

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

DONALD CARLSON, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

UNITED NATURAL FOODS, INC. &
SUPERVALU, INC.,

Defendants.

NO. 3:20-cv-05476-JCC

**AMENDED CLASS AND COLLECTIVE ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff Donald Carlson, through his undersigned counsel, individually and on behalf all others similarly situated, hereby files this Class and Collective Action Complaint against Defendants United Natural Foods, Inc. (“UNFI”) and SuperValu, Inc. (“SuperValu”) (together, “Defendants”). The following allegations are based on personal knowledge as to Plaintiff’s own conduct and on information and belief as to the acts of others.

PRELIMINARY STATEMENT

1. This is an action brought pursuant to the Fair Labor Standards Act of 1938, §§ 201, *et seq.* (“FLSA”) and Washington state law seeking payment of back wages, including overtime compensation. Plaintiff, individually and on behalf of the Classes defined below, also seeks liquidated damages, exemplary damages, attorneys’ fees and costs, and all other relief the Court deems proper.

1 2. Plaintiff alleges that Defendants knowingly and improperly classified him and
2 other similarly situated employees as exempt employees, and, as a result, did not pay
3 overtime compensation to them for hours worked in excess of forty (40) in a workweek.

4 3. Plaintiff further alleges that after UNFI reclassified Plaintiff and other similarly
5 situated employees as non-exempt, UNFI suffered and permitted those employees to work off
6 the clock and failed to pay them any compensation for unrecorded overtime hours.

7 **JURISDICTION AND VENUE**

8 4. This action arises under the FLSA, 29 U.S.C. §§ 201-219. As a federal law claim,
9 the Court has original jurisdiction to hear this complaint and to adjudicate the claims stated
10 herein pursuant to 28 U.S.C. § 1331.

11 5. This Court has supplemental jurisdiction over Plaintiff's Washington state law
12 claims under 28 U.S.C. § 1367 because the state law claims share a common nucleus of
13 operative facts with the federal law claim.

14 6. Venue is proper in the Western District of Washington under 28 U.S.C. § 1391
15 because Defendants maintain offices in this judicial district and because a substantial part of
16 the events giving rise to the claims occurred in this district.

17 **PARTIES**

18 7. Plaintiff is an individual who resides in McKenna, Washington. Plaintiff was
19 employed by Defendants from approximately September 2010 to August 2020. In accordance
20 with 29 U.S.C. § 216(b), Plaintiff has consented to be a plaintiff in this action. See Dkt. Nos. 1,
21 32, 32-1.

22 8. Defendant SuperValu is a registered Delaware corporation with its corporate
23 headquarters located at 11840 Valley View Rd, Eden Prairie, Minnesota 55344. Defendant
24 SuperValu is registered to conduct business in Washington, and maintains its Registered Agent
25 at 711 Capitol Way S, Suite 204, Olympia, Washington 98501.

1 9. Defendant UNFI is a registered Delaware corporation and is headquartered at
2 UNFI's corporate office located at 313 Iron Horse Way, Providence, Rhode Island 02908.
3 Defendant maintains distribution centers across Washington, is registered to conduct business
4 in Washington, and maintains its Registered Agent at 711 Capitol Way S, Suite 204, Olympia,
5 Washington 98501.

6 10. In or around October 2018, Defendant UNFI completed an acquisition of
7 Defendant SuperValu, which then became a wholly-owned subsidiary of UNFI.

8 11. Defendant SuperValu employed Plaintiff from September 2010 to
9 approximately October 2018 in its International Division. After its acquisition of SuperValu,
10 Defendant UNFI employed Plaintiff until August 2020.

11 12. During his employment with SuperValu, Plaintiff worked out of SuperValu's
12 Tacoma, Washington office. After UNFI acquired SuperValu, UNFI transferred Plaintiff to
13 UNFI's distribution site in Centralia, Washington, where he worked until August 2020.

14 13. Throughout his employment, Plaintiff routinely performed non-exempt
15 customer account coordination activities (i.e., coordinating the loading and unloading of food
16 containers; assisting with the logistics of transporting goods to the domestic distribution
17 centers; facilitating customer returns; and completing inventory and logistics-related
18 paperwork and data entry).

