engage in hygiene and sanitation practices during the work day, it will adversely impact their productivity rates. Thus,

they reasonably anticipate that they may be subject to automatically-generated discipline or other adverse consequences.

68. Since non-managerial employees do not have access to their own TOT and productivity rate data, they are constantly conscious that they may be at risk of failing to satisfy Amazon's thresholds.

69. Faced with this risk of adverse consequences and discipline, some employees understandably do not take all appropriate health precautions and instead, rush back from breaks, do not take sufficient time to wash and sanitize their hands and workstations, and do not consistently adhere to safe social distancing.

70. For other employees, Amazon controls and monitors their productivity rates through Amazon's control of conveyer belt speed and the volume of products on those belts. These productivity practices have also hampered these employees' ability to engage in the safe social distancing, hygiene, and sanitation practices necessary to fully protect themselves and co-workers during the COVID-19 pandemic.

Amazon's Inadequate Identification of Contacts and Notification to Workers

71. Amazon has undertaken a program it refers to as "contact tracing," intended to identify workers who have had close contacts with COVID-19-infected workers.

72. Amazon has instructed infected workers not to communicate their infections with coworkers and instead to rely on Amazon's contact-tracing program.

73. Until at least late-June 2020, upon being notified of a confirmed COVID-19 case, Amazon's Loss Prevention Department reviewed surveillance video footage to determine whether any other employee was in close contact with the infected worker for the purpose of contact tracing. This video review process was expected to take up to 72 hours and video surveillance did not show all areas of the warehouse.

74. Until at least late-June 2020, Amazon did not interview the infected worker for the purpose of determining close contacts.

75. On occasions when a worker reported to Amazon having close contact with an infected coworker, Amazon dismissed the worker's concerns and did not investigate or follow up on such information.

76. This lack of an interview component was inconsistent with public health guidelines and also created a very time-consuming process which did not identify close contacts in a timely fashion. By the time Amazon identified employees who were close contacts of an infected worker, such close contacts could have already further spread the virus through Amazon's facility.

77. Furthermore, pursuant to Amazon's official nationwide policy, Amazon only undertook even this limited contact-tracing process only upon receiving written documentation of a laboratory-confirmed COVID-19 test result or medical diagnosis, or receiving phone or email confirmation directly from the employee's healthcare provider. Amazon did not undertake contact tracing while an employee was awaiting test results, if an employee did not provide written documentation of test results or documentation, or if an employee was advised by a medical professional to quarantine based on close contact with an infected individual.

Amazon's Retaliation Against JFK8 Employees Who Complained about its Deficient COVID-19 Response

Employees Christian Smalls and Derrick Palmer Complain to Amazon

78. In or around late March 2020, two JFK8 employees, Christian Smalls ("Smalls") and Derrick Palmer ("Palmer") raised concerns about Amazon's response to the COVID-19 pandemic to multiple JFK8 managers. Both Smalls and Palmer also made public complaints

about Amazon's health practices through the media and made complaints to at least one government agency.

79. Smalls was a level 3 process assistant at JFK8 who had been employed with Amazon since November 2015. Smalls was promoted to a management associate position in or around August 2016, where more than forty other employees reported to him. Smalls had a history of good work performance and Amazon gave him positive quality feedback on multiple occasions.

80. Palmer is a process guide warehouse associate who has been employed with Amazon since July 2015. Palmer has a history of good work performance and Amazon gave him positive quality feedback on multiple occasions.

81. On three occasions during the week of March 22, Smalls and Palmer, along with 8 to 15 other associates, approached JFK8 managers who were participating in a morning production meeting. At each meeting, Smalls and Palmer communicated their concerns that Amazon needed to close the facility to conduct proper cleaning and disinfection consistent with public health guidance. Smalls and Palmer also complained about inadequate identification of and notification to workers about potential exposure to infected workers.

82. During the week of March 22, Smalls and Palmer notified Amazon on at least two separate occasions that they had contacted the CDC and complained that JFK8 was not following CDC protocols. Multiple members of JFK8 management were aware that Smalls and/or Palmer had contacted the CDC.

83. During the week of March 22, Smalls also had at least one smaller meeting with JFK8 General Manager Sai Kotha and JFK8 Human Resources Manager Christine Hernandez. During this meeting Smalls reiterated that Amazon needed to close JFK8 for cleaning and

disinfection, and again complained that JFK8's identification of and notification to close contacts of infected workers was inadequate.

