APPENDIX

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APPENDIX A

Court of Appeal, Fourth Appellate District,
Division Three – No. G064704

S295093

IN THE SUPREME COURT OF CALIFORNIA

En Banc

DIRK CLINTON et al.,
Plaintiffs and Respondents,

v.

AMAZON LOGISTICS, INC., et al.,
Defendants and Appellants.

The application to appear as counsel pro hac vice is granted. (Cal. Rules of Court, rule 9.40(a).)

The petition for review is denied.

The requests for an order directing publication of the opinion are denied.

Groban, J., was recused and did not participate.

Apr. 1, 2026

GUERRERO
Chief Justice

APPENDIX B

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

DIRK CLINTON, et al., Plaintiffs and Respondents, v. AMAZON LOGISTICS, INC., et al., Defendants and Appellants.	CASE NO. G064704 (Super. Ct. No. JCCP 5078) OPINION

Appeal from an order of the Superior Court of Orange County, Melissa R. McCormick, Judge. Affirmed. Application by Appellants to file further briefing in response to Respondents' answer to amicus brief. Denied.

Gibson, Dunn & Crutcher, Megan Cooney, Min Soo Kim, Lucas C. Townsend, Dhananjay S. Manthripragada and Patrick J. Fuster for Defendants and Appellants.

Gupta Wessler, Jennifer D. Bennett, Jessica Garland and Gabriel Chess;[1] Blumenthal Nordrehaug

[1] During the pendency of the appeal, attorney Gabriel Chess left the law firm of Gupta Wessler and was granted leave to withdraw as counsel for plaintiffs.

Bhowmik De Blouw, Norman B. Blumenthal, Kyle Roald Nordrehaug and Aparajit Bhowmik; Burton Employment Law and Jocelyn Burton; Haines Law Group, Paul K. Haines and Sean M. Blakely; Lavi & Ebrahimian and Brett Donald Szmanda; Patterson Law Group and James R. Patterson; Kesluk, Silverstein, Jacob & Morrison, Douglas N. Silverstein and Lauren Morrison; Zimmerman Reed and Jeff S. Westerman for Plaintiffs and Respondents.

Mayer Brown and Archis A. Parasharami for Amici Curiae on behalf of the Chamber of Commerce of the United States of America, the Retail Litigation Center, Inc. and the California Employment Law Council.[2]

* * *

Defendants Amazon.com, Inc. and Amazon Logistics, Inc. (collectively, Amazon) appeal the trial court's order denying their motion to compel arbitration of plaintiffs' individual claims under PAGA (the Arbitration Motion).[3] Plaintiffs are part of a class of so-called last-leg or last-mile delivery drivers, who deliver within California interstate packages and other goods

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[2] With our permission, the Chamber of Commerce of the United States of America, the Retail Litigation Center, Inc., and the California Employment Law Council collectively filed a brief in support of appellants as *amici curiae*. We invited the parties to respond to the amicus curiae brief pursuant to the California Rules of Court, rule 8.200(c)(6). Plaintiffs did so, and Amazon did not. Amazon then filed a request to file a brief addressing plaintiffs' response to the amicus brief, contending plaintiffs' response was effectively a sur-reply to Amazon's reply brief on appeal and cited new authority not cited in plaintiffs' respondents' brief. Plaintiffs opposed the request. We deny Amazon's request.

[3] Labor Code Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.)

ordered by customers of Amazon. The trial court concluded plaintiffs are a "class of workers engaged in . . . interstate commerce" and therefore are exempt from arbitration pursuant to section 1 of the Federal Arbitration Act (FAA). (9 U.S.C. § 1.) We agree and affirm the trial court's order.[4] We find persuasive and follow the Ninth Circuit's decisions in *Rittmann v. Amazon.com, Inc*. (9th Cir. 2020) 971 F.3d 904 (*Rittmann*), and *Carmona Mendoza v. Domino's Pizza, LLC* (9th Cir. 2023) 73 F.4th 1135 (*Carmona*), as well as other federal circuit and California courts that held local delivery drivers like plaintiffs, who do not cross borders but nonetheless transport interstate goods to the final leg to their destinations, fall within section 1's exemption.

FACTS AND PROCEDURAL HISTORY

A. The Coordinated Proceedings

Plaintiffs Dirk Clinton, Linda Luckett, Renee Jordan, Persis Knipe, Jennifer Romero, and Antonia Dias worked as local delivery drivers for Amazon as part of

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[4] The issue raised in this appeal is currently pending before the United States Supreme Court in *Brock v. Flower Foods, Inc.* (10th Cir. 2024) 121 F.4th 753 (certiorari granted October 20, 2025, __ U.S. __ (case No. 24-935)). We take judicial notice of the Supreme Court docket description of the question presented in *Brock*: "Are workers who deliver locally goods that travel in interstate commerce—but who do not transport the goods across borders nor interact with vehicles that cross borders—'transportation workers' 'engaged in foreign or interstate commerce' for purposes of the Federal Arbitration Act's § 1 exemption." (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

the Amazon Flex program.[5] Plaintiffs filed separate lawsuits against Amazon in multiple counties in California alleging, among other things, that Amazon misclassified them as independent contractors. In May 2020, the Judicial Council ordered the cases coordinated and assigned the case for handling by the Orange County Superior Court.[6] The operative pleadings are plaintiffs' amended consolidated complaint (Amended Complaint) and Amazon's answer to it.

B. The Arbitration Motion

Amazon moved to compel arbitration of plaintiffs' individual PAGA claims pursuant to *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639. According to Amazon, plaintiffs agreed to binding arbitration of their individual PAGA claims as part of the "Amazon Flex Independent Contractor Terms of Service" (TOS), which plaintiffs accepted when they downloaded the Amazon Flex app and signed on to be delivery drivers.[7] Specifically, plaintiffs agreed to arbitrate, on an individual basis, "any dispute or claim, whether based on contract, common law, or statute,

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[5] Describing the nature of their work as Amazon delivery drivers, plaintiffs allege Amazon has "a vast network of regional distribution centers across the country and throughout California, to which [their] suppliers' and other sellers' products are shipped from all over to the world" and that "[a]s Amazon Flex drivers, [plaintiffs] use their personal vehicles to complete the last delivery phase for these products, from [Amazon's] regional distribution centers to [Amazon's] customers."

