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CONSTANCE R. WHITE
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NO: 24-2-08098-3

THE HONORABLE STANLEY J. RUMBAUGH
Department 18

IN THE SUPERIOR COURT OF THE STATE WASHINGTON
COUNTY OF PIERCE

BRIAN BRUTON, CHRISTOPHER HORNE, and
TRAVIS THORPE, individually and on behalf of
others similarly situated,

Plaintiffs,

v.

LINDE GAS & EQUIPMENT, INC., a Delaware
corporation and EARNEST CORNWELL,
individually and on behalf of the marital
community of EARNEST CORNWELL and J.
DOE CORNWELL,

Defendants.

NO. 24-2-08098-3

**FIRST AMENDED CLASS ACTION
COMPLAINT**

Plaintiffs Brian Bruton, Christopher Horne, and Travis Thorpe, by their undersigned
counsel, for their first amended class action complaint against Defendants Linde Gas &
Equipment, Inc. and Earnest Cornwell, allege as follows:

1 I. INTRODUCTION

2 1.1 Nature of Action. Defendant Linde Gas & Equipment, Inc. (“Linde Gas”) 3 specializes in providing industrial gases and welding supplies to individuals and businesses and 4 has more than 300 welding supply stores and retail locations across the United States, 5 according to its website. As part of its business, Linde Gas employs Class A and B commercial 6 truck drivers to make daily deliveries of flammable, hazardous, and non-hazardous liquids and 7 gases to its customers in Western Washington. Linde Gas currently dispatches around twenty- 8 five of these drivers from its warehouse in Tacoma, Washington, where Defendant Earnest 9 Cornwell was the distribution supervisor until approximately March 2024. Together, Linde Gas 10 and Mr. Cornwell (collectively “Defendants”) have engaged in a systematic scheme of wage and 11 hour abuses against their Washington drivers. These abuses include: (1) failing to provide 12 drivers with the rest breaks to which they are entitled; (2) failing to provide drivers with the 13 meal breaks to which they are entitled; (3) failing to pay drivers for all hours worked; (4) failing 14 to pay overtime wages to drivers when they work more than forty hours in a workweek; and (5) 15 requiring drivers to have and use personal cell phones for work-related communications and to 16 plan and navigate their delivery routes without reimbursing drivers a reasonable amount for 17 costs associated with those cell phones, which is akin to a de facto wage deduction or rebate.

18 1.2 Plaintiffs and Class members are current and former drivers for Defendants in 19 Washington, and Plaintiffs and Subclass members are current and former drivers for 20 Defendants who have performed work in the city of Seattle. Plaintiffs and members of the 21 Classes have been victimized by Defendants’ unlawful compensation practices. This lawsuit is 22 brought as a class action under state and municipal law to recover unpaid wages owed to 23 Plaintiffs and members of the Classes. 24

II. JURISDICTION AND VENUE

2.1 Jurisdiction. Defendants are within the jurisdiction of this Court. Defendants have done business in Washington, Defendant Linde Gas continues to have operations in Pierce County, and Defendant Cornwell resides in Washington. Defendant Linde Gas is registered to conduct business in Washington, and both Defendants have conducted business in Washington. Defendants have obtained the benefits of the laws of Washington and its retail and labor markets.

2.2 Venue. Venue is proper in Pierce County because Defendants operate and transact business in Pierce County. RCW 4.12.025(1), (3).

2.3 Governing Law. The claims asserted on behalf of Plaintiffs and members of the Classes in this complaint are brought under state and municipal law causes of action and are governed by Washington law and Seattle municipal ordinances.

2.4 Lack of CAFA Jurisdiction. Federal jurisdiction is inappropriate under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) because the matter in controversy does not exceed the sum or value of \$5,000,000, exclusive of interest and costs. Alternatively, federal jurisdiction is inappropriate under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4)(A), because more than two-thirds of the members of the proposed plaintiff class in the aggregate are citizens of Washington; at least one Defendant, Mr. Cornwell, is a Defendant from whom significant relief is sought by members of the plaintiff class; the alleged conduct of Defendant Cornwell forms a significant basis for the claims asserted by the proposed plaintiff class; Defendant Cornwell is a citizen of Washington; the principal injuries resulting from the alleged conduct were incurred in Washington; and during the three-year period preceding the filing of

1 this action, no other class action has been filed asserting same or similar factual allegations
2 against Defendants on behalf of the same or other persons.

