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CONSTANCE R. WHITE
COUNTY CLERK
NO: 23-2-05017-2

The Honorable Stanley J. Rumbaugh
Trial Date: August 22, 2024

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

THOMAS A. PEARSON and DAVID
DAVIES, individually and on behalf of all
those similarly situated,

Plaintiffs,

vs.

OLSON BROTHERS PRO-VAC, LLC, a
Washington Limited Liability Company,

Defendant.

No. 23-2-05017-2

SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES

Plaintiffs claim against Defendant as follows:

I. NATURE OF ACTION

1.1. Plaintiffs Thomas A. Pearson and David Davies individually and on behalf of all individuals currently or formerly employed by Defendant Olson Brothers Pro-Vac, LLC in Washington state at any time from February 24, 2020, and thereafter in positions performing work at Defendant's customer locations and paid on an hourly basis, brings this action for money damages and statutory penalties for violations of the Washington Public Works Act ("PWA"), RCW 39.12, Hours of Labor Act, RCW 49.28, "HLA", Industrial Welfare Act ("IWA"), RCW 49.12, Minimum Wage Act ("MWA"), RCW 49.46, Wage Payment Act ("WPA"), RCW 49.48, and Wage Rebate Act ("WRA"), RCW 49.52.

1 4.1.2 Subclass: All Class members who traveled to/from and worked onside at one
2 or more Public Works jobs during their employment with Defendant.

3 4.2. This action is properly maintainable as a class action under CR 23(a) and (b)(3).

4 4.3. Pursuant to CR 23(a)(1), it is impracticable to join all of the members of the class
5 and subclass as defined herein as named plaintiffs.

6 4.4. Pursuant to CR 23(a)(2), there are common questions of law and fact among
7 Plaintiffs and members of the putative class including, but not limited to:

8 (1) whether Defendant was required to keep records of the occurrence, time and
9 duration of any rest periods provided to Plaintiffs and members of the putative class;

10 (2) whether Defendant failed to keep records of the occurrence, time, and
11 duration of any rest periods provided to Plaintiffs and members of the putative class;

12 (3) whether Defendant required Plaintiffs and members of the putative class to
13 work greater than three consecutive hours without a rest period;

14 (4) whether Defendant failed to ensure Plaintiffs and members of the putative
15 class received a compliant rest period of at least ten minutes in length, on the employer's time, for
16 each four hours worked;

17 (5) whether Defendant was required to compensate Plaintiffs and members of
18 the putative class for an additional ten minutes of work for each instance it required them to work
19 greater than three consecutive hours without a rest period or when it failed to ensure Plaintiff and
20 members of the putative class received a compliant rest period of at least ten minutes in length, on
21 the employer's time, for each four hours worked;

22 (6) whether Defendant failed to compensate Plaintiffs and members of the
23 putative class for an additional ten minutes of work for each instance it required them to work
24 greater than three consecutive hours without a rest period or when it failed to ensure Plaintiff and
25 members of the putative class received a compliant rest period of at least ten minutes in length, on
26 the employer's time, for each four hours worked;

1 (7) whether Defendant failed to provide a compliant meal period of at least
2 thirty minutes for shifts worked by Plaintiffs and members of the putative class in a duration of
3 greater than five hours;

4 (8) whether Plaintiffs and members of the putative class, at times, worked
5 greater than five consecutive hours without a meal period;

6 (9) whether Defendant was required to compensate Plaintiffs and members of
7 the putative class for an additional thirty minutes of work for each instance it failed to provide a
8 compliant meal period of at least thirty minutes for shifts greater than five hours in length or
9 required them to work greater than five consecutive hours without a meal period;

10 (10) whether Defendant failed to compensate Plaintiffs and members of the
11 putative class for an additional thirty minutes of work for each instance it failed to provide a
12 compliant meal period of at least thirty minutes for shifts greater than five hours in length or
13 required them to work greater than five consecutive hours without a meal period;

14 (11) whether Defendant was required to pay Plaintiffs and members of the
15 putative class for sick leave taken at the hourly rate they would have earned during the time they
16 used paid sick leave, or if that rate cannot be identified, the average hourly rate of pay in the current
17 or preceding 30 days, whichever yields the higher hourly rate;

18 (12) whether Defendant failed to pay Plaintiffs and members of the putative class
19 for sick leave taken at the hourly rate they would have earned during the time they used paid sick
20 leave or, if that rate couldn't be identified, the average hourly rate of pay in the current or preceding
21 30 days, whichever yielded the higher hourly rate;

