

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

BREWSTER LOOMER and PETER SLIMAN,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

VAAGEN BROS. LUMBER, INC., a
Washington corporation,

Defendant.

NO. 2:24-cv-00206-TOR

FIRST AMENDED CLASS AND COLLECTIVE
ACTION COMPLAINT

JURY TRIAL REQUESTED

1 Plaintiffs BREWSTER LOOMER and PETER SLIMAN, individually and on behalf of
2 all others similarly situated (collectively "Plaintiffs") bring this CLASS AND COLLECTIVE
3 ACTION COMPLAINT for damages and statutory penalties for wage and hour violations
4 of behalf of current and former non-exempt employees of Defendant VAAGEN BROS.
5 LUMBER, INC. ("Defendant"), pursuant to the Fair Labor Standards Act, Washington
6 Minimum Wage Act ("MWA"), RCW 49.46, and Wage Rebate Act ("WRA"), RCW 49.52.

8 I. INTRODUCTION

9 1.1 Plaintiffs and Class members are current and former non-exempt
10 employees who have been employed by Defendant and who have been victimized by
11 Defendant's unlawful compensation practices. This lawsuit is brought as a class action
12 under state law to recover unpaid wages owed to Plaintiffs and all other similarly
13 situated employees.

14 1.2 Defendant has also engaged in a common practice of not paying Plaintiffs
15 and Class members for all regular and overtime hours worked.

16 1.3 Defendant failed to pay overtime at the regular rate of pay despite Plaintiffs
17 and Class members earning shift differentials.

18 1.4 Defendant has engaged in a systematic policy and practice of denying rest
19 breaks and meal breaks—and thereby wages—to its non-exempt employees.

20 1.5 Defendant engaged in a systematic policy of automatically deducting meal
21 periods.

22 1.6 Defendant has failed to compensate its employees for missed rest breaks
23 and time worked during purported meal breaks.

24 1.7 Defendant's violations of state law have been willful.

II. JURISDICTION & VENUE

2.1 This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, et seq., along with jurisdiction under 29 U.S.C. § 216(b) (FLSA actions “may be maintained against any employer ... in any Federal or State court of competent jurisdiction”).

2.2 This Court has jurisdiction over the state law claims under 28 U.S.C. § 1367, because they arise from a common nucleus of operative facts with the federal claims and are so related to the federal claims as to form part of the same case or controversy under Article III of the United States Constitution.

2.3 The United States District Court for the Eastern District of Washington has personal jurisdiction over Defendant because it does business in Washington and in this District, and because some of the acts complained of and giving rise to the claims alleged occurred in and emanated from this District.

2.4 Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this District.

2.5 At all times material to this action, Plaintiffs were residents of Stevens County, Washington.

2.6 At all relevant times, Defendant employed Plaintiffs in Stevens County, Washington. The events, acts, and omissions giving rise to Plaintiffs’ claims alleged herein occurred in Stevens County, Washington.

III. PARTIES

3.1 Plaintiff Brewster Loomer. Plaintiff Brewster Loomer is an individual over 18 years of age who worked for Defendant in Washington as a non-exempt employee from approximately June 14, 2021, to present. Plaintiff works as an Electrician.

1 4.4 Although Plaintiffs and the FLSA Collective may have had different job
2 titles, worked at different locations or in different departments, received different
3 hourly rates of pay, and received differentials, cash-in-lieu pay, and incentives under
4 different codes and classifications, this action and the damages sought herein may be
5 properly maintained as a collective action because Plaintiffs and the FLSA Collective
6 were similarly situated as follows:

- 7 a. Plaintiffs and the FLSA Collective were all hourly, non-exempt employees.
8 b. Plaintiffs and the FLSA Collective were subject to Defendant's policies,
9 practices, and directives with respect to overtime pay.
10 c. Plaintiffs and the FLSA Collective were paid overtime wages.
11 d. Plaintiffs and the FLSA Collective were paid additional forms of
12 remuneration.
13 e. Regardless of their job title or location, Defendant did not pay Plaintiffs
14 and the FLSA Collective at an overtime rate of at least 1.5x their regular
15 rate of pay for all overtime hours worked.

