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

JON BODILY, on his own behalf and on the
behalf of all others similarly situated,

Plaintiff,

v.

SKAGIT TRANSPORTATION, INC., a
Washington corporation,

Defendant.

NO. 13-2-19306-0 SEA

CLASS ACTION COMPLAINT

Plaintiff Jon Bodily (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys of record, for his Complaint against Defendant Skagit Transportation, Inc. (“Defendant” or “STI”) hereby states and alleges as follows:

I. INTRODUCTION

1.1 Defendant Skagit Transportation, Inc. is a truckload company that services customers through three service centers in Seattle, Mount Vernon, and Quincy Washington. Defendant is in the business of using trucks to deliver food and agricultural and bio solid products for its customers. Defendant operates more than 90 tractors and more than 200 trailers

1 and serves customers in Washington, Oregon, British Columbia, and limited parts of Idaho,
2 Nevada and California.

3 1.2 Defendant has engaged in a common scheme of wage and hour violations
4 against its driver employees. This scheme has included failing to pay driver employees for all
5 hours worked, failing to pay driver employees for all miles driven, and failing to pay driver
6 employees for the rest breaks to which they are entitled under Washington law. Defendant's
7 deliberate conduct violates Washington law.

8 1.3 Plaintiff and Class members are current and former driver employees of
9 Defendant in the State of Washington who have been victimized by Defendant's unlawful
10 practices. This lawsuit is brought as a class action under state law to recover unpaid wages
11 owed to Plaintiff and all other similarly situated employees.

12 II. JURISDICTION AND VENUE

13 2.1 Venue is proper in King County because Plaintiff Bodily worked for Defendant
14 in King County, where some of the violations alleged herein occurred. In addition, Defendant
15 transacts business in King County and many of the acts, as well as the course of conduct
16 alleged herein, occurred in King County.

17 2.2 Defendant does business in and is incorporated in the State of Washington.
18 Defendant has obtained the benefits of the laws of the State of Washington and the Washington
19 labor market.

20 III. PARTIES

21 3.1 Defendant STI is a Washington corporation.

22 3.2 Plaintiff Jon Bodily was employed by STI as a truck driver from approximately
23 July 2002 to May 2003 and again from approximately June 2009 to August 2010. Plaintiff
24 Bodily was dispatched from Defendant's Mount Vernon and Seattle terminals. Plaintiff Bodily
25 was a resident of Washington for the duration of his employment. He worked in King County
26 for Defendant on a regular basis.

1 **IV. CLASS ACTION ALLEGATIONS**

2 4.1 Plaintiff brings this case as a class action pursuant to Civil Rule 23(b)(3) on
3 behalf of a class consisting of:

4 All current and former driver employees who worked for Skagit
5 Transportation, Inc. at any time from May 10, 2010 through the date of
6 final disposition of this action.

7 Excluded from this Class are Defendant, any entity in which Defendant has a controlling
8 interest or which has controlling interest in Defendant, and Defendant's legal representatives,
9 assignees and successors. Also excluded are any judges to whom this case is assigned and any
10 member of an assigned judge's immediate family.

11 4.2 Plaintiff believes there are at least 150 current and former employees in the
12 Class.

13 4.3 Plaintiff's claims are typical of the claims of the members of the Class because
14 Plaintiff was a truck driver who, like the members of the Class, sustained damages arising out
15 of Defendant's common course of wage and hour violations.

16 4.4 Plaintiff will fairly and adequately protect the interests of the Class members.
17 Plaintiff has retained counsel competent and experienced in complex class action litigation,
18 including employment law.

19 4.5 Common questions of law and fact exist as to Plaintiff and all members of the
20 Class and predominate over any questions solely affecting individual members of the Class.

21 Among the questions of law and fact common to the Plaintiff and the Class are:

22 a. Whether Defendant failed to properly compensate Plaintiff and Class members
23 for all time worked, including overtime:

24 b. Whether Defendant failed to pay Plaintiff and Class members for work
25 Defendant permitted them to perform;

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

- 1 d. Whether Defendant failed to pay Plaintiff and Class members for all miles
2 driven;
- 3 e. Whether Defendant failed to compensate Plaintiff and Class members for rest
4 breaks;
- 5 f. Whether Defendant violated RCW 49.46.130 as to Plaintiff and Class members;
- 6 g. Whether Defendant violated RCW 49.12 *et seq.* as to Plaintiff and Class
7 members;
- 8 h. Whether Defendant violated RCW 49.48.010 as to Plaintiff and Class members;
- 9 i. Whether Defendant violated RCW 49.46.090 as to Plaintiff and Class members;
- 10 j. Whether Defendant violated RCW 49.52.050 as to Plaintiff and Class members;
- 11 k. Whether Defendant violated WAC 296-128-010 as to Plaintiff and Class
12 members;
- 13 l. Whether Defendant violated WAC 296-128-011 as to Plaintiff and Class
14 members;
- 15 m. Whether Defendant violated WAC 296-126-040 as to Plaintiff and Class
16 members;
- 17 n. Whether Defendant violated WAC 296-128-012 as to Plaintiff and Class
18 members; and
- 19 o. The nature and extent of class-wide injury and the measure of compensation for
20 such injury.

