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

10 BRUCE SIMMONS, individually and on
11 behalf of all those similarly situated;

12 Plaintiffs,

13 vs.

14 THE BOXMAKER, INC., a Washington
15 Profit Corporation;

16 Defendant.

No.

CLASS ACTION COMPLAINT FOR
UNPAID WAGES

17 Plaintiff claims against Defendant as follows:

18 **I. NATURE OF ACTION**

19 1.1. Plaintiff BRUCE SIMMONS, individually and on behalf of all individuals
20 currently or formerly employed by Defendant in Washington State in non-exempt
21 hourly paid positions, brings this action for money damages and statutory penalties
22 for violations of Washington Industrial Welfare Act ("IWA"), RCW 49.12,
23 Minimum Wage Act ("MWA"), RCW 49.46, Wage Payment Act ("WPA"), RCW
24 49.48, Wage Rebate Act ("WRA"), RCW 49.52.

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2.4. At least some of the acts and omissions alleged in this Complaint took place in the State of Washington and King County.

3.2. Plaintiff BRUCE SIMMONS, hereafter “Plaintiff”, is a resident of King County, Washington.

4.4. Defendant failed to keep records of the occurrence, time, duration of paid rest periods.

1 4.5. At times, Plaintiff and members of the putative class were required to work more
2 than three consecutive hours without a rest period. Indeed, Plaintiff and members
3 of the putative class were scheduled and staff by Defendant to a point where they
4 could not take rest periods.

5 4.6. Plaintiff and members of the putative class were not scheduled for and, at times,
6 did not take a rest period in a duration of at least ten minutes, on the employer's
7 time, for every four hours worked.

8 4.7. Defendant failed to establish and maintain a process for Plaintiff and members of the
9 putative class to report and be paid for instances of when they were required to work
10 over three consecutive hours without a rest period, when they did not receive a rest
11 period in at least a ten-minute duration, or when they failed to receive a rest period of
12 at least ten minutes in length for each four hours worked.

13 4.8. Defendant did not compensate Plaintiff and members of the putative class for an
14 additional ten minutes of work, at their regular rate of pay, for each instance it
15 required them to work greater than three consecutive hours without a rest period,
16 provided a rest period in a duration of less than ten minutes, or did not provide a
17 rest period of at least ten minutes in duration for each four hours worked.

18 4.9. There is no fairly debatable issue of law or any objectively or subjectively reasonable
19 dispute whether Defendant needed to compensate Plaintiff and members of the putative
20 class with an additional ten minutes of work, at their regular rate of pay, for each
21 instance it required them to work greater than three consecutive hours without a
22 rest period, provided a rest period in a duration of less than ten minutes, or did not
23 provide a rest period of at least ten minutes in duration for each four hours worked.

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- 1 4.10. Defendant's failure to compensate Plaintiff and members of the putative class with an
2 additional ten minutes of work, at their regular rate of pay, for each instance it
3 required them to work greater than three consecutive hours without a rest period,
4 provided a rest period in a duration of less than ten minutes, or did not provide a
5 rest period of at least ten minutes in duration for each four hours worked was
6 intentional and deliberate and was not the result of administrative or clerical errors.
- 7 4.11. Defendant created and maintained work schedules, job requirements, and a working
8 environment that discouraged Plaintiff and members of the putative class from
9 taking meal periods in compliance with Washington law.
- 10 4.12. Plaintiff and members of the putative class frequently worked shifts greater than
11 five hours in duration, and at times were not scheduled for, were not provided with,
12 did not take, and did not waive their rights to thirty-minute meal periods.
- 13 4.13. At times, Defendant failed to provide Plaintiff and members of the putative class
14 with meal periods in a duration of at least thirty minutes commencing no less than
15 two hours nor more than five hours from the beginning of their shifts.
- 16 4.14. Defendant failed to establish and maintain a process for Plaintiff and members of
17 the putative class to report and be compensated for instances of when they were not
18 provided a meal period of at least thirty minutes commencing no less than two hours
19 nor more than five hours from beginning of their shift for shifts greater than five
20 hours in duration, or when they were otherwise required to work over five
21 consecutive hours without or between meal periods.