19 14. At all times material to this action, Defendants have employed individuals
20 engaged in commerce or in the production of goods for commerce and/or handling, selling, or
21 otherwise working on goods or materials that have been moved in or produced in commerce
22 by any person, as defined by the FLSA, 29 U.S.C. §§ 206-207.

23 15. Defendants' annual gross volume of sales made or business done exceeds
24 \$500,000.

25 16. Defendants are not independently owned and controlled local enterprises
26 within the meaning of 29 U.S.C. § 207(b)(3).

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COLLECTIVE AND CLASS DEFINITIONS

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2 17. Plaintiff brings this lawsuit pursuant to 29 U.S.C. § 216(b) as a collective action
3 on behalf of himself and the following collective of potential FLSA opt-in litigants:

4 All current or former employees of SuperValu and UNFI in the
5 United States who at any time between September 2017 and
6 February 2020 performed customer account coordination
7 activities while classified as exempt from overtime laws (the
8 “FLSA Collective”).

9 18. The statute of limitations for each member of the FLSA Collective was tolled
10 from August 26, 2020 to February 5, 2021, a period of 163 days.

11 19. Plaintiff also brings this lawsuit for Counts II to V as a class action pursuant to
12 Fed. R. Civ. P. 23, on behalf of himself and the following class:

13 All current or former employees of SuperValu and UNFI in
14 Washington state who at any time between March 2016 and
15 February 2020 performed customer account coordination
16 activities while classified as exempt from overtime laws (the
17 “Washington Class”).

18 20. The FLSA Collective and the Washington Class are together referred to as the
19 “Classes,” and the members of the Classes are referred to collectively as “Class Members.”

20 21. Plaintiff reserves the right to redefine the Classes before notice or class
21 certification, and thereafter, as necessary.

FACTUAL ALLEGATIONS

22 22. SuperValu is a food wholesaler and retailer that supplies its own grocery store
23 brands as well as those of other food retailers, including by importing food from outside the
24 United States.

25 23. UNFI is a wholesale food and meat distributor of bulk foods and products for
26 the grocery stores within its chain. UNFI delivers products to customer locations throughout
27 North America including natural product superstores, independent retailers, conventional

1 supermarket chains, ecommerce retailers, and food service customers. *See About Us,*
2 <https://www.supervalu.com/about.html> (last visited May 7, 2020).

3 24. On or about October 22, 2018, UNFI acquired Supervalu for “approximately
4 \$2.9 billion, including the assumption of outstanding debt and liabilities.” *See UNFI Completes*
5 *Transformative Acquisition of SUPERVALU*, dated October 22, 2018, *available at*
6 [https://ir.unfi.com/news/press-release-details/2018/UNFI-Completes-Transformative-](https://ir.unfi.com/news/press-release-details/2018/UNFI-Completes-Transformative-Acquisition-Of-SUPERVALU/default.aspx)
7 [Acquisition-Of-SUPERVALU/default.aspx](https://ir.unfi.com/news/press-release-details/2018/UNFI-Completes-Transformative-Acquisition-Of-SUPERVALU/default.aspx) (last visited May 7, 2020).

8 25. UNFI and SuperValu operate as joint employers, with SuperValu operating as a
9 wholly owned subsidiary of UNFI.

10 26. Combined with SuperValu, UNFI is the largest publicly traded grocery
11 distributor in America with expected annual sales of over \$21 billion. *See About Us,*
12 <https://www.supervalu.com/about.html> (last visited May 7, 2020).

13 27. SuperValu hired Plaintiff as a Warehouse Coordinator in September 2010.

14 28. From the time of his hire in September 2010, Plaintiff held several job titles,
15 including, *inter alia*, Warehouse Coordinator, Customer Care Coordinator—SVI, Operations
16 Coordinator—SVI, and Account Coordinator—Int’l.

17 29. Irrespective of the job title he held, Plaintiff’s job duties included customer
18 account coordination activities (i.e., coordinating the loading and unloading of food
19 containers; assisting with the logistics of transporting goods to the domestic distribution
20 centers; facilitating customer returns; and completing inventory and logistics-related
21 paperwork and data entry).

22 30. At no time during the relevant period did Plaintiff have subordinate employees
23 who reported to him or the power to hire or fire anyone.

24 31. Before December 2019, Plaintiff worked in Tacoma, Washington at the
25 SuperValu office for international distribution.

