

1 DAVID L. ANDERSON (CABN 149604)
United States Attorney
2 SARA WINSLOW (DCBN 457643)
Chief, Civil Division
3 PAMELA T. JOHANN (CABN 145558)
Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36045
5 San Francisco, California 94102
Telephone: (415) 436-7025
6 Facsimile: (415) 436-7234
pamela.Johann@usdoj.gov

7 Attorneys for Defendant UNITED STATES
8 DEPARTMENT OF LABOR

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13
14 THE CENTER FOR INVESTIGATIVE)
REPORTING and WILL EVANS,)

15 Plaintiffs,)

16 v.)

17 UNITED STATES DEPARTMENT OF)
18 LABOR,)

19 Defendant.)

) Case No. 19-cv-05603-SK

) **DECLARATION OF HEATHER
MACDOUGALL IN SUPPORT OF
DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT**

20
21 I, Heather MacDougall declare under penalty of perjury as follows:

22 1. I am Heather MacDougall, Vice President of Workplace Health & Safety for
23 Amazon.com Services LLC (“Amazon” or “the Company”). Through this role I am familiar with
24 Amazon’s longstanding policies with respect to injury and illness recordkeeping forms that are required
25 to be maintained pursuant to the Occupational and Safety Health Act and regulations, as well as other
26 internal injury and illness records created by Amazon.

27 2. Amazon’s policy is to treat as confidential, and not disclose to the public, the Company’s

28 DECLARATION OF HEATHER MACDOUGALL IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT

1 OSHA recordkeeping forms – Form 300-A, Form 300, and Form 301. This has been Amazon’s policy
2 for a number of years.

3 3. Amazon considers OSHA Form 300-A, the yearly Log of Work Related Injuries and
4 Illnesses, to be confidential. It has been Amazon’s longstanding policy to treat the form as confidential
5 and not share it publicly. In four particular circumstances, Form 300-A is shared on a limited basis: (1)
6 upon request to current or former employees or their representatives; (2) upon request to OSHA through
7 inspection or enforcement actions, (3) through electronic submission to OSHA; and (4) through posting
8 in each fulfillment center for the required three month period between February 1 and April 30 each
9 year.

10 4. Amazon provides Form 300-A to current and former employees or their authorized
11 representatives only upon lawful request pursuant to 29 C.F.R. Part 1904.35. When Amazon provides
12 Form 300-A upon request, steps are taken to maintain and protect the confidentiality of the form,
13 including marking the form as “confidential” and noting to all requestors in writing that both OSHA and
14 Amazon consider the information contained in the form to be confidential with the following message:

15 “In response to your request for the OSHA 300 Logs [and/or] 300A forms for the ____ facility
16 located in [city] [state], I have enclosed the following: [year range] logs. OSHA and Amazon
17 consider this information confidential because, among other things, it has personally identifiable
18 information and personal medical information involving you or your co-workers. We do not
19 share this information with third-parties. As a [current] [former] employee we respect your right
20 to access this confidential information pursuant to OSHA regulations and request that you
21 maintain its confidentiality. Please review and observe the following notice from OSHA that is
22 in a box at the top of the form 300: Attention: This form contains information relating to
23 employee health and must be used in a manner that protects the confidentiality of employees to
24 the extent possible while information is being used for occupational safety and health purpose.”

25 Provision of this notice to current and former employees is consistent with OSHA guidance. *See* OSHA
26 Injury and Illness Recordkeeping and Reporting Requirements, *available at*
27 <https://www.osha.gov/recordkeeping/>.

28 DECLARATION OF HEATHER MACDOUGALL IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT

1 5. When Form 300-A is posted in the workplace, it is posted in an area that is not accessible
2 to the public and it is restricted to employee eyes only.

3 6. Other than limited disclosure under the above-described circumstances, Form 300-A is
4 kept private by Amazon. This is done by stamping all logs as confidential, and restricting access to the
5 logs to only those employees with recordkeeping responsibilities. Additionally, Amazon asserts the
6 confidentiality of Form 300-A upon notification of a FOIA request for this information, including the
7 Form 300-A's at issue in this litigation.