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- 1 4.15. Defendant failed to compensate Plaintiff and members of the putative class with an
2 additional thirty minutes of work, at their regular rate of pay, for each instance of
3 when they were not provided a meal period of at least thirty minutes commencing
4 no less than two hours nor more than five hours from beginning of their shift for
5 shifts greater than five hours in duration, or when they were otherwise required to
6 work over five consecutive hours without or between meal periods.
- 7 4.16. There is no fairly debatable issue of law or any objectively or subjectively reasonable
8 dispute whether Defendant needed to compensate Plaintiff and members of the putative
9 class with an additional thirty minutes of work, at their regular rate of pay, for each
10 instance of when they were not provided a meal period of at least thirty minutes
11 commencing no less than two hours nor more than five hours from beginning of
12 their shift for shifts greater than five hours in duration, or when they were otherwise
13 required to work over five consecutive hours without or between meal periods.
- 14 4.17. Defendant's failure to compensate Plaintiff and members of the putative class with an
15 additional thirty minutes of work, at their regular rate of pay, for each instance of
16 when they were not provided a meal period of at least thirty minutes commencing
17 no less than two hours and no more than five hours from beginning of their shift
18 for shifts greater than five hours in duration, or when they were otherwise required
19 to work over five consecutive hours without or between meal periods was
20 intentional and deliberate and was not the result of administrative or clerical errors.
- 21 4.18. Defendant failed to provide paid sick leave at a rate of at least one hour for every
22 forty hours worked by Plaintiff and members of the putative class.
- 23 4.19. Plaintiff's counsel is experienced in complex wage and hour class action litigation.
- 24 4.20. Plaintiff's counsel has adequate financial resources to prosecute this claim through trial
25 and beyond.

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V. VI. CLASS ACTION ALLEGATIONS

5.1. Pursuant to Civil Rule 23, Plaintiff brings this case as a class action against Defendant on behalf of a Class as defined as follows:

All individuals who are or were employed by Defendant in Washington State in non-exempt hourly paid positions from May 8, 2024, through the final resolution of this case.

5.2. This action is properly maintainable as a class action under CR 23(a) and (b)(3).

5.3. Upon information and belief, the number of putative class members exceeds forty and therefore, pursuant to CR 23(a)(1), it is impracticable to join all the members of the class as defined herein as named plaintiffs.

5.4. Pursuant to CR 23(a)(2), there are common questions of law and fact among Plaintiff and members of the putative class including, but not limited to:

(1) Whether Defendant was required to keep records of the occurrence, time and duration of rest periods provided to Plaintiff and members of the putative class;

(2) whether Defendant failed to keep records of the occurrence, time and duration of rest periods;

(3) whether Defendant required Plaintiff and members of the putative class to work greater than three consecutive hours without a rest period;

(4) whether Defendant failed to ensure Plaintiff and members of the putative class received a compliant rest period of at least ten minutes in length, on the employer's time, for each four hours worked;

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1 (5) whether Defendant was required to compensate Plaintiff and
2 members of the putative class for an additional ten minutes of work for each
3 instance it required them to work greater than three consecutive hours without a
4 rest period, provided a rest period in a duration of less than ten minutes, or did not
5 provide a rest period of at least ten minutes in duration, on the employer's time, for
6 each four hours worked;

7 (6) whether Defendant failed to compensate Plaintiff and members of
8 the putative class for an additional ten minutes of work for each instance it required
9 them to work greater than three consecutive hours without a rest period, provided
10 a rest period in a duration of less than ten minutes, or did not provide a rest period
11 of at least ten minutes in duration, on the employer's time, for each four hours
12 worked;

13 (7) whether Defendant was required to compensate Plaintiff and
14 members of the putative class for rest periods separately and in addition to the
15 piecework, commission, and/or other productivity-based wages;

