

June 30 2022 12:24 PM

CONSTANCE R. WHITE
COUNTY CLERK
NO: 22-2-07296-8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

SAMANTHA D. DAVIS, individually and on
behalf of all those similarly situated,

Plaintiff,

vs.

AVILA-SORENSEN INC., a Washington
corporation,
JEFFREY SORENSON, individually and his
marital community if any, and
LYDIA MCELROY, individually and her
marital community if any,

Defendants.

No.

CLASS ACTION COMPLAINT FOR
DAMAGES

Plaintiff claims against Defendants as follows:

I. NATURE OF ACTION

1.1. Plaintiff Samantha D. Davis, individually and on behalf of all individuals currently or formerly employed by Defendants providing restoration and other services to Defendants' customers, brings this action for money damages and statutory penalties for violations of the Washington Public Works Act ("PWA"), RCW 39.12, Industrial Welfare Act ("IWA"), Minimum Wage Act ("MWA"), RCW 49.46, Wage Payment Act ("WPA"), RCW 49.48, and Wage Rebate Act ("WRA"), RCW 49.52 and for wrongful termination in violation of public policy.

1 **II. JURISDICTION AND VENUE**

2 2.1. The Superior Court of Washington has jurisdiction of Plaintiff's claims pursuant to
3 RCW 2.08.010.

4 2.2. Venue in Pierce County is appropriate pursuant to RCW 4.12.025.

5 2.3. Defendants transact business in Pierce County, and at least some of the acts and
6 omissions alleged in this Complaint took place in the State of Washington and Pierce County.

7 **III. PARTIES**

8 3.1. Defendant Avila-Sorenson, Inc. ("Servicemaster"), presumably under a franchise
9 or co-branding agreement, is a purveyor of water and fire restoration services under private and
10 public contracts in Washington, primarily in and around Tacoma, Washington. Servicemaster is
11 an employer for purposes of PWA, IWA, MWA, WPA and WRA.

12 3.2. Defendant Jeffrey Sorenson ("Sorenson"), at all relevant times, was a principal,
13 member, officer, owner and/or manager of Servicemaster and had apparent and/or actual, direct
14 and/or indirect, authority over employment matters, including the payment of wages. Sorenson is
15 an employer for purposes of PWA, IWA, MWA, WPA and WRA.

16 3.3. Defendant Lydia McElroy ("McElroy"), at all relevant times, was a principal,
17 member, officer, owner, and/or manager of Servicemaster and had apparent and/or actual, direct
18 and/or indirect, authority over employment matters, including the payment of wages. McElroy is
19 an employer for purposes of PWA, IWA, MWA, WPA and WRA.

20 3.4. Plaintiff Samantha D. Davis is a resident of Spanaway, Washington and was
21 formerly employed by Defendants providing restoration and other services to Defendants'
22 customers.

23 **IV. FACTUAL ALLEGATIONS**

24 4.1. Plaintiff and members of the putative class are or were employed by Defendants in
25 positions providing restoration and other services to Defendants' customers in Washington on June
26 30, 2019 and thereafter.

1 4.2. Defendants failed to pay Plaintiff and members of the putative class for all hours
2 worked traveling to and from public works jobs at the applicable prevailing wage.

3 4.3. Defendants failed to pay Plaintiff and members of the putative class for all hours
4 worked loading, unloading, handling, and/or processing materials used in public works jobs at the
5 applicable prevailing wage.

6 4.4. Plaintiff and members of the putative class frequently worked over forty hours in a
7 workweek.

8 4.5. Plaintiff and members of the putative class frequently worked over eight hours per
9 workday on public works jobs.

10 4.6. Defendants failed to pay Plaintiff and members of the putative class at a rate of one
11 and one-half times their prevailing rate of pay for all hours worked over eight hours in a workday.