16 4.5 Plaintiffs estimate that the Class, including current and former employees
17 during the Class Period, will exceed one hundred members, though the precise
18 number of individuals should be readily available from Defendant's personnel file
19 records and other personnel and pay records they are required to keep and maintain
20 under state and federal laws.

21 4.6 The total number and identities of those individuals in the FLSA Collective—
22 current and former employees of Defendant within the FLSA Period—is readily
23 available employment and payroll records Defendant is obligated to maintain under
24 state and federal laws.

25 4.7 The three-year statute of limitations set forth in 29 U.S.C § 255 applies
26 because the obligation to pay overtime based upon the regular rate of pay, rather than

1 the base rate, is well established and Defendant has failed to comply, despite the
2 ability and resources to do so.

3 4.8 The First Cause of Action is properly brought and maintained as an opt-in
4 collective action. 29 U.S.C. 216(b). The FLSA Collective can be provided notice by first
5 class mail and/or email to the last addresses known to their employer.

7 **V. CLASS ACTION ALLEGATIONS**

8 5.1 Plaintiffs, on behalf of themselves, and all Class Action Members, re-alleges
9 and incorporates by reference all allegations set forth herein.

10 5.2 Pursuant to Washington Civil Rule 23, Plaintiffs bring this action on behalf
11 of a proposed Class consisting of:

12 All current and former non-exempt employees who worked
13 for Defendant in Washington at any time from June 17, 2021
14 through the date discovery closes.

15 5.3 Excluded from the Class are any entity in which Defendant has a controlling
16 interest or that has a controlling interest in Defendant, and Defendant's legal
17 representatives, assignees, and successors. Also excluded are the judge to whom this
18 case is assigned and any member of the judge's immediate family.

19 5.4 Plaintiffs reserve the right to establish various subclass definitions as
20 appropriate at the class certification stage, according to proof.

21 5.5 Numerosity: The Class is estimated to exceed 50 individuals, although the
22 precise membership of the entire Class is unknown at this time. The Class is so
23 numerous that joinder of all Class members is impracticable. The identities of Class
24 members can be obtained from Defendant's employment and payroll records.

25 5.6 Commonality. Common questions of law and fact as to the Class members
26 predominate over questions affecting only individual members. The common
questions of law and fact exist as to whether the employment policies and practices

1 formulated by Defendant and applied to Class members constitute violations of
2 Washington law. Among the questions of law and fact common to Plaintiffs and the
3 Class are:

- 4 a. Whether Defendant has engaged in a common course of failing to
5 provide Class members with a ten-minute rest break for every four
6 hours of work;
- 7 b. Whether Defendant has engaged in a common course of requiring
8 Class members to work more than three consecutive hours without
9 a rest break;
- 10 c. Whether Defendant has engaged in a common course of failing to
11 ensure Class members have taken the rest breaks to which they are
12 entitled;
- 13 d. Whether Defendant has engaged in a common course of failing to
14 pay Class members an additional 10 minutes of compensation for
15 each missed rest break;
- 16 e. Whether Defendant has engaged in a common course of failing to
17 provide Class members with a 30-minutes meal break for every five
18 hours of work;
- 19 f. Whether Defendant has engaged in a common course of failing to
20 ensure that Class members have taken the meal breaks to which
21 they are entitled;
- 22 g. Whether Defendant has engaged in a common course of failing to
23 pay Class members an additional 30 minutes of compensation for
24 each missed meal break;
- 25 h. Whether Defendant has engaged in a common course of failing to
26 pay Class members for all hours worked;

