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THE HONORABLE JIM ROGERS

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

ROBERT S. BRUNER and CECIL G. MARKLEY, individually and on behalf of others similarly situated, and TAREK AHMED, MY AU, TAM NGUYEN, THEODORE THOMAS, THAI NGUYEN, ROBERT JONES, DUNG DANG, QUANG TRAN, DUNG DAO, JOSH DIXON, LARRY DUNSON, DOAN LONG, DERALD OWEN, KEN MCNETT, MICHAEL SHERMAN, MICHAEL SPORS, RICK ROSALES, SEDRICK STEVENSON, MIKHAIL SAHKAROV, THAN NGUYEN, DAVID FOX, BINH TRAN, THAI LOI, JEFF BARNES, ERIC BERTRAND, RANDY CHAVEZ, CIPRIANO VASQUEZ, ROBERT VAN SOMEREN, FRANK VIEIRA, UMMAT ASLANOV, YEVEGENIY KAMYSHIN THIEN CAO, RALPH HRIBAR, VOLODYMYR POLUEKTOV, HI TANG, ADEN ISSE, SYDNEY COE, GARY MICHEL HAI LE, THANH TRAN, TAM HUYNH, JOHN SHAW, TOMMY CROCKER, DEAN HANK, GERALD BELLOWS, ARSENIO ESTEBAN, LEONID BERMAN, YOUNG YOON, JAN MIIESCKUC, RAMAZ

CLASS ACTION

No. 12-2-15676-0 SEA

SECOND AMENDED COMPLAINT

1 OSMANOV, ART KOCHAROV, KENDAL RA
2 DILLI, AND FERNANDO ZARATE, as
3 individuals,

4 Plaintiffs,

5 v.

6 DAVIS WIRE CORPORATION,

7 Defendant.
8

9 **I. NATURE OF ACTION**

10 **1.1** This is a class action for unpaid "off-the-clock" work time and unprovided
11 statutory rest and meal breaks brought by two current employees ("class representatives") on
12 behalf of themselves and others similarly situated who worked for defendant during the three
13 years prior to the date the original complaint in this action was filed, and thereafter.

14 **1.2** This is also a class action for overtime compensation not paid to the class
15 representatives and others similarly situated who worked for defendant during the three years
16 prior to the date the original complaint in this action was filed, and thereafter, in the amount of
17 one-and-one-half times their regular rate of pay, in violation of RCW 49.46.130(1) and WAC
18 296-128-550.

19 **1.3** This class of employees was not paid for periods of time during which they were
20 authorized and known by defendant to be on duty at the defendant's workplace or at defendant's
21 direction and during which they were requested, suffered, permitted and/or allowed to perform
22 work for the defendant. As a result, they have been unlawfully deprived of the wages to which
23 they were entitled pursuant to Washington state law.
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1 **1.4** This class of employees was not provided with the thirty-minute meal periods to
2 which the employees were entitled under RCW 49.12.091 and WAC 296-126-092, because the
3 employees were required to work more than five consecutive hours without a meal period and
4 were required to work three or more hours longer than a normal work day without being allowed
5 at least one thirty-minute meal period prior to or during the overtime period.
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7 **1.5** This class of employees was not provided with the paid ten-minute rest periods to
8 which the employees were entitled under RCW 49.12.091 and WAC 296-126-092(4), because
9 they were not allowed a paid rest period for each four hours of working time, the nature of the
10 work does not allow them to take intermittent rest periods equivalent to ten minutes for each four
11 hours worked, and the employer required employees to work more than three hours without a
12 rest period.
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14 **1.6** This class of employees was not paid one-and-one-half times their regular rate of
15 pay, in violation of RCW 49.46.130(1) and WAC 296-128-550, because the portion of their pay
16 which was denominated “incentive pay” was paid at a steady hourly rate, for days when such
17 pay was earned or awarded, regardless of how many hours were worked in the workweek, and
18 was not added into each workers’ total weekly compensation for the purpose of determining the
19 employee’s regular rate and therefore the amount of overtime pay owed.
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21 **1.7** This lawsuit also includes the claims of fifty-three other current and/or former
22 employees who worked for defendant during the three years prior to the date the original
23 complaint in this action was filed, and/or thereafter, who allege the same substantive claims as
24 are alleged by the class representatives, Plaintiffs Bruner and Markley.
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1 **II. JURISDICTION AND VENUE**

2 **2.1** The Superior Court of Washington has jurisdiction of plaintiffs' claims pursuant
3 to RCW 2.08.010 and Superior Court Civil Rule ("CR") 23.

4 **2.2** Venue in King County is appropriate pursuant to RCW 4.12.025.

