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2 THE HONORABLE JULIA GARRATT
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6
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 COUNTY OF KING
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10 KRIS HARDIE, individually and on behalf of
all others similarly situated,

11 Plaintiff,

12 v.

13 BEST PARKING LOT CLEANING INC., a
14 Washington Corporation,
15 Defendant.

NO. 17-2-27730-4 KNT

**PLAINTIFF'S SECOND AMENDED
COMPLAINT FOR DAMAGES**

JURY TRIAL REQUESTED

16 Plaintiff Kris Hardie brings this action on his own behalf and on behalf of all others
17 similarly situated, alleging as follows:

18 **I. INTRODUCTION**

19 1.1 Nature of Action. Plaintiff Kris Hardie brings this class action against Best Parking Lot
20 Cleaning Inc. ("Best" or "Defendant"). Plaintiff alleges Best has engaged in a systematic
21 scheme of wage and hour abuse against employees in Washington. These abuses include
22 failing to provide employees with the rest breaks to which they are entitled, failing to provide
23 employees with the meal breaks to which they are entitled, failing to ensure that employees
24 take the rest breaks to which they are entitled, failing to ensure that employees take the meal
25 breaks to which they are entitled, failing to pay employees for all hours worked, failing to pay
26 employees for overtime hours, and failing to pay prevailing wage.

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2 **II. JURISDICTION AND VENUE**

3 2.1 Jurisdiction. Defendant is within the jurisdiction of this Court. Best Parking Lot Cleaning, Inc.
4 is incorporated in Washington, and conducts business in Washington, including King County,
5 Washington. Defendant has obtained the benefits of the laws of Washington as well as
6 Washington's commercial and labor markets.

7 2.2 Venue. Venue is proper in King County because Defendant operates and
8 transacts business in King County, and Plaintiff performed work for Defendant in King County.

9 2.3 Governing Law. The claims asserted on behalf of Plaintiff and Class members
10 in this complaint are brought solely under state law causes of action and are governed
11 exclusively by Washington law.

12 **III. PARTIES**

13 3.1 Plaintiff Kris Hardie. Plaintiff worked as a broom sweeper employee for Best from
14 approximately August 2013 to July 2015. During the duration of his employment, Plaintiff was
15 a resident of Washington. Plaintiff performed his work for Best in King County, Washington.

16 3.2 Defendant Best Parking Lot Cleaning, Inc. Defendant Best Parking Lot
17 Cleaning, Inc. is a Washington Corporation doing business in King County, Washington.
18 Defendant Best employed Plaintiff in King County and the state of Washington and has
19 exercised control over how and when Plaintiff was paid.

20 **IV. CLASS ACTION ALLEGATIONS**

21 4.1 Class Definition: Under Civil Rule 23(a) and (b)(3), Plaintiff brings this case as a class action
22 against Best on behalf of a Class defined as follows:

23 All persons who have worked as non-exempt employees for
24 Defendant in Washington during the statutory time period.

25 Excluded from the Class are any entity in which Defendant has a controlling interest or that has
26 a controlling interest in Defendant, and Defendant's legal representatives, assignees, and

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2 successors. Also excluded is the judge to whom this case is assigned and any member of the
3 judge's immediate family.

4 4.2 Numerosity. Plaintiff believes that more than fifty persons have worked as
5 employees for Best in Washington during the proposed Class period. These Class members are
6 so numerous that joinder of them is impracticable. Moreover, the disposition of the claims of
7 the Class in a single action will provide substantial benefits to all parties and the Court.

8 4.3 Commonality. There are numerous questions of law and fact common to
9 Plaintiff and Class members. These questions include, but are not limited to, the following:

- 10 a. Whether Best has engaged in a common course of failing to provide
11 Class members with a ten-minute rest break for every four hours of
12 work;
13 b. Whether Best has engaged in a common course of requiring Class
14 members to work more than three consecutive hours without a rest
15 break;
16 c. Whether Best has engaged in a common course of failing to ensure Class
17 members have taken the rest breaks to which they are entitled;
18 d. Whether Best has engaged in a common course of failing to pay Class
19 members an additional ten minutes of compensation for each missed rest
20 break;
21 e. Whether Best has engaged in a common course of failing to provide
22 Class members with a thirty-minute meal break for every five hours of
23 work;
24 f. Whether Best has engaged in a common course of failing to ensure that
25 Class members have taken the meal breaks to which they are entitled;
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- g. Whether Best has engaged in a common course of failing to pay Class members an additional thirty minutes of compensation for each missed meal break;
- h. Whether Best has engaged in a common course of failing to pay Class members for all hours worked;
- i. Whether Best has engaged in a common course of failing to pay Class members for overtime hours worked;
- j. Whether Best has engaged in a common course of failing to pay Class members prevailing wage;
- k. Whether Best has violated RCW 49.12.020;
- l. Whether Best has violated WAC 296-126-092;
- m. Whether Best has violated RCW 49.46.090;
- n. Whether Best has violated RCW 49.46.130;
- o. Whether Best has violated RCW 49.28.010;
- p. Whether Best has violated WAC 296-128-010;
- q. Whether Best has violated WAC 296-128-020;
- r. Whether Best has violated WAC 296-126-040;
- s. Whether Best has violated WAC 296-126-050;
- t. Whether Best has violated RCW 39.12.050;
- u. Whether Best has violated WAC 296-127 *et seq.*;
- v. Whether Best has violated RCW 49.48.010;
- w. Whether Best has violated RCW 49.52.050; and
- x. The nature and extent of Class-wide injury and the measure of compensation for such injury.

