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THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEVIN HELDE, JOHN BODILY, and MAX
TENA, on their own behalf and on the behalf of
all others similarly situated,

Plaintiffs

v.

KNIGHT TRANSPORTATION INC.,
an Arizona Corporation,

Defendant.

CLASS ACTION

No. 2:12-cv-00904RSL

FIRST AMENDED COMPLAINT

Plaintiffs, individually and on behalf of all others similarly situated, by and through their
counsel, for their Complaint against Defendant hereby state and allege as follows:

I. INTRODUCTION

1. Defendant Knight Transportation Inc. (KT) is a truckload company that services
customers through 29 regional service centers. Defendant is in the business of delivering goods for
its customers by use of trucks. Defendant has over 3,500 employees nationwide. Defendant has
employed more than 200 driver employees in Washington State in the last four years. Defendant
has engaged in a common scheme of wage and hour violations against its driver employees. This

1 scheme has included failing to pay driver employees for all hours worked, failing to pay driver
2 employees for all miles driven, failing to reimburse drivers for expenses that were required as part
3 of their employment, and making unlawful deductions to the wages of driver employees. Defendant
4 has also utilized false and misleading advertisements to attract Plaintiff(s) and other driver
5 employee candidates in a manner that has had the capacity to deceive Washington State's general
6 labor pool. Defendant's deliberate conduct violates Washington Law.

7 2. Plaintiffs and Class members are current and former driver employees of Defendant
8 in the State of Washington who have been victimized by the Defendant's unlawful practices. This
9 lawsuit is brought as a class action under state law to recover unpaid wages owed to the individual
10 Plaintiffs and all other similarly situated employees.

11 **II. JURISDICTION AND VENUE**

12
13 3. This matter was originally filed in the Superior Court of Washington for King
14 County. Defendant removed the matter to United States District Court for the Western District of
15 Washington at Seattle pursuant to pursuant to 28 U.S.C. §§ 1332(d), 1441(b), and 1446, and
16 Western District of Washington Civil Rule 101.

17 4. The Defendant is within the jurisdiction of this Court. Defendant does business in
18 the State of Washington and has operations in King County. Defendant is registered in the State of
19 Washington. Defendant has obtained the benefits of the laws of the State of Washington and the
20 Washington retail and labor markets.

21 **III. PARTIES**

22
23 5. Defendant KT is an Arizona corporation, registered in the State of Washington.

24 6. Plaintiff Kevin Helde was employed by Knight Transportation as a truck driver from
25 approximately April 2009 to November 2009. Mr. Helde was dispatched from the Defendant's
26

1 Tukwila and/or Kent, Washington, terminal(s). Mr. Helde was a resident of Washington for the
2 duration of his employment. Mr. Helde worked in King County for Defendant on a regular basis.

3 7. Plaintiff John Bodily was employed by Knight Transportation as a truck driver
4 starting on or about September 2010. Mr. Bodily is no longer employed by Defendant. Mr. Bodily
5 was dispatched from the Tukwila and/or Kent, Washington, terminal(s). Mr. Bodily was a resident
6 of Washington for the duration of his employment. Mr. Bodily worked in King County for
7 Defendant on a regular basis.

8 8. Plaintiff Max Tena was employed by Knight Transportation on two occasions. Most
9 recently, Mr. Tena was employed by Defendant during 2011. Mr. Tena was dispatched from the
10 Tukwilla and/or Kent, Washington, terminal(s). Mr. Tena was a resident of Washington for the
11 duration of his employment. Mr. Tena worked in King County for Defendant on a regular basis.

12 IV. CLASS ACTION ALLEGATIONS

13
14 9. Plaintiffs bring this case as a class action pursuant to Rule 23 of the Federal Rules of
15 Civil Procedure on behalf of a class consisting of:

16
17 All current and former driver employees who worked for Knight
18 Transportation, Inc. and were based or resided in the State of
19 Washington at any time from June 18, 2008 through the date of
20 final disposition of this action.