Amazon Retaliates against Smalls

84. On March 26, both Smalls and Palmer advised representatives of Amazon's Human Resources Department that they had been in close contact with an employee who had just been advised that she tested positive for COVID-19 and who had last been at JFK8 on March 24. Human Resources representatives responded that Amazon would be reviewing surveillance video footage to determine if they met the standards for quarantine, did not ask further questions about their contacts with the infected worker, and did not put them on quarantine.

85. On March 27, an Amazon Loss Prevention employee notified a Human Resources employee that his review of video surveillance had identified Smalls as a close contact of a worker with a confirmed COVID-19 diagnosis. HR Manager Hernandez received notification of this contact trace on March 27 around 10:00 p.m.

86. However, before Hernandez and her HR team received confirmation that Amazon's contact tracing process had identified Smalls as a close contact of an infected worker, Hernandez and a Human Resources supervisor (the "Human Resources Business Partner" or "HRBP") were already discussing "perceived retaliation" of Smalls during the afternoon of March 27. During the afternoon of March 27, Hernandez and the HRBP communicated that they anticipated that Amazon would issue Smalls a directive to quarantine and that he would violate it by attending a protest at the JFK8 facility scheduled to occur on March 30.

87. On the morning of March 28, Amazon, by Senior Operations Manager Zachary Marc, informed Smalls that Amazon was placing him on a mandatory quarantine. When Marc informed Smalls of the quarantine order, Marc did not explain to Smalls any details of what the

directive entailed, including whether the order included Amazon property and the Amazon parking lot.

88. On March 30, Amazon employees including Smalls and Palmer, participated in a protest outside JFK8 to call further attention to their health and safety concerns at the facility. During the protest Smalls was in the parking lot of JFK8 and adjacent sidewalk and did not enter the facility. At no point in time before or during this protest did Amazon direct Smalls to leave, nor did Amazon inform Smalls that his presence in the parking lot violated his quarantine order.

89. In the evening of March 30, Amazon, by Marc, informed Smalls that it was terminating his employment. Marc informed Smalls that Amazon was firing him for violating the quarantine order and for violating Amazon's social distancing requirements by his conduct during the March 30 protest.

90. Prior to firing Smalls, Amazon did not issue to Smalls any documented coaching, written warning, or final written warning regarding violation of social distancing policies or violation of a quarantine order. Amazon did not provide Smalls an opportunity for a "seek to understand" conversation prior to his discharge, which is Amazon's term for a conversation between a supervisor and employee in which an employee can identify any information Amazon should take into consideration prior to Amazon formally issuing discipline.

91. Following Smalls's discharge, the HRBP communicated in writing to HR Manager Hernandez that Smalls's firing did not seem justified because Smalls had not entered the JFK8 facility on March 30 and Amazon had not communicated to him that his quarantine order prohibited him from entering Amazon property outside the facility and Smalls had engaged in social distancing during his discussions with JFK8 managers. In response, HR Manager Hernandez stated that she agreed.

92. The HRBP also wrote to HR Manager Hernandez that she did not believe Amazon should have approached Smalls with a “term[ination] mentality.”

Amazon Retaliates against Palmer

93. Palmer communicated concerns and complaints about Amazon’s compliance with public health guidance to Amazon managers on multiple occasions during late March and early April.

94. On April 10, Amazon issued Palmer a final written warning for violating JFK8’s social distancing policy which referenced violations on March 25, 26 and 27.

95. Prior to Palmer’s final written warning, Amazon did not issue Palmer a documented coaching or non-final written warning. Amazon did not provide Palmer the opportunity for a “seek to understand” conversation prior to issuing issued this discipline.

96. On information and belief, 90% of the discipline Amazon issued for social distancing violations at JFK8 were documented coaching, and fewer than 10% were final written warnings.

97. Of the other final written warnings Amazon issued for social distancing violations at JFK8, Amazon issued most only after a “seek to understand” conversation, and the few instances which were not preceded by a “seek to understand” conversation were based on employees engaging in egregious insubordination in response to instructions to follow social distancing practices.

Amazon’s Retaliatory Actions Harmed Workers

98. Amazon’s unlawful retaliatory termination of Smalls and retaliatory discipline of Palmer caused each of them to suffer emotional distress.

99. But Smalls and Palmer are not the only Amazon workers harmed by Amazon’s unlawful retaliatory actions. Amazon’s actions wrought a devastating chilling impact on other

Amazon employees as well. Following Amazon's discharge of Smalls and issuance of a final written warning to Palmer, Amazon employees reasonably fear that if they make legitimate health and safety complaints about Amazon's COVID-19 response, Amazon will retaliate against them as well.