[6] Coordination allows two or more civil cases that are pending in different counties and share common questions of fact or law to be joined in one court. (Code Civ. Proc., § 404.)

[7] Amazon refers to delivery drivers like plaintiffs, who sign up through the Amazon Flex program and use their own vehicles to deliver packages, as "Delivery Partners."

arising out of or relating in any way to this [TOS]." (Capitalization omitted.) Plaintiffs opposed Amazon's Arbitration Motion on the ground they are exempt from arbitration pursuant to section 1 of the FAA.[8]

On August 29, 2024, the trial court heard argument and took the matter under submission. The court issued its statement of decision on September 4, 2024, denying the Arbitration Motion. The court ruled: "[P]laintiffs belong to a class of workers who deliver in California goods ordered from Amazon. As Amazon acknowledges, many of the goods plaintiffs delivered were manufactured outside of California or were otherwise outside of California at some point. Plaintiffs delivered goods that had been distributed to fulfillment centers, including from out of state, and transported the goods for the last leg of their journeys to their ultimate destinations, which is a part of a continuous interstate transportation of goods. Plaintiffs thus are transportation workers engaged in interstate commerce and exempt from the FAA."

Amazon timely appealed.

DISCUSSION

I.

STANDARD OF REVIEW

"'"There is no uniform standard of review for evaluating an order denying a motion to compel arbitration."'" (*Franco v. Greystone Ridge Condominium* (2019) 39 Cal.App.5th 221, 227.) If the order rests

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[8] Plaintiffs also argued PAGA claims are excluded from the scope of the parties' arbitration agreement. The trial court did not reach this issue in light of its conclusion that plaintiffs are exempt from arbitration under section 1 of the FAA.

solely on a decision of law, the de novo standard of review applies. (*Ibid.*; *Muro v. Cornerstone Staffing Solutions, Inc.* (2018) 20 Cal.App.5th 784, 789.) "'Decisions on issues of fact are reviewed for substantial evidence.'" (*Muro*, *supra*, at p. 790.) Under the substantial evidence standard of review, "'[i]f the trial court has made no findings, the reviewing court will infer all findings necessary to support the judgment and then examine the record to see if the findings are based on substantial evidence.'" (*Frei v. Davey* (2004) 124 Cal.App.4th 1506, 1512.)

II.

FAA EXEMPTION[9]

Section 1 of the FAA creates an exemption to the FAA's general rule of applicability for "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." (9 U.S.C. § 1.) "Section 1 exempts from the FAA only contracts of employment of transportation workers." (*Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 119.)

In *Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450, 455–456 (*Saxon*), the United States Supreme Court held that whether the exemption applies to a specific class of workers turns on a two-step analysis. First, the court must "defin[e] the relevant 'class of workers' to which [Plaintiffs] belong[ ]." (*Id*. at p. 456.) In so doing, the court considers "the actual work that the members of the class, as a whole, typically carry out. . . . not what [the employer] does generally." (*Ibid.*) Second, the court determines whether that

[9] The parties do not dispute the FAA applies to the arbitration agreements.

"class of workers [is] directly involved in transporting goods across state or international borders." (*Id*. at p. 457.) To be directly involved in interstate commerce, that class of workers "'must at least play a direct and "necessary role in the free flow of goods" across borders.'" (*Bissonnette v. LePage Bakeries Park St., LLC* (2024) 601 U.S. 246, 256 (*Bissonnette*), quoting *Saxon*, *supra*, 596 U.S. at p. 458.)

Section 1's exemption has a "'narrow' scope." (*Bissonette*, *supra*, 601 U.S. at p. 256.) Nevertheless, a "transportation worker need not work in the transportation industry to fall within the exemption from the FAA provided by [section] 1 of the Act." (*Ibid*.)

A. Step 1: Defining the Class of Workers

"We begin by defining the relevant 'class of workers' to which [plaintiffs] belong[ ]." (*Saxon*, *supra*, 596 U.S. at p. 455.) The actual work plaintiffs perform as delivery partners for Amazon is not in dispute. Plaintiffs perform local pickup and delivery within California of certain goods and packages ordered by Amazon's customers, many of which were manufactured outside California or otherwise originated outside California and crossed state lines before plaintiffs picked them up for delivery.

Based on the nature of the work performed by delivery partners for Amazon, we define the class of workers as workers who deliver locally goods that travel in interstate commerce—but who do not transport the goods across borders nor interact with vehicles that cross borders.[10]

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[10] Although the work performed by Amazon's delivery partners is not in dispute, the parties could not agree in the proceedings

B. Step 2: Whether the Workers are Directly Involved in Interstate Commerce

Next, we consider whether the defined class of workers "engaged in . . . interstate commerce" within the meaning of section 1. (9 U.S.C. § 1.) To answer that question, we ask whether the class of workers played a "direct and 'necessary role in the free flow of goods' across borders." (*Saxon*, *supra*, 596 U.S. at p. 458; see *Circuit City Stores, Inc. v. Adams*, *supra*, 532 U.S. at p. 121 [in enacting the section 1 exemption to the FAA, Congress was demonstrating its "concern with transportation workers and their necessary role in the free flow of goods"].) Based on the undisputed facts before the trial court, we conclude they did.