- i. Whether Defendant has engaged in a common course of failing to pay Class members all overtime compensation to which they are entitled;
- j. Whether Defendant violated RCW 49.12 *et seq.* as to Plaintiffs and the Class;
- k. Whether Defendant violated RCW 49.46.090 as to Plaintiffs and the Class;
- l. Whether Defendant violated RCW 49.46.130 as to Plaintiffs and the Class;
- m. Whether Defendant violated RCW 49.48.010 as to Plaintiffs and the Class;
- n. Whether Defendant violated RCW 49.52.050 as to Plaintiffs and the Class;
- o. Whether Defendant violated WAC 296-126-092 as to Plaintiffs and the Class;
- p. Whether Defendant violated WAC 296-126-040 as to Plaintiffs and the Class;
- q. Whether Defendant violated WAC 296-126-023(3) as to Plaintiffs and the Class;
- r. Whether Defendant violated WAC 296-128-010 as to Plaintiffs and the Class;
- s. Whether Defendant violated WAC 296-128-020 as to Plaintiffs and the Class; and
- t. The nature and extent of Class-wide injury and the measure of compensation for such injury.

1 5.7 Typicality. Plaintiffs' claims are typical of the claims of the other Class
2 members. Plaintiffs and Class members were subject to the same policies and
3 practices of Defendant, which resulted in losses to Plaintiffs and the Class. Proof of
4 common unlawful business practices, which Plaintiffs experienced, will establish the
5 right of the Class to recover on the causes of action alleged herein.

6 5.8 Adequacy. Plaintiffs will fairly and adequately protect the interests of the
7 Class. Plaintiffs have retained competent and capable attorneys who have significant
8 experience in complex and class action litigation, including employment law. Plaintiffs
9 and Plaintiffs' counsel are committed to prosecuting this action vigorously on behalf
10 of the Class and have the financial resources to do so. Neither Plaintiffs nor Plaintiffs'
11 counsel have interests that are contrary to or that conflict with the class.

12 5.9 Predominance. Defendant has engaged in a common course of wage and
13 hour abuse toward Plaintiffs and members of the Class. The common issues arising
14 from this conduct that affect Plaintiffs and members of the Class predominate over
15 any individual issues. Adjudication of these common issues in a single action has
16 important and desirable advantages of judicial economy.

17 5.10 Superiority. A class action is superior to other means for adjudicating this
18 dispute. Individual joinder is impractical. Class treatment will allow for common issues
19 to be resolved in a single forum, simultaneously, and without duplication of effort and
20 expense.

21 22 **VI. SUMMARY OF FACTUAL ALLEGATIONS**

23 6.1 Common Course of Conduct: Failure to Pay for All Hours of Work.
24 Defendant has engaged in a common course of failing to pay minimum wages to
25 Plaintiffs and the Class members for all hours worked.
26

1 6.2 Defendant has engaged in a common practice of requiring off-the-clock
2 work due to working through unpaid, automatically deducted meal periods which
3 resulted in unpaid hours worked.

4 6.3 For example, Plaintiffs often worked through their unpaid meal periods due
5 to the high demands of the job and understaffing. However, Defendants still
6 automatically deducted meal periods in increments of 30 minutes from each shift.

7 6.4 As a result, each time Plaintiffs and the other Class members worked
8 through their meal periods and were not paid for this time, this resulted in unpaid off-
9 the-clock work.

10 6.5 Specifically, and just as an example taken from many workweeks, during
11 the workweek from September 26, 2023 to September 30, 2023, Plaintiff Loomer
12 notified his supervisor via text message on September 27, 2023 that he and the other
13 Class members who worked the day before, worked through their meal period that
14 day. Plaintiff's supervisor responded by saying "I'll make sure everyone gets paid
15 lunches today." However, Plaintiff Loomer and on information and belief, the Class
16 members were not paid for the time worked through these non-compliant meal
17 periods. In fact, Plaintiff's time records show a thirty-minute deduction on this day for
18 a meal period he did not take. On September 26, 2023 Plaintiff worked from 6:47 a.m.
19 to 5:32 p.m. totaling 10 hours and 45 minutes, however, Plaintiff Loomer was only paid
20 for 10 hours and 15 minutes on this day. Here, Defendants deducted a 30-minute meal
21 period despite Plaintiff Loomer working through this time on that day.

22 6.6 Additionally, and again as just one example of a common practice, Plaintiff
23 Sliman experienced a similar violation during the workweek of April 7, 2024 to April
24 13, 2024. Plaintiff Sliman recalls working through his unpaid meal period due to
25 insufficient coverage on many days but specifically recalls working through his entire
26 shift on April 12, 2024 which totaled 10.75 hours without taking any meal periods.