Amazon's Retaliation Against DBK1 Employees Who Complained about its Deficient COVID-19 Response

100. In or around early to mid-March 2020, DBK1 employees, raised concerns about Amazon's response to the COVID-19 pandemic to multiple DBK1 managers.

101. On or about March 17, 2020, DBK1 employees expressed COVID-related health and safety concerns through an attempt to deliver a petition to DBK1 management. This petition was also posted publicly on the internet, stating: "*As the coronavirus pandemic unfolds and communities everywhere prepare for the worst, Amazon workers have become crucial in getting people their food, water, and sanitation supplies. We have seen an increase in the volume of such goods, placing a greater strain on workers. Yet despite larger workloads, Amazon continues to enforce and raise productivity quotas.*"

102. In the COVID-19 petition, the workers expressed concern for Amazon's lack of protective measures and demanded a comprehensive plan to ensure the safety of its workers and the larger public. The demands sought compliance with public regulations to shut the facility down for disinfection upon a confirmed case in the facility. Additionally, they demanded no more productivity rate-based write-ups so that workers could take necessary safety precautions.

103. Amazon retaliated against DBK1 employees who expressed concerns about Amazon's COVID-19 response, including by refusing to select them for preferred job assignments, assigning them non-preferred duties, and interrogating and criticizing them about their complaints.

104. Amazon's actions wrought a devastating chilling impact on other employees. Amazon employees reasonably fear that if they make legitimate health and safety complaints about Amazon's COVID-19 response, Amazon will retaliate against them as well.

Amazon's Response to the Virus Continues to be Legally Deficient

105. Since April 2020 to the present, Amazon's COVID-19 response remains inadequate.

106. Amazon still requires warehouse associates to clean their own workstations and equipment. However, Amazon does not provide training to these employees in how to use disinfecting products in a safe and effective manner, Amazon does not provide these employees sufficient time to ensure they are able to properly clean and disinfect without impacting their productivity rates and TOT, and Amazon does not ensure that workstations are cleaned, sanitized, and safe for workers on the next shift.

107. Amazon continues to fail to close its facilities when infected workers have been in the facility. The only portion of the facility that Amazon closes, and even then, only in limited cases, are employee workstations and immediately adjacent workstations for only ninety minutes.

108. Amazon also continues to fail to allow employees to take health precautions and engage in adequate social distancing. At JFK8 and DBK1, there are many areas where crowding occurs. For example, Amazon requires multiple employees to enter trucks together and they are unable to socially distance inside the trucks. In other areas, workers are forced to crowd and are unable to adhere to social distancing in order to meet the speed of and/or volume of packages on automated belts.

109. Amazon continues to monitor productivity rates and TOT metrics and issue discipline to employees under both categories. Amazon still has no automatic exemption for

COVID-related hygiene, cleaning, sanitizing, or social distancing measures, and instead it is solely within the discretion of individual managers whether to excuse time that employees can identify as being spent on such measures or to proceed with issuing discipline in any given instance.

110. Workers are fearful to take sufficient time to engage in health precautions because they are never sure if and when they will be subject to questioning and potential discipline at the discretion of their manager.

111. As a result, Amazon's time off task and productivity policies ensure that employees continue to focus on meeting Amazon's productivity goals and fail to provide employees with sufficient opportunities to engage in hygiene, cleaning, sanitizing, or social distancing.

Amazon's Legally-Deficient Response Allowed it to Profit Off of the Pandemic

112. Amazon has touted its efforts to protect employees during the COVID-19 pandemic, even creating a television advertising campaign to make this point.

113. However, Amazon's many failures to take reasonable and adequate measures to protect its employees from COVID-19 by following regulatory guidance were a deliberate effort to evade the particular measures that would have hindered increased sales volume.

114. Over the course of the pandemic, Amazon generated more than \$213 billion in revenues from its online sales—corresponding to a 44% growth from its pre-pandemic revenues. This growth rate is about 29 percentage points higher than the average 15% growth rate that Amazon experienced in the previous two years. This corresponds to approximately \$43 billion in additional worldwide online sales that Amazon would not have generated at its pre-pandemic growth rates. On information and belief, this increased sales volume amounts to approximately \$30 million in additional profits from JFK8 and DBK1 alone during the pandemic.

115. Amazon's extreme profits and exponential growth rate came at the expense of the lives, health, and safety of its frontline workers.