21 10. Excluded from this Class are Defendant, any entity in which Defendant has a
22 controlling interest or which has controlling interest in Defendant, and of Defendant's legal
23 representatives, assignees and successors. Also excluded are the Judge(s) to whom this case is
24 assigned and any member of the Judge's immediate family. Plaintiffs believe there are least 200
25 current and former employees in the Class.

26 11. Plaintiffs' claims are typical of the claims of the members of the Class because
Plaintiffs were truck drivers who, like the members of the Class, sustained damages arising out of

1 Defendant's common course of wage and hour violations and its unfair and deceptive solicitations
2 to such drivers for employment.

3 12. Plaintiffs will fairly and adequately protect the interests of the Class members.
4 Plaintiffs have retained counsel competent and experienced in complex and class action litigation,
5 including employment law.

6 13. Common questions of law and fact exist as to Plaintiffs and all members of the Class
7 and predominate over any questions solely affecting individual members of the Class. Among the
8 questions of law and fact common to Plaintiffs and the Class are:

9 a. Whether Defendant failed to properly compensate Plaintiffs and Class members for
10 all time worked, including overtime;

11 b. Whether Defendant failed to pay Plaintiffs and Class members for work Defendant
12 permitted them to perform;

13 c. Whether Defendant failed to keep true and accurate time records for all hours
14 worked by Plaintiffs and Class members;

15 d. Whether Defendant failed to pay Plaintiffs and Class members for all miles driven;

16 e. Whether Defendant failed to compensate Plaintiffs and Class members for rest
17 breaks;

18 f. Whether Defendant failed to reimburse Plaintiffs and Class members for expenses
19 that were required as part of their employment;

20 g. Whether Defendant made unlawful deductions to the wages of Plaintiffs and Class
21 members;

22 h. Whether Defendant violated RCW 49.46.130 as to Plaintiffs and Class members;

23 i. Whether Defendant violated RCW 49.12 *et seq.* as to Plaintiffs and Class members;

24 j. Whether Defendant violated RCW 49.48.010 as to Plaintiffs and Class members;

25 k. Whether Defendant violated RCW 49.46.090 as to Plaintiffs and Class members;

26 l. Whether Defendant violated RCW 49.52.050 as to Plaintiffs and Class members;

- m. Whether Defendant violated WAC 296-128-010 as to Plaintiffs and Class members;
- n. Whether Defendant violated WAC 296-126-011 as to Plaintiffs and Class members;
- o. Whether Defendant violated WAC 296-126-040 as to Plaintiffs and Class members;
- p. Whether Defendant violated WAC 296-126-025 as to Plaintiffs and Class members;
- q. Whether Defendant violated WAC 296-126-023 as to Plaintiffs and Class members;
- r. Whether Defendant violated WAC 296-126-023 as to Plaintiffs and Class members;
- s. Whether Defendant violated WAC 296-126-030 as to Plaintiffs and Class members;
- t. Whether Defendant violated WAC 296-128-012 as to Plaintiffs and Class members;
- u. Whether Defendant violated RCW 19.86 *et seq.* as to Plaintiffs and Class members;

and,

- v. The nature and extent of class-wide injury and the measure of compensation for such injury.

14. Class action treatment is superior to the alternative for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their modest, purely economic, common claims in a single forum simultaneously, efficiently and without duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The Class is readily identifiable from Defendant's records.

15. Defendant has acted on grounds generally applicable to the entire Class, thereby making a final injunctive relief or corresponding declaratory relief appropriate with respect to the Class as a whole. Prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for Defendant.

1 24. Upon information and belief, Defendant did not provide certain Plaintiffs and Class
2 members access to all wages earned when it provided those employees with payroll cards.

3 25. Defendant failed to offer those Plaintiffs and Class members a payroll check as an
4 alternative to the payroll cards, which charged a fee for access to the employees' wages.

5 26. Defendant benefited from the fees charged to certain Plaintiffs and Class members
6 for the use of the payroll cards.

7 27. RCW 49.46.010 defines wage as "compensation due to an employee by reason of
8 employment, payable in legal tender of the United States or checks on banks convertible into cash
9 on demand at full face value, subject to such deductions, charges, or allowances as may be
10 permitted by rules of the director." Defendant often failed to pay certain Plaintiffs and Class
11 members in "legal tender or checks on banks convertible into case into cash on demand at full face
12 value." Instead, Defendant paid certain Plaintiffs and Class members through use of a payroll card.
13 In order employees to convert money placed on the payroll card into cash, they were required to pay
14 a fee. Defendant did not inform Plaintiffs and Class members of the fee.

