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6  
7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF ARIZONA**

9 CATHY PATZKE and MARTHA  
KNAUSS, on behalf of themselves  
10 and all others similarly situated,

11 Plaintiffs

12 v.

13 AMERICAN EXPRESS TRAVEL  
RELATED SERVICES COMPANY, INC.,

14 Defendant.  
15

CASE NO.

**COMPLAINT IN COLLECTIVE  
AND CLASS ACTION**

**(DEMAND FOR JURY TRIAL)**

16 Cathy Patzke and Martha Knauss, (hereinafter “Plaintiffs”), individually and on  
17 behalf of all others similarly situated, by their attorneys Zimmerman Reed, PLLP, allege  
18 upon personal knowledge as to themselves and upon information and belief as to other  
19 matters, as follows:

20 1. Plaintiffs are former customer service/travel counselor call center  
21 representatives employed by Defendant American Express Travel Related Services  
22 Company, Inc. (hereinafter “Amex TRS”). Amex TRS did not pay its telephone  
23 customer service workers for the time they worked at the beginning and end of their  
24 scheduled shifts, and the time spent working during unpaid rest and meal breaks. These  
25 activities were necessary and indispensable to the principal work of Plaintiffs and others  
26 similarly situated at the various Amex TRS call centers.

27 2. Amex TRS operates customer service call centers in Arizona, Florida,  
28 Georgia, North Carolina, and Utah.



1 Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1132(e)(1); and 29  
2 U.S.C. §§ 1331 and 1337.

3 8. This Court is empowered to issue a declaratory judgment under 28 U.S.C.  
4 §§ 2201 and 2202.

5 9. Venue herein is proper under 28 U.S.C. §§1391(b) and (c) because all or a  
6 substantial part of the events or omissions giving rise to the claims accrued in the State  
7 of Arizona and Amex TRS’ contacts within this District are sufficient and substantial.

8 10. The District of Arizona has personal jurisdiction over Amex TRS because  
9 Amex TRS (a) does business in Arizona, (b) operates a call center in Arizona, (c)  
10 employs hundreds of workers in Arizona, and (d) because all or a substantial part of the  
11 events or omissions giving rise to the claims accrued in the State of Arizona and within  
12 the district where Amex TRS transacts business.

13 **THE PARTIES**

14 11. Plaintiff Cathy Patzke, at all material times, was an adult individual  
15 residing in Mesa, Arizona.

16 12. Patzke was employed by Amex TRS from approximately 2006 through  
17 approximately September, 2009.

18 13. During her employment with Amex TRS, Patzke worked at an Amex TRS  
19 call center located in Phoenix, Arizona.

20 14. Patzke, within three years of this Complaint, was a nonexempt employee  
21 of Amex TRS within the meaning of the FLSA, 29 U.S.C. §§ 203(e) and (g).

22 15. Plaintiff Martha Knauss, at all material times, was an adult individual  
23 residing in Phoenix, Arizona.

24 16. Knauss was employed by Amex TRS from approximately 1998 through  
25 approximately May, 2009.

26 17. During her employment with Amex TRS, Knauss worked at an Amex  
27 TRS call center located in Phoenix, Arizona.

28

1 18. Knauss, within three years of this Complaint, was a nonexempt employee  
2 of Amex TRS within the meaning of the FLSA, 29 U.S.C. §§ 203(e) and (g).

3 19. All persons presently or formerly employed by Amex TRS in similar  
4 positions to Knauss and Patzke, who are not exempt from the minimum wage and  
5 overtime requirements of the FLSA, are entitled to collectively participate in this action  
6 by choosing to “opt-in” and submit written Consents to Join this action. This federal  
7 cause of action is brought as a collective action pursuant to the statutory requirements of  
8 the FLSA, 29 U.S.C. § 216(b). After the commencement of this action, and in  
9 accordance with the Local Rules of the District of Arizona, Plaintiffs shall file a motion  
10 for certification of their FLSA claims as a collective action, to obtain discovery of  
11 potential class members necessary for notice, and for authorization to issue notice to the  
12 FLSA Class.