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2 4.4 Typicality. Plaintiff's claims are typical of the claims of the Class. Plaintiff has
3 performed work for Best in King County, Washington and thus is a member of the Class.
4 Plaintiff's claims, like the claims of the Class, arise out of the same common course of conduct
5 by Best and are based on the same legal and remedial theories.

6 4.5 Adequacy. Plaintiff will fairly and adequately protect the interests of the Class.
7 Plaintiff has retained competent and capable attorneys who have significant experience in
8 complex and class action litigation, including employment law. Plaintiff and his counsel are
9 committed to prosecuting this action vigorously on behalf of the Class and have the financial
10 resources to do so. Neither Plaintiff nor his counsel has interests that are contrary to or that
11 conflict with those of the Class.

12 4.6 Predominance. Best has engaged in a common course of wage and hour abuse
13 toward Plaintiff and members of the Class. The common issues arising from this conduct that
14 affect Plaintiff and members of the Class predominate over any individual issues. Adjudication
15 of these common issues in a single action has important and desirable advantages of judicial
16 economy.

17 4.7 Superiority. Plaintiff and Class members have suffered and will continue to
18 suffer harm and damages as a result of Best's unlawful and wrongful conduct. Absent a class
19 action, however, most Class members likely would find the cost of litigating their claims
20 prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation
21 because it conserves judicial resources, promotes consistency and efficiency of adjudication,
22 provides a forum for small claimants, and deters illegal activities. There will be no significant
23 difficulty in the management of this case as a class action. The Class members are readily
24 identifiable from Best's records.

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V. SUMMARY OF FACTUAL ALLEGATIONS FOR CLASS CLAIMS

5.1 Best Parking lot entered into various contracts with local, state, or federal entities for prevailing wage contracts. Pursuant to those contracts it was required to pay employees and the proposed class members a prevailing wage. Defendant failed to pay its drivers properly pursuant to those contracts.

5.2 Common Course of Conduct: Failure to Provide Proper Rest Breaks. Best has engaged in a common course of failing to provide Plaintiff and Class members with a paid ten-minute rest break for every four hours of work.

5.3 Best has engaged in a common course of requiring or permitting Plaintiff and Class members to work more than three consecutive hours without a rest break.

5.4 Best has engaged in a common course of failing to ensure Plaintiff and Class members have taken the rest breaks to which they are entitled.

5.5 Best has engaged in a common course of failing to provide Plaintiff and Class members with ten minutes of additional pay for each missed rest break.

5.6 Common Course of Conduct: Failure to Provide Proper Meal Breaks. Best has engaged in a common course of failing to provide Plaintiff and Class members with a thirty-minute meal break for every five hours of work.

5.7 Best has engaged in a common course of requiring or permitting Plaintiff and Class members to work more than five consecutive hours without a meal break.

5.8 Best has engaged in a common course of failing to ensure Plaintiff and Class members have taken the meal breaks to which they are entitled.

5.9 Best has engaged in a common course of failing to provide Plaintiff and Class members with thirty minutes of additional pay for missed meal breaks.

5.10 Common Course of Conduct: Failure to Pay for all Hours Worked. Best has engaged in a common course of failing to pay Plaintiff and Class members for all hours worked.

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2 5.11 Best has engaged in a common course of failing to properly keep accurate payroll
3 records and ensure Plaintiff and the Class members are properly paid for all hours worked.

4 5.12 Common Course of Conduct: Failure to Pay for all Overtime Hours Worked. Best
5 has engaged in a common course of failing to pay Plaintiff and Class members for all overtime
6 hours worked.

7 5.13 Best has engaged in a common course of failing to properly keep accurate payroll
8 records and ensure Plaintiff and the Class members are properly paid for all overtime hours
9 worked.

10 5.14 Common Course of Conduct: Failure to Pay Prevailing Wage. Best has engaged in
11 a common course of failing to pay prevailing wage on public works projects in which it is party
12 to.