22 (13) whether Defendant's failure to pay Plaintiffs and members of the putative
23 class for sick leave taken at the hourly rate they would have earned during the time they used paid
24 sick leave or, if that rate couldn't be identified, the average hourly rate of pay in the current or
25 preceding 30 days, whichever yielded the higher hourly rate was willful and with the intent to
26 deprive them of wages;

1 (14) whether Defendant was required to compensate Plaintiffs and members of
2 the putative subclass for travel time at the applicable prevailing wage rate;

3 (15) whether Defendant failed to compensate Plaintiffs and members of the
4 putative subclass for travel time at the applicable prevailing wage rate;

5 (16) whether Defendant was required to compensate Plaintiffs and members of
6 the putative subclass for time spent loading, unloading, or processing materials used in public work
7 jobs at the applicable prevailing wage rate;

8 (17) whether Defendant failed to compensate Plaintiffs and members of the
9 putative subclass for time spent loading, unloading, handling, and/or processing materials used in
10 public work jobs at the applicable prevailing wage rate;

11 (18) whether Defendant's failure to compensate Plaintiffs and members of the
12 putative subclass for time spent loading, unloading, handling, and/or processing materials used in
13 public work jobs at the applicable prevailing wage rate was willful and with the intent to deprive
14 them of wages;

15 (19) whether Defendant was required to pay Plaintiffs and members of the
16 putative subclass for all hours worked on public works jobs over eight hours in a workday at a rate
17 of one and one-half times the applicable prevailing wage rate;

18 (20) whether Defendant failed to pay Plaintiffs and members of the putative
19 subclass for all hours worked on public works jobs over eight hours in a workday at a rate of one
20 and one-half times the applicable prevailing wage rate;

21 (21) whether Defendant's failure to pay Plaintiffs and members of the putative
22 class for all hours worked on public works jobs over eight hours in a workday at a rate of one and
23 one-half times the applicable prevailing wage rate was willful and with the intent to deprive them
24 of wages;

1 (22) whether Defendant was required to pay Plaintiffs and members of the
2 putative class for all hours worked over forty in a workweek at one and one-half times their regular
3 rate of pay;

4 (23) whether Defendant failed to pay Plaintiffs and members of the putative class
5 for all hours worked over forty in a workweek at one and one-half times their regular rate of pay;
6 and

7 (24) whether Defendant's failure to pay Plaintiffs and members of the putative
8 class for all hours worked over forty in a workweek at one and one-half times their regular rate of
9 pay was willful and with the intent to deprive them of wages;

10 4.5. Pursuant to CR 23(a)(3), the named Plaintiffs' claims are typical of the claims of
11 all class members or of Defendant's anticipated defenses thereto.

12 4.6. The named Plaintiffs and their counsel will fairly and adequately protect the
13 interests of the class as required by CR 23(a)(4).

14 4.7. Pursuant to CR 23(b)(3), class certification is appropriate here because questions
15 of law or fact common to members of the class predominate over any questions affecting only
16 individual members, and because a class action is superior to other available methods for the fair
17 and efficient adjudication of the controversy.

18 V. FACTUAL ALLEGATIONS

19 5.1. Plaintiffs and members of the putative class are or were employed by Defendant in
20 Washington state at any time from February 24, 2020, and thereafter in positions performing work
21 at Defendant's customer locations and paid on an hourly basis.

22 5.2. Defendant failed to pay Plaintiffs and members of the putative subclass for all time
23 spent traveling to and from public works jobs at the applicable prevailing wage rates.

24 5.3. Defendant failed to pay Plaintiffs and members of the putative subclass for all time
25 spent loading, unloading, handling, and/or processing materials used in public works jobs at the
26 applicable prevailing wage.

1 5.4. Defendant created and maintained timekeeping systems, work schedules, staffing
2 levels, job requirements and a working environment that discouraged Plaintiffs and members of
3 the putative class from taking rest periods and meal periods in compliance with Washington law.

4 5.5. At times, Plaintiffs and members of the putative class were required to work more
5 than three consecutive hours without a rest period.

6 5.6. With respect to Plaintiffs and members of the putative class, Defendant failed to
7 establish maintain a process to record of the occurrence, time, and duration of paid rest periods.