13 **DEFENDANT**

14 20. Amex TRS is a corporation organized and existing under the laws of the  
15 State of New York. Amex TRS has its principal place of business at 200 Vessy Street,  
16 New York, New York, 10285.

17 21. Amex TRS is a wholly owned subsidiary of American Express Company.

18 22. Upon information and belief, Amex TRS is a national provider of credit  
19 card, banking, investment, and insurance services.

20 23. Upon information and belief, in addition to the call centers in Phoenix,  
21 Arizona, Amex TRS call centers are located in Florida, Georgia, North Carolina, and  
22 Utah.

23 24. The FLSA regulates, among other things, the payment of all hours worked,  
24 including overtime pay by employers whose employees are engaged in commerce, or  
25 engaged in the production of goods for commerce, or employed in an enterprise engaged  
26 in commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1). Amex  
27 TRS is, and was, subject to the pay requirements of the FLSA, because it is an enterprise  
28 engaged in commerce and its employees are engaged in commerce.

1 25. Upon information and belief, Amex TRS was the “employer” of Plaintiffs  
2 as that term is defined by the federal laws pled herein. See 29 U.S.C. § 203(d).

3 26. Upon information and belief, Plaintiffs were “employees” of Amex TRS  
4 as that term is defined by the federal laws pled herein. See 29 U.S.C. § 203(e).

5 27. Upon information and belief, and at all times relevant hereto, Amex TRS  
6 was aware of the applicable federal laws and regulations governing wages and overtime  
7 compensation.

8 28. Amex TRS is the Plan Sponsor and, upon information and belief, a named  
9 fiduciary of the Amex TRS 401(k) Plan (“the Plan”). Alternatively, Amex TRS  
10 exercises discretionary authority through its owners and officers and the Plan  
11 administrator with respect to management and disposition of the Plan assets. The  
12 actions of the owners, officers, administrators and other employee fiduciaries with  
13 respect to the Plan are imputed to Amex TRS through the doctrine of *respondeat*  
14 *superior*, rendering Amex TRS liable for their actions.

15 **FACTUAL ALLEGATIONS**

16 29. Plaintiffs and other similarly situated current and former nonexempt,  
17 hourly employees at Amex TRS’ call centers nationwide were not paid for all of the  
18 hours that they worked, including overtime compensation due for all hours worked  
19 above and beyond forty hours in a single work week.

20 30. Plaintiffs were required by Amex TRS to perform work related duties off  
21 the clock. Plaintiffs were not compensated for work duties performed before and after  
22 each scheduled shift and during unpaid rest and meal breaks. Accordingly, Plaintiffs  
23 and the members of the FLSA Class have not been paid for all hours actually worked.

24 31. Plaintiffs and the FLSA and ERISA Classes are and were subject to Amex  
25 TRS’ policies and practices of failing to accurately record and compensate its  
26 employees for any and all overtime worked, and Amex TRS’ policy and practice of  
27 failing to credit all compensation earning or owing as Compensation under the 401(k)  
28 Plan.

1           32. Plaintiffs spent time before each shift engaging in work activities such as  
2 booting up and logging on to their computers, and logging on to multiple computer and  
3 phone programs. These activities began the continuous workday and were necessary  
4 and indispensable to Plaintiffs' principal work and were performed for the benefit of  
5 Amex TRS.

6           33. Plaintiffs spent time at the end of each shift engaging in work activities  
7 such as completing answering and servicing Amex TRS customer telephone calls,  
8 shutting down and logging off of their computers, and logging out of multiple computer  
9 and phone programs. At the end of their paid shifts, Plaintiffs were required to  
10 complete paperwork, write correspondence to customers, and perform other tasks that  
11 were necessary and indispensable to Plaintiffs' principal work and were performed for  
12 the benefit of Amex TRS. All of these activities are included within the continuous  
13 workday.