15 28. Defendant failed to furnish proper payroll documents to Plaintiffs and Class
16 members in a timely manner.

17 29. Defendant failed to pay Plaintiffs and Class members for all miles driven.

18 30. Defendant failed to pay wages to Plaintiffs and Class members as promised.

19 31. Defendant made unlawful deductions to the wages of Plaintiffs and Class members,
20 including deductions associated with per diem payments and deductions associated with short
21 employment periods.

22 32. Defendant failed to reimburse Plaintiffs and Class members for expenses that were
23 required as part of their employment.

24 33. Defendant advertised rates of pay and job openings in various public locations,
25 including the Internet and print advertisements. By way of example, Defendant frequently
26 advertised such openings and rates of pay on the Internet site Craigslist and in print publications at

1 various truck stops and rest areas within the state. These advertisements were generally accessible to
2 Washington's labor market.

3 34. Plaintiff(s) saw these advertisements and applied for positions with Defendant based
4 in whole or in part on the rates of pay advertised. On information and belief, Class members also
5 saw such advertisements and relied upon the rates of pay set forth therein when choosing to apply
6 for driver openings.

7 35. Defendant's advertisements indicated that employees would be paid on a per-mile
8 basis and therefore drivers would be paid for all miles driven while working. Defendant failed to
9 pay Plaintiffs and Class members for all miles driven while working.

10 36. Defendant failed to pay Plaintiffs and Class members the rates of pay that were
11 advertised. Defendant paid Plaintiffs and Class members less than the advertised rate, including not
12 paying employees at all for all certain miles driven while working.

13 **V. FIRST CLAIM FOR RELIEF**

14 **(Breach of Contract)**

15
16 37. Plaintiffs and reallege and incorporate by reference each and every allegation set
17 forth in the preceding paragraphs.

18 38. At the time Plaintiffs and members of the Class accepted employment with
19 Defendant, they were hired to work at a fixed mileage rate. Plaintiffs and Class members were
20 expressly told the rate they would earn for each mile driven. Plaintiffs and Class members were
21 provided with a copy of Defendant's Handbook, which embodies the terms of their employment
22 and to which they were directed to refer if they had any questions regarding employment.

23 39. Upon information and belief this handbook is a standardized, uniform document.
24 Plaintiffs and Class members did not have an opportunity to negotiate the terms of their
25 employment contracts.

26 40. Defendant breached its contract by not paying Plaintiffs and Class members for all
hours worked.

1 41. Defendant did not pay employees for each mile driven.

2 42. Defendant breached its contract by permitting and encouraging Plaintiffs and Class
3 members to work during mandated meal and/or rest periods.

4 43. Defendant is liable to Plaintiffs and Class members for damages incurred as a result
5 of Defendant's failure to provide rest and/or meal breaks and compensation in instances where rest
6 and meal breaks were interrupted to perform work.

7 **VI. SECOND CLAIM FOR RELIEF**

8 **(Minimum Wage Act: RCW 49.46.090 and RCW 49.46.130)**

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

11 45. RCW 49.46.130 provides that no employer shall employ any employee for a
12 workweek longer than 40 hours unless the employee receives compensation for his employment in
13 excess of the hours above specified at a rate not less than one and half times the regular rate at
14 which he is employed. RCW 49.46.130 (f) excludes an individual employed as a truck or bus driver
15 who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and
16 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is
17 paid includes overtime pay, reasonably equivalent to that required by this subsection, for working
18 longer than forty hours per week. Upon information and belief, Defendant did not employ a
19 "reasonably equivalent" method to pay overtime to Plaintiffs and Class members.

20 46. WAC 296-128-012 provides a method for compensating truck drivers for overtime
21 pay. Defendant did not compensate Plaintiffs and Class members for overtime hours worked.