1 Nonetheless, Plaintiff's records reveal Plaintiff was only paid 9.75 hours on April 12,
2 2024, showing Defendant deducted a full hour or two 30-minute meal periods despite
3 Plaintiff Sliman's inability to take them.

4 6.7 This practice of auto-deducting meal period resulted in unpaid hours
5 worked each time Plaintiffs and the Class members were unable to take a compliant
6 meal period and worked through all or part of their unpaid meal periods, which they
7 allege, occurred frequently.

8 6.8 Common Course of Conduct: Failure to Pay Overtime Wages. Defendant
9 has engaged in a common course of failing to pay overtime wages to Plaintiffs and
10 Class members when they work more than 40 hours in a week.

11 6.9 To the extent that Defendant's policy requiring off-the-clock work resulted
12 in hours worked over 40 hours in a week, this resulted in unpaid overtime hours.

13 6.10 Plaintiffs and the Class members earned shift differentials and other forms
14 of compensation in addition to their hourly rate that Defendant failed to include in the
15 regular rate of pay for purposes of calculating the overtime rate owed to Plaintiffs and
16 Class members when they worked overtime in the same pay period.

17 6.11 As an illustrative, non-exhaustive specific example of this alleged violation,
18 during the workweek of March 12, 2023 to March 18, 2024 Plaintiff Loomer worked a
19 total of 42.75 hours with 2.75 of those being overtime hours and also earned a shift
20 differential, however, Defendants failed to include this shift differential in the
21 overtime rate. Instead, Defendant unlawfully only paid overtime at a straight 1.5x
22 multiple of Plaintiff's base rate of \$34.25, instead of the regular rate of pay inclusive
23 of all additional non-excludable remuneration.

24 6.12 Similarly, and again as an illustrative, non-exhaustive specific example of
25 this alleged violation, during the workweek from October 8, 2023 to October 15, 2023,
26 Plaintiff Sliman worked a total of 43 hours, with 3 being overtime hours and he earned

1 a weekend shift differential. Defendant failed to include this shift differential in
2 Plaintiff's overtime rate, instead paying overtime at a straight 1.5x multiple of
3 Plaintiff's base rate.

4 6.13 Defendant has actual or constructive knowledge of the foregoing facts.

5 6.14 Common Course of Conduct: Failure to Provide Meal Breaks. Defendant has
6 engaged in a common course of failing to provide Plaintiffs and Class members with a
7 thirty-minute meal break for every five hours of work.

8 6.15 Defendant has engaged in a common course and maintained an unlawful
9 policy and practice of requiring or permitting Plaintiffs and Class members to work
10 more than five consecutive hours without a meal break.

11 6.16 Plaintiffs and Class members were not provided adequate staffing and
12 coverage to take proper meal breaks, and routinely went without or otherwise
13 experienced a non-compliant meal period.

14 6.17 Plaintiffs often experienced missed meal periods as they often worked
15 through their meal periods due to being short-staffed.

16 6.18 As an illustrative, non-exhaustive specific example of this alleged violation,
17 during the week of September 24, 2023 Plaintiff Loomer notified his supervisor via text
18 message that he and the other Class members who worked on September 26, 2023
19 worked through their meal period on that day. Plaintiff's supervisor responded by
20 saying "I'll make sure everyone gets paid lunches today." However, Plaintiff Loomer's
21 records show he was not paid an additional 30 minutes for this violation. On
22 information and belief, the other Class members similarly not paid an additional 30
23 minutes for each non-compliant meal period.

24 6.19 Similarly, and again as an illustrative, non-exhaustive specific example of
25 this alleged violation Plaintiff Sliman experienced missed meal periods during the
26 workweek from April 7, 2024 to April 13, 2024. He specifically recalls working through

1 his meal periods on April 12, 2024 when both his co-workers that could have relieved
2 him had taken the day off. However, Plaintiff's records show he was not paid
3 additional compensation for these missed meal periods.