21 4.6 Class action treatment is superior to the alternative for the fair and efficient
22 adjudication of the controversy alleged herein. Such treatment will permit a large number of
23 similarly situated persons to prosecute their modest, purely economic, common claims in a
24 single forum simultaneously, efficiently and without duplication of effort and expense that
25 numerous individual actions would entail. No difficulties are likely to be encountered in the
26 management of this class action that would preclude its maintenance as a class action, and no

1 superior alternative exists for the fair and efficient adjudication of this controversy. The Class
2 is readily identifiable from Defendant's records.

3 4.7 A class action is superior to other available methods for the fair and efficient
4 adjudication of this controversy since joinder of all matters is impractical. Furthermore the
5 amounts at stake for many Class members, while substantial to them, are not great enough to
6 hire an attorney to prosecute individual suits against Defendant.

7 V. SUMMARY OF ALLEGATIONS

8 5.1 Beginning at a date currently unknown to Plaintiff, but at least as early as June
9 2009, Defendant committed, and continues to commit, acts of wage abuse against its driver
10 employees, including but not limited to failing to pay wages due and owing to Plaintiff and
11 Class members, including wages for overtime worked.

12 5.2 Defendant has failed to pay minimum wage to Plaintiff and Class members for
13 work performed, including, but not limited to, work performed when not driving and work
14 performed during mandatory orientation.

15 5.3 Defendant has failed to pay Plaintiff and Class members for rest breaks.

16 5.4 Defendant has failed pay overtime compensation to Plaintiff and Class members
17 for hours worked beyond forty in a workweek.

18 5.5 Defendant has failed to furnish proper payroll documents to Plaintiff and Class
19 members.

20 5.6 Defendant has failed to pay Plaintiff and Class members for all miles driven.

21 VI. FIRST CLAIM FOR RELIEF

22 (Payment of Wages Less Than Entitled: RCW 49.46.090)

23 6.1 Plaintiff realleges and incorporates by reference each and every allegation set
24 forth in the preceding paragraphs.

25 6.2 Under RCW 49.46.090, employers must pay employees all wages to which they
26 are entitled under The Washington Minimum Wage Act ("WMWA"). If the employer fails to

1 do so, RCW 49.46.090 requires that the employer pay the employees the full amount of the
2 statutory minimum wage rate less any amount actually paid to the employees.

3 6.3 By the actions alleged above, Defendant violated the provisions of RCW
4 49.46.090 and the WMWA by failing to pay any wage whatsoever to Plaintiff and Class
5 members for part of time they worked, including but not limited to, orientation, safety
6 meetings, driving inspections, load and unload times, rest breaks, and wait times.

7 6.4 RCW 49.46.020 provides that an employer must pay each employee no less than
8 the effective minimum wage for each hour worked.

9 6.5 Defendant created a mandatory orientation program for Plaintiff and Class
10 members. Defendant failed to pay Plaintiff and Class members minimum wage for time
11 worked during the mandatory driver orientation program.

12 6.6 Defendant failed to pay Plaintiff and Class members for time worked when they
13 were not driving but were still performing work for Defendant, including for time worked
14 during mandatory safety meetings.

15 6.7 Defendant failed to pay Plaintiff and Class members for each mile driven.

16 6.8 Defendant failed to pay Plaintiff and Class members for mandatory pre-trip and
17 post-trip inspections.

18 6.9 Defendant failed to pay Plaintiff and Class members for rest breaks.

19 6.10 By the actions alleged above, Defendant violated the provisions of RCW
20 49.46.090.

21 6.11 As a result of the unlawful acts of Defendant, Plaintiff and Class members have
22 been deprived of compensation in amounts to be determined at trial, and pursuant to RCW
23 49.46.090 are entitled to recover such amounts, including interest thereon, and attorneys' fees
24 and costs.

1 **VII. SECOND CLAIM FOR RELIEF**

2 **(Unpaid Overtime Compensation: RCW 49.46.130)**

3 7.1 Plaintiff realleges and incorporates by reference each and every allegation set
4 forth in the preceding paragraphs.