16 (8) whether Defendant failed to compensate Plaintiff and members of
17 the putative class for rest periods separately and in addition to the piecework,
18 commission, and/or other productivity-based wages;

19 (9) whether Defendant was required to provide Plaintiff and members
20 of the putative class with meal periods in a duration of at least thirty minutes
21 commencing no less than two hours nor more than five hours from the beginning
22 of their shifts;

23 (10) whether Defendant failed to provide Plaintiff and members of the
24 putative class with meal periods in a duration of at least thirty minutes commencing
25 no less than two hours nor more than five hours from the beginning of their shifts;
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1 (11) whether Defendant was required to provide second meal periods in
2 a duration of at least thirty minutes for shifts greater than ten and one-half hours in
3 duration or otherwise required Plaintiff and members of the putative class to work
4 greater than five consecutive hours without or between meal periods;

5 (12) whether Defendant failed to provide second meal periods in a
6 duration of at least thirty minutes for shifts greater than ten and one-half hours in
7 duration or otherwise required Plaintiff and members of the putative class to work
8 greater than five consecutive hours without or between meal periods;

9 (13) whether Defendant was required to compensate Plaintiff and
10 members of the putative class with an additional thirty minutes of work, at their
11 regular rate of pay, for each instance of when they were not provided a meal period
12 of at least thirty minutes commencing no less than two hours nor more than five
13 hours from beginning of their shift for shifts greater than five hours in duration, or
14 when they were otherwise required to work over five consecutive hours without or
15 between meal periods;

16 (14) whether Defendant failed to compensate Plaintiff and members of
17 the putative class with an additional thirty minutes of work, at their regular rate of
18 pay, for each instance of when they were not provided a meal period of at least
19 thirty minutes commencing no less than two hours nor more than five hours from
20 beginning of their shift for shifts greater than five hours in duration, or when they
21 were otherwise required to work over five consecutive hours without or between
22 meal periods;

23 (15) whether Defendant was required to provide paid sick leave at a rate
24 of at least one hour for every forty hours worked by Plaintiff and members of the
25 putative class;
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1 (16) whether Defendant failed to provide paid sick leave at a rate of at
2 least one hour for every forty hours worked by Plaintiff and members of the putative
3 class;

4 (17) whether Defendant failed to compensate Plaintiff and members of
5 the putative class for sick leave at the employee's regular and normal wage.

6 (18) whether Defendant was required to allow Plaintiff and members of
7 the putative class to use accrued paid sick leave for qualifying absences;

8 (19) whether Defendant failed to allow Plaintiff and members of the
9 putative class to use accrued paid sick leave for qualifying absences;

10 (20) whether Defendant acted willfully and with the intent of depriving
11 wages or other compensation.

12 5.5. Pursuant to CR 23(a)(3), the named Plaintiff's claims are typical of the claims of
13 the putative class and of Defendant's anticipated defenses thereto.

14 5.6. The named Plaintiff and his counsel will fairly and adequately protect the interests
15 of the class as required by CR 23(a)(4).

16 5.7. Pursuant to CR 23(b)(3), class certification is appropriate here because questions
17 of law or fact common to members of the class predominate over any questions
18 affecting only individual members, and because a class action is superior to other
19 available methods for the fair and efficient adjudication of the controversy.

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1 **VI. FIRST CAUSE OF ACTION – FAILURE TO ACCRUE AND**
2 **ALLOW THE USE OF PAID SICK LEAVE IN VIOLATION OF THE**
3 **WASHINGTON MINIMUM WAGE ACT**

4 6.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

5 6.2. The Washington Paid Safe and Sick Leave Act, RCW 49.46.210, and its
6 implementing regulations WAC 296-128-620 requires that employees accrue paid
7 sick leave for all hours worked at a rate of at least one hour for every forty hours
8 worked.

9 6.3. Defendant violated the MWA by failing to accrue sick leave for and failing to allow
10 the usage of paid sick leave for qualifying absences by Plaintiff and members of
11 the putative class.