3 III. PARTIES

4 3.1 Plaintiff Brian Bruton. Plaintiff Brian Bruton is a resident of Lakewood in Pierce
5 County, Washington, and is a current employee of Defendant Linde Gas and a former employee
6 of Defendant Cornwell. Mr. Bruton was hired as a Class A commercial driver in January 2016,
7 and he has been employed with Linde Gas in that capacity ever since. Mr. Bruton delivers liquid
8 and gas products to Linde Gas customers across Western Washington, including in the city of
9 Seattle. Defendants have failed to provide Mr. Bruton with the rest and meals breaks to which
10 he is entitled under Washington law, and they have done nothing to ensure those breaks have
11 been taken or to compensate Mr. Bruton for missed breaks. Until in or around March 2024,
12 Defendants automatically deducted thirty minutes from Mr. Bruton's timecard each day for
13 meal breaks he did not receive, resulting in Defendants' failure to pay him for all hours worked,
14 including overtime. Finally, Defendants have required Mr. Bruton to have and use a personal
15 cell phone for work-related tasks, including planning his daily delivery routes, navigating those
16 routes, and communicating with management throughout the day. But Defendants have failed
17 to reimburse him a reasonable amount for the costs associated with the use of his cell phone,
18 which has resulted in Mr. Bruton being subjected to a de facto wage deduction or rebate.

19 3.2 Plaintiff Christopher Horne. Plaintiff Christopher Horne is a resident of Sumner in
20 Pierce County, Washington, and is a former employee of Defendants. Mr. Horne was employed
21 as a Class A commercial driver from September 2020 to February 2024. Mr. Horne delivered
22 liquid and gas products to Linde Gas customers across Western Washington, including in the
23 city of Seattle. Defendants failed to provide Mr. Horne with the rest and meals breaks to which
24 he is entitled under Washington law, and they did nothing to ensure those breaks were taken
or to compensate Mr. Horne for missed breaks. Throughout his employment, Defendants

1 automatically deducted thirty minutes from Mr. Horne's timecard each day for meal breaks he
2 did not receive, resulting in Defendants' failure to pay him for all hours worked, including
3 overtime. Finally, Defendants required Mr. Horne to have and use a personal cell phone for
4 work-related tasks, including planning his daily delivery routes, navigating those routes, and
5 communicating with management throughout the day. But Defendants failed to reimburse him
6 a reasonable amount for the costs associated with the use of his cell phone, which resulted in
7 Mr. Horne being subjected to a de facto wage deduction or rebate.

8 3.3 Plaintiff Travis Thorpe. Plaintiff Travis Thorpe is a resident of Tacoma in Pierce
9 County, Washington, and is a current employee of Defendant Linde Gas and a former employee
10 of Defendant Cornwell. Mr. Thorpe was hired as a Class A commercial driver in July 2016, and
11 he has been employed with Linde Gas in that capacity ever since. Mr. Thorpe delivers liquid and
12 gas products to Linde Gas customers across Western Washington, including in the city of
13 Seattle. Defendants have failed to provide Mr. Thorpe with the rest and meals breaks to which
14 he is entitled under Washington law, and they have done nothing to ensure those breaks have
15 been taken or to compensate Mr. Thorpe for missed breaks. Until in or around March 2024,
16 Defendants automatically deducted thirty minutes from Mr. Thorpe's timecard each day for
17 meal breaks he did not receive, resulting in Defendants' failure to pay him for all hours worked,
18 including overtime. Finally, Defendants have required Mr. Thorpe to have and use a personal
19 cell phone for work-related tasks, including planning his daily delivery routes, navigating those
20 routes, and communicating with management throughout the day. But Defendants have failed
21 to reimburse him a reasonable amount for the costs associated with the use of his cell phone,
22 which has resulted in Mr. Thorpe being subjected to a de facto wage deduction or rebate.

1 3.4 Defendant Linde Gas & Equipment, Inc. Linde Gas & Equipment, Inc. (“Linde
2 Gas”) is a Delaware corporation with its principal place of business in Danbury, Connecticut.
3 According to its website, Linde Gas is “a leading global industrial gases and engineering
4 company with 2022 sales of \$33 billion.”¹ Linde Gas (formerly Praxair Distribution, Inc.) has
5 been registered to conduct business in Washington since 2004 and has conducted business
6 throughout Western Washington, including in Pierce County and the city of Seattle, at all times
7 relevant to this litigation. On information and belief, Linde Gas jointly and simultaneously
8 employed at least 40 active drivers, along with Defendant Cornwell, until in or around March
9 2024 when Mr. Cornwell was terminated. Thereafter and through the present, Linde Gas has
10 simultaneously employed at least 40 active drivers.