5 7.2 RCW 49.46.130 provides that no employer shall employ any employee for a
6 workweek longer than forty hours unless the employee receives compensation for his
7 employment in excess of the hours above specified at a rate not less than one and half times the
8 regular rate at which he is employed. RCW 49.46.130 (f) excludes an individual employed as a
9 truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C.
10 §§ 3101 *et seq.* and 49 U.S.C. §§ 10101 *et seq.*), if the compensation system under which the
11 truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this
12 subsection, for working longer than forty hours per week. Upon information and belief,
13 Defendant did not employ a “reasonably equivalent” method to pay overtime to Plaintiff and
14 Class members.

15 7.3 WAC 296-128-012 provides a method for compensating truck drivers for
16 overtime pay. Defendant did not compensate Plaintiff and Class members for overtime hours
17 worked.

18 7.4 WAC 296-126-092 requires employers to pay employees for the rest break time
19 to which the employees are entitled. Because Defendant failed to pay Plaintiff and Class
20 members for rest breaks, whether received or not, the overtime provisions of RCW 49.46.130
21 are also triggered when the unpaid rest break time extends the employee’s workweek beyond
22 forty hours.

23 7.5 As a result of the unlawful acts of Defendant, Plaintiff and Class members have
24 been deprived of compensation in amounts to be determined at trial, and pursuant to RCW
25 49.46.090 and 49.48.030, are to recover those damages, including interest thereon, and
26 attorneys’ fees and costs.

1 **VIII. THIRD CLAIM FOR RELIEF**

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

3 8.1 Plaintiff realleges and incorporates by reference each and every allegation set
4 forth in the preceding paragraphs.

5 8.2 RCW 49.48.010 provides that “when any employee shall cease to work for an
6 employer, whether by discharge or by voluntary withdrawal, the wages due him on account of
7 his employment shall be paid to him at the end of the established pay period.” The statute
8 further states that it shall be unlawful for “any employer to withhold or divert any portion of an
9 employee's wages.”

10 8.3 By the actions alleged above, Defendant violated the provisions of RCW
11 49.48.010.

12 8.4 As a result of the unlawful acts of Defendant, Plaintiff and Class members have
13 been deprived of compensation in amounts to be determined at trial, and pursuant to RCW
14 49.48.030 are entitled to recover of such amounts, including interest thereon, attorneys’ fees
15 and costs.

16 **IX. FOURTH CLAIM FOR RELIEF**

17 **(Willful Refusal to Pay Wages: RCW 49.52.050)**

18 9.1 Plaintiff realleges and incorporates by reference each and every allegation set
19 forth in the preceding paragraphs.

20 9.2 RCW 49.52.050(2) provides that any employer who “willfully and with intent to
21 deprive the employee of any part of his wages, pays any employee a lower wage than the wage
22 such employer is obligated to pay such employee by any statute, ordinance, or contract” is
23 guilty of a misdemeanor.

24 9.3 RCW 49.52.070 provides that any employer who violates the foregoing statute
25 shall be liable in a civil action for twice the amount of wages withheld, together with costs of
26 suit and reasonable attorney fees.

1 9.4 The alleged unlawful actions by Defendant against Plaintiff and Class members,
2 as set forth above, were committed willfully and with intent to deprive Plaintiff and Class
3 members of part of their wages.

4 9.5 As such, based on the above allegations, Defendant violated the provisions of
5 RCW 49.52.050.

6 9.6 As a result of the unlawful acts of Defendant, Plaintiff and the Class have been
7 deprived of compensation in amounts to be determined at trial, and pursuant to RCW 49.52.070
8 are entitled to recovery of twice such amounts, including interest thereon, and attorneys’ fees
9 and costs.

10 **X. PRAYER FOR RELIEF**

11 Wherefore, Plaintiff, on his own behalf and on behalf of the members of the Class,
12 prays for judgment against Defendant as follows:

- 13 A. Certify the proposed Plaintiff Class;
- 14 B. Appoint Plaintiff Bodily as Class representative;
- 15 C. Appoint the undersigned attorneys as Class counsel;
- 16 D. Declare that the actions complained of herein violate Washington’s statutes and
17 administrative codes;
- 18 E. Award Plaintiff and Class members compensatory and exemplary damages;
- 19 F. Award attorneys’ fees and costs to Plaintiff’s attorneys, as allowed by law;
- 20 G. Award pre-judgment and post-judgment interest to Plaintiff and Class members,
21 as provided by law; and
- 22 H. Grant such other and further relief as this Court deems necessary.

1 DATED this 10th day of May, 2013.

2 TERRELL MARSHALL DAUDT & WILLIE PLLC

3
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