5 **III. PARTIES**

6 **3.1** Plaintiff Robert S. Bruner is a resident of the City of Lakewood in Pierce County,
7 Washington. He is currently employed by the defendant, and is an employee for purposes of the
8 Washington State Minimum Wage Act ("MWA"), RCW 49.46, and the Industrial Welfare Act
9 ("IWA"), RCW 49.12.

10 **3.2** Plaintiff Cecil G. Markley is a resident of the City of Puyallup in Pierce County,
11 Washington. He was employed by the defendant during the three years preceding the date the
12 original complaint was filed in this matter and during that time period was an employee for
13 purposes of the MWA and the IWA.

14 **3.3** The other fifty-three named plaintiffs are residents of Washington State who were
15 employed by the defendant during the three years preceding the date the original complaint was
16 filed in this matter and/or thereafter and during that time period were employees for purposes of
17 the MWA and the IWA.

18 **3.4** Defendant Davis Wire Corporation, ("Davis Wire" or "employer") is a
19 corporation which does business in the State of Washington and in King County. Davis Wire is
20 an employer for purposes of the MWA and the IWA.

1 **IV. CLASS ACTION ALLEGATIONS**

2 **4.1** The class representatives seek to represent all production, maintenance and
3 shipping employees at the Davis Wire plant located at 19411 80th Avenue South in Kent,
4 Washington who performed work for Davis Wire at that location during at least a portion of the
5 three years prior to the service and/or filing of the original complaint in this matter, and
6 thereafter.

7
8 **4.2** The action is properly maintainable under CR 23(a) and (b)(3).

9 **4.3** The class described in paragraph 4.1 is sufficiently numerous such that joinder of
10 all of them is impractical, as required by CR 23(a)(1).

11 **4.4** Pursuant to CR 23(a)(2), there are common questions of law and fact including,
12 but not limited to, a) whether the defendant failed to pay class members for time periods when
13 they were authorized and known by defendant to be on duty at the defendant's workplace or at
14 the defendant's direction and during which they were requested, suffered, permitted and/or
15 allowed to perform work for the defendant; b) whether the defendant failed to provide and
16 compensate employees for the meal and rest breaks to which they were entitled under
17 Washington wage and hour law; and c) whether the defendant failed to pay class members one
18 and one-half times their regular rate of pay for all hours worked in excess of forty in their work
19 weeks, in violation of RCW 49.46.130(1) and WAC 296-128-550.

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21 **4.5** Pursuant to CR 23(a)(3), the class representatives' wage claims, as well as
22 defendant's anticipated affirmative defenses thereto, are typical of the claims of all class
23 members and of defendant's anticipated affirmative defenses thereto.
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1 **4.6** The class representatives and their counsel will fairly and adequately protect the
2 interests of the class as required by CR 23(a)(4).

3 **4.7** Pursuant to CR 23(b)(3), class certification is appropriate here because common
4 questions of law or fact common to members of the class predominate over any questions
5 affecting only individual members, and because a class action is superior to other available
6 methods for the fair and efficient adjudication of the controversy.
7

8 **V. FACTUAL ALLEGATIONS**

9 **5.1** Defendant is engaged in the manufacture of wire, including galvanized and
10 reinforcement wire and specialty wires.

11 **5.2** During the time period relevant to this amended complaint, plaintiffs and class
12 members worked for defendant as production, maintenance and shipping employees.

13 **5.3** During the time period relevant to this amended complaint, plaintiffs and class
14 members routinely “clocked in” anywhere from one to sixty minutes or more prior to the
15 commencement of their scheduled shift. During this period of time, plaintiffs and class members
16 were authorized and known by defendant to be on duty at the defendant’s workplace and were
17 requested, suffered, permitted and/or allowed to perform work for the defendant. Plaintiffs and
18 class members were not paid for this work.
19

20 **5.4** During the time period relevant to this amended complaint, plaintiffs and class
21 members routinely “clocked out” later than the end of their scheduled or extended shifts.
22 During the period of time between the end of plaintiffs’ and class members’ shifts and the time
23 plaintiffs and class members clocked out, plaintiffs and class members were authorized and
24 known by defendant to be on duty at the defendant’s workplace and were requested, suffered,
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1 permitted and/or allowed to perform work for the defendant. Plaintiffs and class members were
2 not paid for this work.

3 **5.5** During the time period relevant to this amended complaint, plaintiffs and class
4 members working more than five hours of work were not allowed meal periods of at least thirty
5 minutes. Plaintiffs and class members working three or more hours longer than a normal work
6 day were not allowed at least one thirty-minute meal period prior to or during the overtime
7 period. Davis Wire did not provide plaintiffs and class members meal periods either scheduled
8 or unscheduled, interrupted or uninterrupted.