8 5.7. With respect to Plaintiffs and members of the putative class, Defendant failed to
9 maintain accurate records of the occurrence, time, and duration of paid rest periods.

10 5.8. With respect to Plaintiffs and members of the putative class, Defendant failed to
11 provide a process to report instances of when they were required to work over three consecutive
12 hours without a rest period, when they did not receive a rest period in at least a ten-minute duration
13 for each four hours worked.

14 5.9. Defendant did not ensure Plaintiffs and members of the putative class received a
15 ten-minute rest period on the employer's time for every four hours worked.

16 5.10. Defendant did not compensate Plaintiffs and members of the putative class for an
17 additional ten minutes of work for each instance it required them to work greater than three
18 consecutive hours without a rest period, provided a rest period in a duration of less than ten
19 minutes, or did not provide a rest period of at least ten minutes in duration for each four hours
20 worked.

21 5.11. Plaintiffs and members of the putative class worked shifts greater than five hours
22 in length and, at times, were not provided and did not waive their rights to meal periods in
23 compliance with Washington law.

24 5.12. At times, Plaintiffs and members of the putative class worked more than five
25 consecutive hours without a meal period.
26

1 5.13. Defendant did not compensate Plaintiffs and members of the putative class for an
2 additional thirty minutes of work for each time it required them to work shifts greater than five
3 hours in length and meal periods were not provided, or when Plaintiffs and members of the putative
4 class worked more than five consecutive hours without a meal period.

5 5.14. At times when total compensable time, including additional time to compensate for
6 missed or otherwise noncompliant meal and rest periods totaled over forty in a workweek,
7 Defendant did not pay Plaintiffs and members of the putative class one and one-half times their
8 regular rate of pay for all hours over forty in a workweek.

9 5.15. There is no bona fide dispute of whether Defendant was required to pay Plaintiffs
10 and members of the putative class for travel to and from public works jobsites and for loading,
11 unloading, handling, and/or processing materials used in public works jobs at the applicable
12 prevailing wage rate.

13 5.16. Defendant's failure to pay Plaintiffs and members of the putative class for travel to
14 and from public works jobsites and for loading, unloading, handling, and/or processing materials
15 used in public works jobs at the applicable prevailing wage rate was deliberate and intentional and
16 not the result of administrative or clerical errors.

17 5.17. When time spent traveling to and from public works jobsites and loading,
18 unloading, handling, and/or processing materials used in public works jobs is considered, Plaintiffs
19 and members of the putative subclass frequently worked over eight hours per workday on public
20 works jobs.

21 5.18. When travel to and from the jobsites and loading, unloading, handling, and/or
22 processing materials used in public works jobs is considered, Defendant failed to pay Plaintiffs
23 and members of the putative subclass at a rate of one and one-half times their prevailing rate of
24 pay when they worked over eight hours in a workday.

1 5.19. There is no bona fide dispute whether Defendant was required to pay Plaintiffs and
2 members of the putative class at a rate of one and one-half times the applicable prevailing rate of
3 pay for all hours worked on public works jobs over eight hours in a workday.

4 5.20. Defendant's failure to pay Plaintiffs and members of the putative class at a rate of
5 one and one-half times the applicable prevailing rate of pay for all hours worked on public works
6 jobs over eight hours in a workday was deliberate and intentional and not the result of
7 administrative or clerical errors.

8 5.21. Plaintiffs and members of the putative class frequently worked over forty hours in
9 a workweek while working for Defendant.

10 5.22. Defendant failed to pay Plaintiffs and members of the putative class at a rate of one
11 and one-half times their regular rate of pay for all hours worked over forty in a workweek.

12 5.23. There is no bona fide dispute whether Defendant was required to pay Plaintiffs and
13 members of the putative class at a rate of one and one-half times their regular rate of pay for all
14 hours worked over forty in a workweek.

15 5.24. Defendant's failure to pay Plaintiffs and members of the putative class at a rate of
16 one and one-half times their regular rate of pay for all hours worked over forty in a workweek was
17 deliberate and intentional and not the result of administrative or clerical errors.

18 5.25. Defendant paid Plaintiffs and members of the putative class for sick leave taken at
19 their base wage rate, not accounting for fluctuating hourly rates paid due to working on prevailing
20 wage jobs.

21 5.26. Defendants failed to pay Plaintiffs and members of the putative class for sick leave
22 taken at the hourly rate they would have earned during the time they used paid sick leave, or if that
23 rate couldn't be identified, the average hourly rate of pay in the current or preceding 30 days,
24 whichever yielded the higher hourly rate.

