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

The Honorable Stanley J. Rumbaugh  
Trial Date: August 2, 2024

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

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

Plaintiff,

vs.

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

Defendant.

No. 23-2-05017-2

FIRST AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES

Plaintiff claims against Defendant as follows:

**I. NATURE OF ACTION**

1.1. Plaintiff Thomas A. Pearson, individually and on behalf of all individuals currently or formerly employed by Defendant Olson Brothers Pro-Val, 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.

## II. JURISDICTION AND VENUE

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

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

2.3. Defendant maintains its principal place of business in Pierce County, transacts business in Pierce County, and at least some of the acts and omissions alleged in this Complaint took place in the State of Washington and Pierce County.

## III. PARTIES

3.1. Defendant Olson Brothers Pro-Vac, LLC ("Pro-Vac") is organized under the laws of the state of Washington and maintains its principal place of business in Puyallup, Washington. Pro-Vac is a purveyor of industrial stormwater, sewer maintenance, and hydro-excavation services under private and public works contracts in Washington. Pro-Vac is an employer for the purposes of PWA, HLA, IWA, MWA, WPA and WRA.

3.2. Plaintiff Thomas A. Pearson is a resident of Puyallup, Washington and was formerly employed by Defendant as an hourly-paid worker and as part of his employment traveled to and from and performed work on both public works and private, non-public works jobs.

## IV. CLASS ACTION ALLEGATIONS

4.1. Pursuant to Civil Rule 23, Plaintiff brings this case as a class action against Defendant on behalf of a Class and Subclass as defined as follows:

4.1.1 Class: All individuals currently or formerly employed by Defendant 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.

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

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

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

3           4.4. Pursuant to CR 23(a)(2), there are common questions of law and fact among  
4 Plaintiff and members of the putative class including, but not limited to:

5                   (1) whether Defendant was required to keep records of the occurrence, time and  
6 duration of rest periods provided to Plaintiff and members of the putative class;

7                   (2) whether Defendant failed to keep records of the occurrence, time and  
8 duration of rest periods;

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

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

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

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

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

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

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

11          (11)    whether Defendant was required to compensate Plaintiff and members of  
12 the putative subclass for travel time at the applicable prevailing wage rate;

13          (12)    whether Defendant failed to compensate Plaintiff and members of the  
14 putative subclass for travel time at the applicable prevailing wage rate;

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

18          (14)    whether Defendant failed to compensate Plaintiff and members of the  
19 putative subclass for time spent loading, unloading, handling, and/or processing materials used in  
20 public work jobs at the applicable prevailing wage rate;

21          (15)    whether Defendant's failure to compensate Plaintiff and members of the  
22 putative subclass for time spent loading, unloading, handling, and/or processing materials used in  
23 public work jobs at the applicable prevailing wage rate was willful and with the intent to deprive  
24 them of wages;

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

4 (17) whether Defendant failed to pay Plaintiff and members of the putative class  
5 for all hours worked on public works jobs over eight hours in a workday at a rate of one and one-  
6 half times the applicable prevailing wage rate;

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

11 (19) whether Defendant was required to pay Plaintiff and members of the  
12 putative class for all hours worked over forty in a workweek at one and one-half times their regular  
13 rate of pay;

14 (20) whether Defendant failed to pay Plaintiff and members of the putative class  
15 for all hours worked over forty in a workweek at one and one-half times their regular rate of pay;  
16 and

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

20 4.5. Pursuant to CR 23(a)(3), the named Plaintiff's claims are typical of the claims of  
21 all class members or of Defendant's anticipated defenses thereto.

22 4.6. The named Plaintiff and his counsel will fairly and adequately protect the interests  
23 of the class as required by CR 23(a)(4).

24 4.7. Pursuant to CR 23(b)(3), class certification is appropriate here because questions  
25 of law or fact common to members of the class predominate over any questions affecting only  
26

1 individual members, and because a class action is superior to other available methods for the fair  
2 and efficient adjudication of the controversy.

### 3 V. FACTUAL ALLEGATIONS

4 5.1. Plaintiff and members of the putative class are or were employed by Defendant in  
5 Washington state at any time from February 24, 2020, and thereafter in positions performing work  
6 at Defendant's customer locations and paid on an hourly basis.

7 5.2. Defendant failed to pay Plaintiff and members of the putative class for all time spent  
8 traveling to and from public works jobs at the applicable prevailing wage rates.

9 5.3. Defendant failed to pay Plaintiff and members of the putative sub class for all time  
10 spent loading, unloading, handling, and/or processing materials used in public works jobs at the  
11 applicable prevailing wage.

12 5.4. Defendant created and maintained timekeeping systems, work schedules, staffing  
13 levels, job requirements and a working environment that discouraged Plaintiff and members of the  
14 putative class from taking rest periods and meal periods in compliance with Washington law.

