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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR KING COUNTY

9 ALPHONSA CHANDLER; NICHOLAS
10 GORE; BRENT MERITY; and ERIC
11 VAUGHAN, each individually and on behalf
12 of all others similarly situated,

13 Plaintiffs,

14 v.

15 INTERNATIONAL MARINE AND
16 INDUSTRIAL APPLICATORS, LLC, a
17 Florida Corporation,

18 Defendant.

CLASS ACTION

NO. 22-2-02546-8 SEA

COMPLAINT FOR DAMAGES

JURY TRIAL REQUESTED

19 Plaintiffs Alphonsa Chandler, Nicholas Gore, Brent Merity, and Eric Vaughan
20 (“Plaintiffs”) bring this action on their own behalf and on behalf of all others similarly situated,
21 and hereby state and allege as follows:

22 **I. INTRODUCTION**

23 1.1 Nature of Action. Plaintiffs bring this class action against Defendant International
24 Marine and Industrial Applicators, LLC (“Defendant”). Defendant has been in the business of
25 employing workers, including but not limited to welders, to maintain and repair ships and docks
26 in and around King and Kitsap Counties. Plaintiffs allege Defendant has engaged in a systematic
scheme of wage and hour abuse against them and other employees in Washington. These abuses

1 include Defendant's willful failure to pay such employees their earned wages for all time worked,
2 including paying at the correct pay rates. These violations were willful.

3 **II. JURISDICTION AND VENUE**

4 2.1 Jurisdiction. Defendant is within the jurisdiction of this Court. Defendant has
5 conducted business and have employed workers in Washington, including within Seattle,
6 Washington. Defendant has bid on and accepted Public Work Projects in King County worth
7 millions of dollars. Defendant has obtained the benefits of the laws of the State of Washington
8 and the Washington retail and labor markets. Defendant has also obtained the benefits of King
9 County retail and labor markets.

10 2.2 Venue. RCW 4.12.025 provides "the residence of a corporation defendant shall
11 be deemed to be in any county where the corporation: (a) Transacts business; (b) has an office
12 for the transaction of business; (c) transacted business at the time the cause of action arose; or
13 (d) where any person resides upon whom process may be served upon the corporation." Venue
14 is proper in King County because Defendant operates and transact business Seattle, Washington
15 which is in King County Washington.

16 2.3 Governing Law. The claims asserted on behalf of Plaintiff and the proposed Class
17 in this complaint are brought under the laws of Washington State.

18 **III. PARTIES**

19 3.1 Plaintiff Alphonsa Chandler. Plaintiff Chandler worked as an hourly paid
20 employee for Defendant from approximately April 11, 2019 to September 7, 2020. Plaintiff
21 performed work for Defendant in Washington.

22 3.2 Plaintiff Nicholas Gore. Plaintiff Gore worked as an hourly paid employee for
23 Defendant from approximately April 11, 2019 to July 11, 2020. Plaintiff performed work for
24 Defendant in Washington.
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26

1 3.3 Plaintiff Brent Merity. Plaintiff Merity worked as an hourly paid employee for
2 Defendant from approximately April 11, 2019 to November 13, 2020. Plaintiff performed work
3 for Defendant in Washington.

4 3.4 Plaintiff Eric Vaughan. Plaintiff Vaughan worked as an hourly paid employee for
5 Defendant from approximately July 23, 2019 to September 13, 2019. Plaintiff performed work
6 for Defendant in Washington.

7 3.5 Defendant International Marine and Industrial Applicators LLC (“IMIA”).
8 Defendant IMIA is a Florida Corporation. It does business in and around Seattle, King County,
9 Washington. Defendant IMIA is headquartered in Alabama, but has facilities throughout the
10 nation, including in Bremerton, WA. Plaintiff and the proposed Class worked for Defendant in
11 Washington, including at its location in Bremerton. Defendant IMIA performed work, and thus
12 transacted business, in Seattle, and King County Washington.

13 **IV. CLASS ACTION ALLEGATIONS**

14 4.1 Class Definition: Under Civil Rule 23(a) and (b)(3), Plaintiffs bring this case as a
15 class action against Defendant on behalf of a Class defined as follows:
16

17 All persons who are hourly workers, classified as travelers, who
18 worked for Defendant in Washington State who received a per
19 diem payment at any time from February 18, 2019 to 90 days
20 before the date of final disposition of this action.

21 Excluded from the Class are any entity in which Defendant has a controlling interest or that has
22 a controlling interest in Defendant, and Defendant’s legal representatives, assignees, and
23 successors. Also excluded are the Judge to whom this case is assigned and any member of the
24 Judge’s immediate family.