In 2020, prior to the United States Supreme Court's decision in *Saxon*, *supra*, 596 U.S. 450, the Ninth Circuit held delivery drivers (like plaintiffs here) who contracted with Amazon to perform local deliveries of goods via the Amazon Flex app belonged to a class of workers engaged in interstate commerce. (*Rittmann*, *supra*, 971 F.3d at pp. 907, 915, 919.) The court reasoned that such delivery drivers "pick up

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below on how to define the class of workers for purposes of determining the applicability of the section 1 exemption. Amazon contended the class of workers should be defined as "local delivery drivers." Plaintiffs argued the class of workers are those who "load, transport, unload, and deliver interstate packages." The trial court adopted neither definition, instead defining the class of workers as those who "deliver in California goods ordered from Amazon." At oral argument, counsel for both parties agreed the class of workers defined in the question presented to the Supreme Court in *Brock* also accurately defines the class of workers at issue in this appeal. We agree and therefore use the same definition here.

packages that have been distributed to Amazon warehouses, certainly across state lines, and transport them for the last leg of the shipment to their destination," so that "[a]lthough Amazon contende[d] that [Amazon Flex] delivery providers are 'engaged in local, intrastate activities,' the Amazon packages they carry are goods that remain in the stream of interstate commerce until they are delivered." (*Id*. at p. 915.) The court explained the interstate transactions did not conclude until the packages were delivered. (*Id*. at pp. 915–916.) *Rittmann* reviewed both state and federal cases interpreting section 1's language and concluded, "[f]ederal district courts and state courts have also understood [section] 1 not to require that a worker cross state lines." (*Id*. at p. 911.) Further, *Rittmann* noted that courts that have interpreted the meaning of the phrase "engaged in commerce" in the context of other statutes did not limit that language to instances where workers physically crossed state lines.[11]

Then, in 2022, the United States Supreme Court decided *Saxon*, which became the leading case on section 1's exemption. (*Saxon*, *supra*, 596 U.S. 450.) The

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[11] For example, *Rittmann* examined cases interpreting the Federal Employees Liability Act (45 U.S.C. § 51, FELA). (*Rittmann*, *supra*, 971 F.3d at pp. 910, 912–913, citing *Phila. & Read. Ry. Co. v. Hancock* (1920) 253 U.S. 284, 286 [railroad worker injured while operating a train carrying coal, some of which would ultimately be shipped out of state, was engaged in interstate commerce for FELA purposes because "the shipment was but a step in the transportation of the coal to real and ultimate destinations in another [s]tate"] and *Waithaka v. Amazon.com, Inc*. (1st Cir. 2020) 966 F.3d 10, 17–23 ["[W]orkers 'engaged in interstate commerce'" included "those who were not involved in transport themselves but were in positions 'so closely related' to interstate transportation 'as to practically be a part of it'"].)

class of workers in *Saxon* were local airline cargo loaders who loaded cargo on and off airplanes that travel in interstate commerce. (*Id*. at pp. 458–459, 463.) The Supreme Court held such workers were exempted under section 1 from the FAA's coverage. (*Id*. at p. 463.) In so doing, however, the court expressly declined to decide whether workers who carry out "duties further removed from the channels of interstate commerce or the actual crossing of borders," are exempt under section 1, citing as an example the last-leg delivery drivers that were at issue in *Rittmann*, *supra*, 971 F.3d 904. (*Saxon*, *supra*, 596 U.S. at p. 457, fn. 2.)

After deciding *Saxon*, the United States Supreme Court granted certiorari on a subsequent decision by the Ninth Circuit holding local delivery drivers for Domino's Pizza are exempt under section 1 of the FAA and remanded the case with directions to reconsider the decision in light of *Saxon*.[12] In 2023, the Ninth Circuit reconsidered and *reaffirmed* its decision in light of *Saxon*. (*Carmona*, *supra*, 73 F.4th at pp. 1137–1139.) The court noted its initial decision had "squarely rested" (*id.* at p. 1137) upon *Rittmann* and, after evaluating *Rittmann* and finding it not inconsistent with *Saxon*, it held *Rittmann* "continue[d] to control [the] analysis." (*Carmona*, *supra*, at pp. 1138–1139.) The court reiterated that the "critical question"

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[12] In *Carmona v. Domino's Pizza, LLC* (9th Cir. 2021) 21 F.4th 627, judgment vacated and cause remanded for further consideration in light of *Saxon*, *supra*, 596 U.S. 450, the 9th Circuit affirmed the trial court's determination that employees of Domino's Pizza who performed local deliveries of pizza ingredients that had been delivered from outside California to an in-state supply center were exempt from the FAA under section 1. (*Id*. at p. 628.)

(*id*. at p. 1137) in assessing whether workers are engaged in interstate commerce "is whether the workers are actively 'engaged in transportation' of goods in interstate commerce and play a direct and 'necessary role in the free flow of goods across borders.'" (*Ibid*., quoting *Saxon*, *supra*, 596 U.S. at p. 458.)

We agree with the analysis in *Rittmann* and *Carmona*—and with the analysis conducted by the trial court below. We therefore conclude the class of plaintiffs here were engaged in interstate commerce when they participated in the last-mile delivery of Amazon packages, many of which, as Amazon acknowledged in its reply to plaintiffs' opposition to the Arbitration Motion, were manufactured outside California or otherwise originated out of state. (See also, *Betancourt v. Transportation Brokerage Specialists, Inc*. (2021) 62 Cal.App.5th 552, 558–561 [Amazon's "last-mile" delivery driver was exempt from the FAA as a transportation worker engaged in interstate commerce]; *Nieto v. Fresno Beverage Co., Inc.* (2019) 33 Cal.App.5th 274, 284 [a delivery driver who made only intrastate deliveries came within the transportation worker exemption because he delivered beverages originating from out of state].)

We reject Amazon's argument that, because a large percentage of its goods had already been received at the local warehouse in California and were "at rest" when the orders are placed, they were not on a continuous cross-border journey to the California customers who purchased them. We agree with the Ninth Circuit's conclusion that a "pause in the journey of the goods at the warehouse alone [does not] remove them from the stream of interstate commerce." (*Carmona*, *supra*, 73 F.4th at p. 1138.) The warehouse stop is part of the journey of the product to its ultimate recipient.[13] Without last-mile delivery drivers, such as plaintiffs, the transportation of these packages would be incomplete. Similarly, the fact that some of the goods plaintiffs delivered were from local California suppliers and did not cross borders does not change the outcome. (See *Rittmann*, *supra*, 971 F.3d at p. 917, fn. 7 [explaining that Amazon package delivery drivers are engaged in interstate commerce "even if that engagement also involves intrastate activities"].)