10 **5.6** During the time period relevant to this amended complaint, plaintiffs and class
11 members were required to perform active work during the entirety of their shifts, without respite,
12 and were provided no opportunity to engage in personal activities, to rest or relax or to
13 experience relief from work or exertion. From the commencement of plaintiffs' and class
14 members' scheduled shifts until the time that they clocked out at the end of their shifts, plaintiffs
15 and class members were always on duty, always performing work and always acting in the
16 interest of the employer. When plaintiffs and class members ate or drank during work time, they
17 did so while they were on duty on the employer's premises and while actively performing work
18 activities. Plaintiffs and class members did not waive their required meal periods.

21 **5.7** During the time period relevant to this amended complaint, plaintiffs and class
22 members were not provided with paid ten-minute rest periods, as required by WAC 296-126-
23 092(4) and RCW 49.12.091, even though the nature of the work performed by them did and does
24 not allow them to take intermittent rest periods equivalent to ten minutes for each four hours
25 worked.

1 **5.8** During the time period relevant to this amended complaint, plaintiffs and class
2 members were not paid one-and-one-half times their regular rate of pay, in violation of RCW
3 49.46.130(1) and WAC 296-128-550, because the portion of their pay which was denominated
4 “incentive pay” was paid at a steady hourly rate, for days when such pay was earned or awarded,
5 regardless of how many hours were worked in the workweek, and was not added into each
6 workers’ total weekly compensation for the purpose of determining the employee’s regular rate
7 and therefore the amount of overtime pay owed.
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9 **VI. FIRST CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY FOR TIME**
10 **SPENT PERFORMING WORK FOR THE DEFENDANT PRIOR TO THE**
11 **COMMENCEMENT OF REGULARLY SCHEDULED SHIFTS, IN VIOLATION**
12 **OF THE WASHINGTON STATE MINIMUM WAGE ACT, RCW 49.46, AND**
13 **RCW 49.52**

14 **6.1** Plaintiffs restate and reallege the allegations set forth in paragraphs 1.1 through
15 5.8 above.

16 **6.2** Defendant’s failure to pay plaintiffs and class members for the time they spent
17 prior to the commencement of their regularly scheduled shifts constitutes a violation of RCW
18 49.46.020, RCW 49.46.090(1), and RCW 49.52.050(2).

19 **6.3** In failing to pay wages to their employees as alleged above, defendant acted
20 willfully and with the intent of depriving its employees of these wages.

21 **6.4** As a result of defendant’s acts and omissions, plaintiffs and class members have
22 been damaged in amounts not yet calculated.

23 **VII. SECOND CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY FOR TIME**
24 **SPENT PERFORMING WORK FOR THE DEFENDANT SUBSEQUENT TO**
25 **THE COMPLETION OF REGULARLY SCHEDULED AND EXTENDED**
26 **SHIFTS, IN VIOLATION OF RCW 49.46 AND RCW 49.52**

1 **7.1** Plaintiffs restate and reallege the allegations set forth in paragraphs 1.1 through
2 5.8 above.

3 **7.2** Defendant's failure to pay plaintiffs and class members for the time they spent
4 subsequent to the completion of their regularly scheduled shifts constitutes a violation of RCW
5 49.46.020, RCW 49.46.090(1), and RCW 49.52.050(2).
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7 **7.3** In failing to pay wages to their employees as alleged above, defendant acted
8 willfully and with the intent of depriving its employees of these wages.

9 **7.4** As a result of defendant's acts and omissions, plaintiffs and class members have
10 been damaged in amounts not yet calculated.

11 **VIII. THIRD CAUSE OF ACTION – CLASSWIDE FAILURE TO PROVIDE MEAL**
12 **PERIODS IN VIOLATION OF RCW 49.12.091 AND WAC 296-126-092**

13 **8.1** Plaintiffs restate and reallege the allegations set forth in paragraphs 1.1 through
14 5.8 above.

15 **8.2** Defendant violated WAC 296-126-092(1) through (3) and RCW 49.12.091 by
16 failing to provide plaintiffs and class members with thirty-minute meal periods as required by
17 WAC 296-126-092(1) through (3).
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19 **8.3** The plaintiffs and class members were required to work more than five
20 consecutive hours without a meal period and were required to work three or more hours longer
21 than a normal work day without being allowed at least one thirty-minute meal period prior to or
22 during the overtime period.

23 **8.4** In failing to provide meal periods as alleged above, defendant benefited from the
24 labor of these employees without compensating the employees for their labor, and in so doing
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1 defendant acted willfully and with the intent of depriving its employees of the wages they were
2 due.