25 4.2 Numerosity. Plaintiffs believes that more than forty persons who fall within the
26 Class definition set forth in para. 4.1. These Class members are so numerous that joinder of them
is impracticable. Moreover, the disposition of the claims of the Class in a single action will
provide substantial benefits to all parties and the Court.

1 4.3 Commonality. There are numerous questions of law and fact common to
2 Plaintiffs and Class members. These questions include, but are not limited to, the following:

- 3 a. Whether Defendant has engaged in a common course of failing to properly
4 compensate Plaintiffs and Class members for all time worked;
- 5 b. Whether Defendant has engaged in a common course of failing to properly
6 compensate Plaintiffs and Class members for all time worked in excess of
7 forty hours per week;
- 8 c. Whether Defendants have violated RCW 49.46.090;
- 9 d. Whether Defendants have violated RCW 49.46.120;
- 10 e. Whether Defendants have violated RCW 49.46.130;
- 11 f. Whether Defendants have violated RCW 49.48.010;
- 12 g. Whether Defendants have violated RCW 49.52.050;
- 13 h. Whether Defendants have violated RCW 49.52.060;
- 14 i. The nature and extent of Class-wide injury and the measure of
15 compensation for such injury.

16 4.4 Typicality. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs
17 worked in Washington for Defendant and performed work for it in Washington. Plaintiffs'
18 claims, like the claims of the Class, arise out of the same common courses of conduct by
19 Defendant and are based on the same legal and remedial theories.

20 4.5 Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class.
21 Plaintiffs have retained competent and capable attorneys who have significant experience in
22 complex and class action litigation, including employment law. Plaintiffs and their counsel are
23 committed to prosecuting this action vigorously on behalf of the Class. Neither Plaintiffs nor
24 their counsel have interests that are contrary to or that conflict with those of the Class.

25 4.6 Predominance. Defendant has engaged in a common course of wage and hour
26 abuse toward Plaintiffs and members of the Class. The common issues arising from this conduct

1 that affects Plaintiffs and members of the Class predominate over any individual issues.
2 Adjudication of these common issues in a single action has important and desirable advantages
3 of judicial economy.

4 4.7 Superiority. Plaintiffs and Class members have suffered and will continue to
5 suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. Absent a
6 class action, however, most Class members likely would find the cost of litigating their claims
7 prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation
8 because it conserves judicial resources, promotes consistency and efficiency of adjudication,
9 provides a forum for small claimants, and deters illegal activities. There will be no significant
10 difficulty in the management of this case as a class action. The Class members are readily
11 identifiable from Defendant's records.

12 V. SUMMARY OF FACTUAL ALLEGATIONS FOR CLASS CLAIMS

13 5.1 Common Course of Conduct: Failure to properly pay for all hours worked.
14 Defendant has engaged in a common course of conduct of willfully failing to properly pay
15 Plaintiffs and the Class members for all time worked.

16 5.2 Defendant paid Plaintiffs and Proposed Class compensation in two forms, an
17 hourly rate of pay and also per diem compensation.

18 5.3 Defendant's payment of per diem compensation was designed to compensate
19 Plaintiffs and the Class for work performed and was not a true reimbursement for actual living
20 and meal expenses.

21 5.4 Defendant's per diem payment was the same amount, regardless of living and
22 meal expenses.

23 5.5 When Defendant calculated overtime rate, the Defendant did not include in that
24 calculation any compensation paid as per diem. This resulted in a lower overtime rate of pay
25 than permissible under Washington law.
26

1 5.6 Defendant has had actual or constructive knowledge of the facts set forth in
2 Paragraphs 5.1-5.3.

3 5.7 **Common Course of Conduct:** Failure to pay all wages accrued at the time of
4 termination. Defendant has engaged in a common course of conduct of willfully failing to pay
5 Plaintiff and Class members all wages earned, including willfully failing to pay such wages upon
6 termination. Indeed, Defendant failed to pay for all recorded time worked.

7 5.8 Defendant has had actual or constructive knowledge of the facts set forth in
8 Paragraph 5.5.

9 5.9 Defendant hired Plaintiffs in 2019.

10 5.10 All Plaintiffs worked in excess of 40 hours in at least one workweek.

11 5.11 Defendant paid Plaintiffs an hourly rate and paid Plaintiffs a stipend to
12 supplement their compensation.

13 5.12 When calculating the regular rate of pay, Defendant failed to include
14 compensation earned through the stipend, and as a result, artificially and improperly paid
15 Plaintiffs an overtime rate less than 1.5 times the actual rate of pay.