1 32. Plaintiff's regular work schedule was Monday through Friday, 3:00 a.m. to 1:00
2 p.m., with an hour or two of additional work from home each day, for a total of 50-60 hours
3 per week. With the exception of weeks in which he took vacation days, Plaintiff is unable to
4 recall a single workweek in which he did not work more than 40 hours.

5 33. Before February 2020, Defendants classified Plaintiff as an exempt employee
6 and did not pay him overtime wages.

7 34. Until approximately February 9, 2020, Plaintiff was paid an annual salary,
8 starting at \$38,430.

9 35. Before the acquisition, SuperValu had substantial control over Plaintiff's
10 working conditions and the unlawful policies and practices alleged in this complaint.

11 36. After the acquisition, UNFI had substantial control over Plaintiff's working
12 conditions and the unlawful policies and practices alleged in this complaint.

13 37. On February 7, 2020, UNFI informed Plaintiff that, as part of a broader
14 "Position Alignment," he was being reclassified as a non-exempt employee. Plaintiff's job
15 duties remained the same after the reclassification.

16 38. In February 2020, Defendants provided substantially similar letters to members
17 of the Classes and reclassified them as non-exempt employees. The job duties of these
18 members remained the same after the reclassification.

19 39. Under the policy and practice of considering employees similar to Plaintiff as
20 exempt, SuperValu and subsequently UNFI, failed to pay overtime wages to Plaintiff and the
21 Class Members until at least February 9, 2020.

22 40. Under the policy and practice of suffering and permitting off-the-clock work,
23 UNFI failed to pay Plaintiff and Class Members for all hours worked after February 9, 2020.
24 UNFI required Plaintiff and Class members to perform the same amount of work as before the
25 reclassification but pressured them to limit the number of overtime hours they recorded. As a
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1 result, Plaintiff and Class Members regularly worked some overtime hours off the clock in the
2 workweeks after February 9, 2020, and UNFI failed to pay them for those hours.

3 41. As a leading wholesaler and publicly traded company with access to human
4 resources, Defendants had no reasonable basis to believe that Plaintiff and the Classes were
5 exempt from the requirements of the FLSA and state laws. Rather, Defendants either knew or
6 acted with reckless disregard of clearly applicable wage and hour provisions in failing to pay
7 overtime to Plaintiff and the Class Members prior to February 9, 2020. Accordingly,
8 Defendants operated a willful scheme to deprive Plaintiff and the Classes of overtime
9 compensation.

10 42. Likewise, UNFI either knew or acted with reckless disregard of clearly
11 applicable wage and hour provisions in suffering and permitting Plaintiff and the Class
12 Members to work off the clock and in failing to pay them for all overtime hours worked after
13 February 9, 2020. Accordingly, UNFI operated a willful scheme to deprive Plaintiff and the
14 Classes of overtime compensation.

15 **COLLECTIVE ACTION ALLEGATIONS**

16 43. Plaintiff brings Count I of this lawsuit pursuant to 29 U.S.C. § 216(b) as a
17 collective action on behalf of the FLSA Collective defined above.

18 44. Plaintiff desires to pursue his FLSA claims on behalf of all individuals who opt-in
19 to this action pursuant to 29 U.S.C. § 216(b).

20 45. Many individuals are similarly situated to Plaintiff because they performed
21 customer account coordination activities for Defendants between May 2017 and the present.

22 46. Like Plaintiff, the primary job duties of the FLSA Collective Members involved
23 only non-exempt work consisting of, *inter alia*, coordinating the loading and unloading of food
24 containers; assisting with the logistics of transporting goods to the domestic distribution
25 centers; facilitating with customer returns; and completing inventory and logistics-related
26 paperwork and data entry.

1 47. Like Plaintiff, the FLSA Collective Members regularly worked more than 40
2 hours per week within the applicable statutory period but either failed to receive any
3 overtime compensation or, after February 9, 2020, were not paid for all overtime hours
4 worked.

5 48. Until February 9, 2020, Defendants classified Plaintiff and each of the FLSA
6 Collective Members as exempt from wage and hours laws; paid them a fixed salary; and did
7 not pay them overtime compensation.

8 49. At all times relevant, Defendants did not make, keep, or preserve adequate or
9 accurate records of the hours worked by Plaintiff or the FLSA Collective Members.

10 50. Defendants knew that Plaintiff and the FLSA Collective Members were working
11 overtime hours because Defendants required Plaintiff and the FLSA Collective Members to
12 work overtime hours and were present during those hours.