12 4.7. Defendants created and maintained timekeeping systems, work schedules, staffing
13 levels, job requirements, and a working environment that discouraged Plaintiff and members of
14 the putative class from taking rest periods and meal periods in compliance with Washington law.

15 4.8. At times, Plaintiff and members of the putative class were required to work more
16 than three consecutive hours without a rest period.

17 4.9. With respect to Plaintiff and members of the putative class, Defendants failed to
18 establish maintain a process to record of the occurrence, time, and duration of paid rest periods.

19 4.10. With respect to Plaintiff and members of the putative class, Defendants failed to
20 maintain accurate records of the occurrence, time, and duration of paid rest periods.

21 4.11. With respect to Plaintiff and members of the putative class, Defendants failed to
22 provide a process to report instances of when they were required to work over three consecutive
23 hours without a rest period, when they did not receive a rest period in at least a ten-minute duration
24 for each four hours worked.

25 4.12. Defendants did not ensure Plaintiff and members of the putative class received a
26 ten-minute rest period on the employer's time for every four hours worked.

1 4.13. Defendants did not compensate Plaintiff and members of the putative class for an
2 additional ten minutes of work for each instance it required them to work greater than three
3 consecutive hours without a rest period, provided a rest period in a duration of less than ten
4 minutes, or did not provide a rest period of at least ten minutes in duration for each four hours
5 worked.

6 4.14. Plaintiff and members of the putative class worked shifts greater than five hours in
7 length and, at times, were not provided and did not waive their rights to meal periods in compliance
8 with Washington law.

9 4.15. At times, Plaintiff and members of the putative class worked more than five
10 consecutive hours without a meal period.

11 4.16. Defendants did not compensate Plaintiff and members of the putative class for an
12 additional thirty minutes of work for each time it required them to work shifts greater than five
13 hours in length and meal periods were not provided, or when Plaintiff and members of the putative
14 class worked more than five consecutive hours without a meal period.

15 4.17. At times when total compensable time, including additional time to compensate for
16 missed or otherwise noncompliant rest and meal periods, totaled over forty in a workweek,
17 Defendants did not pay Plaintiff and members of the putative class one and one-half times their
18 regular rate of pay for all hours over forty in a workweek.

19 4.18. Shortly before her termination, Plaintiff questioned and complained to McElroy
20 and others that wage rates and the calculation of overtime on her paychecks was not correct.

21 4.19. Shortly before her termination, Plaintiff complained to McElroy and others
22 regarding Defendants' unsafe working conditions and unlawful conduct.

23 4.20. Defendants retaliated against Plaintiff by terminating her employment for
24 expressing concerns about her wages not being correct and for complaining about Defendants'
25 unsafe working conditions and unlawful conduct.

1 4.21. Plaintiff's interests in this matter do not conflict with the interests of the putative
2 class.

3 4.22. Plaintiff's counsel is experienced in complex class action litigation and has been
4 appointed class counsel in dozens of cases in Washington courts.

5 V. CLASS ACTION ALLEGATIONS

6 5.1. Plaintiff seeks to represent all individuals employed by Defendants in Washington
7 state at any time from June 30, 2019 and thereafter in positions providing restoration and other
8 services to Defendants' customers.

9 5.2. This action is properly maintainable as a class action under CR 23(a) and (b)(3).

10 5.3. Pursuant to CR 23(a)(1), the class is so numerous that it is impracticable to join all
11 of the members of the class as defined herein as named Plaintiffs.

