

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

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

TRISTAN STONE, individually and on
behalf of all others similarly situated,

NO. 15-2-14612-8

and

**PLAINTIFF-INTERVENOR’S CLASS
ACTION COMPLAINT FOR
DAMAGES**

ROY KINGSLEY, on his own behalf and on the
behalf of all others similarly situated,

JURY TRIAL REQUESTED

Plaintiff-Intervenor,

v.

INTERSTATE DISTRIBUTOR CO.,
a Washington Corporation,

Defendant.

Plaintiff-Intervenor, individually and on behalf of all others similarly situated, by and
through his counsel, for his class action complaint against Defendant hereby states and alleges
as follows:

I. INTRODUCTION

1. Defendant Interstate Distributor Co. (“Defendant” or “Interstate”) is a truckload
company that delivers goods for customers by use of trucks. On information and belief,
Defendant has employed more than 150 Washington State driver employees since February 22,

1 2014. Defendant has engaged in a common scheme of wage and hour violations against its
2 driver employees. This scheme has included failing to pay driver employees for the rest breaks
3 to which they are entitled, failing to pay driver employees at least minimum wage for all work
4 performed during mandatory orientation, and failing to pay driver employees for all hours
5 worked. Defendant's willful failure to pay these driver employees their earned wages violates
6 Washington law.

7 2. Plaintiff-Intervenor and the proposed Class members are current and former
8 Washington State driver employees of Defendant who have been victimized by Defendant's
9 unlawful compensation practices. This lawsuit is brought as a class action under state law to
10 recover unpaid wages owed to the individual Plaintiff and all other similarly situated
11 employees.

12 3. Plaintiff-Intervenor originally filed these claims against Defendant on February
13 22, 2017 in King County Superior Court, Case No. 17-2-04226-9 SEA. Plaintiff-Intervenor has
14 not sought to prosecute the King County case since this Court granted leave to intervene.
15 Rather, Plaintiff-Intervenor has been attempting to work cooperatively with Defendant to either
16 ask the King County Superior Court to stay the case filed therein during the pendency of this
17 litigation or to dismiss the case.

18 II. JURISDICTION AND VENUE

19 4. Plaintiff-Intervenor Kingsley was granted leave to intervene and file this
20 complaint by the Court's Order dated May 26, 2017.

21 5. Venue is proper in Pierce County because Plaintiff-Intervenor Kingsley has
22 worked for Defendant in Pierce County where violations alleged herein occurred. In addition,
23 Defendant transacts business in Pierce County and some of the specific acts, as well as the
24 course of conduct alleged herein, occurred in Pierce County.

25 6. The Defendant is within the jurisdiction of this Court. Defendant is
26 incorporated and headquartered in the State of Washington and has operations in Pierce

1 County. Defendant has obtained the benefits of the laws of the State of Washington and the
2 Washington retail and labor markets.

3 7. Federal jurisdiction is inappropriate under the Class Action Fairness Act, 28
4 U.S.C. § 1332(d)(4)(B), because two-thirds or more of the members of all proposed plaintiff
5 classes in the aggregate and Defendant are citizens of the state of Washington.

6 III. PARTIES

7 8. Defendant Interstate is a Washington corporation.

8 9. Named Plaintiff-Intervenor Roy Kingsley has been a resident of the State of
9 Washington during his employment with Defendant Interstate. Mr. Kingsley has worked as a
10 driver for Defendant from July 25, 2016. During his employment with Interstate, Mr. Kingsley
11 has had a commercial driver's license issued by the State of Washington.

12 IV. CLASS ACTION ALLEGATIONS

13 10. Plaintiff-Intervenor brings this case as a class action pursuant to Washington
14 Civil Rule 23 on behalf of a class consisting of:

15 All current and former driver employees of Interstate Distributors
16 Co. who at any time from February 22, 2014 through the date of
17 final disposition, worked as drivers for the company while
residing in the State of Washington.

18 Excluded from this Class are Defendant, any entity in which Defendant has a
19 controlling interest or which has a controlling interest in Defendant, and Defendant's legal
20 representatives, assignees and successors. Also excluded are the Judge(s) to whom this case is
21 assigned and any member of the Judge's immediate family.