13 51. In sum, Plaintiff and the FLSA Collective Members are similarly situated in that
14 they had substantially similar job duties and were subject to Defendants' common policies,
15 patterns, and practices, including failing to keep time records and classifying them as exempt
16 employees before February 9, 2020 and suffering and permitting them to work off the clock
17 and without compensation after February 9, 2020.

18 52. The FLSA requires non-exempt hourly employees to be compensated at a rate
19 of one and one-half (1 ½) times the regular hourly rate for all hours worked over 40 in a week.

20 53. Until February 9, 2020, Defendants misclassified Plaintiff and FLSA Collective
21 Members as exempt from the overtime requirements of the FLSA and failed to provide them
22 overtime compensation for hours worked in excess of 40 a week.

23 54. After February 9, 2020, Defendants suffered and permitted Plaintiff and FLSA
24 Collective Members to work off the clock and failed to pay them any compensation for
25 unrecorded overtime hours.

1 55. The similarly situated employees are known to Defendants, are readily
2 identifiable, and can easily be located through Defendants' business and human resources
3 records.

4 56. Defendants have employed many FLSA Collective Members in the United
5 States. These similarly situated employees may be readily notified of this action through
6 electronic mail, U.S. Mail, and/or other means, and allowed to opt in to this action pursuant to
7 29 U.S.C. § 216(b), for the purpose of collectively adjudicating their claims for overtime
8 compensation, liquidated damages (or, alternatively, interest) and attorneys' fees and costs
9 under the FLSA.

10 **CLASS ACTION ALLEGATIONS**

11 57. Plaintiff brings Counts II-V of this action as a class action pursuant to Fed. R. Civ.
12 P. 23 on behalf of himself and the Washington Class defined above.

13 58. Like Plaintiff, the primary job duties of the Washington Class Members involved
14 only non-exempt work consisting of customer account coordination activities including
15 coordinating the loading and unloading of food containers; assisting with the logistics of
16 transporting goods to the domestic distribution centers; facilitating with customer returns;
17 and completing inventory and logistics-related paperwork and data entry.

18 59. Like Plaintiff, the Washington Class Members regularly worked more than 40
19 hours per week within the applicable statutory period but either failed to receive any
20 overtime compensation or, after February 9, 2020, were not paid for all overtime hours
21 worked.

22 60. Defendants did not make, keep, or preserve adequate or accurate records of
23 the hours worked by Plaintiff or the Washington Class Members.

24 61. Defendants knew that Plaintiff and the Washington Class Members were
25 working overtime hours because Defendants required Plaintiff and the Washington Class
26 Members to work overtime hours and were present during those hours.

1 62. The members of the Washington Class are so numerous that joinder of all
2 members is impracticable.

3 63. Plaintiff will fairly and adequately represent and protect the interests of the
4 Washington Class because there is no conflict between the claims of Plaintiff and those of the
5 Washington Class, and Plaintiff's claims are typical of the claims of the Washington Class.
6 Plaintiff's counsel are competent and experienced in litigating class actions and other complex
7 litigation matters, including wage and hour cases like this one.

8 64. There are questions of law and fact common to the proposed Washington
9 Class, which predominate over any questions affecting only individual Class Members,
10 including, without limitation, whether Defendants have violated Washington law through
11 their policy or practice of not paying their non-exempt employees overtime compensation.

12 65. Plaintiff's claims are typical of the claims of the Washington Class Members in
13 the following ways, without limitation: (a) Plaintiff is a member of the Washington Class; (b)
14 Plaintiff's claims arise out of the same policies, practices and course of conduct that form the
15 basis of the claims of the Washington Class; (c) Plaintiff's claims are based on the same legal
16 and remedial theories as those of the Washington Class and involve similar factual
17 circumstances; (d) there are no conflicts between the interests of Plaintiff and the Washington
18 Class Members; and (e) the injuries suffered by Plaintiff are similar to the injuries suffered by
19 the Washington Class Members.

20 66. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because
21 questions of law and fact common to the Washington Class predominate over any questions
22 affecting only individual Class Members.