12 5.4. Pursuant to CR 23(a)(2), there are common questions of law and fact among
13 Plaintiff and members of the putative class including, but not limited to:

14 (1) whether Defendants were required to compensate Plaintiff and members of
15 the putative class for travel time to and from public works jobs at the applicable prevailing wage
16 rate;

17 (2) whether Defendants failed to compensate Plaintiff and members of the
18 putative class for travel time at the applicable prevailing wage rate;

19 (3) whether Defendants were required to compensate Plaintiff and members of
20 the putative class for time spent loading, unloading, or processing materials used in public work
21 jobs at the applicable prevailing wage rate;

22 (4) whether Defendants failed to compensate Plaintiff and members of the
23 putative class for time spent loading, unloading, handling, and/or processing materials used in
24 public work jobs at the applicable prevailing wage rate;

25 (5) whether Defendants were required to keep records of the occurrence, time
26 and duration of rest periods provided to Plaintiff and members of the putative class;

1 (6) whether Defendants failed to keep records of the occurrence, time and
2 duration of rest periods;

3 (7) whether Defendants required or allowed Plaintiff and members of the
4 putative class to work greater than three consecutive hours without a rest period;

5 (8) whether Defendants failed to ensure Plaintiff and members of the putative
6 class received a compliant rest period of at least ten minutes in length, on the employer's time, for
7 each four hours worked;

8 (9) whether Defendants were required to compensate Plaintiff and members of
9 the putative class for an additional ten minutes of work for each instance it required them to work
10 greater than three consecutive hours without a rest period or when it failed to ensure Plaintiff and
11 members of the putative class received a compliant rest period of at least ten minutes in length, on
12 the employer's time, for each four hours worked;

13 (10) whether Defendants failed to compensate Plaintiff and members of the
14 putative class for an additional ten minutes of work for each instance they required them to work
15 greater than three consecutive hours without a rest period or when it failed to ensure Plaintiff and
16 members of the putative class received a compliant rest period of at least ten minutes in length, on
17 the employer's time, for each four hours worked;

18 (11) whether Defendants failed to provide a compliant meal period of at least
19 thirty minutes for shifts greater than five hours in length;

20 (12) whether Defendants failed to compensate for meal periods that were
21 interrupted or were taken in a duration of less than thirty consecutive minutes;

22 (13) whether Plaintiff and members of the putative class, at times, worked
23 greater than five consecutive hours without a meal period;

24 (14) whether Defendants were required to compensate Plaintiff and members of
25 the putative class for an additional thirty minutes of work for each instance it failed to provide a
26

1 compliant meal period of at least thirty minutes for shifts greater than five hours in length or
2 required them to work greater than five consecutive hours without a meal period;

3 (15) whether Defendants failed to compensate Plaintiff and members of the
4 putative class for an additional thirty minutes of work for each instance it failed to provide a
5 compliant meal period of at least thirty minutes for shifts greater than five hours in length or
6 required them to work greater than five consecutive hours without a meal period;

7 (16) whether Defendants failed to pay Plaintiff and members of the putative class
8 one and one-half their regular rate of pay for all hours over forty in a workweek, inclusive of the
9 additional time to compensate for noncompliant or missed meal and rest periods; and

10 (17) whether Defendants acted willfully and with the intent of depriving Plaintiff
11 and members of the putative class of wages or other compensation.

12 5.5. Pursuant to CR 23(a)(3), the named Plaintiff's claims are typical of the claims of
13 all class members or of Defendants' anticipated defenses thereto.

14 5.6. The named Plaintiff and his counsel will fairly and adequately protect the interests
15 of the class as required by CR 23(a)(4).

16 5.7. Pursuant to CR 23(b)(3), class certification is appropriate here because questions
17 of law or fact common to members of the class predominate over any questions affecting only
18 individual members, and because a class action is superior to other available methods for the fair
19 and efficient adjudication of the controversy.

20 **VI. FIRST CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY**
21 **PREVAILING WAGES IN VIOLATION OF THE WASHINGTON PUBLIC**
22 **WORKS ACT AND WAGE PAYMENT ACT**

23 6.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

24 6.2. Defendants violated the Washington State Public Works Act, RCW 39.12 and Wage
25 Payment Act, RCW 49.48, by failing to pay Plaintiff and members of the putative class at the
26 applicable prevailing wage rates for traveling to and from public works jobs.