14           34. Plaintiffs were required to stay on a telephone call with a customer until  
15 the call was complete. If the call continued into the time allotted for Plaintiffs' rest or  
16 meal breaks or shift end, Plaintiffs and members of the FLSA Class were required to  
17 continue servicing the call, without compensation. This work activity is part of the  
18 continuous workday.

19           35. At all relevant times, Amex TRS' time-keeping program automatically  
20 deducted thirty (30) minutes for lunch each day, regardless of whether Plaintiffs and  
21 other members of the FLSA Class performed work during that time.

22           36. At all relevant times, Amex TRS has the ability to accurately record the  
23 actual time Plaintiffs spent working. There are no administrative burdens associated  
24 with recording Plaintiffs' actual work time. Nevertheless, Plaintiffs were only paid  
25 according to their scheduled shift times.

26           37. At all relevant times, Amex TRS paid Plaintiffs and members of the FLSA  
27 Class earned incentive payments. Incentive payments were not included in calculating  
28 the regular rate of pay for purposes of paying overtime under the FLSA. Consequently,

1 Amex TRS has failed to pay the appropriate overtime compensation due under the  
2 FLSA.

3 38. Amex TRS' failure to pay Plaintiffs and similarly situated FLSA Class  
4 members the proper wages for all hours worked, as set forth in the preceding  
5 paragraphs, occurs on a daily basis. These violations are ongoing, continuous, knowing,  
6 and willful.

7 **COLLECTIVE AND CLASS ACTION ALLEGATIONS**

8 39. Plaintiffs' first cause of action is brought under Section 16(b) of the  
9 FLSA, 29 U.S.C. §216(b), as a collective action, on behalf of the FLSA Class.

10 40. Plaintiffs and the FLSA Class are similarly situated in that they have  
11 substantially similar job requirements and pay provisions, and are subject to Amex  
12 TRS' common practice, policy, or plan of unlawfully failing to pay for all hours  
13 worked, including pay at overtime rates.

14 41. The names and addresses of the FLSA Class are available from Amex  
15 TRS' records. Notice should be provided to the FLSA Class as soon as possible.

16 42. Plaintiffs Knauss and Patzke have consented in writing to be parties to this  
17 action, pursuant to 29 U.S.C. § 216(b), and agree to be collective action representatives  
18 in this matter. Copies of Plaintiffs' consents to join this action were filed in accordance  
19 with 29 U.S.C. § 216(b) and are attached to this Complaint as Exhibit "A."

20 43. Plaintiffs bring their second and third causes of action for violations of  
21 ERISA as a class action under Rule 23(a), (b)(1) or (b)(2), on behalf of all ERISA Class  
22 members.

23 44. The putative ERISA Class Action is based upon the same conduct engaged  
24 in by Defendant in not paying its call center employees for all compensable work to  
25 which they were entitled to under the federal law.

26 45. Members of the putative class are so numerous that joinder of all such  
27 members is impracticable. Although the exact size of the putative class is unknown, it is  
28

1 believed and alleged that the number of persons employed as call center employees is  
2 approximately 1,000 persons.

3 46. There are common questions of law and fact applicable to the putative  
4 class with respect to liability issues, relief issues, and anticipated affirmative defenses.  
5 For example, common questions of fact include but are not limited to Amex TRS'  
6 recordkeeping practices and failure to maintain accurate records of actual time worked  
7 and wages earned by Plaintiffs and the ERISA Class; Amex TRS' failure to provide  
8 accurate wage statements and itemizing of all actual time worked and wages earned by  
9 Plaintiffs and the ERISA Class; and Amex TRS' liability under ERISA.

10 47. Plaintiffs' claims are typical of the ERISA Class. Plaintiffs, like all other  
11 ERISA Class members, are and were subject to Amex TRS' policies and practices of  
12 failing to record overtime worked, and Amex TRS' policy and practice of failing to  
13 credit all compensation earning or owing as Compensation under the 401(k) Plan.

14 48. Plaintiffs will fairly and adequately protect the interests of the putative  
15 class. They have no conflicts with the putative class members. Their counsel possesses  
16 the requisite resources and skill to prosecute this case and are experienced in class  
17 action litigation.