Finally, we reject Amazon's argument that the trial court failed to focus on the work actually performed by plaintiffs and instead focused on the nature of Amazon's business generally. To the contrary, the trial court focused on the work plaintiffs perform and properly understood it to be "part of a continuous interstate transportation of goods."

In sum, we conclude plaintiffs are exempt from the FAA under section 1 because the arbitration agreements they entered into with Amazon were a "contract of employment" and they belong to a class of transportation workers "engaged in interstate commerce."

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[13] As the trial court noted in its Statement of Decision, the declaration from Amazon's own witness "describes the interconnected chain of operations by which Amazon moves goods purchased by customers 'around the world' . . . from their initial locations to their ultimate destinations—the customers who ordered the goods."

DISPOSITION

The order is affirmed. Respondents shall recover costs on appeal.

GOODING, J.

WE CONCUR:

DELANEY, ACTING P. J.

BANCROFT, J.*

* Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX C

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

Hon. Melissa R. McCormick,
Coordination Trial Judge

<table>
<tr><td>Coordination Proceeding
Special Title (Rule 3.550)

AMAZON FLEX WAGE AND HOUR CASES</td><td rowspan="2">JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 5078

STATEMENT OF DECISION RE: DEFENDANTS' MOTION TO COMPEL ARBITRATION

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA
NO. RG18923557

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES

NO. 19STCV08098

SUPERIOR COURT OF</td></tr>
<tr><td>Included actions:

Luckett, et al. v. Amazon Logistics, Inc., et al.

Dias v. Amazon Services, LLC, et al.

Clinton v. Amazon.com, Inc., et al.

Romero v. Amazon.com Services, Inc., et al.

Knipe v. Amazon.com, Inc., et al.</td></tr>
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	CALIFORNIA COUNTY OF ORANGE NO. 30-2017-00938102 SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE NO. 30-2018-01031789 SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN DIEGO NO. 37-2017-00029426

Defendants Amazon.com, Inc. and Amazon Logistics, Inc. (together, "Amazon") move to compel arbitration of plaintiffs Dirk Clinton, Linda Luckett, Renee Jordan, Persis Knipe, Jennifer Romero and Antonia Dias's individual PAGA claims. Plaintiffs oppose. The court heard argument on the motion on August 29, 2024, and now issues this statement of decision. For the following reasons, Amazon's motion is denied.

There is a public policy in favor of arbitration under federal and state law. *McManus v. CIBC World Markets Corp*. (2003) 109 Cal.App.4th 76, 85. "Doubts as to whether an arbitration clause applies to a particular dispute are to be resolved in favor of sending the parties to arbitration. The court should order them to arbitrate unless it is clear that the arbitration clause cannot be interpreted to cover the dispute." *United Transportation Union v. Southern Cal. Rapid Transit Dist*. (1992) 7 Cal.App.4th 804, 808.

The right to arbitration depends upon contract; a petition to compel arbitration is simply a suit in equity seeking specific performance of that contract. *Little v. Pullman* (2013) 219 Cal.App.4th 558, 565. The petitioner bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. *Id*.

The 2016 and 2021 Terms of Service

To sign up for the Amazon Flex program, individuals must accept the Amazon Flex Independent Contractor Terms of Service (TOS). The six above-identified plaintiffs each accepted the 2016 TOS. Plaintiff Dias also accepted the 2021 TOS. The 2016 TOS states:

> YOU AND AMAZON AGREE TO RESOLVE DISPUTES BETWEEN YOU AND AMAZON ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION, UNLESS YOU OPT OUT OF ARBITRATION WITHIN 14 CALENDAR DAYS OF THE EFFECTIVE DATE OF THIS AGREEMENT, AS DESCRIBED BELOW IN SECTION 11. If you do not agree with these terms, do not use the Amazon Flex app or participate in the Program or provide any Services.

Rodgers Decl. (ROA 311) Ex. A (2016 TOS, at 1).

The 2021 TOS states:

> YOU AND AMAZON AGREE TO RESOLVE DISPUTES BETWEEN YOU AND AMAZON ON AN INDIVIDUAL BASIS THROUGH FINAL AND BINDING ARBITRATION. YOU AND AMAZON WAIVE THE RIGHT TO PURSUE THE RESOLUTION OF ANY SUCH DISPUTE IN A COURT AND WAIVE THE RIGHT TO A TRIAL BY JURY. . . . This Agreement updates and replaces any version of the Terms of Service you previously accepted.

Rodgers Decl. (ROA 311) Ex. C (2021 TOS, at 1).

Section 11 of the 2016 TOS, entitled "Dispute Resolution; Submission to Arbitration," states:

> a) SUBJECT TO YOUR RIGHT TO OPT OUT OF ARBITRATION, THE PARTIES WILL RESOLVE BY FINAL AND BINDING ARBITRATION, RATHER THAN IN COURT, ANY DISPUTE OR CLAIM, WHETHER BASED ON CONTRACT, COMMON LAW, OR STATUTE, ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, INCLUDING TERMINATION OF THIS AGREEMENT, TO

> YOUR PARTICIPATION IN THE PROGRAM OR TO YOUR PERFORMANCE OF SERVICES.
>
> . . .
>
> b) TO THE EXTENT PERMITTED BY LAW, THE PARTIES AGREE THAT ANY DISPUTE RESOLUTION PROCEEDINGS WILL BE CONDUCTED ONLY ON AN INDIVIDUAL BASIS AND NOT ON A CLASS OR COLLECTIVE BASIS.
>
> c) TO THE EXTENT PERMITTED BY LAW, THE PARTIES FURTHER AGREE THAT NO DISPUTE RESOLUTION PROCEEDING WILL BE CONDUCTED ON A REPRESENTATIVE BASIS.
>
> d) TO THE EXTENT PERMITTED BY LAW, THE PARTIES WAIVE ANY RIGHT TO PARTICIPATE IN OR RECEIVE ANY RELIEF FROM ANY NON-INDIVIDUAL PROCEEDING REFERENCED ABOVE.
>
> e) THIS AGREEMENT DOES NOT PROVIDE FOR, AND THE PARTIES DO NOT CONSENT TO, ARBITRATION ON A CLASS, COLLECTIVE OR REPRESENTATIVE BASIS.