16 5.13 Defendant failed to pay Plaintiffs one and one-half times their actual regular rate
17 for the hours he worked in excess of forty that workweek.

18 **VI. FIRST CLAIM FOR RELIEF**
19 **(Violation of RCW 49.46 *et seq.*, Payment of Wages Less than Entitled)**
 On Behalf of Plaintiff and the Class

20 6.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
21 in the preceding paragraphs.

22 6.2 Defendants have failed to properly pay wages to Plaintiffs and Class members for
23 the work they performed in excess of forty hours per week, including failure to pay for such work
24 at all, and failure to pay at the proper overtime rate as per RCW 49.46.130.

25 6.3 By the actions alleged above, Defendants have violated the provisions of RCW
26 49.46.020, RCW 49.46.090, RCW 49.46.120, RCW 49.46.130.

1 6.4 As a result of these unlawful acts, Plaintiffs and the Class have been deprived of
2 compensation in amounts to be determined at trial, and Plaintiff and the Class are entitled to the
3 recovery of such damages, including interest thereon, as well as attorneys' fees and costs pursuant
4 to RCW 49.46.090.

5 **VII. SECOND CLAIM FOR RELIEF**
6 **(Unpaid Wages on Termination: RCW 49.48 et seq.)**
7 ***On Behalf of Plaintiff and the Class***

8 7.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
9 in the preceding paragraphs.

10 7.2 RCW 49.48.010 provides that "when any employee shall cease to work for an
11 employer, whether by discharge or by voluntary withdrawal, the wages due him on account of
12 his employment shall be paid to him at the end of the established pay period." The statute further
13 states that it shall be unlawful for "any employer to withhold or divert any portion of an
14 employee's wages."

15 7.3 By the actions alleged above, Defendant violated the provisions of RCW
16 49.48.010. As a result of Defendant's unlawful acts, Plaintiffs and the Class have been deprived
17 of compensation in amounts to be determined at trial. Pursuant to RCW 49.48.030 are entitled to
18 recover of such amounts, including interest thereon, attorneys' fees, and costs.

19 **VIII. THIRD CLAIM FOR RELIEF**
20 **(Violation of RCW 49.52.050 — Willful Refusal to Pay Wages)**
21 ***On Behalf of Plaintiff and the Class***

22 8.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
23 in the preceding paragraphs.

24 8.2 RCW 49.52.050 provides that any employer or officer, vice principal or agent of
25 any employer who, "[w]ilfully and with intent to deprive the employee of any party of her wages,
26 shall pay any employee a lower wage than the wage such employer is obligated to pay such
employee by any statute, ordinance, or contract" shall be guilty of a misdemeanor.

1 8.3 RCW 49.52.070 provides that any employer who violates the provisions of RCW
2 49.52.050 shall be liable in a civil action for twice the amount of wages withheld, attorneys' fees,
3 and costs.

4 8.4 The alleged unlawful actions by Defendant against Plaintiffs and the Class, as set
5 forth above, were committed willfully and with intent to deprive Plaintiffs and the Class of part
6 of their wages.

7 8.5 As such, based on the above allegations, Defendant violated the provisions of
8 RCW 49.52.050.

9 8.6 As a result of the willful, unlawful acts of Defendant, Plaintiff and the Class have
10 been deprived of compensation in amounts to be determined at trial and pursuant to RCW
11 49.52.070, Plaintiff and the Class are entitled to recovery of twice such damages, including
12 interest thereon, as well as attorneys' fees and costs.

13 **IX. PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs, on their own and on behalf of the members of the Class, pray
15 for judgment against Defendant, as follows:

- 16 A. Certify the proposed Class;
- 17 B. Appoint Plaintiffs as representatives of the Class;
- 18 C. Appoint the undersigned attorneys as counsel for the Class;
- 19 D. Award compensatory, liquidated, and exemplary damages to Plaintiffs and Class
20 members for violation of Washington's wage and hour laws, in amounts to be proven at trial;
- 21 E. Award Plaintiffs and the Class attorneys' fees and costs, as allowed by law;
- 22 F. Award Plaintiffs and the Class prejudgment and post-judgment interest, as
23 provided by law;
- 24 G. Permit Plaintiffs and the Class leave to amend the complaint to conform to the
25 evidence presented at trial; and
- 26 H. Grant such other and further relief as the Court deems necessary, just, and proper.

1 RESPECTFULLY SUBMITTED AND DATED this 18th day of February, 2022.

2 **REKHI & WOLK, P.S.**

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