23 67. Class action treatment is superior to the alternatives for the fair and efficient
24 adjudication of the controversy alleged herein. Such treatment will permit a group of similarly
25 situated persons to prosecute their common claims in a single forum simultaneously,
26 efficiently, and without the duplication of effort and expense that numerous individual actions
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1 would entail. No difficulties are likely to be encountered in the management of this class
2 action that would preclude its maintenance as a class action, and no superior alternative
3 exists for the fair and efficient adjudication of this controversy. The Washington Class
4 Members are readily identifiable from Defendants’ own records. Prosecution of separate
5 actions by individual members of the Washington Class would create the risk of inconsistent
6 or varying adjudications with respect to individual Washington Class Members that would
7 establish incompatible standards of conduct for Defendants.

8 68. A class action is superior to other available methods for adjudication of this
9 controversy because joinder of all members is impractical. Further, the amounts at stake for
10 many of the Washington Class Members, while substantial, are not great enough to enable
11 them to maintain separate suits against Defendants.

12 69. Without a class action, Defendants will retain the benefit of their wrongdoing,
13 which will result in further damages to Plaintiff and the Washington Class. Plaintiff envisions
14 no difficulty in the management of this action as a class action.

15 **COUNT I**
16 **FAIR LABOR STANDARDS ACT**
17 **FAILURE TO PAY OVERTIME**
18 **(on behalf of Plaintiff and the FLSA Collective Class)**

19 70. Plaintiff restates and incorporates by reference the above paragraphs.

20 71. Under 29 U.S.C. § 216(b), Plaintiff brings this count on behalf of himself and the
21 FLSA Collective.

22 72. Because they were hired, paid, and had their work controlled by Defendants,
23 Plaintiff and members of the FLSA Collective Class each qualifies as an “employee” under 29
24 U.S.C. § 203(e)(1).

25 73. Based on their business operations in food distribution, Defendants are each an
26 “employer” engaged in interstate commerce under 29 U.S.C. § 203(d).
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1 74. At all relevant times, as part of Defendants’ business operations, Plaintiff and
2 members of the FLSA Collective were engaged in commerce or the production of goods for
3 commerce under 29 U.S.C. § 207(a).

4 75. 29 U.S.C. § 207 requires employers to pay non-exempt employees one and
5 one-half times the regular rate of pay for all hours worked over 40 hours per workweek.

6 76. As employers of Plaintiff and the FLSA Collective, Defendants suffered and
7 permitted Plaintiff and members of the FLSA Collective to work more than 40 hours per
8 workweek within the statutory period without paying them overtime compensation.

9 77. Defendants’ actions, policies, and practices described above violated the FLSA’s
10 overtime requirement because Defendants regularly and repeatedly failed to pay required
11 overtime compensation to Plaintiffs and members of the FLSA Collective Class.

12 78. By failing to accurately record, report, or preserve records of hours worked by
13 Plaintiffs and members of the FLSA Collective, Defendants failed to make, keep, and preserve
14 records about each of their employees sufficient to determine their wages, hours, and other
15 conditions and practice of employment, in violation of the FLSA, 29 U.S.C. § 211(c).

16 79. The foregoing conduct is a willful violation of the FLSA within the meaning of 29
17 U.S.C. § 255(a). Defendants knew or showed reckless disregard for the fact that their
18 compensation practices violated these laws.

19 80. As the direct and proximate result of Defendants’ unlawful conduct, Plaintiff
20 and members of the FLSA Collective have suffered damages. Plaintiff and the FLSA Collective
21 are entitled to recover actual damages, liquidated damages, prejudgment interest, attorneys’
22 fees, and costs under 29 U.S.C. § 216(b).

23 81. Defendants are liable under the FLSA for failing to properly compensate
24 Plaintiff and members of the FLSA Collective. As a result, notice should be sent to the FLSA
25 Collective. There are many similarly situated current and former employees of Defendants
26 who have suffered from Defendants’ practice of denying overtime pay and who would benefit
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1 from the issuance of court-supervised notice of this lawsuit and the opportunity to join. Those
2 similarly situated employees are known to Defendants and are readily identifiable through
3 Defendants' records.

4 **COUNT II**
5 **WASHINGTON MINIMUM WAGE ACT**
6 **FAILURE TO PAY OVERTIME**
7 **(on behalf of Plaintiff and the Washington Class)**

8 82. Plaintiff restates and incorporates by reference the above paragraphs.

9 83. Plaintiff and the Washington Class Members were at all relevant times
10 employees under RCW 49.46.010(3).