Rodgers Decl. (ROA 311) Ex. A (2016 TOS, at 5). The 2021 TOS combines subsections (d) and (e). *Id*. Ex. C (2021 TOS, at 5–6).

Interpretation of the 2016 TOS "is governed by the law of the state of Washington without regard to its conflict of laws principles, except for Section 11 of this Agreement, which is governed by the Federal Arbitration Act and applicable federal law." Rodgers Decl. (ROA 311) Ex. A (2016 TOS, at 6). The 2016 TOS also states: "If any provision of this Agreement is determined to be unenforceable, the parties intend that this Agreement be enforced as if the unenforceable provisions were not present and that any partially valid and enforceable provisions be enforced to the fullest extent permissible under applicable law." Rodgers Decl. (ROA 311) Ex. A (2016 TOS, at 7).

Interpretation and enforcement of the 2021 TOS "is governed by the law of the state of Delaware without regard to its conflict of laws principles, except for Section 11 of this Agreement, which is governed by the Federal Arbitration Act and applicable federal law." Rodgers Decl. (ROA 311) Ex. C (2021 TOS, at 8). The 2021 TOS further states: "If, for any reason, the Federal Arbitration Act is held by a court of competent jurisdiction not to apply to Section 11 of this Agreement, the law of the state of Delaware and the Delaware Uniform Arbitration Act, 10 Del. C. § 5701 et seq. will govern Section 11 of this Agreement, including without limitation the common law of contracts of such state in the event that any statute could be interpreted as limiting the right of Amazon or you to arbitrate disputes pursuant to Section 11 of this Agreement." *Id*. The 2021 TOS also states: "If any provision of this Agreement is determined to be unenforceable, the parties intend that this Agreement be enforced as if the unenforceable provisions were not present and that any partially valid and enforceable provisions be enforced to the fullest extent permissible under applicable law." Rodgers Decl. (ROA 311) Ex. C (2021 TOS, at 9).

The Federal Arbitration Act

Amazon argues the Federal Arbitration Act (FAA) applies to the arbitration agreements in the 2016 TOS and the 2021 TOS. Section 2 of the FAA (9 U.S.C. § 2) applies to any "written provision in . . . a contract evidencing a transaction involving commerce." While neither party addresses the application of section 2 in detail, the 2016 TOS and the 2021 TOS state the FAA applies to section 11 of the TOS. Amazon also asserts "[t]here is no question that Amazon Flex transactions involve interstate commerce." Amazon Brief (ROA 313) at 5:3–4. Plaintiffs do not dispute this assertion.

The parties instead focus on section 1 of the FAA. Section 1 provides that the FAA does not apply "to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1.

Amazon argues plaintiffs worked as "local delivery drivers" who "picked up customers' orders and delivered them locally, in their own vehicles, without leaving the state of California." Amazon Brief (ROA 313) at 1:12–13. Amazon contends that "[f]ulfilling the last leg of an order's interstate journey is not a central part of [plaintiffs'] work because nearly all their orders are intrastate." *Id*. at 2:4–5. Plaintiffs argue that, as "last mile" delivery drivers, they belong to a class of workers who load, transport, unload and deliver interstate packages, and are thus exempt from the FAA.

In determining whether a class of workers is "engaged in foreign or interstate commerce," the inquiry focuses on the worker and the work the individual performs. *Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450, 455–56. In *Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 119–21, the Supreme Court interpreted the phrase "any other class of workers engaged in foreign or interstate commerce" to refer to "transportation workers," not to employees generally. The court did not "provide a complete definition of 'transportation worker,' [but it] indicated that any such worker must at least play a direct and 'necessary role in the free flow of goods' across borders," or be "actively 'engaged in transportation' of those goods across borders via the channels of foreign or interstate commerce." *Saxon*, 596 U.S. at 458.

An employee need not cross state lines for the exemption to apply. *See Saxon*, 596 U.S. at 461; *Nieto v. Fresno Beverage Co*. (2019) 33 Cal.App.5th 274, 284 (delivery driver who only made intrastate deliveries within transportation worker exemption because he delivered beverages originating from out of state).

In *Rittmann v. Amazon.com, Inc*. (9th Cir. 2020) 971 F.3d 904, the Ninth Circuit held that a "last-mile" delivery driver contracted by Amazon was exempt from the FAA. *Id*. at 921. The court interpreted the phrase "engaged in interstate or foreign commerce" to include transportation workers employed to deliver goods that originate out of state to an in-state destination: "AmFlex delivery providers are a class of workers that transport packages through to the conclusion of their journeys in interstate and foreign commerce." *Id*. at 910, 915. The court explained that the interstate transactions did not conclude until the packages were delivered. *Id*. at 915–16. Thus, the drivers were "engaged in the movement of interstate commerce" because their "transportation of goods wholly within a state [was] still a part of a continuous interstate transportation." *Id*.; *see also Betancourt v. Transportation Brokerage Specialists, Inc*. (2021) 62 Cal.App.5th 552, 558–561 (Amazon "last-mile" delivery driver was exempt from FAA as a transportation worker engaged in interstate commerce).