15 5.5. At times, Plaintiff and members of the putative class were required to work more  
16 than three consecutive hours without a rest period.

17 5.6. With respect to Plaintiff and members of the putative class, Defendant failed to  
18 establish maintain a process to record of the occurrence, time, and duration of paid rest periods.

19 5.7. With respect to Plaintiff and members of the putative class, Defendant failed to  
20 maintain accurate records of the occurrence, time, and duration of paid rest periods.

21 5.8. With respect to Plaintiff and members of the putative class, Defendant 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 5.9. Defendant did not ensure Plaintiff and members of the putative class received a ten-  
26 minute rest period on the employer's time for every four hours worked.

1           5.10. Defendant 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           5.11. 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           5.12. At times, Plaintiff and members of the putative class worked more than five  
10 consecutive hours without a meal period.

11           5.13. Defendant 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           5.14. At times when total compensable time, including additional time to compensate for  
16 missed or otherwise noncompliant meal and rest periods totaled over forty in a workweek,  
17 Defendant 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           5.15. There is no bona fide dispute of whether Defendant was required to pay Plaintiff  
20 and members of the putative class for travel to and from public works jobsites and for loading,  
21 unloading, handling, and/or processing materials used in public works jobs at the applicable  
22 prevailing wage rate.

23           5.16. Defendant's failure to pay Plaintiff and members of the putative class for travel to  
24 and from public works jobsites and for loading, unloading, handling, and/or processing materials  
25 used in public works jobs at the applicable prevailing wage rate was deliberate and intentional and  
26 not the result of administrative or clerical errors.

1           5.17. When time spent traveling to and from public works jobsites and loading,  
2 unloading, handling, and/or processing materials used in public works jobs is considered, Plaintiff  
3 and members of the putative subclass frequently worked over eight hours per workday on public  
4 works jobs.

5           5.18. When travel to and from the jobsites and loading, unloading, handling, and/or  
6 processing materials used in public works jobs is considered, Defendant failed to pay Plaintiff and  
7 members of the putative subclass at a rate of one and one-half times their prevailing rate of pay  
8 when they worked over eight hours in a workday.

9           5.19. There is no bona fide dispute whether Defendant was required to pay Plaintiff and  
10 members of the putative class at a rate of one and one-half times the applicable prevailing rate of  
11 pay for all hours worked on public works jobs over eight hours in a workday.

12           5.20. Defendant's failure to pay Plaintiff and members of the putative class at a rate of  
13 one and one-half times the applicable prevailing rate of pay for all hours worked on public works  
14 jobs over eight hours in a workday was deliberate and intentional and not the result of  
15 administrative or clerical errors.

16           5.21. Plaintiff and members of the putative class frequently worked over forty hours in a  
17 workweek while working for Defendant.

18           5.22. Defendant failed to pay Plaintiff and members of the putative class at a rate of one  
19 and one-half times their regular rate of pay for all hours worked over forty in a workweek.

20           5.23. There is no bona fide dispute whether Defendant was required to pay Plaintiff and  
21 members of the putative class at a rate of one and one-half times their regular rate of pay for all  
22 hours worked over forty in a workweek.

23           5.24. Defendant's failure to pay Plaintiff and members of the putative class at a rate of  
24 one and one-half times their regular rate of pay for all hours worked over forty in a workweek was  
25 deliberate and intentional and not the result of administrative or clerical errors.



1           5.25. Plaintiff's interests in this matter do not conflict with the interests of the putative  
2 class and subclass.

3           5.26. Plaintiff's counsel is experienced in complex class action litigation and has been  
4 appointed class counsel in dozens of wage and hour class action cases.

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

10           6.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

11           6.2. 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           6.3. 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           6.4. 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           6.5. Defendant 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.

26           6.6. Defendant violated the MWA and WPA when it failed to compensate Plaintiff and  
members of the putative class for an additional ten minutes of work for each instance a rest period  
was not provided in compliance with IWA.

1           6.7. As a result of Defendant’s acts and omissions, Plaintiff and members of the putative  
2 class have been damaged in amounts as will be proven at trial.

3           **VII. SECOND CAUSE OF ACTION – CLASSWIDE FAILURE TO**  
4           **PROVIDE MEAL PERIODS IN VIOLATION OF THE WASHINGTON**  
5           **INDUSTRIAL WELFARE ACT AND FAILURE TO COMPENSATE FOR**  
6           **VIOLATIONS OF THE WASHINGTON MINIMUM WAGE ACT AND**  
7           **WASHINGTON WAGE PAYMENT ACT**

8           7.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

9           7.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing  
10 regulation, WAC 296-126-092, require employers to provide thirty-minute meal periods to their  
11 employees for work shifts greater than five hours in length and prohibits employees from working  
12 more than five consecutive hours without a meal period.