3 **8.5** As a result of defendant's acts and omissions, plaintiffs and class members have
4 been damaged in amounts not yet calculated.

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6 **IX. FOURTH CAUSE OF ACTION – CLASSWIDE FAILURE TO PROVIDE PAID
REST PERIODS IN VIOLATION OF RCW 49.12.091 AND WAC 296-126-092(4)**

7 **9.1** Plaintiffs restate and reallege the allegations set forth in paragraphs 1.1 through
8 5.8 above.

9 **9.2** Defendant violated WAC 296-126-092(4) and RCW 49.12.091 by failing to
10 provide plaintiffs and class members with the paid ten-minute rest periods as required by WAC
11 296-126-092(4), even though the nature of the work performed by these employees did not allow
12 them to take intermittent rest periods equivalent to ten minutes for each four hours worked.

13 **9.3** In failing to provide paid ten-minute rest periods as alleged above, defendant
14 benefited from the labor of these employees without compensating the employees for their labor,
15 and in so doing defendant acted willfully and with the intent of depriving its employees of the
16 wages they were due.

17 **9.4** As a result of defendant's acts and omissions, plaintiffs and class members have
18 been damaged in amounts not yet calculated.

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21 **X. FIFTH CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY OVERTIME
WAGES IN VIOLATION OF RCW 49.46.130(1) AND WAC 296-126-550
FLOWING FROM CAUSES OF ACTION ONE THROUGH FOUR**

22 **10.1** Plaintiffs restate and reallege the allegations set forth in paragraphs 1.1 through
23 5.8 above.
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1 **10.2** On multiple weeks during which the violations described above occurred,
2 plaintiffs and class members worked in excess of forty hours in a given workweek.

3 **10.3** On the weeks when this occurred, defendant failed to properly compensate
4 plaintiffs and class members by paying them one and one-half times their regular rate of pay for
5 hours worked in excess of forty hours because defendant failed to consider or compensate
6 plaintiffs and class members for all of the time actually worked by plaintiffs and class members
7 in that workweek.
8

9 **10.4** Defendant's failure to pay plaintiffs and class members one and one-half times
10 their regular rate of pay for hours worked in excess of forty in their work weeks constitutes a
11 violation of RCW 49.46.130(1).

12 **10.5** As a result of defendant's acts and omissions, plaintiffs and class members have
13 been damaged in amounts as will be proven at trial.
14

15 **XI. SIXTH CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY OVERTIME**
16 **WAGES IN VIOLATION OF RCW 49.46.130(1) AND WAC 296-126-550 IN**
17 **RELATION TO INCENTIVE PAY**

18 **11.1** Plaintiffs restate and reallege the allegations set forth in paragraphs 1.1 through
19 5.8 above.

20 **11.2** During the time period relevant to this complaint, plaintiffs and class members
21 were not paid one-and-one-half times their regular rate of pay because the portion of their pay
22 which was denominated "incentive pay" was paid at a steady hourly rate, for days when such
23 pay was earned or awarded, regardless of how many hours were worked in the workweek, and
24 was not added into each workers' total weekly compensation for the purpose of determining the
25 employee's regular rate and therefore the amount of overtime pay owed.
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1 **11.3** Defendant's failure to pay plaintiffs and class members one and one-half times
2 their regular rate of pay for hours worked in excess of forty in their work weeks constitutes a
3 violation of RCW 49.46.130(1) and WAC 296-128-550.

4 **11.4** As a result of defendant's acts and omissions, plaintiffs and class members have
5 been damaged in amounts as will be proven at trial.

6
7 **XII. REQUEST FOR RELIEF**

8 WHEREFORE, plaintiffs request that this Court enter an order certifying the class, and
9 granting them and the class members the following relief:

10 A. Damages for lost wages in amounts to be proven at trial, including wages owed
11 pursuant to RCW 49.46.020, RCW 49.12.091, RCW 49.52.050(2), and WAC 296-126-092, and
12 wages equal to one and one-half the otherwise applicable regular rate of pay, per RCW
13 49.46.130(1) and WAC 296-128-550;

14 B. Exemplary damages in amounts equal to double the wages due to class members,
15 pursuant to RCW 49.52.070;

16 C. Attorney's fees and costs pursuant to RCW 49.46.090, RCW 49.48.030, and
17 RCW 49.52.070;

18 D. Prejudgment interest;

19 E. Declaratory relief finding defendant in violation of the MWA and the IWA; and

20 F. Such other and further relief as the Court deems just and proper.

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DATED this 17th of July, 2012.

s/Dmitri Iglitzin
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2012, I caused the foregoing Second Amended Complaint to be filed with the Court using the King County E-Filing system and true and correct copies of the same to be sent via electronic mail and US First Class mail to the following:

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