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

DOUGLAS FRECHIN, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

KING COUNTY DEPARTMENT OF
TRANSPORTATION, a governmental agency,

Defendant.

No. 13-2-23545-5 SEA

CLASS ACTION COMPLAINT

Plaintiff claims against defendant as follows:

I. NATURE OF ACTION

1.1 Plaintiff brings this class action for money damages and statutory penalties for wage law violations on behalf of current and former employees of Metro Transit, a division of the defendant King County Department of Transportation ("Metro"), for violations of the Washington Minimum Wage Act ("MWA"), RCW 49.46, the Washington Industrial Welfare Act ("IWA"), RCW 49.12, and WAC 296-126-092.

II. JURISDICTION AND VENUE

2.1 The Superior Court of Washington has jurisdiction of plaintiff's claims

1 pursuant to RCW 2.08.010 and CR 23.

2 2.2 Venue in King County is appropriate pursuant to RCW 4.12.025.

3 2.3 All or a significant portion of the acts and omissions alleged herein took
4 place in the state of Washington, and King County.

5
6 **III. PARTIES**

7 3.1 Plaintiff Douglas Frechin is a resident of Edmonds, Washington and is
8 employed as a bus driver by defendant.

9 3.2 Defendant King County Department of Transportation is an agency of King
10 County. Defendant provides public bus services in King County through its Metro Transit
11 division. Defendant is an employer for purposes of the MWA and the IWA.

12
13 **IV. FACTUAL ALLEGATIONS**

14 4.1 Plaintiff and members of the class work and have worked for defendant as
15 bus drivers.

16 4.2 Class members are not and have not been provided with legally sufficient
17 meal periods in accordance with Washington law.

18 4.3 Metro has adopted a pattern and practice of requiring bus drivers to work
19 shifts of greater than five consecutive hours without an uninterrupted thirty-minute meal
20 period. Metro has designed the majority of its shifts of greater than five consecutive hours
21 with less than a thirty-minute uninterrupted meal period between the second and fifth hours
22 of the shift.

23 4.4 Metro knew or should have known that, due to operating delays on its bus
24 routes, bus drivers regularly failed to receive a thirty-minute uninterrupted meal break
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1 during shifts of greater than five consecutive hours, even when the schedule for the route
2 included a thirty-minute uninterrupted break period.

3 4.5 During the class period, plaintiff and other class members routinely worked
4 in excess of forty hours per week.

5 4.6 Defendant knew that plaintiff and other members of the class were working
6 in excess of forty hours per week without receiving additional compensation at overtime
7 rates when they did not receive the legally required meal periods, and nonetheless
8 continued to require and allow such pay practices to continue.

9 4.7 In failing to provide the required meal periods, defendant has acted willfully
10 and with the intent of depriving plaintiff and members of the class of the requisite overtime
11 or regular compensation.
12

13 **V. CLASS ACTION ALLEGATIONS**

14 5.1 Plaintiff seeks to represent all past and present employees employed by
15 defendant as bus drivers at any time from three years prior to the filing of this complaint
16 and continuing thereafter.
17

18 5.2 The action is properly maintainable under CR 23(a) and (b)(3).

19 5.3 The class described in paragraph 5.1 is sufficiently numerous such that
20 joinder of all of them is impractical, as required by CR 23(a)(1).
21

22 5.4 Pursuant to CR 23(a)(2), there are common questions of law and fact
23 including, but not limited to: whether defendant regularly failed and fails to provide
24 uninterrupted thirty-minute meal break periods to drivers on shifts of more than five
25 consecutive hours; whether this failure violates WAC 296-126-092; whether defendant
26 owes drivers additional wages for days on which they work shifts of greater than five

1 consecutive hours without an uninterrupted thirty-minute meal break period; at what rates
2 any such additional compensation is owed; and whether the defendant, in failing to provide
3 for required meal breaks and to pay additional wages, has acted willfully and with the intent
4 to deprive plaintiff and the members of the class of such compensation.