4 6.20 Additionally, due to the emergent nature of the work Plaintiffs and the
5 Class members often experienced short (less than 30 minutes) or interrupted meal
6 periods, where they would not be completely free from work duties.

7 6.21 For example, throughout his employment, including the week of April 7,
8 2024, Plaintiff Sliman typically started his shift at 3:30 a.m. and was not permitted to
9 take his meal period until 9:30 a.m., when the next operator came in and could take
10 over. Further, on the days Plaintiffs and the Class members worked over 10 hours in
11 a day they were not provided a second meal period.

12 6.22 Plaintiffs likewise observed other Class members regularly not receiving
13 compliant meal periods for every five hours of work.

14 6.23 Defendant was aware of these non-compliant meal periods and Defendant
15 has engaged in a common course of failing to ensure Plaintiffs and Class members have
16 taken the meal breaks to which they are entitled.

17 6.24 However, Defendant has engaged in a common course of failing to provide
18 Plaintiffs and Class members with thirty minutes of additional pay for each missed
19 meal break.

20 6.25 Defendant actively avoided compensating Plaintiffs and the Class members
21 the thirty minutes of additional pay for each non-compliant meal period by engaging
22 in a common course of automatically deducting 30 minutes of unpaid meal period time
23 each day

24 6.26 Common Course of Conduct: Failure to Provide Rest Breaks. Defendant has
25 engaged in a common course of failing to provide Plaintiffs and Class members with a
26 paid ten-minute rest break for every four hours of work.

1 6.27 Defendant has engaged in a common course of requiring or permitting
2 Plaintiffs and Class members to work more than three consecutive hours without all
3 owed rest breaks.

4 6.28 Plaintiff Loomer often worked his entire shift without a single compliant
5 rest period. It was rare for Plaintiff Loomer to ever take a compliant rest period during
6 his employment.

7 6.29 For example, as an illustrative, non-exhaustive specific example of this
8 alleged violation Plaintiff Loomer recalls that during the week of March 1, 2023, he
9 worked more than four consecutive hours without a rest break due to being on night
10 shift by himself and not being permitted to take a compliant rest period for his entire
11 10 (or more) hour shifts.

12 6.30 Additionally, and again as an illustrative, non-exhaustive specific example
13 of this alleged violation, Plaintiff Sliman recalls that he worked more than four
14 consecutive hours without his second or third rest breaks during his last week of
15 employment, the week of June 10, 2024.

16 6.31 Plaintiffs likewise observed other Class members not regularly receiving 10-
17 minute rest breaks for every four hours worked.

18 6.32 Defendant has engaged in a common course of failing to provide Plaintiffs
19 and Class members with ten minutes of additional pay for each missed rest break.

20 6.33 Common Course of Conduct: Failure to Maintain and Provide Accurate
21 Wage Statements. Defendant has engaged in a common course of failing to keep true
22 and accurate time records for all hours worked by Plaintiffs and Class members.

23 6.34 As a result of Defendant's common course of failing to provide proper rest
24 and meal breaks to Plaintiffs and Class members, Defendant has also failed to maintain
25 accurate records of hours worked by Plaintiffs and Class members.
26

6.35 Defendant has engaged in a common course of failing to provide proper payroll documents to Plaintiffs and Class members.

6.36 Defendant has actual or constructive knowledge of the foregoing facts.

VII. FIRST CLAIM FOR RELIEF

Failure to Pay All Overtime Wages Owed [FLSA - 29 U.S.C. §§ 201 *et seq.*]

(Plaintiffs and the FLSA Collective Against Defendant)

7.1 Plaintiffs incorporate all paragraphs of this Complaint as if set forth herein.

7.2 Defendant knowingly, willfully, and intentionally, failed to compensate Plaintiffs and the FLSA Collective all overtime wages due under the FLSA, as mandated by 29 U.S.C. § 207(a).

7.3 Defendant employed Plaintiffs and the FLSA Collective to work, and they did work, in excess of forty (40) hours per week.

7.4 Defendant paid Plaintiffs and the FLSA Collective non-excludable, non-discretionary forms of additional remuneration.