In *Carmona v. Domino's Pizza, LLC* (9th Cir. 2021) 21 F.4th 627 (*Carmona I*), the Ninth Circuit affirmed the district court's denial of Domino's' motion to compel arbitration, holding that because the plaintiff-drivers were a "class of workers engaged in foreign or interstate commerce," their claims were exempt from the FAA. "The exemption applies if the class of workers is engaged in a 'single, unbroken stream of interstate commerce' that renders interstate commerce a 'central part' of their job description." *Id*. at 629. The Supreme Court granted certiorari, vacated, and remanded for reconsideration in light of *Saxon*. Upon reconsideration, the Ninth Circuit again affirmed. *Carmona Mendoza v. Domino's Pizza, LLC* (9th Cir. 2023) 73 F.4th 1135 (*Carmona II*), *cert. denied*, 144 S.Ct. 1391 (Apr. 22, 2024).

As described in *Carmona II*: "Domino's sells ingredients used to make pizzas to its franchisees. As relevant to this case, Domino's buys those ingredients from suppliers outside of California, and they are then delivered to Domino's Southern California Supply Chain Center. At the Supply Center, Domino's employees reapportion, weigh, and package the relevant ingredients for delivery to local franchisees but do not otherwise alter them. The plaintiff drivers . . . , employees of Domino's, then deliver the ingredients in response to orders from Domino's California franchisees." *Carmona II*, 73 F.4th at 1136.

Domino's argued *Rittmann* was distinguishable because Domino's franchisees did not order the goods until after they arrived at the warehouse. The Ninth Circuit rejected this argument, explaining that "'[t]he issue is not how the purchasing order is placed, but rather whether the [Domino's] drivers operate in a single, unbroken stream of interstate commerce that renders interstate commerce a central part of their job description.'" *Carmona II*, 73 F.4th at 1138.

The court also rejected the argument that a pause in the journey of the goods at the warehouse removed them from the stream of interstate commerce. *Carmona II*, 73 F.4th at 1138 (citing *Walling v. Jacksonville Paper Co.* (1943) 317 U.S. 564, 568 ("The entry of the goods into the warehouse interrupts but does not necessarily terminate their interstate journey."); *id.* ("[I]f the halt in the movement of goods is a convenient intermediate step in the process of getting them to their final destinations, they remain 'in commerce' until they reach those points.")). The court concluded that "[b]ecause the goods in this case were inevitably destined from the outset of the interstate journey for Domino's franchisees, it matters not that they briefly paused that journey at the Supply Center." *Carmona II*, 73 F.4th at 1138.

Amazon makes arguments similar to those advanced by the defendants in *Rittman* and *Carmona*. Amazon asserts that approximately two-thirds of Amazon Flex delivery blocks in California are "GSF" blocks to deliver locally stocked items such as same-day merchandise orders, and that approximately three-quarters of brown box orders in California are fulfilled from fulfillment centers in California where the ordered items have been waiting an average of over 30 days before a customer orders them. Amazon contends that plaintiffs therefore do not play a "'necessary role in the free flow of goods' across borders," and are not "actively 'engaged in transportation' of those goods across borders via the channels of foreign or interstate commerce." *Saxon*, 596 U.S. at 458.

Amazon concedes that "many of the goods [plaintiffs delivered] were manufactured outside California or [were] otherwise outside California at some point." Amazon Reply (ROA 614) at 5:4–5. Amazon contends this concession is irrelevant because "the goods are at rest in California when the orders are placed and do not take a continuous cross-border journey to the California customer who purchases them," and because "at the time of purchase, the goods are already within California over 90% of the time." Amazon Reply (ROA 614) at 3:10–11, 5:12–14.

Rittman rejected the argument that the interstate transactions concluded at the Amazon fulfillment centers. *Rittman*, 971 F.3d at 916 ("Amazon packages do not 'come to rest,' at Amazon warehouses, and thus the interstate transactions do not conclude at those warehouses. The packages are not held at warehouses for later sales to local retailers; they are simply part of a process by which a delivery provider transfers the packages to a different vehicle for the last mile of the packages' interstate journeys. The interstate transactions between Amazon and the customer do not conclude until the packages reach their intended destinations, and thus AmFlex drivers are engaged in the movement of interstate commerce."). This court is not persuaded that the stream of interstate commerce concludes when the goods arrive at Amazon's fulfillment centers. The Rodgers Declaration (ROA 311) describes the interconnected chain of operations by which Amazon moves goods purchased by customers "around the world" (Rodgers Decl. ¶ 4) from their initial locations to their ultimate destinations—the customers who order the goods. *See Carmona II*, 73 F.4th at 1138 ("Nor does the pause in the journey of the goods at the warehouse alone remove them from the stream of interstate commerce. . . . Because the goods in this case were inevitably destined from the outset of the interstate journey for Domino's franchisees, it matters not that they briefly paused that journey at the Supply Center.").

Amazon also argues the exemption does not apply because many of the goods being delivered are already in California when they are ordered. In rejecting Domino's similar argument in *Carmona II*, the court explained that the "'[t]he issue is not how the purchasing order is placed, but rather whether the . . . drivers operate in a single, unbroken stream of interstate commerce that renders interstate commerce a central part of their job description.'" *Carmona II*, 73 F.4th at 1138. The timing of the orders does not determine whether the goods remain in the stream of interstate commerce.

In sum, plaintiffs belong to a class of workers who deliver in California goods ordered from Amazon. As Amazon acknowledges, many of the goods plaintiffs delivered were manufactured outside of California or were otherwise outside of California at some point. Plaintiffs delivered goods that had been distributed to Amazon fulfillment centers, including from out of state, and transported the goods for the last leg of their journeys to their ultimate destinations, which is a part of a continuous interstate transportation of goods. Plaintiffs thus are transportation workers engaged in interstate commerce and exempt from the FAA.

Amazon cites a Fifth Circuit case (*Lopez v. Cintas Corp*. (5th Cir. 2022) 47 F.4th 428) and an Oklahoma appellate case which, relying on *Saxon*, rejected the last-leg delivery argument and denied FAA exemption. Neither of these authorities is controlling and the court does not find either case more persuasive than those discussed above. Amazon's related Reply Request for Judicial Notice (ROA 616) of the Oklahoma appellate decision is denied, as Amazon appears to present this document not as a judicially-noticeable court record, but rather as purportedly persuasive legal authority. *See*, *e.g.*, Reply (ROA 614) at 2:15–16, 8:4–7.