22 11. Plaintiff-Intervenor believes there are more than 600 current and former
23 employees in the Class.

24 12. Plaintiff-Intervenor's claims are typical of the claims of the members of the
25 Class because he is a truck driver who, like the members of the Class, sustained damages
26 arising out of Defendant's failure to pay wages.

1 13. Plaintiff-Intervenor will fairly and adequately protect the interests of the Class
2 members. Plaintiff-Intervenor has retained counsel competent and experienced in complex and
3 class action litigation, including employment law.

4 14. Common questions of law and fact exist as to Plaintiff-Intervenor and all
5 members of the Class and predominate over any questions solely affecting individual members
6 of the Class, if any. Among the questions of law and fact common to Plaintiff-Intervenor and
7 the Class are:

8 a. Whether Defendant failed to pay separate compensation to Plaintiff-
9 Intervenor and Class members for rest breaks, whether received or not;

10 b. Whether Defendant failed to pay driver employees at least minimum wage
11 for all work performed during mandatory orientation;

12 c. Whether Defendant failed to properly compensate Plaintiff-Intervenor and
13 the Class for all hours worked, including hours worked while not driving;

14 d. Whether Defendant violated RCW 49.12 *et seq.* as to Plaintiff-Intervenor
15 and the Class;

16 e. Whether Defendant violated RCW 49.46.090 as to Plaintiff-Intervenor and
17 the Class;

18 f. Whether Defendant violated RCW 49.46.130 as to Plaintiff-Intervenor and
19 the Class;

20 g. Whether Defendant violated RCW 49.52.050 as to Plaintiff-Intervenor and
21 the Class;

22 h. Whether Defendant violated WAC 296-126-021 as to Plaintiff-Intervenor
23 and the Class;

24 i. Whether Defendant violated WAC 296-126-092 as to Plaintiff-Intervenor
25 and the Class; and
26

1 j. The nature and extent of class-wide injury and the measure of compensation
2 for such injury.

3 15. Class action treatment is superior to the alternative for the fair and efficient
4 adjudication of the controversy alleged herein. Such treatment will permit a large number of
5 similarly situated persons to prosecute their modest, purely economic, common claims in a
6 single forum simultaneously, efficiently and without duplication of effort and expense that
7 numerous individual actions would entail. No difficulties are likely to be encountered in the
8 management of this class action that would preclude its maintenance as a class action, and no
9 superior alternative exists for the fair and efficient adjudication of this controversy. The Class
10 is readily identifiable from Defendant's records.

11 16. Defendant has acted on grounds generally applicable to the entire Class, thereby
12 making final injunctive relief or corresponding declaratory relief appropriate with respect to the
13 Class as a whole. Prosecution of separate actions by individual members of the Class would
14 create a risk of inconsistent or varying adjudications with respect to individual members of the
15 Class that would establish incompatible standards of conduct for Defendant.

16 17. A class action is superior to other available methods for the fair and efficient
17 adjudication of this controversy since joinder of all matters is impractical. Furthermore, the
18 amounts at stake for many of the class members, while substantial to them, are not great
19 enough to hire an attorney to prosecute individual suits against Defendant.

20 18. Without a class action, Defendant will likely continue its course of illegal action
21 which will cause further damage to Plaintiff and the Class.

22 **V. SUMMARY OF ALLEGATIONS**

23 19. Beginning at a date currently unknown to Plaintiff-Intervenor, but at least as
24 early as February 2014, Defendant committed, and continues to commit, acts of wage abuse
25 against its employees, specifically drivers.

1 29. Rest period constitute “hours worked” and for the purposes of computing
2 overtime, hours spent resting are treated the same as hours spent working.

3 30. Rest periods must be compensated at the appropriate time and one-half rate
4 when it results in overtime pursuant to RCW 49.46.130.

5 31. By the actions alleged above, Defendant has violated the provisions of WAC
6 296-126-092. This, in turn, constitutes a violation of RCW 49.12.010 and RCW 49.12.020. It
7 also constitutes a violation of RCW 49.46.130, to the extent that any rest period resulted in
8 Plaintiff-Intervenor or any Class Member working more than 40 hours in a workweek.