11 3.5 Defendant Earnest Cornwell. Defendant Earnest Cornwell is a resident of Lacey,
12 Washington. Until in or around March 2024, Mr. Cornwell was employed by Linde Gas as a
13 distribution supervisor, overseeing the scheduling and execution of delivery routes performed
14 by Plaintiffs and members of the Classes. During his employment, Mr. Cornwell had
15 responsibility for the wage and hour policies and practices of Linde Gas, and he exercised
16 control over when and how Plaintiffs and members of the Classes were paid. At all relevant
17 times, Mr. Cornwell has been married to J. Doe Cornwell and has done the acts complained of
18 in pursuit of financial gain or livelihood for himself individually and for the benefit of his marital
19 community. On information and belief, Mr. Cornwell jointly and simultaneously employed at
20 least 40 active drivers, along with Linde Gas, until in or around March 2024 when he was
21 terminated.

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¹ <https://www.lindeus.com/our-company/> (last visited June 13, 2024).

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4.1 Class Definitions. Pursuant to Washington Civil Rule 23, Plaintiffs bring this case

All individuals who are or have been employed as drivers for Linde Gas & Equipment, Inc. in the state of Washington from May 20, 2021, through the date of final disposition of this action.

Pursuant to Washington Civil Rule 23, Plaintiffs also bring this case as a class action on behalf of a Subclass defined as follows (the “Seattle Subclass”):

All individuals who are or have been employed as drivers for Linde Gas & Equipment, Inc. in the state of Washington and who have performed work in the city of Seattle from May 20, 2021, through the date of final disposition of this action.

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

4.2 Numerosity. More than forty members of each of the Classes have worked as

4.3 Commonality. There are numerous questions of law and fact common to

a. Whether Defendants have engaged in a common course of failing to
iffs and members of the Classes with a ten-minute rest break for every four hours

1 b. Whether Defendants have engaged in a common course of requiring
2 Plaintiffs and members of the Classes to work more than three consecutive hours without a rest
3 break;

4 c. Whether Defendants have engaged in a common course of failing to
5 ensure that Plaintiffs and members of the Classes have received the rest breaks to which they
6 are entitled;

7 d. Whether Defendants have engaged in a common course of failing to
8 provide Plaintiffs and members of the Classes with a thirty-minute meal break for every five
9 hours of work;

10 e. Whether Defendants have engaged in a common course of failing to
11 ensure that Plaintiffs and members of the Classes have received the meal breaks to which they
12 are entitled;

13 f. Whether Defendants have engaged in a common course of requiring or
14 permitting Plaintiffs and members of the Classes to perform work without pay;

15 g. Whether Defendants have engaged in a common course of failing to pay
16 Plaintiffs and members of the Classes all the wages to which they are entitled;

17 h. Whether Defendants have engaged in a common course of failing to pay
18 Plaintiffs and members of the Classes all of the overtime wages to which they are entitled;

19 i. Whether Defendants have engaged in a common course of requiring
20 drivers to have and use personal cell phones for work-related navigation and communications
21 without reimbursing drivers a reasonable amount for costs associated with those cell phones;

22 j. Whether Defendants have failed to keep true and accurate records of the
23 hours worked by Plaintiffs and members of the Classes and their rates of pay;

1 k. Whether Defendants have willfully deprived Plaintiffs and members of
2 the Classes of the wages to which they are entitled;

3 l. Whether Defendants have violated RCW 49.12.020;

4 m. Whether Defendants have violated WAC 296-126-092;

5 n. Whether Defendants have violated RCW 49.46.130;

6 o. Whether Defendants have violated RCW 49.46.020;

7 p. Whether Defendants have violated RCW 49.46.090;

8 q. Whether Defendants have violated RCW 49.52.060;

9 r. Whether Defendants have violated WAC 296-126-028;

10 s. Whether Defendants have violated RCW 49.52.050;

11 t. Whether Defendants have violated SMC 14.20; and

12 u. The nature and extent of the injury to members of the Classes and the
13 measure of compensation for such injury.

14 4.4 Typicality.

15 4.4.1 Class. Plaintiffs' claims are typical of the Class members' claims because
16 Plaintiffs have worked as drivers for Defendants in Washington. Plaintiffs' claims, like the Class
17 members' claims, arise out of the same common course of conduct by Defendants and are
18 based on the same legal and remedial theories.