State law

Amazon states in its Notice of Motion that it moves to compel arbitration of plaintiffs' individual PAGA claims under the FAA "and applicable state law that is not preempted by the FAA." Amazon Notice of Motion (ROA 313) at 2:8. Amazon does not identify any such state law or argue any state law applies. The court thus has no basis on which to conclude the arbitration agreements may be enforced under state law.

Amazon's Evidentiary Objections (ROA 619) are overruled.

IT IS SO ORDERED.

Dated: September 4, 2024

Melissa R. McCormick
Coordination Trial Judge

APPENDIX D

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CIVIL COMPLEX CENTER

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DECLARATION OF JOHN RODGERS

I, John Rodgers, declare as follows:

1. I am Director, Last Mile Tech, employed by Amazon.com Services LLC and have responsibility for certain functions related to the Amazon Flex Program.

2. I make this declaration based on my personal knowledge and my review of Amazon's business records which are kept in the ordinary course of business. If called to testify to these facts, I could and would be competent to do so.

3. In my role as Director, Last Mile Tech, I am familiar with the operation of the Amazon Flex program and the Terms of Service that prospective Amazon Flex Delivery Partners ("Delivery Partners") must review and accept before they can begin making local deliveries through the Amazon Flex smartphone application.

4. Amazon offers various products, groceries, and household items that customers around the world can purchase, including through Amazon's website and smartphone application.

5. When a customer places an order, the customer designates the location at which to receive the product(s) ordered. Although customers often designate their home or business, customers often can and do pick up an order from a different local destination, such as Whole Foods Market and Amazon Fresh storefronts (for products ordered from those stores), Amazon Go convenience stores, or third-party owned storefronts with an Amazon Hub Locker (self-service pickup) and/or an Amazon Hub Counter (over-the-counter pickup).

6. For orders not picked up locally by customers, Amazon contracts with certain third parties to make local customer deliveries, including Delivery Partners.

7. Amazon's "logistics" operations refer generally to the processes of coordinating and managing the movement and warehousing of products, equipment, and supplies within Amazon's own facilities, as well as coordinating Amazon's external relationships with the third parties, including Delivery Partners, that make local customer deliveries.

8. For instance, third-party wholesalers, manufacturers, and sellers ship their products to Amazon fulfillment centers, where Amazon warehouses many products.

9. Once Amazon's customers place orders and designate the location at which they will receive those orders, Amazon ships the ordered items to a series of different facilities (such as sort centers, postal and other third-party distribution centers, and delivery stations).

10. Amazon uses long-haul tractor-trailers and aircraft to move some goods from third-party wholesalers, manufacturers, and sellers to Amazon fulfillment centers and also to move some goods between Amazon's fulfillment centers, sort centers, and delivery stations.

11. Through the Amazon Flex app, Delivery Partners can sign up for offered "delivery blocks," which are described in terms of their location, date, and anticipated length of time. Delivery Partners are not required to accept any specific Amazon Flex offer or a minimum number of offers. The lengths of delivery blocks vary but commonly last between 2 to 6 hours.

12. Among other opportunities, Delivery Partners can accept delivery blocks through Amazon's "GSF" or "Global Specialty Fulfillment" umbrella of programs to deliver food, groceries, and other items that are stocked and/or prepared locally. These GSF programs have included:

- Amazon Fresh (groceries sold by Amazon).
- Store orders (e.g., groceries picked up at Whole Foods Markets).
- Prime Now (locally stocked items with a 1 or 2-hour turnaround).
- Amazon Restaurants (items from restaurants, now discontinued).

13. Separate from GSF delivery blocks, a Delivery Partner can schedule delivery blocks to make "AMZL" or "brown box" deliveries of items warehoused in Amazon fulfillment centers.

14. Items that have originally been delivered to a fulfillment center are unloaded, sorted, and stowed there. After customers order such items, Amazon employees—not Delivery Partners—pick the ordered items from the fulfillment center's shelves and prepare them for shipment. Other workers then load the items onto vehicle(s) for transit to another location like a sort center, other workers drive those vehicles to that location, and other workers unload these vehicles there. At a sort center, after Amazon's employees sort the items by delivery zip code, other workers load the items onto other vehicles, other workers drive those vehicles to the delivery station, and other workers unload these vehicles at the delivery station.

15. At a delivery station, Amazon employees retrieve packages and group them into proposed local

delivery routes, which often encompass numerous orders and numerous customers' delivery locations. The batched packages then are transferred to Delivery Partners, who deliver the batched packages to customers. Delivery Partners ordinarily do not touch packages until after they are batched and organized (on a cart, for example, or in a sturdy canvas or nylon bag) by local delivery routes at a delivery station or other pickup location like a Whole Foods Market retail store. Delivery Partners then assume responsibility for taking the cart/bag to their personal vehicles, arranging and loading the items in their vehicles, and delivering the items to the locations in their proposed local delivery route.

16. Amazon's records show that since the start of 2022, approximately 72% of California orders within the AMZL/brown box category originated from a California fulfillment center, where items are stored on average for more than 30 days. Moreover, nearly 99% of California AMZL/brown box orders since the start of 2022 have stopped at a California facility (typically a sort center) after leaving the fulfillment center and before being routed to the California delivery station for local delivery.

17. As this overview indicates, the role of a Delivery Partner is not to unload cargo from airplanes, trucks, rail cars, or ships or otherwise interact with those long-range forms of transportation, or to transport cargo to, or from, fulfillment centers. Nor is their role to package items or ship them to sort centers, postal and other third-party distribution centers, or delivery stations.

18. Instead, Delivery Partners characteristically pick up batches of pre-packaged items in their selected geographic areas and deliver those items to a

number of customers in the same geographic areas using ordinary vehicles like their personal automobiles. In this way, Delivery Partners can help Amazon's customers avoid having to personally pick up orders at a retail store or Amazon Hub location.