25 5.27. There is no bona fide dispute whether Defendant was required to pay Plaintiffs and
26 members of the putative class for sick leave taken at the hourly rate they would have earned during

1 the time they used paid sick leave, or if that rate couldn't be identified, the average hourly rate of
2 pay in the current or preceding 30 days, whichever yielded the higher hourly rate

3 5.28. Defendants failure to pay Plaintiffs and members of the putative class for sick leave
4 taken at the hourly rate they would have earned during the time they used paid sick leave, or if that
5 rate couldn't be identified, the average hourly rate of pay in the current or preceding 30 days,
6 whichever yielded the higher hourly rate, was deliberate and intentional and not the result of
7 administrative or clerical errors.

8 5.29. Plaintiffs' interests in this matter do not conflict with the interests of the putative
9 class and subclass.

10 5.30. Plaintiffs' counsel is experienced in complex class action litigation and has been
11 appointed class counsel in dozens of similar wage and hour class action cases.

12 **VI. FIRST CAUSE OF ACTION – CLASSWIDE FAILURE TO ENSURE**
13 **REST PERIODS IN VIOLATION OF THE WASHINGTON INDUSTRIAL**
14 **WELFARE ACT AND FAILURE TO COMPENSATE FOR VIOLATIONS**
IN VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT AND
WASHINGTON WAGE PAYMENT ACT

15 6.1. Plaintiffs restate and reallege the allegations set forth in all preceding paragraphs.

16 6.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing
17 regulation, WAC 296-126-092, require employers to provide a rest period of not less than ten
18 minutes, on the employer's time, for each four hours of working time.

19 6.3. Employees have an implied cause of action for violations of RCW 49.12 to protect
20 them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow*
21 *Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

22 6.4. A rest period violation is a wage violation with employees entitled to ten minutes
23 of additional compensation for each instance they are required to work longer than three
24 consecutive hours without a rest break. *Id* at 849.

25 6.5. Defendant violated the IWA and its implementing regulation by failing to ensure
26 Plaintiffs and members of the putative class received a ten-minute paid rest period for every four

1 hours worked and by failing to keep records of the occurrence, time and duration of rest periods
2 taken, by failing to implement a process for Plaintiffs and members of the putative class to report
3 missed or otherwise noncompliant rest periods and by creating work schedules, staffing levels and
4 conditions of work that discouraged paid rest periods.

5 6.6. Defendant violated the MWA and WPA when it failed to compensate Plaintiffs and
6 members of the putative class for an additional ten minutes of work for each instance a rest period
7 was not provided in compliance with IWA.

8 6.7. As a result of Defendant's acts and omissions, Plaintiffs and members of the
9 putative class have been damaged in amounts as will be proven at trial.

10 **VII. SECOND CAUSE OF ACTION – CLASSWIDE FAILURE TO**
11 **PROVIDE MEAL PERIODS IN VIOLATION OF THE WASHINGTON**
12 **INDUSTRIAL WELFARE ACT AND FAILURE TO COMPENSATE FOR**
13 **VIOLATIONS OF THE WASHINGTON MINIMUM WAGE ACT AND**
14 **WASHINGTON WAGE PAYMENT ACT**

15 7.1. Plaintiffs restate and reallege the allegations set forth in all preceding paragraphs.

16 7.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing
17 regulation, WAC 296-126-092, require employers to provide thirty-minute meal periods to their
18 employees for work shifts greater than five hours in length and prohibits employees from working
19 more than five consecutive hours without a meal period.

20 7.3. Employees have an implied cause of action for violations of RCW 49.12 to protect
21 them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow*
22 *Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

23 7.4. A meal period violation is a wage violation with employees entitled to thirty
24 minutes of additional compensation for each instance they are required to work more than five
25 consecutive hours without a compliant meal period. *Hill v. Garda CL Nw., Inc.*, 191 Wn.2d 553,
26 560 (2018), citing *Hill v. Garda CL Nw., Inc.*, 198 Wn.App 326, 361 (2017).

7.5. Defendant violated the IWA and its implementing regulation by failing to provide
Plaintiffs and members of the putative class with compliant thirty-minute meal periods and by

1 creating work schedules, staffing levels and conditions of work that discouraged compliant meal
2 periods.