FIRST CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW § 63(12)
(Violation of New York Labor Law § 200)

116. Plaintiff repeats and realleges paragraphs 1 through 115 as if fully set forth herein.

117. From March 1, 2020 continuing through the present, Amazon has failed and continues to fail to provide reasonable and adequate protection to the lives, health, and safety of its employees.

118. Amazon's repeated and continuing business practices during the COVID-19 pandemic have illegally and materially failed to provide reasonable and adequate protection to the health and safety of its workers in the New York locations, in that (a) Amazon has forced its workers to work in conditions that are not socially distanced, even when practical options for social distancing are available, (b) Amazon has failed to adhere to reasonable and adequate routine cleaning protocols and cleaning protocols if a worker suspected or confirmed to have COVID-19 has been in the facility, (c) Amazon has failed to take reasonable and adequate steps to properly determine which employees may have been exposed to the virus in the workplace and inform those employees of their possible close contact with someone had was confirmed or suspected of being infected; and (d) Amazon has failed to take reasonable and adequate steps to provide employees with sufficient opportunities to engage in hygiene, cleaning, sanitizing, or social distancing in its facilities.

119. Amazon's violations of Labor Law § 200 constitute repeated illegal acts and illegality in the carrying on, conducting, or transaction of business as defined by New York Executive Law § 63(12).

SECOND CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW § 63(12)
(Violation of Labor Law § 215 as to Christian Smalls)

120. Plaintiff repeats and realleges paragraphs 1 through 119 as if fully set forth herein.

121. In or around March 2020, Amazon employee Christian Smalls made reasonable and good-faith complaints to Amazon managers, the media, and/or government agencies that Amazon had failed to provide reasonable and adequate protection to the lives, health, and safety of its employees.

122. Smalls's complaints constituted a protected complaint under the Labor Law.

123. On or around March 30, 2020, Amazon terminated Smalls's employment.

124. Amazon terminated Smalls's employment as retaliation for his protected complaints, in violation of Labor Law § 215.

125. As a result of Amazon's retaliation, Smalls has suffered and continues to suffer emotional distress.

126. Amazon's violations of Labor Law § 215 constitute repeated illegal acts and illegality in the carrying on, conducting, or transaction of business as defined by New York Executive Law § 63(12).

THIRD CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW § 63(12)
(Violation of Labor Law § 740 as to Christian Smalls)

127. Plaintiff repeats and realleges paragraphs 1 through 126 as if fully set forth herein.

128. In or around March 2020, Amazon employee Christian Smalls complained to Amazon managers that Amazon had failed to provide reasonable and adequate protection to the lives, health and safety of its employees and had failed to comply with laws, rules, regulations, and/or regulatory guidance related to the COVID-19 pandemic.

129. Smalls's complaints constituted protected complaints, objections, or refusals to participate under the Labor Law.

130. In or around March 2020, Smalls complained to the CDC that Amazon had failed to comply with regulations related to the COVID-19 pandemic.

131. The CDC constitutes a public body under the Labor Law.

132. At the time of Smalls's complaints, Amazon's response to the COVID-19 pandemic violated Labor Law § 200, Executive Orders 202.6, 202.8, and 202.11, and/or CDC guidance.

133. Labor Law § 200, Executive Orders 202.6, 202.8, and 202.11, and CDC guidance each constitute a law, rule or regulation within the meaning of the Labor Law.

134. Amazon's failure to comply with such law, rule, and/or regulation created and presented a substantial and specific danger to the public health.

135. On or around March 30, 2020, Amazon terminated Smalls's employment.

136. Amazon terminated Smalls's employment because of his protected objections, refusals to participate, and/or objections to a public body, in violation of Labor Law § 740.

137. Amazon's violations of Labor Law § 740 constitute repeated illegal acts and illegality in the carrying on, conducting, or transaction of business as defined by New York Executive Law § 63(12).

FOURTH CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW § 63(12)
(Violation of Labor Law § 215 as to Derrick Palmer)

138. Plaintiff repeats and realleges paragraphs 1 through 137 as if fully set forth herein.

139. In or around March 2020, Amazon employee Derrick Palmer made reasonable and good-faith complaints to Amazon managers, the media, and/or government agencies that

Amazon had failed to provide reasonable and adequate protection to the lives, health and safety of its employees.

140. Palmer's complaints constituted a protected complaint under the Labor Law.

141. On or around April 10, 2020, Amazon issued a final written warning to Palmer.

142. Amazon issued the final written warning to Palmer as retaliation for his protected complaints, in violation of Labor Law § 215.