19 4.4.2 Seattle Subclass. Plaintiffs' claims are typical of the Seattle Subclass
20 members' claims because Plaintiffs have worked as drivers for Defendants in Washington and
21 have performed work in the city of Seattle. Plaintiffs' claims, like the Seattle Subclass
22 members' claims, arise out of the same common course of conduct by Defendants and are
23 based on the same legal and remedial theories.

1 4.5 Adequacy. Plaintiffs will fairly and adequately protect the interests of the
2 Classes. Plaintiffs have retained competent and capable attorneys who are experienced trial
3 lawyers with significant experience in complex and class action litigation, including employment
4 law. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf
5 of the Classes and have the financial resources to do so. Neither Plaintiffs nor their counsel
6 have interests that are contrary to or that conflict with those of the proposed Classes.

7 4.6 Predominance. Defendants have engaged in a common course of wage and hour
8 abuse toward Plaintiffs and members of the Classes. The common issues arising from this
9 conduct that affect Plaintiffs and members of the Classes predominate over any individual
10 issues.

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

19 **V. SUMMARY OF FACTUAL ALLEGATIONS**

20 5.1 Defendants have engaged in a common course of wage and hour abuse against
21 their driver employees in the state of Washington.

22 5.2 Failure to provide rest breaks. Defendants have engaged in a common course of
23 failing to provide Plaintiffs and members of the Classes with a paid ten-minute rest break for
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1 every four hours of work. Because of the demands of drivers' delivery routes, the locations of
2 Defendants' delivery customers, the inability of drivers to leave their trucks unattended, and
3 other requirements that Defendants place on their drivers, Plaintiffs and members of the
4 Classes have been unable to take rest breaks. For example, Plaintiffs and members of the
5 Classes have been required to make deliveries in densely populated urban areas and other
6 locations where they have been unable to park their tractor-trailers and other large commercial
7 delivery trucks and disengage from their work responsibilities between deliveries. Even if they
8 could find space and time to park their trucks, they have been unable to leave their trucks and
9 the often-hazardous cargo unattended due to safety and theft-prevention concerns. Despite
10 Defendants' knowledge of these work conditions and the requirements and limitations they
11 impose on drivers, Defendants have taken no steps to ensure that drivers have sufficient time
12 or space between deliveries for rest breaks or to take such breaks. As a result, Plaintiffs and
13 members of the Classes rarely have received the rest breaks to which they are entitled during
14 their shifts.

15 5.3 Defendants have engaged in a common course of requiring or permitting
16 Plaintiffs and members of the Classes to work more than three consecutive hours without a rest
17 break.

18 5.4 Defendants have engaged in a common course of failing to ensure Plaintiffs and
19 members of the Classes have taken the rest breaks to which they are entitled.

20 5.5 Defendants have engaged in a common course of failing to provide Plaintiffs and
21 members of the Classes with ten minutes of additional pay for each missed rest break.

22 5.6 Failure to provide meal breaks. Defendants have engaged in a common course of
23 failing to provide Plaintiffs and members of the Classes with thirty-minute meal breaks for
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1 every shift greater than five hours in length. Because of the demands of drivers' delivery routes,
2 the locations of Defendants' delivery customers, the inability of drivers to leave their trucks
3 unattended, and other requirements that Defendants place on their drivers, Plaintiffs and
4 members of the Classes have been unable to take meal breaks. For example, Plaintiffs and
5 members of the Classes have been required to make deliveries in densely populated urban
6 areas and other locations where they have been unable to park their tractor-trailers and other
7 large commercial delivery trucks and disengage from their work responsibilities between
8 deliveries. Even if they could find space and time to park their trucks, they have been unable to
9 leave their trucks and the often-hazardous cargo unattended due to safety and theft-
10 prevention concerns. Despite Defendants' knowledge of these work conditions and the
11 requirements and limitations they impose on drivers, Defendants have taken no steps to ensure
12 that drivers have sufficient time for meal breaks or take such breaks. As a result, Plaintiffs and
13 members of the Classes rarely have received the meal breaks to which they are entitled during
14 their shifts.

15 5.7 Defendants have engaged in a common course of requiring or permitting
16 Plaintiffs and members of the Classes to work more than five consecutive hours without a meal
17 break.

18 5.8 Defendants have engaged in a common course of failing to ensure Plaintiffs and
19 members of the Classes have received the meal breaks to which they are entitled.

20 5.9 Defendants have engaged in a common course of failing to provide Plaintiffs and
21 members of the Classes with thirty minutes of additional pay for each missed meal break.