1 6.3. Defendants violated the Washington State Public Works Act, RCW 39.12 and Wage
2 Payment Act, RCW 49.48, by failing to pay Plaintiff and members of the putative class at the
3 applicable prevailing wage rates for loading, unloading, handling, and/or processing materials used
4 in public works jobs.

5 6.4. As a result of Defendants' acts and omissions, Plaintiff and members of the putative
6 class have been damaged in amounts as will be proven at trial.

7 **VII. SECOND CAUSE OF ACTION – CLASSWIDE FAILURE TO ENSURE**
8 **REST PERIODS IN VIOLATION OF THE WASHINGTON INDUSTRIAL**
9 **WELFARE ACT AND FAILURE TO COMPENSATE FOR VIOLATIONS IN**
 VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT AND
 WASHINGTON WAGE PAYMENT ACT

10 7.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

11 7.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing
12 regulation, WAC 296-126-092, require employers to provide a rest period of not less than ten
13 minutes, on the employer's time, for each four hours of working time.

14 7.3. Employees have an implied cause of action for violations of RCW 49.12 to protect
15 them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow*
16 *Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

17 7.4. A rest period violation is a wage violation with employees entitled to ten minutes
18 of additional compensation for each instance they are required to work longer than three
19 consecutive hours without a rest break. *Id* at 849.

20 7.5. Defendants violated the IWA and its implementing regulation by failing to ensure
21 Plaintiff and members of the putative class received a ten-minute paid rest period for every four
22 hours worked and by failing to keep records of the occurrence, time and duration of rest periods
23 taken, by failing to implement a process for Plaintiff and members of the putative class to report
24 missed or otherwise noncompliant rest periods and by creating work schedules, staffing levels and
25 conditions of work that discouraged paid rest periods.

1 7.6. Defendants violated the MWA and WPA when it failed to compensate Plaintiff and
2 members of the putative class for an additional ten minutes of work for each instance a rest period
3 was not provided in compliance with IWA.

4 7.7. As a result of Defendants' acts and omissions, Plaintiff and members of the putative
5 class have been damaged in amounts as will be proven at trial.

6 **VIII. THIRD CAUSE OF ACTION – CLASSWIDE FAILURE TO PROVIDE**
7 **MEAL PERIODS IN VIOLATION OF THE WASHINGTON INDUSTRIAL**
8 **WELFARE ACT AND FAILURE TO COMPENSATE FOR VIOLATIONS OF**
9 **THE WASHINGTON MINIMUM WAGE ACT AND WASHINGTON WAGE**
10 **PAYMENT ACT**

11 8.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

12 8.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing
13 regulation, WAC 296-126-092, require employers to provide thirty-minute meal periods to their
14 employees for work shifts greater than five hours in length and prohibits employees from working
15 more than five consecutive hours without a meal period.

16 8.3. Employees have an implied cause of action for violations of RCW 49.12 to protect
17 them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow*
18 *Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

19 8.4. A meal period violation is a wage violation with employees entitled to thirty
20 minutes of additional compensation for each instance they are required to work more than five
21 consecutive hours without a compliant meal period. *Hill v. Garda CL Nw., Inc.*, 191 Wn.2d 553,
22 560 (2018), citing *Hill v. Garda CL Nw., Inc.*, 198 Wn.App 326, 361 (2017).

23 8.5. Defendants violated the IWA and its implementing regulation by failing to provide
24 Plaintiff and members of the putative class with compliant thirty-minute meal periods and by
25 creating work schedules, staffing levels and conditions of work that discouraged compliant meal
26 periods.

1 8.6. Defendants violated the MWA and WPA when it failed to compensate Plaintiff and
2 members of the putative class for thirty minutes of work for each instance a meal period was not
3 provided in compliance with the IWA.

4 8.7. As a result of Defendants' acts and omissions, Plaintiff and members of the putative
5 class have been damaged in amounts as will be proven at trial.