11 84. RCW 49.46.130 requires employers to pay employees one and one-half times
12 the regular rate at which they are employed for all hours worked over 40 per workweek.

13 85. RCW 49.46.090 makes employers who violate RCW 49.46.130 liable to the
14 affected employees in the amount of unpaid wages, costs, attorneys' fees, and other
15 appropriate relief under the law.

16 86. Defendants' actions, policies, and practices as described above violated RCW
17 49.46.130 because Defendants regularly and repeatedly failed to compensate Plaintiff and the
18 Washington Class at the required overtime rate for all overtime hours worked.

19 87. By failing to accurately record, report, or preserve records of all hours worked
20 by Plaintiff and the Washington Class, Defendants have failed to make, keep, and preserve
21 records about each of its employees sufficient to determine their wages, hours, and other
22 conditions and practice of employment, in violation of Washington law. *See* WAC 296-126-050
23 (requiring "[e]very employer shall keep for at least three years a record of the name, address,
24 and occupation of each employee, dates of employment, rate or rates of pay, amount paid
25 each pay period to each such employee and the hours worked"); WAC 296-128-010(6)
26 (requiring employer to keep records of the "[h]ours worked each workday and total hours
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1 worked each week”); WAC 296-128-020 (requiring employers to maintain those records for at
2 least three years).

3 88. As the direct and proximate result of Defendants’ unlawful conduct, Plaintiff
4 and the Washington Class have suffered damages. Plaintiff and the Washington Class are
5 entitled to recover actual damages, prejudgment interest, attorneys’ fees, and costs.

6 **COUNT III**
7 **FAILURE TO PROVIDE MEAL AND REST BREAKS AND ENSURE**
8 **THOSE BREAKS ARE TAKEN**
9 **(On Behalf of Plaintiff and the Washington Class)**

10 89. Plaintiff restates and incorporates by reference the above paragraphs.

11 90. RCW 49.12.010 provides:

12 The welfare of the state of Washington demands that all employees
13 be protected from conditions of labor which have a pernicious
14 effect on their health. The state of Washington, therefore,
15 exercising herein its police and sovereign power declares that
16 inadequate wages and unsanitary conditions of labor exert such
17 pernicious effect.

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

21 92. Pursuant to RCW 49.12.005(5) and WAC 296-126-002(9), conditions of labor
22 “means and includes the conditions of rest and meal periods” for employees.

23 93. WAC 296-126-092 provides:

24 (1) Employees shall be allowed a meal period of at least thirty
25 minutes which commences no less than two hours nor more
26 than five hours from the beginning of the shift. Meal periods
27 shall be on the employer’s time when the employee is
required by the employer to remain on duty on the premises
or at a prescribed work site in the interest of the employer.

(2) No employee shall be required to work more than five
consecutive hours without a meal period.

1 (3) Employees working three or more hours longer than a
2 normal work day shall be allowed at least one thirty-minute
meal period prior to or during the overtime period.

3 (4) Employees shall be allowed a rest period of not less than ten
4 minutes, on the employer's time, for each four hours of
5 working time. Rest periods shall be scheduled as near as
6 possible to the midpoint of the work period. No employee
shall be required to work more than three hours without a
rest period.

7 (5) Where the nature of the work allows employees to take
8 intermittent rest periods equivalent to ten minutes for each
9 four hours worked, scheduled rest periods are not required.

10 94. Defendants implemented a policy and practice of either failing to provide
11 Plaintiff and the Washington Class Members with the meal and rest breaks to which they were
12 entitled, failing to ensure those breaks were taken, failing to record missed breaks, and failing
13 to pay for missed breaks.

14 95. Because Plaintiff and the Washington Class Members have failed to receive the
15 meal and rest breaks to which they were entitled, Defendants have violated WAC 296-126-
16 092.

17 96. Because Plaintiff and the Washington Class Members failed to receive the meal
18 breaks to which they were entitled under WAC 296-126-092, Plaintiff and the Washington
19 Class Members should be additionally compensated for thirty (30) minutes for each meal
20 break missed. *See Hill v. Garda CL Nw., Inc.*, 198 Wn. App. 326, 360, 294 P.3d 390 (2017)
21 (holding "that violating the meal period requirement is a wage violation"), *reversed in part on*
22 *other grounds*, 191 Wn.2d 553, 424 P.3d 207 (2018).