22 47. Defendant created a mandatory orientation program for Plaintiffs and Class
23 members. Defendant failed to pay Plaintiffs and Class members minimum wage for time worked
24 during the mandatory driver orientation program.

25 48. Defendant failed to pay Plaintiffs and Class members for time worked when they
26 were not driving but were still performing work for Defendant.

1 49. Defendant failed to pay Plaintiffs and Class members for each mile driven.

2 50. Defendant failed to pay Plaintiffs and Class members for mandatory pre-trip and
3 post-trip inspections.

4 51. Defendant also violated the Minimum Wage Act by not paying for rest periods taken
5 or missed by Plaintiffs and Class members.

6 52. By the actions alleged above, Defendant violated the provisions of RCW 49.46.090
7 and 49.46.130.

8 53. As a result of the unlawful acts of Defendant, Plaintiffs and Class members have
9 been deprived of compensation in amounts to be determined at trial, and pursuant to RCW
10 49.46.130 are entitled to recover such amounts, including interest thereon, and attorneys' fees and
11 costs.

12 **VIII. THIRD CLAIM OF RELIEF**

13 **(Unpaid Wages on Termination: RCW 49.48)**

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

16 55. RCW 49.48.010 provides that "when any employee shall cease to work for an
17 employer, whether by discharge or by voluntary withdrawal, the wages due him on account of his
18 employment shall be paid to him at the end of the established pay period." The statute further states
19 that it shall be unlawful for "any employer to withhold or divert any portion of an employee's
20 wages."
21

22 56. By the actions alleged above, Defendant violated the provisions of RCW 49.48.010.

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

IX. FOURTH CLAIM FOR RELIEF

(Payment of Wages Less Than Entitled: RCW 49.46.090)

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

59. Under RCW 49.46.090, employers must pay employees all wages to which they are entitled under The Washington Minimum Wage Act (“WMWA”). If the employer fails to do so, RCW 49.46.090 requires that the employer pay the employees the full amount of the statutory minimum wage rate less any amount actually paid to the employees.

60. By the actions alleged above, Defendant violated the provisions of RCW 49.46.090 and the WMWA by failing to pay any wage whatsoever to Plaintiffs and Class members for part of time they worked, including but not limited to, orientation, driving inspections, load and unload times, rest breaks, and wait times.

61. As a result of the unlawful acts of Defendant, Plaintiffs and Class members have been deprived of compensation in amounts to be determined at trial, and pursuant to RCW 49.46.090 and 49.48.030, are to recover those damages, including interest thereon, and attorneys’ fees and costs.

X. FIFTH CLAIM FOR RELIEF

(Unlawful Deductions)

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

63. Defendant made deductions from the wages of Plaintiffs and Class members, including but not limited to, deductions for per diem expenses. This was disadvantageous to Plaintiffs and Class members. Further, Plaintiffs’ and Class Members’ wages were reduced below the agreed upon rate.

1 64. In addition, Defendant failed to reimburse Plaintiffs and Class members in whole or
2 in part for expenses that were required as part of their employment. The unreimbursed out-of-
3 pocket expenses were essentially deducted from the wages of Plaintiffs and Class members.

4 65. Defendant derived a financial profit or benefit from these deductions.

5 66. By the actions alleged above, Defendant violated Washington laws. As a result of
6 the unlawful acts of Defendant, Plaintiffs and Class members have been deprived of compensation
7 in amounts to be proven at trial. Pursuant to RCW 49.52.060, RCW 49.48.010 and RCW
8 49.46.090, Plaintiffs and the Class are entitled to recover those damages, including interest thereon,
9 and attorneys’ fees and costs.

10
11 **XI. SIXTH CLAIM FOR RELIEF**
12 **(Willful Refusal to Pay Wages: RCW 49.52.050)**

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

15 68. RCW 49.52.050(2) provides that any employer who “willfully and with intent to
16 deprive the employee of any part of his wages, pays any employee a lower wage than the wage such
17 employer is obligated to pay such employee by any statute, ordinance, or contract” is guilty of a
18 misdemeanor.

19 69. RCW 49.52.070 provides that any employer who violates the foregoing statute shall
20 be liable in a civil action for twice the amount of wages withheld, together with costs of suit and
21 reasonable attorney fees.