7.5 Defendant failed to pay Plaintiffs and the FLSA Collective at one-and-one half times the regular rate of pay, inclusive of the aforementioned forms of remuneration, for hours in excess of forty (40) per week during the FLSA Period.

7.6 Plaintiffs and the FLSA Collective have been deprived of overtime wages owed for time worked more than 40 hours per week, due to the regular rate underpayments.

7.7 Defendant's violations of the FLSA have been willful and intentional. Defendant failed to make a good faith effort to comply with the FLSA with respect to the compensation of Plaintiffs and other similarly situated current and former

employees, despite the unambiguous language of 29 U.S.C. § 207(a)(1) and the unambiguous eight allowable exclusions set forth in 29 U.S.C. § 207(e)(1) through (8).

7.8 Because Defendant's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

7.9 As a result of Defendant's practice, Plaintiffs and other similarly situated current and former employees have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus liquidated damages, interest, attorneys' fees, and costs pursuant to 29 U.S.C. § 216(b).

VIII. SECOND CLAIM FOR RELIEF
(Minimum Wage Act Violations: RCW 49.46 et seq.)
On Behalf of Plaintiffs and the Class

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

8.2 Under RCW 49.46.090, employers must pay employees all wages to which they are entitled under the Washington Minimum Wage Act ("WMWA"), RCW 49.46 et seq.

8.3 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.

8.4 Defendant has failed to pay wages to Plaintiffs and Class members for missed rest and meal breaks, and work performed off the clock.

8.5 Defendant has failed to timely pay all wages owed to Plaintiffs and Class members at regular pay intervals pursuant to RCW 49.46 et seq. and WAC 296-126-023.

1 8.6 By the actions alleged above, Defendant has violated the provisions of
2 RCW 49.46.020, RCW 49.46.090, RCW 49.46.120, RCW 49.46.130, and WAC 296-126-
3 023.

4 8.7 As a result of these unlawful acts, Plaintiffs and the Class have been
5 deprived of compensation in amounts to be determined at trial, and Plaintiffs and
6 the Class are entitled to the recovery of such damages, including interest thereon, as
7 well as attorneys' fees and costs pursuant to RCW 49.46.090.

8
9 **IX. THIRD CLAIM FOR RELIEF**
10 **(Failure to Pay Overtime Wages: RCW 49.46.130)**
11 ***On Behalf of Plaintiffs and the Class***

12 9.1 Plaintiffs reallege and incorporate by reference each and every
13 allegation set forth in the preceding paragraphs.

14 9.2 RCW 49.46.130 provides that no employer shall employ any employee
15 for a workweek longer than forty hours unless the employee receives compensation
16 for his or her employment in excess of the hours above specified at a rate not less
17 than one and one-half the regular rate at which he or she is employed.

18 9.3 Defendant failed to pay the required overtime rate to Plaintiffs and Class
19 members during the class period.

20 9.4 Defendant failed to pay Plaintiffs and Class members for all time
21 worked.

22 9.5 By the actions alleged above, Defendant violated the provisions of RCW
23 49.46.090 and RCW 49.46.130 by failing to pay all wages earned to Plaintiffs and
24 Class members for some of the time they worked, including but not limited to work
25 they performed in excess of forty hours per week.

26 9.6 By the actions alleged above, Defendant violated the provisions of RCW
49.46 et seq.

1 9.7 As a result of Defendant's unlawful acts, Plaintiffs and the Class have
2 been deprived of compensation in amounts to be determined at trial, and pursuant
3 to RCW 49.46 are entitled to recover such amounts, including interest thereon, and
4 attorneys' fees and costs.

5
6 **X. FOURTH CLAIM FOR RELIEF**
7 **(Meal Period Violations: RCW 49.12.020 and WAC 296-126-092)**
8 ***On Behalf of Plaintiffs and the Class***

9 10.1 Plaintiffs reallege and incorporate by reference each and every
10 allegation set forth in the preceding paragraphs.

11 10.2 RCW 49.12.010 demands all employees be "protected from conditions
12 of labor which have a pernicious effect on their health." The RCW and WAC have
13 interpreted "conditions of labor" to include meal and rest periods for employees in
14 the state of Washington.