8 7. Form 300-A includes confidential commercial information specific to each Amazon
9 facility, including total hours worked, total number of employees, total rates of injury, and total rates of
10 missed work. These categories of information are kept private by Amazon, and are not disclosed to the
11 public. Although Form 300-A does not itself contain personally identifiable sensitive medical
12 information, the total injuries and illnesses that are listed by categories could be used to profile
13 Amazon's injury trends at individual fulfillment centers, which would be a major component of the
14 sensitive information contained in OSHA Form 300 and 301. Amazon therefore customarily treats all
15 three forms as private due to the sensitive and confidential nature of the source data.

16 8. The Company's policy of maintaining Form 300-A as confidential is in line with
17 OSHA's direction and policymaking. For example, during the rulemaking process for the "Improve
18 Tracking of Workplace Injuries and Illnesses" rules, OSHA recognized that its recordkeeping logs were
19 customarily treated confidentially by employers, which was recognized in several employer-submitted
20 comments. Currently, OSHA's website on recordkeeping notes that OSHA views the Form 300-A data
21 as "confidential commercial information" and that OSHA "will not release it to the public." *See* OSHA
22 Injury and Illness Recordkeeping and Reporting Requirements, *available at*
23 <https://www.osha.gov/recordkeeping/>. Additionally, on September 12, 2019, OSHA instructed all FOIA
24 officers that before releasing any of the recordkeeping forms, including Form 300-A, OSHA must ask
25 the employer whether it considers this information confidential and subject to protection under FOIA
26 Exemption 4. *See Public Citizen Foundation v. Department of Labor*, 18-cv-0117 (D.D.C.) at ECF No.
27 29-4 (Declaration of Francis Meilinger).

1 9. Amazon considers Form 300 to be confidential. Both OSHA and Amazon consider Form
2 300 to contain sensitive personally identifiable information and personal medical information and
3 Amazon maintains these forms in accordance with OSHA's characterization of their sensitive nature.
4 Form 300 contains confidential and personal information, including the name(s) of the injured
5 employee(s), and a description of his/her injuries and/or work-related medical condition(s). Form 300
6 also includes confidential commercial information specific to each Amazon facility, including rates of
7 injury, areas where injuries take place, and rates of missed work. Form 300 is not disclosed by Amazon,
8 other than upon request to current or former employees or their representatives. When disclosure of
9 Form 300 is made upon request, steps are taken to protect the confidentiality of the form, including
10 marking the form as "confidential" and noting to all requestors in writing that both OSHA and Amazon
11 consider the information contained in the form to be confidential.

12 10. Amazon considers Form 301 to be confidential. Both OSHA and Amazon consider Form
13 301 to contain highly sensitive personally identifiable information and personal medical information and
14 Amazon maintains these forms in accordance with OSHA's characterization of their sensitive nature.
15 Form 301 contains all of the confidential and personal information listed in Form 300, as well as
16 additional detailed and sensitive information regarding the circumstances of the injury, the employee's
17 confidential medical condition, and the employee's confidential medical treatment. OSHA interpretive
18 guidance allows only the employee who is the subject of the form to receive it, providing even more
19 privacy and confidentiality. Form 301 is not disclosed by Amazon, other than upon request to current or
20 former employees or their representatives.

21 11. When OSHA requests injury and illness records from Amazon through inspection and
22 enforcement actions, including Form 300-A, Form 300, and Form 301, it has been and continues to be
23 Amazon's policy to treat all forms as confidential, and identify and submit them as such to the agency
24 under an assurance of privacy. For the recordkeeping logs at issue in this litigation, this was completed
25 by, for example, stamping the logs as confidential and/or by enclosing the logs with a cover letter noting
26 that Amazon considers the enclosed information to be confidential. Attached as Exhibit A is a cover
27 letter sent to OSHA in connection with one of the inspections at issue in this litigation.

28 DECLARATION OF HEATHER MACDOUGALL IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