9 32. As a result of the unlawful acts of Defendant, Plaintiff-Intervenor and the Class
10 have been deprived of compensation in amounts to be determined at trial. Pursuant to
11 RCW 49.48.030, Plaintiff-Intervenor and the Class are entitled to recover such damages,
12 including interest thereon, as well as attorneys’ fees and costs.

13 **VII. SECOND CLAIM FOR RELIEF**
14 **(Payment of Wages Less than Entitled: Violation of RCW 49.46.090)**

15 33. Plaintiff-Intervenor and the Class reallege and incorporate by reference each and
16 every allegation set forth in the preceding paragraphs.

17 34. Under RCW 49.46.090, employers must pay employees all wages to which they
18 are entitled under The Washington Minimum Wage Act. If the employer fails to do so, RCW
19 49.46.090 requires that the employer pay the employees the full amount of the statutory
20 minimum wage rate less any amount actually paid to the employees.

21 35. Defendant created a mandatory orientation program for Plaintiff-Intervenor and
22 Class members. Defendant failed to pay Plaintiff-Intervenor and Class members minimum
23 wage for time worked during the mandatory driver orientation program.

24 36. Defendant failed to pay Plaintiff-Intervenor and Class members for time spent
25 on duty not driving—that is, when the drivers were performing work for Defendant other than
26 driving.

1 37. Defendant has also violated the provisions of RCW 49.46.090 by failing to pay
2 Plaintiff and Class members for rest breaks.

3 38. By the actions alleged above, Defendant violated the provisions of RCW
4 49.46.090 by failing to pay any wage whatsoever to Plaintiff-Intervenor and the Class for all of
5 the time they worked, including but not limited to, orientation, driving inspections, load and
6 unload times, fueling, wait times, rest breaks, etc. Defendant failed to pay Plaintiff and the
7 Class at all for certain hours worked and/or failed to pay minimum wage for certain hours
8 worked.

9 39. As a result of the unlawful acts of Defendant, Plaintiff-Intervenor and the Class
10 have been deprived of compensation in amounts to be determined at trial, and pursuant to RCW
11 49.46.090 and 49.48.030, are entitled to recover those damages, including interest thereon, and
12 attorneys' fees and costs.

13 **VIII. THIRD CLAIM FOR RELIEF**
14 **(Willful Refusal to Pay Wages: RCW 49.52.050)**

15 40. Plaintiff-Intervenor and the Class reallege and incorporate by reference each and
16 every allegation set forth in the preceding paragraphs.

17 41. RCW 49.52.050(2) provides that any employer who “willfully and with intent to
18 deprive the employee of any part of his wages, pays any employee a lower wage than the wage
19 such employer is obligated to pay such employee by any statute, ordinance, or contract” is
20 guilty of a misdemeanor.

21 42. RCW 49.52.070 provides that any employer who violates the foregoing statute
22 shall be liable in a civil action for twice the amount of wages withheld, together with costs of
23 suit and reasonable attorneys' fees.

24 43. The alleged unlawful actions by Defendant against Plaintiff-Intervenor and the
25 Class, as set forth above, were committed willfully and with intent to deprive Plaintiff-
26 Intervenor and the Class of part of their wages.

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

RESPECTFULLY SUBMITTED AND DATED this 16th day of June, 2017.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Toby J. Marshall, WSBA #32726
Toby J. Marshall, WSBA #32726
Email: tmarshall@terrellmarshall.com
Erika L. Nusser, WSBA #40854
Email: enusser@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

REKHI & WOLK, P.S.

By: /s/ Gregory A. Wolk, WSBA #28946
Hardeep S. Rekhi, WSBA No. 34579
Email: hardeep@rekhiwolk.com
Gregory A. Wolk, WSBA No. 28946
Email: greg@rekhiwolk.com
529 Warren Avenue North, Suite 201
Seattle, Washington 98109
Telephone: (206) 388-5887
Facsimile: (206) 577-3924

Attorneys for Plaintiff-Intervenor