15 10.3 WAC 296-126-092 establishes employees shall be allowed unpaid meal
16 periods during their shifts.

17 10.4 Failure to do so results in an employer's duty to pay employees thirty
18 minutes of additional pay for each missed (or otherwise non-compliant) meal break.

19 10.5 Defendant violated the provisions of RCW 49.12.020 and WAC 296-126-
20 092 and further violated the WMWA by automatically deducting meal periods and
21 not paying Plaintiffs and Class members for non-compliant meal periods.

22 10.6 As a result of the unlawful acts of Defendant, Plaintiffs and Class
23 members have been deprived of compensation in amounts to be determined at trial,
24 and Plaintiffs and Class members are entitled to the recovery of such damages,
25 including interest thereon, and attorneys' fees and costs under RCW 49.48.030.

26 **XI. FIFTH CLAIM FOR RELIEF**
 (Rest Break Violations: RCW 49.12.020 and WAC 296-126-092)

On Behalf of Plaintiffs and the Class

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

11.2 RCW 49.12.010 demands all employees be “protected from conditions of labor which have a pernicious effect on their health.” The RCW and WAC have interpreted “conditions of labor” to include meal and rest periods for employees in the state of Washington.

11.3 WAC 296-126-092 establishes employees shall be allowed paid rest breaks during their shifts.

11.4 Under Washington law, Defendant must provide employees with the rest periods to which they are entitled.

11.5 Failure to do so results in an employer’s duty to pay employees ten minutes of additional pay for each missed rest break.

11.6 Defendant violated provisions of RCW 49.12.020 and WAC 296-126-092 and further violated the WMWA by automatically deducting meal periods and not paying Plaintiffs and Class members for non-compliant meal periods.

11.7 Defendant violated the provisions of RCW 49.12.020 and WAC 296-126-092 and further violated the WMWA by not paying Plaintiffs and Class members for missed rest breaks.

11.8 As a result of the unlawful acts of Defendant, Plaintiffs and Class members have been deprived of compensation in amounts to be determined at trial, and Plaintiffs and Class members are entitled to the recovery of such damages, including interest thereon, and attorneys’ fees and costs under RCW 49.48.030.

XII. SIXTH CLAIM FOR RELIEF
(Unpaid Wages on Termination: RCW 49.48 *et seq.*)
On Behalf of Plaintiffs and the Class

1 12.1 Plaintiffs reallege and incorporate by reference each and every allegation
2 set forth in the preceding paragraphs.

3 12.2 RCW 49.48.010 provides that “when any employee shall cease to work
4 for an employer, whether by discharge or by voluntary withdrawal, the wages due him
5 on account of his employment shall be paid to him at the end of the established pay
6 period.” The statute further states that it shall be unlawful for “any employer to
7 withhold or divert any portion of an employee’s wages.”

8 12.3 Defendant failed to pay Plaintiffs and the Class all wages due, and at the
9 end of the established pay period, at the end of their employment. This includes, but
10 is not limited to, failing to pay Plaintiffs and Class members for all wages earned in the
11 final pay period, failing to pay Plaintiffs and Class members for all wages earned in
12 prior pay periods, and failure to pay Plaintiffs and Class members their final paycheck
13 at the end of the established pay period.

14 12.4 By the actions alleged above, Defendant violated the provisions of RCW
15 49.48.010. As a result of Defendant’s unlawful acts, Plaintiffs and the Class have been
16 deprived of compensation in amounts to be determined at trial. Pursuant to RCW
17 49.48.030 are entitled to recovery of such amounts, including interest thereon,
18 attorneys’ fees, and costs.

19
20 **XIII. SEVENTH CLAIM FOR RELIEF**
21 **(Willful Refusal to Pay Wages: RCW 49.52.050)**
22 ***On Behalf of Plaintiffs and the Class***

23 13.1 Plaintiffs reallege and incorporate by reference each and every allegation
24 set forth in the preceding paragraphs.