5
6 5.5 Pursuant to CR 23(a)(3), the named plaintiff's wage and hour claims are
7 typical of the claims of all class members and of defendant's anticipated affirmative
8 defenses thereto.

9 5.6 The named plaintiff will fairly and adequately protect the interests of the
10 class as required by CR 23(a)(4).

11 5.7 Pursuant to CR 23(b)(3), class certification is appropriate here because
12 questions of law or fact common to members of the class predominate over any questions
13 affecting only individual members and because a class action is superior to other available
14 methods for the fair and efficient adjudication of the controversy.
15

16 **VI. FIRST CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY**
17 **OVERTIME WAGES IN VIOLATION OF THE WASHINGTON**
18 **STATE MINIMUM WAGE ACT**

19 6.1 Plaintiff restates and realleges the allegations set forth in paragraphs 1.1
20 through 5.7 above.

21 6.2 Defendant's failure to pay class members additional wages for missed meal
22 periods at one and one-half times their regular rate of pay when they have worked in excess
23 of forty hours in their work weeks constitutes a violation of RCW 49.46.130.

24 6.3 As a result of defendant's acts and omissions, plaintiff and the class
25 members have been damaged in amounts as will be proven at trial.
26

1 **VII. SECOND CAUSE OF ACTION - CLASSWIDE FAILURE TO**
2 **PROVIDE MEAL BREAKS AS REQUIRED UNDER WASHINGTON**
3 **LAW**

4 7.1 Plaintiff restates and realleges the allegations set forth in paragraphs 1.1
5 through 6.3 above.

6 7.2 Defendant's failure to provide for legally sufficient meal breaks constitutes a
7 violation of RCW 49.12 and WAC 296-126-092.

8 7.3 As a result of defendant's acts and omissions, plaintiff and the class
9 members have been damaged in amounts as will be proven at trial.

10 **VIII. THIRD CAUSE OF ACTION - CLASSWIDE FAILURE TO PAY FOR**
11 **WORK AS REQUIRED BY EMPLOYMENT POLICIES AND**
12 **AGREEMENTS**

13 8.1 Plaintiff restates and realleges the allegations set forth at paragraphs 1.1
14 through 7.3 above.

15 8.2 Some of the meal periods missed by plaintiff and class members may have
16 fallen in work weeks in which plaintiff and class members worked less than forty hours.

17 8.3 As to those missed meal periods, defendant has breached the employment
18 policies and agreements applicable to plaintiff and the class members and has been violating
19 statutory requirements, including RCW 49.46.020 and RCW 49.48.010, by failing to pay for
20 these hours worked at the agreed upon hourly pay rates.

21 8.4 As a result of defendant's acts and omissions, plaintiff and the class
22 members have been damaged in amounts as will be proven at trial.

23 **IX. FOURTH CAUSE OF ACTION - CLASSWIDE WILLFUL**
24 **WITHHOLDING OF WAGES IN VIOLATION OF RCW 49.52**

25 9.1 Plaintiff restates and realleges the allegations set forth in paragraphs 1.1
26 through 8.4 above as if fully set forth herein.

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9.2 By the foregoing, defendant's actions constitute willful withholding of wages in violation of RCW 49.52.050 and .070.

9.3 As a direct and proximate result of the foregoing, plaintiff and the class members have suffered and continue to suffer loss of compensation in amounts as will be proven at trial.

X. PRAYER FOR RELIEF

WHEREFORE, plaintiff requests this Court enter an order granting him and the class members the following relief:

- A. Damages, including lost wages, in amounts to be proven at trial;
- B. Exemplary damages in amounts equal to double the wages due to plaintiff and class members, pursuant to RCW 49.52.070;
- C. Attorneys fees and costs pursuant to RCW 49.46.090, RCW 49.48.030, and RCW 49.52.070;
- D. Prejudgment interest; and
- E. Such other and further relief as the Court deems just and proper.

DATED this 19th day of June, 2013.

SCHROETER, GOLDMARK & BENDER


ADAM J. BERGER, WSBA #20714
Counsel for Plaintiffs