13           7.3. Employees have an implied cause of action for violations of RCW 49.12 to protect  
14 them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow*  
15 *Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

16           7.4. A meal period violation is a wage violation with employees entitled to thirty  
17 minutes of additional compensation for each instance they are required to work more than five  
18 consecutive hours without a compliant meal period. *Hill v. Garda CL Nw., Inc.*, 191 Wn.2d 553,  
19 560 (2018), citing *Hill v. Garda CL Nw., Inc.*, 198 Wn.App 326, 361 (2017).

20           7.5. Defendant violated the IWA and its implementing regulation by failing to provide  
21 Plaintiff and members of the putative class with compliant thirty-minute meal periods and by  
22 creating work schedules, staffing levels and conditions of work that discouraged compliant meal  
23 periods.

24           7.6. Defendant violated the MWA and WPA when it failed to compensate Plaintiff and  
25 members of the putative class for thirty minutes of work for each instance a meal period was not  
26 provided in compliance with the IWA.

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

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

4                   8.1.     Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

5                   8.2.     Defendant violated the Washington State Public Works Act, RCW 39.12 and Wage  
6                   Payment Act, RCW 49.48, by failing to pay Plaintiff and members of the putative class at the  
7                   applicable prevailing wage rates for traveling to and from public works jobs.

8                   8.3.     Defendant violated the Washington State Public Works Act, RCW 39.12 and Wage  
9                   Payment Act, RCW 49.48, by failing to pay Plaintiff and members of the putative subclass at the  
10                  applicable prevailing wage rates for loading, unloading, handling, and/or processing materials used  
11                  in public works jobs.

12                 8.4.     As a result of Defendant’s acts and omissions, Plaintiff and members of the putative  
13                  subclass have been damaged in amounts as will be proven at trial.

14                   **IX.     FOURTH CAUSE OF ACTION – SUBCLASSWIDE FAILURE TO**  
15                   **PAY OVERTIME IN VIOLATION OF THE WASHINGTON PUBLIC**  
16                   **WORKS ACT AND HOURS OF LABOR ACT**

17                   9.1.     Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

18                   9.2.     Defendant violated RCW 49.28.010 et seq by failing to pay Plaintiff and members  
19                  of the putative subclass one and one-half times their prevailing rate of pay for hours worked over  
20                  eight hours in a workday on public works jobs.

21                 9.3.     As a result of Defendant’s acts and omissions, Plaintiff and members of the putative  
22                  subclass have been damaged in amounts as will be proven at trial.

23                   **X.     FIFTH CAUSE OF ACTION –CLASSWIDE FAILURE TO PAY**  
24                   **OVERTIME IN VIOLATION OF THE WASHINGTON MINIMUM**  
25                   **WAGE ACT**

26                   10.1.    Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

                  10.2.    In weeks where the total number of compensable hours exceeded forty, Defendant  
                  violated the Washington State Minimum Wage Act, RCW 49.46.130, by failing to pay Plaintiff

1 and members of the putative class one and one-half times their regular rate of pay for all hours  
2 over forty in a workweek.

3 10.3. As a result of Defendant's acts and omissions, Plaintiff and members of the putative  
4 class have been damaged in amounts as will be proven at trial.

5 **XI. SIXTH CAUSE OF ACTION – CLASSWIDE WILLFUL**  
6 **WITHHOLDING OF WAGES IN VIOLATION OF THE WASHINGTON**  
7 **WAGE REBATE ACT**

8 11.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

9 11.2. By the foregoing, Defendant's actions and omissions constitute willful withholding  
10 of wages due in violation of RCW 49.52.050 and 070.

11 11.3. As a result of Defendant's acts and omissions, Plaintiff and members of the putative  
12 class have been damaged in amounts as will be proven at trial.

13 **XII. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff requests this Court enter an order against Defendant granting the  
15 following relief:

- 16 A. Certification of this case as a class action pursuant to CR 23(a) and (b)(3);
- 17 B. Damages for unpaid wages in amounts to be proven at trial;
- 18 C. Exemplary damages in amounts equal to double the unpaid wages due to Plaintiff  
19 and members of the putative class pursuant to RCW 49.52.070;
- 20 D. Attorneys' fees and costs pursuant to RCW 49.46.090, 49.48.030, and 49.52.070;
- 21 E. Prejudgment interest pursuant to RCW 19.52.010; and
- 22 F. Such other and further relief as the Court deems just and proper.

23 DATED this 22nd Day of May, 2023.

24 ENTENTE LAW PLLC

25 s/ James B. Pizl

26 James B. Pizl, WSBA #28969

Ari M. Robbins Greene, WSBA #54201