25 13.2 RCW 49.52.050 provides that any employer or officer, vice principal or
26 agent of any employer who, “[w]ilfully and with intent to deprive the employee of any
party of her wages, shall pay any employee a lower wage than the wage such employer

1 is obligated to pay such employee by any statute, ordinance, or contract” shall be
2 guilty of a misdemeanor.

3 13.3 RCW 49.52.070 provides that any employer who violates the provisions
4 of RCW 49.52.050 shall be liable in a civil action for twice the amount of wages
5 withheld, attorneys’ fees, and costs.

6 13.4 The alleged unlawful actions by Defendant against Plaintiffs and the Class,
7 as set forth above, were committed willfully and with intent to deprive Plaintiffs and
8 the Class of part of their wages.

9 13.5 As such, based on the above allegations, Defendant violated the
10 provisions of RCW 49.52.050.

11 13.6 As a result of the willful, unlawful acts of Defendant, Plaintiffs and the
12 Class have been deprived of compensation in amounts to be determined at trial and
13 pursuant to RCW 49.52.070, Plaintiffs and the Class are entitled to recovery of twice
14 such damages, including interest thereon, as well as attorneys’ fees and costs.

15 **XIV. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, on their own and on behalf of the members of the Class,
17 prays for judgment against Defendant, as follows:
18

- 19 A. Certify the proposed Class;
- 20 B. For certification of this action as an FLSA collective action;
- 21 C. Appoint Plaintiffs as representatives of the Class;
- 22 D. Appoint the undersigned attorneys as counsel for the Class;
- 23 E. Award compensatory, liquidated, and exemplary damages to Plaintiffs
24 and Class members for violation of state wage and hour laws, in amounts to be proven
25 at trial;
- 26 F. Award Plaintiffs and Class members their attorneys’ fees and costs, as
allowed by law;

1 G. Award Plaintiffs and Class members prejudgment and post-judgment
2 interest, as permitted by law, including 29 U.S.C. § 216(b), RCW 49.46.090, RCW
3 49.48.030, and RCW 49.52.070;

4 H. Permit Plaintiffs and Class members leave to amend the complaint to
5 conform to the evidence presented at trial; and

6 I. Grant such other and further relief as the Court deems necessary, just,
7 and proper.

8 RESPECTFULLY SUBMITTED AND DATED this 29th day of August, 2024.

9
10 **REKHI & WOLK, P.S.**

11 By: s/ Hardeep S. Rekhi, WSBA No. 34579

12 Hardeep S. Rekhi, WSBA No. 34579

13 Gregory A Wolk, WSBA No. 28946

14 Erika Lane, WSBA No. 40854

15 529 Warren Ave N., Suite 201

16 Seattle, WA 98109

17 Telephone: (206) 388-5887

18 Facsimile: (206) 577-3924

19 E-Mail: hardeep@rekhiwolk.com

20 greg@rekhiwolk.com

21 elane@rekhiwolk.com

22 **FERRARO VEGA EMPLOYMENT**
23 **LAWYERS, INC.**

24 By:

Nicholas J. Ferraro

Nicholas J. Ferraro (State Bar No. 59674)
Email: nick@ferrarovega.com
3333 Camino del Rio South, Suite 300
San Diego, California 92108
Telephone: (619) 693-7727
Facsimile: (619) 350-6855

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Jeff Mead, hereby certify that on August 29, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

William M. Symmes, WSBA # 24132
Abigail Maurer-Lesser, WSBA #57658
WILLIAMS, KASTNER & GIBBS PLLC
601 W. Riverside Avenue, Suite 800
Spokane, WA 99201
Telephone: (509) 609-3820
Fax: (206) 628-6611
wsymmes@williamskastner.com
amaurer@williamskastner.com

Attorneys for Defendant Vaagen Bros. Lumber, Inc.

Declared under penalty of perjury under the laws of the United States and the state of Washington dated at Seattle, Washington this 29th day of August, 2024.

/s/ Jeff Mead

Jeff Mead, Paralegal
REKHI & WOLK, P.S.
529 Warren Ave N, Suite 201
Seattle, WA 98109
Telephone: (206) 388-5887
Email: jeff@rekhiwolk.com