

2. In this action, the named Plaintiff seeks restitution for himself and all other Amazon Flex drivers who have not received all tips to which they are entitled, as well as statutory trebling of damages, interest, attorneys' fees, and costs, and any other relief that the Court deems proper, all as provided for by law.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to Superior Court Rule 29 and M.G.L. c. 212, § 3, because the amount in controversy exceeds \$50,000.

4. Venue in Suffolk County is proper under M.G.L. c. 223, § 8, because Amazon operates and conducts business in Suffolk County and is therefore appropriately sued in this county.

III. PARTIES

5. Plaintiff Philip Sullivan is a resident of Millis, Massachusetts, and has worked as an Amazon Flex delivery driver since approximately 2017, driving and doing deliveries in Massachusetts for Amazon.

6. This is a class action that the above-named Plaintiff brings on his own behalf and on behalf of all others similarly situated, namely all other individuals who have been Amazon Flex drivers in Massachusetts during the statutory period applicable to the claims in this action. The proposed class meets the requirements for class certification in M.G.L. c. 149, § 150, and/or Mass. R. Civ. P. 23.

7. Plaintiff Philip Sullivan filed his statutory claims with the Office of the Attorney General on February 5, 2021.

8. Defendant Amazon.com, Inc. is a Delaware corporation with a principal office in Seattle, Washington. Defendant Amazon.com, Inc. operates in Massachusetts.

9. Defendant Amazon Logistics, Inc. is a Delaware corporation with a principal office in Seattle, Washington and is a wholly owned subsidiary of Amazon.com, Inc. Defendant Amazon Logistics, Inc. operates in Massachusetts.

IV. STATEMENT OF FACTS

10. Amazon offer products for customers to purchase online around the country, including in Massachusetts.

11. In 2015, Amazon implemented "Amazon Flex," a delivery service through which customers pay for drivers to deliver products to them using their own personal vehicles.

12. On some transactions through Amazon Flex, customers may add tips for their drivers.

13. Amazon has consistently represented to both customers and drivers that all tips paid by customers are paid in full to the drivers.

14. For example, the Amazon Flex app has informed drivers: "You will receive 100% of the tips you. Earn while delivering with Amazon Flex."

15. Customers are similarly informed that 100 percent of the tips they pay are passed on to the delivery drivers.

16. However, Amazon has not always paid all tips from customers for Amazon Flex deliveries to the drivers.

17. Beginning in approximately 2016 and continuing to approximately August 2019, Amazon retained portions of drivers' tips instead of distributing them all to the drivers.

18. Amazon only changed this practice after the Federal Trade Commission began investigating their tip retention practices.

19. As a result of the practices described above, Plaintiff and putative class members have been deprived of tips to which they are entitled.

20. Through their representations to drivers and customers and other communications with drivers, Amazon has been contractually obligated to provide to drivers all tips paid by customers.

21. Amazon has breached its contractual obligations to its Amazon Flex drivers by failing to remit to them all tips paid by customers, in derogation of the customers' intent that they receive those tips.

22. The drivers have suffered damages as a result of Amazon's breach of contract, namely, non-payment of tips contractually owed and promised to them.

23. By retaining tips owed to its Amazon Flex drivers, and which customers have paid for those drivers' benefit, Amazon has been unjustly enriched to the drivers' detriment.

V. CLASS ALLEGATIONS

24. Pursuant to Mass. R. Civ. P. 23 and M.G.L. c. 149 § 150, Plaintiff Sullivan brings this class action lawsuit on behalf of himself and all other individuals who have

been Amazon Flex delivery drivers during the statutory periods relevant to the claims in this case.

25. The members of the class are too numerous for practicable joinder.

26. There are issues of law and fact common to all class members because Amazon's tip retention and distribution practices apply to all the class members. The common questions of law and fact concerning those practices predominate over any questions affecting individual class members.

27. The claims of the named Plaintiff are typical of the claims of all members of the class, because all members of the class were subject to the same unlawful practices.

28. The named Plaintiff and his counsel will fairly and adequately represent the interests of the class.

29. The claims asserted on behalf of the class predominate over any question of law or fact affecting only individual members of the class. The predominant questions of law or fact are clear, precise, well-defined, and applicable to the named Plaintiff as well as every absent member of the proposed class.

30. A class action is superior in this case for several reasons including, but not limited to, that: the case challenges uniform tip distribution and retention practices; many individuals may be reluctant to bring claims individually for fear of retaliation; some class members may not have the motivation or resources to bring their claims individually; and it would be an inefficient use of scarce judicial resources to require

each employee affected by the practices challenged herein to bring his or her own individual claim.

COUNT I

MASSACHUSETTS GENERAL LAW CHAPTER 149, § 152A

Defendants' conduct, as set forth above, violates M.G.L. c. 149, § 152A. This claim is brought pursuant to M.G.L. c. 149 § 150.

COUNT II

BREACH OF CONTRACT

Defendants' conduct, as set forth above, constitutes breach of contract in violation of the Massachusetts common law.

COUNT III

UNJUST ENRICHMENT

Defendants' conduct, as set forth above, constitutes unjust enrichment in violation of the Massachusetts common law. The named Plaintiff and the class are entitled to *quantum meruit* damages.

JURY DEMAND

Plaintiffs request a trial by jury on all their claims.

WHEREFORE, Plaintiffs request that this Court enter the following relief:

1. Certification of a class of similarly situated individuals pursuant to Mass. R. Civ. P. 23 and/or M.G.L. c. 149 § 150;
2. Restitution for all gratuities not properly distributed to drivers;
3. Statutory trebling of all damages;
4. Damages for Defendants' violation of Massachusetts common law;
5. Pre- and post-judgment interest;

6. Attorney's fees and costs; and
7. Any other relief to which the employees may be entitled.

Respectfully submitted,

PHILIP SULLIVAN,
on behalf of himself
and all others similarly situated,

By their attorneys,

/s/ Brant Casavant
Hillary Schwab, BBO #666029
Brant Casavant, BBO #672614
FAIR WORK, P.C.
192 South Street, Suite 450
Boston, MA 02111
Tel. (617) 607-3260
Fax. (617) 488-2261
hillary@fairworklaw.com
brant@fairworklaw.com

Dated: February 5, 2021.