3 7.6. Defendant violated the MWA and WPA when it failed to compensate Plaintiffs and
4 members of the putative class for thirty minutes of work for each instance a meal period was not
5 provided in compliance with the IWA.

6 7.7. As a result of Defendant's acts and omissions, Plaintiffs and members of the
7 putative class have been damaged in amounts as will be proven at trial.

8 **VIII. THIRD CAUSE OF ACTION – SUBCLASSWIDE FAILURE TO**
9 **PAY PREVAILING WAGES IN VIOLATION OF THE WASHINGTON**
10 **PUBLIC WORKS ACT, AND WAGE PAYMENT ACT**

11 8.1. Plaintiffs restate and reallege the allegations set forth in all preceding paragraphs.

12 8.2. Defendant violated the Washington State Public Works Act, RCW 39.12 and Wage
13 Payment Act, RCW 49.48, by failing to pay Plaintiffs and members of the putative class at the
14 applicable prevailing wage rates for traveling to and from public works jobs.

15 8.3. Defendant violated the Washington State Public Works Act, RCW 39.12 and Wage
16 Payment Act, RCW 49.48, by failing to pay Plaintiffs and members of the putative subclass at the
17 applicable prevailing wage rates for loading, unloading, handling, and/or processing materials used
18 in public works jobs.

19 8.4. As a result of Defendant's acts and omissions, Plaintiffs and members of the
20 putative subclass have been damaged in amounts as will be proven at trial.

21 **IX. FOURTH CAUSE OF ACTION – SUBCLASSWIDE FAILURE TO**
22 **PAY OVERTIME IN VIOLATION OF THE WASHINGTON PUBLIC**
23 **WORKS ACT AND HOURS OF LABOR ACT**

24 9.1. Plaintiffs restate and reallege the allegations set forth in all preceding paragraphs.

25 9.2. Defendant violated RCW 49.28.010 et seq by failing to pay Plaintiffs and members
26 of the putative subclass one and one-half times their prevailing rate of pay for hours worked over
eight hours in a workday on public works jobs.

1 9.3. As a result of Defendant's acts and omissions, Plaintiffs and members of the
2 putative subclass have been damaged in amounts as will be proven at trial.

3 **X. FIFTH CAUSE OF ACTION –CLASSWIDE FAILURE TO PAY**
4 **OVERTIME IN VIOLATION OF THE WASHINGTON MINIMUM**
5 **WAGE ACT**

6 10.1. Plaintiffs restate and reallege the allegations set forth in all preceding paragraphs.

7 10.2. In weeks where the total number of compensable hours exceeded forty, Defendant
8 violated the Washington State Minimum Wage Act, RCW 49.46.130, by failing to pay Plaintiffs
9 and members of the putative class one and one-half times their regular rate of pay for all hours
10 over forty in a workweek.

11 10.3. As a result of Defendant's acts and omissions, Plaintiffs and members of the
12 putative class have been damaged in amounts as will be proven at trial.

13 **XI. SIXTH CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY**
14 **SICK LEAVE AT PROPER RATE IN VIOLATION OF THE**
15 **WASHINGTON MINIMUM WAGE ACT**

16 11.1. Plaintiffs restate and realleges the allegations set forth in all preceding paragraphs.

17 11.2. The Washington Minimum Wage Act, RCW 49.46.200, and its implementing
18 regulation, WAC 296-128-670, require employers to pay for sick leave hours taken at the rate of
19 pay the employee would have earned during the period in which the sick leave is used and, if that
20 rate cannot be identified, the average hourly rate of pay in the current or preceding thirty days,
21 whichever yields the higher hourly rate.

22 11.3. Defendant violated the Washington State Minimum Wage Act, RCW 49.46.200 by
23 failing to pay Plaintiffs and members of the putative class for sick leave taken at the hourly rate
24 they would have earned during the time they used paid sick leave, or if that rate couldn't be
25 identified, the average hourly rate of pay in the current or preceding 30 days, whichever yielded
26 the higher hourly rate.

 11.4. As a result of Defendant's acts and omissions, Plaintiffs and members of the
putative class have been damaged in amounts as will be proven at trial.

1 **CERTIFICATE OF SERVICE**

2 I certify that I caused to be served in the manner noted below a copy of the foregoing
3 Second Amended Class Action Complaint for Damages on the following individual(s):

4 *Counsel for Defense:*

5 Susan K. Stahlfeld, WSBA #22003
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17 DATED: November 8, 2023, at Puyallup, Washington.

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