22 70. The alleged unlawful actions by Defendant against Plaintiffs and Class members, as
23 set forth above, were committed willfully and with intent to deprive Plaintiff and Class members of
24 part of their wages.

25 71. As such, based on the above allegations, Defendant violated the provisions of RCW
26 49.52.050.

1 72. As a result of the unlawful acts of Defendant, Plaintiffs and the Class have been
2 deprived of compensation in amounts to be determined at trial, and pursuant to RCW 49.52.070 are
3 entitled to recovery of twice such amounts, including interest thereon, and attorneys' fees and costs.

4 **XII. SEVENTH CLAIM FOR RELIEF**

5 **(Violation of Washington's Consumer Protection Act: RCW 19.86)**

6
7 73. Plaintiffs reallege and incorporate by reference each and every allegation set forth in
8 the preceding paragraphs.

9 74. Defendant engaged in unfair or deceptive acts or practices when it: (i) advertised pay
10 ranges above the wages actually paid to Plaintiffs and Class members; and (ii) advertised paying for
11 miles driven but failed to pay Plaintiffs and Class members for their miles driven.

12 75. Defendant's unfair or deceptive acts or practices repeatedly occurred in Defendant's
13 trade or business and were capable of deceiving a substantial portion of the public.

14 76. Defendant advertised employment opportunities directed at the labor market in
15 Washington State.

16 77. Defendant placed advertisements on the Internet, including, but not limited to, on
17 Craigslist for Washington locations and other Internet sites.

18 78. Defendant also advertised employment opportunities in print advertisements that
19 appeared at truck and/or rest stops, among other places.

20 79. Defendant stated in its advertisements that employee truck drivers would be paid on
21 a per mile basis.

22 80. Defendant also provided mileage pay rates in the advertisements.

23 81. Plaintiff(s) and Class members reviewed these advertisements and applied for
24 positions based on the representations in them, including the rates of pay.

1 82. After Plaintiffs and Class members became employed it became apparent that the
2 advertisements were false in both the rates listed and the fact that drivers were not paid for all miles
3 driven while working.

4 83. Defendant failed to pay Plaintiffs and Class members the advertised rates, paying
5 less than the amount advertised.

6 84. Defendant failed to pay Plaintiffs and Class Members for each mile driven while
7 working.

8 85. As a direct and proximate cause of Defendant's unfair or deceptive acts or practices,
9 Plaintiffs and Class members have suffered actual damages.

10 86. As a result of Defendant's unfair and deceptive practices, Plaintiffs and the Class are
11 entitled, pursuant to RCW 19.86.090, to recover treble damages, reasonable attorneys' fees, and
12 costs.

13 **XIII. PRAYER FOR RELIEF**

14
15 Wherefore, Plaintiffs, on their own behalf and on behalf of the members of the Class, pray
16 for judgment against the Defendant as follows:

17 A. Certification of the proposed Plaintiff Class;

18 B. A declaration that Defendant is financially responsible for notifying all Class
19 members of its wage and hour violations;

20 C. Appoint Plaintiffs Helde, Bodily, and Tena as Class representatives;

21 D. Appoint the undersigned attorneys as Class counsel;

22 E. Declare that the actions complained of herein violate Washington's statutes and
23 administrative codes;

24 F. Award Plaintiffs and Class members compensatory and exemplary damages;
25
26

1 G. Enjoin Defendant and its officers, agents, successors, employees, representatives,
2 and any and all persons acting in concert with them, as provided by law, from engaging in each of
3 the unlawful practices, patterns, and policies set forth herein;

4 H. Award attorneys' fees and costs to Plaintiffs' attorneys, as allowed by law;

5 I. Award pre-judgment and post-judgment interest to Plaintiffs and Class members, as
6 provided by law; and

7 J. Grant such other and further relief as this Court deems necessary.

8
9 DATED this 20th day of November, 2012.

10
11 THE REKHI LAW FIRM, PLLC

GREG WOLK, P.S.

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CERTIFICATE OF SERVICE

I, Toby J. Marshall, hereby certify that on November 20, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 20th day of November, 2012.

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