6 **IX. FOURTH CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY
7 OVERTIME IN VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT**

8 9.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

9 9.2. On days where Plaintiff and members of the putative class worked on public works
10 projects over eight hours, Defendants violated RCW 49.28.010 et seq by failing to pay Plaintiff
11 and members of the putative class one and one-half times their prevailing rate of pay for those
12 hours.

13 9.3. In weeks where the total number of compensable hours including additional
14 compensable time for Defendants' failure to provide rest periods and meal periods exceeded forty,
15 Defendants violated the Washington State Minimum Wage Act, RCW 49.46.130, by failing to pay
16 Plaintiff and members of the putative one and one-half times their regular rate of pay for those
17 hours.

18 9.4. As a result of Defendants' acts and omissions, Plaintiff and members of the putative
19 class have been damaged in amounts as will be proven at trial.

20 **X. FIFTH CAUSE OF ACTION – CLASSWIDE WILLFUL WITHHOLDING OF
21 WAGES IN VIOLATION OF THE WASHINGTON WAGE REBATE ACT**

22 10.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

23 10.2. By the foregoing, Defendants' actions and omissions are presumed to be willful
24 pursuant to RCW 49.52.080 and do constitute willful pursuant to RCW 49.52.080 and do constitute
25 willful withholding of wages due in violation of RCW 49.52.050 and 070.

26 10.3. As a result of Defendants' acts and omissions, Plaintiff and members of the putative
class have been damaged in amounts as will be proven at trial.

1 **XI. SEVENTH CAUSE OF ACTION – WRONGFUL TERMINATION IN**
2 **VIOLATION OF PUBLIC POLICY**

3 11.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

4 11.2. As illustrated by RCW 49.17, Washington has a clear public policy to prevent
5 personal injuries and illnesses arising out of conditions of employment and unlawful conduct.

6 11.3. Allowing employers to retaliate against employees who report unsafe conditions of
7 employment and unlawful conduct would violate and frustrate clear public policy.

8 11.4. As illustrated by RCW 49.46.100, Washington has a clear public policy to prevent
9 retaliation against employees who make complaints about unpaid wages.

10 11.5. Allowing employers to retaliate against employees who complain that they have
11 not been paid all wages due would violate and frustrate clear public policy.

12 11.6. When Defendants terminated Plaintiff’s employment as a result of reporting safety
13 violations and unlawful conduct and for complaining that wages were calculated incorrectly, they
14 committed the tort or wrongful termination in violation of public policy.

15 11.7. As a result of Defendants’ acts and omissions, Plaintiff has been damaged in
16 amounts as will be proven at trial.

17 **XII. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff requests this Court enter an order against Defendants, jointly
19 and severally, granting the following relief:

20 A. Certification of this case as a class action pursuant to CR 23(a) and (b)(3);

21 B. Damages for unpaid wages due to Plaintiff and members of the putative class in
22 amounts to be proven at trial;

23 C. Exemplary damages in amounts equal to the unpaid wages due to Plaintiff and
24 members of the putative class pursuant to RCW 49.52.070;

25 D. Reinstatement of Plaintiff’s employment with Defendants;

1 E. Damages for Plaintiff's lost wages as a result of wrongful termination in amounts
2 to be proven at trial;

3 F. Damages for Plaintiff's emotional distress caused by wrongful termination in
4 amounts to be proven at trial;

5 G. Attorneys' fees and costs pursuant to RCW 49.46.090, 49.48.030, and 49.52.070;

6 H. Additional Attorney's fees pursuant to all applicable factors outlined in *Bowers v.*
7 *Transamerica Title Ins.*, 100 Wn.2d 581, 593-597 (1983);

8 I. Prejudgment interest pursuant to RCW 19.52.010; and

9 J. Such other and further relief as the Court deems just and proper.

10
11 DATED this 30th Day of June, 2022.

12 ENTENTE LAW PLLC

13 s/ James B. Pizl
14 James B. Pizl, WSBA #28969