22 5.10 Failure to pay for all hours worked. Defendants have engaged in a common
23 course of failing to pay Plaintiffs and members of the Classes for all hours worked.

1 5.11 Until in or around March 2024, Defendants automatically deducted thirty
2 minutes of worktime each day from drivers' timecards for meal breaks, regardless of whether
3 the drivers received them or not. Drivers were required to clock in at the start of their shift and
4 clock out at the end of their shift using a fingerprint-initiated timeclock in the warehouse. They
5 were also required to accurately record their activities throughout each workday, including
6 drive time and breaks, on their Department of Transportation ("DOT") drivers' logs.

7 5.12 On information and belief, Mr. Cornwell would go into Defendants' timekeeping
8 system and alter drivers' timecards to show that they received a thirty-minute meal break every
9 day, regardless of whether drivers received a break or recorded one in their DOT logs. When
10 confronted by drivers, Mr. Cornwell said that the pay deductions were necessary because
11 Defendants were required to show on DOT records that drivers received a meal break every
12 day.

13 5.13 Defendants' common course of deducting thirty minutes of worktime from
14 drivers' timecards each day has resulted in their failure to pay Plaintiffs and members of the
15 Classes for all hours worked, including overtime.

16 5.14 Failure to pay overtime wages. Defendants have engaged in a common course of
17 failing to pay Plaintiffs and members of the Classes the overtime wages to which they are
18 entitled, including, without limitation, overtime wages owed to Class members for time worked
19 beyond forty hours in a week, time owed for missed rest and meal breaks, and time
20 automatically deducted for meal breaks not taken.

21 5.15 Plaintiffs and members of the Classes regularly have worked more than eight
22 hours per day, five days or more per week. Thus, Plaintiffs and members of the Classes regularly
23 have worked more than forty hours per week.

1 5.16 Defendants have failed to separately compensate Plaintiffs and members of the
2 Classes for missed rest and meal breaks, including time automatically deducted for meal breaks
3 not taken. Such work, if performed beyond forty hours in a workweek, must be compensated at
4 one-and-a-half times the driver's regular rate, regardless of whether it is paid at the time it is
5 owed or recovered later.

6 5.17 Failure to reimburse drivers for personal cell phones. Defendants have engaged
7 in a common course of requiring Plaintiffs and members of the Classes to have and use
8 personal cell phones for work-related tasks, including planning their daily delivery routes,
9 navigating those routes, and communicating with management throughout the day.

10 5.18 Defendants have also engaged in a common course of failing to reimburse
11 Plaintiffs and members of the Classes a reasonable amount for costs associated with those cell
12 phones.

13 5.19 Defendants' failure to reimburse Plaintiffs and members of the Classes for a
14 reasonable percentage of their personal cell phone bills and the cost of the phone itself has
15 resulted in a de facto deduction or rebate from the wages paid to Plaintiffs and members of the
16 Classes.

17 5.20 Failure to maintain accurate payroll records. Defendants have engaged in a
18 common course of failing to maintain accurate payroll records for Plaintiffs and members of the
19 Classes.

20 5.21 Under Washington law, an employer must keep and preserve records that detail,
21 among other things, the "[h]ours worked each workday and total hours worked each
22 workweek," the "[t]otal daily or weekly straight-time earnings or wages," the "[t]otal overtime
23 excess compensation for the workweek," and the "rate or rates of pay," and an employer must
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1 maintain those records for at least three years. WAC 296-128-010(6); WAC 296-126-050; *see*
2 *also* RCW 49.46.040(3).

3 5.22 Defendants have failed to keep accurate records of the hours Plaintiffs and
4 members of the Classes have worked each day.

5 5.23 Defendants have failed to keep accurate records of the hours Plaintiffs and
6 members of the Classes have worked each week.

7 5.24 Defendants have failed to keep accurate records of the total daily or weekly
8 straight-time earnings or wages owed to Plaintiffs and members of the Classes.

9 5.25 Defendants have failed to keep accurate records of the total overtime excess
10 compensation owed to Plaintiffs and members of the Classes.

11 5.26 Defendants have failed to keep accurate records of the rate or rates of pay
12 earned by Plaintiffs and members of the Classes.

13 **VI. FIRST CLAIM FOR RELIEF**
14 **(Violations of RCW 49.12.020 and WAC 296-126-092 —Failure to Provide Rest Periods)**

15 6.1 Plaintiffs and members of the Classes reallege and incorporate by reference each
16 and every allegation set forth in the preceding paragraphs.

