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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.

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, 2023, 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 4.3. 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, 2023, 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 24th Day of February, 2023.

24 ENTENTE LAW PLLC

25 s/ James B. Pizl

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James B. Pizl, WSBA #28969

Ari M. Robbins Greene, WSBA #54201

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