143. As a result of Amazon's retaliation, Palmer has suffered and continues to suffer emotional distress.

144. Amazon's violations of Labor Law § 215 constitute repeated illegal acts and illegality in the carrying on, conducting, or transaction of business as defined by New York Executive Law § 63(12).

FIFTH CAUSE OF ACTION PURSUANT TO EXECUTIVE LAW § 63(12)
(Violation of Labor Law § 740 as to Derrick Palmer)

145. Plaintiff repeats and realleges paragraphs 1 through 144 as if fully set forth herein.

146. In or around March 2020, Amazon employee Derrick Palmer complained to Amazon managers that Amazon had failed to provide reasonable and adequate protection to the lives, health and safety of its employees and had failed to comply with laws, rules, regulations, and/or regulatory guidance related to the COVID-19 pandemic.

147. Palmer's complaints constituted protected complaints, objections, or refusals to participate under the Labor Law.

148. In or around March 2020, Palmer complained to the CDC that Amazon had failed to comply with regulations related to the COVID-19 pandemic.

149. The CDC constitutes a public body under the Labor Law.

150. At the time of Palmer's complaints, Amazon's response to the COVID-19 pandemic violated Labor Law § 200, Executive Orders 202.6, 202.8, and 202.11, and/or CDC guidance.

151. Labor Law § 200, Executive Orders 202.6, 202.8, and 202.11, and CDC guidance each constitute a law, rule or regulation within the meaning of the Labor Law.

152. Amazon's failure to comply with such law, rule, and/or regulation created and presented a substantial and specific danger to the public health.

153. On or around April 10, 2020, Amazon issued a final written warning to Palmer.

154. Amazon issued the final written warning to Palmer because of his protected objections, refusals to participate, and/or objections to a public body, in violation of Labor Law § 740.

155. Amazon's violations of Labor Law § 740 constitute repeated illegal acts and illegality in the carrying on, conducting, or transaction of business as defined by New York Executive Law § 63(12).

WHEREFORE, Plaintiff, the Attorney General of the State of New York, on behalf of the People of the State of New York, requests that this Court issue an Order for the following relief:

- (a) Finding that Amazon repeatedly violated Labor Law § 200;
- (b) Finding that Amazon repeatedly violated Labor Law § 215;
- (c) Finding that Amazon repeatedly violated Labor Law § 740;
- (d) Enjoining Amazon from engaging in unlawful practices which fail to reasonably and adequately protect the lives, health, and safety of its employees and requiring Amazon to take all affirmative steps, including changing policies, conducting training, and

- undergoing monitoring, among others, to ensure that Amazon reasonably and adequately protects the lives, health, and safety of its employees;
- (e) Awarding backpay, including lost compensation and benefits, emotional distress damages, and liquidated damages, for Amazon's unlawful retaliation against Christian Smalls, and requiring Amazon to offer Smalls reinstatement to his former position of employment;
 - (f) Awarding emotional distress damages and liquidated damages for Amazon's unlawful retaliation against Derrick Palmer, and ordering Amazon to rescind the discipline issued to Palmer;
 - (g) Awarding appropriate relief for illegal retaliation against other employees who made reasonable and good-faith complaints to Amazon managers and/or the media.
 - (h) Ordering Amazon to post and distribute notices to employees of their rights under Labor Law § 215 and § 740, provide training to non-supervisory employees about their rights under Labor Law § 215 and § 740, and provide training to supervisors and managers about compliance with Labor Law § 215 and § 740;
 - (i) Awarding Plaintiff disgorgement under Executive Law § 63(12);
 - (j) Awarding Plaintiff her reasonable attorneys' fees, costs, and expenses;
 - (k) Granting such other and further relief as the Court may deem just and proper.

Dated: May 6, 2021

Respectfully submitted,

LETITIA JAMES

Attorney General of the State of New York

By: /s/ Fiona J. Kaye

KAREN CACACE

Chief of Labor Bureau

JULIE R. ULMET

Deputy Chief of Labor Bureau

FIONA J. KAYE

ROYA AGHANORI

ELIZABETH KOO

SETH KUPFERBERG

DANIELA L. NOGUEIRA

JEREMY PFETSCH

Assistant Attorneys General

Office of the New York State Attorney General

28 Liberty Street

New York, NY 10005

Phone: (212) 416-8036

Fiona.Kaye@ag.ny.gov

Attorneys for the State of New York