17 6.2 RCW 49.12.010 provides that “[t]he welfare of the state of Washington demands
18 that all employees be protected from conditions of labor which have a pernicious effect on
19 their health. The state of Washington, therefore, exercising herein its police and sovereign
20 power declares that inadequate wages and unsanitary conditions of labor exert such pernicious
21 effect.”
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1 6.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in any
2 industry or occupation within the state of Washington under conditions of labor detrimental to
3 their health.”

4 6.4 Under RCW 49.12.005 and WAC 296-126-002, conditions of labor “means and
5 includes the conditions of rest and meal periods” for employees.

6 6.5 WAC 296-126-092 provides that employees shall be allowed certain paid rest
7 periods during their shifts.

8 6.6 Under Washington law, Defendants have an obligation to provide employees
9 with the rest breaks to which they are entitled.

10 6.7 Under Washington law, Defendants have an obligation to ensure that employees
11 receive the rest breaks to which they are entitled.

12 6.8 Under Washington law, Defendants have an obligation to provide employees
13 with ten minutes of additional pay for each missed rest break.

14 6.9 By the actions alleged above, Defendants have violated the provisions of RCW
15 49.12.020 and WAC 296-126-092.

16 6.10 As a result of the unlawful acts of Defendants, Plaintiffs and members of the
17 Classes have been deprived of compensation in amounts to be determined at trial and pursuant
18 to RCW 49.48.030, Plaintiffs and members of the Classes are entitled to recovery of such
19 damages, including interest thereon, as well as attorneys’ fees and costs.

20 **VII. SECOND CLAIM FOR RELIEF**
21 **(Violations of RCW 49.12.020 and WAC 296-126-092 — Failure to Provide Meal Periods)**

22 7.1 Plaintiffs and members of the Classes reallege and incorporate by reference each
23 and every allegation set forth in the preceding paragraphs.
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1 7.2 RCW 49.12.010 provides that “[t]he welfare of the state of Washington demands
2 that all employees be protected from conditions of labor which have a pernicious effect on
3 their health. The state of Washington, therefore, exercising herein its police and sovereign
4 power declares that inadequate wages and unsanitary conditions of labor exert such pernicious
5 effect.”

6 7.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in any
7 industry or occupation within the state of Washington under conditions of labor detrimental to
8 their health.”

9 7.4 Under RCW 49.12.005 and WAC 296-126-002, conditions of labor “means and
10 includes the conditions of rest and meal periods” for employees.

11 7.5 WAC 296-126-092 provides that employees shall be allowed certain meal periods
12 during their shifts.

13 7.6 Under Washington law, Defendants have an obligation to provide employees
14 with the meal breaks to which they are entitled.

15 7.7 Under Washington law, Defendants have an obligation to ensure that employees
16 receive the meal breaks to which they are entitled.

17 7.8 Under Washington law, Defendants have an obligation to provide employees
18 with thirty minutes of additional pay for each missed meal break.

19 7.9 By the actions alleged above, Defendants have violated the provisions of RCW
20 49.12.020 and WAC 296-126-092.

21 7.10 As a result of the unlawful acts of Defendants, Plaintiffs and members of the
22 Classes have been deprived of compensation in amounts to be determined at trial and pursuant
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1 to RCW 49.48.030, Plaintiffs and members of the Classes are entitled to recovery of such
2 damages, including interest thereon, as well as attorneys' fees and costs.

3 **VIII. THIRD CLAIM FOR RELIEF**
4 **(Violation of RCW 49.46.090 — Payment of Wages Less Than Entitled)**

5 8.1 Plaintiffs and members of the Classes reallege and incorporate by reference each
6 and every allegation set forth in the preceding paragraphs.

7 8.2 Under RCW 49.46.090, employers must pay employees all wages to which they
8 are entitled under the Washington Minimum Wage Act.

9 8.3 RCW 49.46.010 defines "wage" as "compensation due to an employee by reason
10 of employment, payable in legal tender of the United States or checks on banks convertible into
11 cash on demand at full face value, subject to such deductions, charges, or allowances as may be
12 permitted by rules of the director."

13 8.4 By the actions alleged above, Defendants have violated the provisions of RCW
14 49.46.090, including by failing to pay Plaintiffs and members of the Classes for all hours worked
15 and by failing to pay any wage whatsoever to Plaintiffs and members of the Classes for their
16 missed rest and meal breaks.