19. Currently, and in the past, individuals seeking to sign up for Amazon Flex must first download the Amazon Flex app on a smartphone, create an account, log into the app, and provide the zip code for the local area in which they wish to make deliveries.

20. After creating an account and selecting their desired local delivery area, prospective Delivery Partners must affirmatively agree to the Amazon Flex Independent Contractor Terms of Service. There have been multiple versions of the Amazon Flex Independent Contractor Terms of Service (the "TOS").

21. Based on my review of the Complaint in this action and Amazon's records, the six plaintiffs in this action all created their accounts and accepted the TOS between October 7, 2016 and July 17, 2017.

22. Between September 2016 and February 2017, the TOS attached as **Exhibit A** was in effect. On or about February 24, 2017, Amazon corrected a typo in Section 11(h) (changing an erroneous cross-reference to "Section 15" to a correct cross-reference to "Section 14"), and the TOS attached as **Exhibit B** took effect. Because there are no material differences between these two versions, I refer to them interchangeably in this declaration as the "2016 TOS."

23. In 2021, Amazon began using a new version of the TOS, which is attached as **Exhibit C** and which I refer to as the "2021 TOS".

24. Prospective Delivery Partners have always been free to spend as much time as they wish reviewing the TOS before accepting them. The TOS have also been accessible in the Account/View Legal Information section of the Amazon Flex app.

25. In signing up to participate in Amazon Flex, the six plaintiffs in this case had to click two buttons indicating that they agreed to the 2016 TOS. The first time was to accept the 2016 TOS as a whole, and the second time was to accept the arbitration provision specifically.

26. For the plaintiffs' first acceptance, the Amazon Flex app presented the 2016 TOS in its entirety (by scrolling through the app) and would have resembled one of the following pairs of screenshots (depending on the date of signup):

* * *

27. Next, Delivery Partners had to separately signify acceptance on a second screen that focused on arbitration, that would have resembled one of the following pairs of screenshots:

* * *

28. The 2016 TOS gave new Amazon Flex Delivery Partners the option to "opt out" of the arbitration agreement. To opt out, the Delivery Partner needed to send an email to the identified Amazon email address within 14 days after accepting the 2016 TOS.

29. Plaintiff Dirk Clinton accepted the 2016 TOS on or about February 12, 2017. He selected Greater Los Angeles Area as his delivery area. He did not opt-out of the arbitration agreement of the 2016 TOS.

30. Plaintiff Antonio Dias accepted the 2016 TOS on or about December 16, 2016. He selected Greater

Los Angeles Area as his delivery area. He did not opt-out of the arbitration agreement of the 2016 TOS.

31. Plaintiff Renee Jordan accepted the 2016 TOS on or about June 21, 2017. She selected San Francisco Bay Area as her delivery area. She did not opt-out of the arbitration agreement of the 2016 TOS.

32. Plaintiff Persis Knipe accepted the 2016 TOS on or about May 12, 2017. She selected San Diego as her delivery area. She did not opt-out of the arbitration agreement of the 2016 TOS.

33. Plaintiff Linda Luckett accepted the 2016 TOS on or about July 17, 2017. She selected San Francisco Bay Area as her delivery area. She did not opt-out of the arbitration agreement of the 2016 TOS.

34. Plaintiff Jennifer Romero accepted the 2016 TOS on or about October 7, 2016. She selected Greater Los Angeles Area as her delivery area. She did not opt-out of the arbitration agreement of the 2016 TOS.

35. In April and May 2021, Amazon rolled out the 2021 TOS. California Delivery Partners with active accounts received a notification in the Amazon Flex app that they had to read and accept the new agreement to continue performing deliveries, on a screen that would have resembled the following:

* * *

36. Like the process for initially agreeing to the TOS, the Amazon Flex app presented the 2021 TOS in its entirety (by scrolling through the app) and would have resembled the following pair of screenshots:

* * *

37. Amazon's records show that Plaintiff Antonio Dias accepted the 2021 TOS on or about June 22, 2021.

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

Executed on August 25, 2022, in Bellevue, Washington.

John Rodgers

APPENDIX E

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CIVIL COMPLEX CENTER

Coordination Proceeding Special Title (Rule 3.550) **AMAZON FLEX WAGE AND HOUR CASES**	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 5078
Included actions: *Luckett, et al. v. Amazon Logistics, Inc., et al.* *Dias v. Amazon Services, LLC, et al.* *Clinton v. Amazon.com, Inc., et al.* *Romero v. Amazon.com Services, Inc., et al.* *Knipe v. Amazon.com, Inc., et al.*	**DECLARATION OF PETER NICKERSON IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL ARBITRATION AND DISMISS OR STAY NON-INDIVIDUAL CLAIMS**

DECLARATION OF PETER NICKERSON

I, Peter Nickerson, declare as follows:

1. I am an economist and the principal of Nickerson & Associates, LLC ("Nickerson"), a Seattle-based consulting firm specializing in economic and statistical analysis, especially analyses that require the use of large data sets. I have an M.S. and Ph.D., both in economics, from the University of Washington. I have taught at the university level for over 30 years. I have worked on numerous court cases and testified in depositions and in trial in federal and state courts in Alaska, Oregon, California, Idaho, Arizona, and Virginia.

2. I make this declaration based on my personal knowledge and my review of Amazon's business records. If called to testify to these facts, I could and would be competent to do so.

3. Amazon has provided Nickerson with certain data for the delivery services provided by Amazon Flex Delivery Partners ("Delivery Partners") in California from January 1, 2019 to early September 2021 (the "Period").

4. Among other things, this data generally identifies whether a Delivery Partner performed a block of "AMZL," *i.e.*, "brown box" deliveries, or a block of "Global Specialty Fulfillment" ("GSF") deliveries.

5. During the Period, more than two-thirds (67.4%) of all Amazon Flex delivery blocks in California were GSF, while nearly one-third (32.6%) were AMZL.

Executed on August 29, 2022, in Seattle, Washington.

Peter Nickerson