18 49. Class certification of the second and third causes of action are appropriate  
19 under Rule 23(b)(1) because adjudications with respect to individual members of the  
20 class would, as a practical matter, be dispositive of the interests of the other members.  
21 In addition or alternatively, class certification of the ERISA Class claims are  
22 appropriate under Rule 23(b)(2) because Amex TRS acted or refused to act on grounds  
23 generally applicable to the ERISA Class, making appropriate declaratory and injunctive  
24 relief with respect to Plaintiffs and the ERISA Class as a whole.

25 **FIRST CAUSE OF ACTION – FAIR LABOR STANDARDS ACT**

26 **Unpaid Overtime Compensation**

27 50. Plaintiffs reallege and incorporate by reference all allegations in all  
28 preceding paragraphs.

1           51. At all relevant times, Plaintiffs and other similarly situated current and  
2 former employees were engaged in commerce and/or the production of goods for  
3 commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

4           52. At all relevant times, Plaintiffs and others similarly situated are or were  
5 employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a) in that they were  
6 engaged in commerce and or the production of goods for commerce within the meaning  
7 of 29 U.S.C. §§ 206(a) and 207(a) and were employed by Amex TRS.

8           53. Amex TRS was and is an employer subject to the overtime wage  
9 provisions of §§ 201 *et seq* of the FLSA.

10           54. Amex TRS has failed to pay Plaintiffs and other similarly situated current  
11 and former employees the overtime wages at the statutorily required rate because it has  
12 failed to include all compensation, inclusive of incentive pay, into the regular rate of  
13 pay for all hours worked in excess of forty (40) in one workweek, to which they were  
14 entitled under 29 U.S.C. § 207(e).

15           55. The FLSA Class is entitled to damages equal to the amount of all  
16 uncompensated time, including overtime premium pay within the three years preceding  
17 the filing of this complaint, plus periods of equitable tolling. Amex TRS' failure to pay  
18 overtime to the FLSA Class was "willful" within the meaning of Section 6(a) of the  
19 Portal-to-Portal Pay Act, as amended, 29 U.S.C. § 255(a), because Amex TRS did not  
20 act in good faith in failing to pay proper overtime pay, and had no reason to believe that  
21 its failure to do so was not a violation of the FLSA, within the meaning of Section 11 of  
22 the Portal-to-Portal Pay Act, as amended, 29 U.S.C. § 260. Accordingly, the FLSA  
23 Class is entitled to an award of liquidated damages in an amount equal to the amount of  
24 unpaid overtime pay described above, pursuant to Section 16(b) of the FLSA.  
25 Alternatively, should the Court find that Amex TRS did not act willfully in failing to pay  
26 overtime pay, the FLSA employees are entitled to an award of prejudgment interest at  
27 the applicable legal rate. Reasonable attorneys' fees and costs, pursuant to Section 16(b)  
28 of the FLSA, 29 U.S.C. § 216(b), should also be awarded.



1 other equitable relief as the Court deems just and proper, as provided by Section  
2 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3).

3 63. Plaintiffs, on behalf of themselves and members of the ERISA Class, seek  
4 recovery of their attorneys' fees and costs of action to be paid by Amex TRS, as  
5 provided by Section 502(g)(1) of ERISA, 29 U.S.C. § 1132(g)(1).

6 **THIRD CAUSE OF ACTION**

7 **Violations of the Employee Retirement and Income Security Act (ERISA)**

8 **Breach of Fiduciary Duty**

9 64. Plaintiffs reassert and reallege the allegations set forth in the preceding  
10 paragraphs.

11 65. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires that employee benefit  
12 plan fiduciaries discharge their duties with respect to the plan solely in the interests of  
13 the participants and beneficiaries, and *inter alia*, 1) for the exclusive purpose of  
14 providing benefits to participants and their beneficiaries and defraying reasonable  
15 expenses of administration; 2) with the care, skill, prudence, and diligence under the  
16 circumstances that a prudent person acting in a capacity and familiar with such matters  
17 would use in the conduct of an enterprise of like character and with like aims; and 3) in  
18 accordance with the documents and instruments governing the Plan.