17 8.5 As a result of the unlawful acts of Defendants, Plaintiffs and members of the
18 Classes have been deprived of compensation in amounts to be determined at trial and pursuant
19 to RCW 49.46.090(1), Plaintiffs and members of the Classes are entitled to recovery of such
20 damages, including interest thereon, as well as attorneys' fees and costs.

21 **IX. FOURTH CLAIM FOR RELIEF**
22 **(Violation of RCW 49.46.130 — Failure to Pay Overtime Wages)**

23 9.1 Plaintiffs and members of the Classes reallege and incorporate by reference each
24 and every allegation set forth in the preceding paragraphs.

1 9.2 RCW 49.46.130 provides that “no employer shall employ any of his or her
2 employees for a workweek longer than forty hours unless such employee receives
3 compensation for his or her employment in excess of the hours above specified at a rate not
4 less than one and one-half times the regular rate at which he or she is employed.”

5 9.3 Defendants have failed to pay overtime compensation to Plaintiffs and members
6 of the Classes for hours worked over forty in a week at a rate of not less than one and one-half
7 times their regular rate of pay, including time worked outside of scheduled shifts and time
8 owed for missed rest and meal breaks.

9 9.4 By the actions alleged above, Defendants have violated the provisions of RCW
10 49.46.130.

11 9.5 As a result of the unlawful acts of Defendants, Plaintiffs and members of the
12 Classes have been deprived of compensation in amounts to be determined at trial and pursuant
13 to RCW 49.46.090(1), Plaintiffs and members of the Classes are entitled to recovery of such
14 damages, including interest thereon, as well as attorneys’ fees and costs.

15 **X. FIFTH CLAIM FOR RELIEF**
16 **(Violation of RCW 49.52.050 — Unlawful Rebate of Wages)**

17 10.1 Plaintiffs and members of the Classes reallege and incorporate by reference each
18 and every allegation set forth in the preceding paragraphs.

19 10.2 RCW 49.52.050 provides:

20 Any employer or officer . . . or agent of any employer . . . who

21 (1) Shall collect or receive from any employee a rebate of any
22 part of wages theretofore paid by such employer to such
23 employee; or

24 ***

1 (4) Being an employer or a person charged with the duty of
2 keeping any employer's books or records shall wilfully fail or
3 cause another to fail to show openly and clearly in due course
4 in such employer's books and records any rebate of or
5 deduction from any employee's wages.

6 ***

7 Shall be guilty of a misdemeanor.

8 10.3 By requiring Plaintiffs and members of the Classes to have personal cell phones
9 for work-related tasks and communications and failing to reimburse them a reasonable amount
10 for the costs associated with those phones, Defendants have effectively taken rebates from the
11 wages of Plaintiffs and members of the Classes.

12 10.4 Defendants' conduct violates RCW 49.52.050, and Plaintiffs and members of the
13 Classes are entitled to repayment of the wages unlawfully rebated.

14 10.5 RCW 49.52.070 provides that any employer who violates the foregoing statute
15 shall be liable in a civil action for twice the amount of wages unlawfully rebated, together with
16 costs of suit and reasonable attorneys' fees.

17 10.6 Defendants' violations have been committed willfully and with intent to deprive
18 Plaintiffs and members of the Classes of part of their wages.

19 10.7 As a result of the unlawful acts of Defendants, Plaintiffs and members of the
20 Classes have been deprived of compensation in amounts to be determined at trial and are
21 entitled to recover those rebated wages along with prejudgment interest, costs and, pursuant
22 to RCW 49.48.030, attorneys' fees.

23 10.8 As a result of the unlawful acts of Defendants, Plaintiffs and members of the
24 Classes are also entitled to recover exemplary damages, attorneys' fees, and costs under RCW
49.52.070.

1 **XI. SIXTH CLAIM FOR RELIEF**
2 **(Violation of RCW 49.52.060 and WACV 296-126-028 — Unlawful Deductions)**

3 11.1 Plaintiffs and members of the Classes reallege and incorporate by reference each
4 and every allegation set forth in the preceding paragraphs.

5 11.2 Pursuant to RCW 49.52.060 and WAC 296-126-028, an employer may not make
6 deductions from an employee's wages except in limited circumstances and may not derive a
7 financial benefit from such deduction, even if it is allowed.

8 11.3 Under Washington law, deductions and rebates must be identified and recorded
9 "openly and clearly in employee payroll records." WAC 296-126-028(5); *see also* RCW
10 49.52.060; WAC 296-128-010(9).