13 5.15 Best has engaged in a common course of failing to keep accurate payroll records
14 and ensuring Plaintiff and Class members are paid prevailing wage for hours worked on
15 projects Best was awarded contracts to.

16 5.16 Best has had actual or constructive knowledge of the facts set forth in Paragraphs
17 above.

18 **VI. FIRST CLAIM FOR RELIEF**
19 **(Violations of RCW 49.12.020 and WAC 296-126-092 and**
20 **Failure to Provide Rest and Meal Periods)**
21 ***On Behalf of Plaintiff and the Class***

22 6.1 Plaintiff realleges and incorporates by reference each and every allegation set forth in the
23 preceding paragraphs.

24 6.2 RCW 49.12.010 provides that “[t]he welfare of the state of Washington
25 demands that all employees be protected from conditions of labor which have a pernicious
26 effect on their health. The state of Washington, therefore, exercising herein its police and
sovereign power declares that inadequate wages and unsanitary conditions of labor exert such
pernicious effect.”

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2 6.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in
3 any industry or occupation within the state of Washington under conditions of labor detrimental
4 to their health.”

5 6.4 Under RCW 49.12.005 and WAC 296-126-002, “conditions of labor” “means
6 and includes the conditions of rest and meal periods” for employees.

7 6.5 WAC 296-126-092 provides that employees shall be allowed certain paid rest
8 periods during their shifts.

9 6.6 WAC 296-126-092 provides that employees shall be allowed certain meal
10 periods during their shifts.

11 6.7 Under Washington law, Best has an obligation to provide employees with the
12 rest and meal breaks to which they are entitled.

13 6.8 Under Washington law, Best has an obligation to ensure that employees take the
14 rest and meal breaks to which they are entitled.

15 6.9 Under Washington law, Best has an obligation to provide employees with ten
16 minutes of additional pay for each missed rest break and thirty minutes of additional pay for
17 each missed meal break.

18 6.10 By the actions alleged above, Best has violated the provisions of RCW
19 49.12.020 and WAC 296-126-092.

20 6.11 As a result of these unlawful acts, the Plaintiff and the Class have been deprived
21 of compensation in amounts to be determined at trial, and the Plaintiff and the Class are entitled
22 to the recovery of such damages, including interest thereon, attorneys’ fees under RCW
23 49.48.030, and costs.

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VII. SECOND CLAIM FOR RELIEF
(Violation of RCW 49.46.090 — Payment of Wages Less than Entitled)
On Behalf of Plaintiff and the Class

7.1 Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

7.2 RCW 49.46.090 provides that “[a]ny employer who pays any employee less than wages to which such employee is entitled under or by virtue of [the Minimum Wage Act], shall be liable to such employee affected for the full amount of such wage rate, less any amount actually paid to such employee by the employer, and for costs and such reasonable attorney's fees as may be allowed by the court.”

7.3 By the actions alleged above, Best has violated the provisions of RCW 49.46.090 by failing to pay wages to Plaintiff and Class members for missed rest and meal breaks, and by failing to pay wages to Plaintiff and the Class members for all straight time hours worked.

7.4 As a result of these unlawful acts, Plaintiff and the Class have been deprived of compensation in amounts to be determined at trial, and Plaintiff and the Class are entitled to the recovery of such damages, including interest thereon, as well as attorneys’ fees and costs under RCW 49.46.090.

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VIII. THIRD CLAIM FOR RELIEF
(Violations of RCW 49.46.130, RCW 49.28.010, and WAC 296-127 et seq.-
Failure to Pay for Overtime Hours)
On Behalf of Plaintiff and the Class

8.1 Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

8.2 RCW 49.46.130 provides that no employer shall employ any of his employees for a workweek longer than 40 hours unless the employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

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2 8.3 RCW 49.28.010 provides that any work performed by contract or subcontract on
3 improvements or works on roads for the state over eight hours per day shall be one and one-
4 half times the rate of pay.

5 8.4 WAC 296-127-022 provides that work performed on public works contracts will
6 not require payment of overtime rates for the first two hours worked in excess of eight hours
7 per day when the employer and employee voluntarily enter into an agreement wherein the
8 employee will work up to ten hours per day in a four-day week to accomplish forty hours of
9 work.

10 8.5 By the actions alleged above, Best has violated the provisions of RCW
11 49.46.130, RCW 49.28.010, and WAC 296-127-022 by failing to pay Plaintiff and the Class
12 members for all overtime hours worked.

13 8.6 As a result of the unlawful acts of Defendant, the Plaintiff has been deprived of
14 overtime compensation in amounts to be determined at trial, and pursuant to RCW 49.46.090
15 and 49.48.030, are entitled to attorneys' fees and costs.