23 97. Because Plaintiff and the Washington Class Members were constantly engaged
24 in work activities during their paid rest breaks in violation of WAC 296-126-092, Plaintiff and
25 the Washington Class Members should be additionally compensated for ten (10) minutes for
26 each rest break missed. *See Washington State Nurses Ass'n v. Sacred Heart Med. Ctr.*, 175
27 Wn.2d 822, 829-30, 287 P.3d 516 (2012).

1 98. Plaintiff and the Washington Class Members are entitled to recover wages at
2 one and one-half times their regular hourly rate for all time owed by Defendants for missed
3 rest and meal breaks that, when added to the other hours worked in a week, exceeded 40
4 hours.

5 99. As a result of these unlawful acts, Plaintiff and the Washington Class have been
6 deprived of compensation in amounts to be determined at trial, and Plaintiff and the
7 Washington Class are entitled to the recovery of such damages, including interest thereon,
8 and attorneys' fees and costs under RCW 49.48.030.

9 **COUNT III**
10 **WASHINGTON WAGE REBATE ACT**
11 **WILLFUL REFUSAL TO PAY WAGES**
12 **(On Behalf of Plaintiff and the Washington Class)**

13 1. Plaintiff restates and incorporates by reference the above paragraphs.

14 2. Plaintiff and the Washington Class Members were at all relevant times
15 employees under RCW 49.46.010(3) and RCW 49.52.050.

16 3. RCW 49.52.050 provides that any employer or agent of any employer who,
17 "[w]ilfully and with intent to deprive the employee of any party of his wages, shall pay any
18 employee a lower wage than the wage such employer is obligated to pay such employee by
19 any statute, ordinance, or contract" shall be guilty of a misdemeanor.

20 4. Defendants' violations of RCW 49.46.130, RCW 49.12.020, and WAC 296-126-
21 092, as discussed above, have been willful and thus violate RCW 49.52.050.

22 5. RCW 49.52.070 provides that any employer who violates the provisions of
23 RCW 49.52.050 is liable in a civil action for twice the amount of wages withheld, attorneys'
24 fees, and costs.

25 6. As a result of the willful, wrongful acts of Defendants, Plaintiff and the
26 Washington Class have been deprived of compensation in amounts to be determined at trial
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1 and pursuant to RCW 49.52.070, Plaintiff and the Washington Class are therefore entitled to
2 recover twice such damages as well as attorneys' fees and costs.

3 **PRAYER FOR RELIEF**

4 Plaintiff, on behalf of himself and the Classes, hereby for the following relief:

5 A. Designation of this action as a collective action on behalf of the FLSA Collective
6 and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated
7 individuals informing them of the pendency of this action and permitting them to assert FLSA
8 claims in this action by filing individual consent forms under 29 U.S.C. § 216(b);

9 B. An order permitting this litigation to proceed as a class action pursuant to Fed.
10 R. Civ. P. 23 on behalf of the Washington Class;

11 C. Judgment against Defendants in the amount of actual damages suffered by
12 Plaintiff and the Classes;

13 D. A finding that Defendants' violations of the FLSA were not in good faith and
14 were willful;

15 E. Liquidated damages for Plaintiff and members of the FLSA Collective under
16 federal law;

17 F. A finding that Defendants' violations of Washington law were willful;

18 G. Exemplary damages for Plaintiff and the Washington Class under Washington
19 law;

20 H. All reasonable costs and attorneys' fees under 29 U.S.C. § 216, RCW 49.46.090,
21 RCW 49.52.070, RCW 49.48.030, and any other applicable laws;

22 I. An award of prejudgment interest on actual damages recovered under the FLSA
23 (to the extent liquidated damages are not awarded) and postjudgment interest as provided by
24 law;

25 J. An award of prejudgment interest on actual damages recovered under
26 Washington law and postjudgment interest as provided by law; and
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1 K. All further relief as the Court deems just and equitable.

2 **DEMAND FOR TRIAL BY JURY**

3 Under Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by
4 jury on all questions of fact raised by the complaint.

5 RESPECTFULLY SUBMITTED AND DATED this 18th day of February, 2021.

6 TERRELL MARSHALL LAW GROUP PLLC

7
8 By: /s/ Toby J. Marshall, WSBA #32726

9 Toby J. Marshall, WSBA #32726

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