11 11.4 Defendants effectively made unauthorized deductions from the wages of
12 Plaintiffs and members of the Classes by requiring them to have and use personal cell phones
13 for work-related communications but failing to reimburse them a reasonable amount for the
14 costs associated with those phones.

15 11.5 Defendants derived a financial benefit from such unlawful deductions.

16 11.6 As such, based on the above allegations, Defendants violated the provisions of
17 RCW 49.52.060 and WAC 296-126-028.

18 11.7 As a result of the unlawful acts of Defendants, Plaintiffs and members of the
19 Classes have been deprived of compensation in amounts to be determined at trial and are
20 entitled to recover those unlawfully deducted wages along with prejudgment interest, costs
21 and, pursuant to RCW 49.48.030, attorneys' fees.

XII. SEVENTH CLAIM FOR RELIEF
(Violation of SMC 14.20.020 — Failure to Pay Wages Owed)

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

12.2 SMC 14.20.020 provides that “[a]n employer shall pay all compensation owed to an employee by reason of employment on an established regular pay day at no longer than monthly payment intervals.”

12.3 SMC 14.20.045 provides that the failure of an employer to comply with any requirement imposed upon it under Chapter 14.20 constitutes a violation of the ordinance.

12.4 Defendants’ failure to pay wages for all hours worked, failure to pay overtime wages, and failure to pay for missed rest breaks and meal periods, to Plaintiffs and Subclass members constitutes a violation of SMC 14.20.

12.5 SMC 14.20.090(A) provides that “any person or class of persons that suffers financial injury as a result of a violation of [the Wage Theft Ordinance] . . . may be awarded reasonable attorneys fees and costs and such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, the payment of any unpaid compensation plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid compensation”

12.6 By the foregoing acts, Defendants failed and refused to pay Plaintiffs and Subclass members the wages owed to them by reason of employment in violation of SMC 14.20.020.

12.7 As a result of Defendants’ acts and omissions, Plaintiffs and Subclass members have been damaged in an amount to be proven at trial, and Plaintiffs and Subclass members

1 are entitled to the recovery of such damages, including interest thereon, an additional amount
2 of twice the unpaid compensation, and attorneys' fees and costs under SMC 14.20.090.

3 **XIII. EIGHTH CLAIM FOR RELIEF**
4 **(Violation of RCW 49.52.050 — Willful Refusal to Pay Wages)**

5 13.1 Plaintiffs and members of the Classes reallege and incorporate by reference each
6 and every allegation set forth in the preceding paragraphs.

7 13.2 RCW 49.52.070 provides that any employer who "willfully and with intent to
8 deprive the employee of any part of his wages, pays any employee a lower wage than the wage
9 such employer is obligated to pay such employee by any statute, ordinance, or contract" is
10 guilty of a misdemeanor.

11 13.3 RCW 49.52.070 provides that any employer who violates the foregoing statute
12 shall be liable in a civil action for twice the amount of wages withheld, together with costs of
13 suit and reasonable attorneys' fees.

14 13.4 The alleged unlawful actions by Defendants against Plaintiffs and members of
15 the Classes, as set forth above, were committed willfully and with intent to deprive Plaintiffs
16 and members of the Classes of part of their wages.

17 13.5 As such, based on the above allegations, Defendants violated the provisions of
18 RCW 49.52.050.

19 13.6 As a result of the unlawful acts of Defendants, Plaintiffs and members of the
20 Classes have been deprived of compensation in amounts to be determined at trial, and
21 pursuant to RCW 49.52.070 are entitled to recovery of twice such amounts, including interest
22 thereon and attorneys' fees and costs.
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- A. Certify the proposed Class and Subclass;
- B. Appoint Plaintiffs as representatives of the Class and Subclass;
- C. Appoint the undersigned attorneys as Class counsel for the Class and Subclass;
- D. Declare that the actions complained of herein violate Washington law and Seattle Municipal Code;
- E. Award Plaintiffs and members of the Classes compensatory and exemplary damages in amounts to be proven at trial;
- F. Award attorneys' fees and costs to Plaintiffs' attorneys, as allowed by law;
- G. Award pre-judgment and post-judgment interest to Plaintiffs and members of the Classes, as provided by law;
- H. Permit Plaintiffs and members of the Classes leave to amend the complaint to conform to the evidence presented at trial; and
- I. Grant such other and further relief as this Court deems necessary, just, and proper.

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1 RESPECTFULLY SUBMITTED AND DATED this 17th day of June, 2024.

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