19 66. On information and belief, the governing instrument of the 401(k) Plan  
20 confers on Amex TRS discretionary authority, responsibility, or control with respect to  
21 the crediting of compensation, thereby rendering Amex TRS a fiduciary in that regard.

22 67. On further information and belief, Amex TRS has exercised actual  
23 discretionary authority, responsibility, or control in determining what compensation  
24 would and would not be credited under the 401(k) Plan. By reason of the exercise of  
25 such discretion, Amex TRS has been a fiduciary of that Plan with respect to the crediting  
26 of compensation.

27 68. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132 (a)(3), Plaintiffs on  
28 behalf of themselves and all members of the ERISA Class seek an injunction requiring

1 Amex TRS to credit all members of the ERISA Class with Compensation under the  
2 401(k) Plan for all of the past and future work, including overtime work, performed by  
3 those Class members and any other equitable relief as this Court deems appropriate.

4 69. Plaintiffs, on behalf of themselves and members of the ERISA Class, seek  
5 recovery of their attorneys' fees and costs of action to be paid by Amex TRS, as  
6 provided by Section 502(g)(1) of ERISA, 29 U.S.C. § 1132(g)(1).

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiffs Cathy Patzke and Martha Knauss, on behalf of themselves  
9 and all other similarly situated FLSA Class members respectfully request that this Court  
10 grant the following relief:

- 11 a. Designation of this action as a collective action on behalf of the FLSA  
12 Class members and prompt issuance of notice pursuant to 29 U.S.C. §  
13 216(b) to all similarly situated members of an FLSA opt-in class,  
14 apprising them of the pendency of this action, permitting them to assert  
15 timely FLSA claims in this action by filing individual Consents to Sue  
16 pursuant to 29 U.S.C. § 216(b);
  - 17 b. Appointing Plaintiffs and their counsel to represent the FLSA Class  
18 Members;
  - 19 c. An award of unpaid compensation due under the FLSA;
  - 20 d. An award of unpaid overtime compensation due under the FLSA;
  - 21 e. An award of liquidated and/or punitive damages as a result of Amex TRS'  
22 willful failure to pay overtime compensation pursuant to 29 U.S.C. § 216;
  - 23 f. An award of prejudgment and post-judgment interest;
  - 24 g. An award of costs and expenses of this action together with reasonable  
25 attorneys' and expert fees; and
  - 26 h. Such other and further relief as this Court deems just and proper.
- 27  
28

1 **WHEREFORE**, Plaintiffs Cathy Patske and Martha Knauss, on behalf of themselves  
2 and all members of the ERISA Class, pray for relief as follows:

- 3 a. Certification of this action as a class action on behalf of the proposed  
4 ERISA Class;
- 5 b. Designation of Named Plaintiffs as Representatives of the ERISA Class;
- 6 c. A declaration that the practices complained of herein violate ERISA §  
7 209(a), 291 U.S.C. § 1129(a);
- 8 d. Appropriate equitable and injunctive relief to remedy Amex TRS’  
9 violations of ERISA § 209(a);
- 10 e. A declaration that Amex TRS has breached its fiduciary duties by failing  
11 to credit the Plaintiff and the ERISA Class with Compensation for all  
12 work performed, as required by ERISA and the terms of the 401(k) Plan;
- 13 f. An order requiring that Defendant remedy its breaches of fiduciary duty  
14 by crediting Plaintiff and the ERISA Class with Compensation for all of  
15 their past, present, and future uncompensated work;
- 16 g. Attorneys’ fees and costs of suit, including expert fees; and
- 17 i. For any other and further relief the Court may deem just or equitable.

18  
19  
20 Dated: February 8, 2010

Respectfully submitted,

ZIMMERMAN REED, P.L.L.P.

/s/ Hart L. Robinovitch

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