16 **IX. FOURTH CLAIM FOR RELIEF**
17 **(Violations of RCW 39.12.050 and WAC 296-127 et seq.)**
18 **Failure to Pay Prevailing Wage**
19 ***On Behalf of Plaintiff and the Class***

20 9.1 Plaintiff realleges and incorporates by reference each and every allegation set forth in the
21 preceding paragraphs.

22 9.2 RCW 39.12.050 provides "Any contractor or subcontractor who files a false
23 statement or fails to file any statement or record required to be filed ... shall ... forfeit as a civil
24 penalty the sum of five hundred dollars for each false filing or failure to file ..."

25 9.3 WAC 296-127 et seq. provides a guide for the type of work entitled to a prevailing
26 wage rate.

9.4 By the actions alleged above, Best has violated the provisions of RCW 39.12.050
and WAC 296-127 et seq. by failing to pay prevailing wage.

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2 9.5 As a result of the unlawful acts of Defendant, Plaintiff and members of the Class
3 have been deprived of compensation in amounts to be determined at trial, and Plaintiff and
4 members of the Class are entitled to the recovery of such damages, including interest thereon,
5 attorneys' fees under RCW 49.48.030, and costs.

6 **X. FIFTH CLAIM FOR RELIEF**
7 **(Violation of RCW 49.48.010- Unpaid Wages on Termination)**
8 ***On Behalf of Plaintiff and the Class***

9 10.1 Plaintiff realleges and incorporates by reference each and every allegation set forth in the
10 preceding paragraphs.

11 10.2 RCW 49.48.010 provides that “[w]hen any employee shall cease to work for an
12 employer, whether by discharge or by voluntary withdrawal, the wages due him or her on
13 account of his or her employment shall be paid to him or her at the end of the established pay
14 period.” The statute further provides that “[i]t shall be unlawful for any employer to withhold or
15 divert any portion of an employee’s wages”

16 10.3 By the actions alleged above, Defendant has violated the provisions of RCW
17 49.48.010 by failing to pay wages to Plaintiff and Class members for rest breaks, by failing to
18 pay wages to Plaintiff and Class members for all hours worked, by failing to pay Plaintiff and
19 Class members proper prevailing wage, and by failing to pay overtime wages to Plaintiff and
20 Class members. As a result of the unlawful acts of Defendant, Plaintiff and members of the
21 Class have been deprived of compensation in amounts to be determined at trial, and Plaintiff and
22 members of the Class are entitled to the recovery of such damages, including interest thereon,
23 attorneys' fees under RCW 49.48.030, and costs.

24 **XI. SIXTH CLAIM FOR RELIEF**
25 **(Violation of RCW 49.52.050 — Willful Refusal to Pay Wages)**
26 ***On Behalf of Plaintiff and the Class***

11.1 Plaintiff realleges and incorporates by reference each and every allegation set forth in the
preceding paragraphs.

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2 11.2 RCW 49.52.050 provides that any employer or agent of any employer who,
3 “[w]ilfully and with intent to deprive the employee of any party of her wages, shall pay any
4 employee a lower wage than the wage such employer is obligated to pay such employee by any
5 statute, ordinance, or contract” shall be guilty of a misdemeanor.

6 11.3 Best’s violations of RCW 49.12.020, WAC 296-126-092, and RCW 49.46.090,
7 RCW 49.46.130, RCW 49.28.010, RCW 49.48.010, RCW 39.12.050, and WAC 296-127 *et*
8 *seq.* as discussed above, were willful and constitute violations of RCW 49.52.050.

9 11.4 RCW 49.52.070 provides that any employer who violates the provisions of
10 RCW 49.52.050 shall be liable in a civil action for twice the amount of wages withheld,
11 attorneys’ fees, and costs.

12 11.5 As a result of the willful, unlawful acts of Best, Plaintiff and the Class have been
13 deprived of compensation in amounts to be determined at trial and under RCW 49.52.070,
14 Plaintiff and the Class are entitled to recovery of twice such damages, including interest
15 thereon, as well as attorneys’ fees and costs.

16 **XII. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff, on his own and on behalf of the members of the Class, pray
18 for judgment against Defendant, as follows:

- 19 A. Certify the proposed Class;
20 B. Appoint Plaintiff as representative of the Class;
21 C. Appoint the undersigned attorneys as counsel for the Class;
22 D. Award compensatory, liquidated, and exemplary damages to Plaintiff and Class
23 members for violation of Washington’s wage and hour laws, in amounts to be proven at trial;
24 E. Award Plaintiff and the Class attorneys’ fees and costs, as allowed by law;
25 F. Award Plaintiff and the Class prejudgment and post-judgment interest, as
26 provided by law;

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2 G. Permit Plaintiff and the Class leave to amend the complaint to conform to the
3 evidence presented at trial; and

4 H. Grant such other and further relief as the Court deems necessary, just, and
5 proper.

6 RESPECTFULLY SUBMITTED AND DATED this 26th day of November, 2018.

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