12 6.4. Pursuant to RCW 49.46.200, Defendant must compensate Plaintiff and members of
13 the putative class for sick leave at the employee's regular and normal wage;

14 6.5. As a result of Defendant's acts and omissions, Plaintiff and members of the
15 putative class have been damaged in amounts as will be proven at trial.

16 **VII. SECOND CAUSE OF ACTION – CLASSWIDE FAILURE TO**
17 **PROVIDE MEAL PERIODS IN VIOLATION OF THE WASHINGTON**
18 **INDUSTRIAL WELFARE ACT AND FAILURE TO COMPENSATE FOR**
19 **VIOLATIONS OF THE WASHINGTON MINIMUM WAGE ACT**

20 6.6 Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

21 6.7 The Washington Industrial Welfare Act, RCW 49.12, and its implementing
22 regulation, WAC 296-126-092, require employers to provide thirty-minute meal
23 periods to their employees for work shifts greater than five hours in length and
24 prohibits employees from working more than five consecutive hours without a meal
25 period.

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- 1 6.8 Employees have an implied cause of action for violations of RCW 49.12 to protect
2 them from conditions of labor that have a pernicious effect on their health. *Wingert*
3 *v. Yellow Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).
- 4 6.9 A meal period violation is a wage violation with employees entitled to thirty
5 minutes of additional compensation for each instance they are required to work
6 more than five consecutive hours without a compliant meal period. *Hill v. Garda*
7 *CL Nw., Inc.*, 191 Wn.2d 553, 560 (2018), citing *Hill v. Garda CL Nw., Inc.*, 198
8 Wn. App 326, 361 (2017).
- 9 6.10 Defendant violated the Industrial Welfare Act and its implementing regulation by
10 failing to provide Plaintiff and members of the putative class with compliant thirty-
11 minute meal periods and by creating work schedules, staffing levels and conditions
12 of work that discouraged compliant meal periods.
- 13 6.11 Defendant violated the Minimum Wage Act when it failed to compensate Plaintiff
14 and members of the putative class for thirty minutes of work for each it did not
15 provide a meal period in a duration of thirty minutes commencing between the
16 second and fifth hour from the start of their shift or when it required them to work
17 greater than five consecutive hours without or between meal periods.
- 18 6.12 As a result of Defendant's acts and omissions, Plaintiff and members of the putative
19 class have been damaged in amounts as will be proven at trial.

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**VIII. THIRD CAUSE OF ACTION – CLASSWIDE FAILURE ENSURE
REST PERIODS IN VIOLATION OF THE WASHINGTON
INDUSTRIAL WELFARE ACT AND FAILURE TO COMPENSATE
FOR VIOLATIONS IN VIOLATION OF THE WASHINGTON
MINIMUM WAGE ACT**

- 8.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.
- 8.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing regulation, WAC 296-126-092, require employers to provide a rest period of not less than ten minutes, on the employer's time, for each four hours of working time.
- 8.3. Employees have an implied cause of action for violations of RCW 49.12 to protect them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).
- 8.4. A rest period violation is a wage violation with employees entitled to ten minutes of additional compensation for each instance they are required or allowed to work longer than three consecutive hours without a rest break. *Id* at 849.
- 8.5. Defendant violated the Industrial Welfare Act and its implementing regulation by failing to ensure Plaintiff and members of the putative class received a ten-minute paid rest period for every four hours worked and by failing to keep records of the occurrence, time and duration of rest periods taken, by failing to implement a process for Plaintiff and members of the putative class to report missed or otherwise noncompliant rest periods and by creating work schedules, staffing levels and conditions of work that discouraged paid rest periods.

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1 8.6. Defendant violated the Minimum Wage Act when it failed to compensate Plaintiff
2 and members of the putative class for an additional ten minutes of work for each
3 instance it required them to work greater than three consecutive hours without a
4 rest period, provided a rest period in a duration of less than ten minutes, or did not
5 provide a rest period of at least ten minutes in duration for each four hours worked.

6 8.7. As a result of Defendant's acts and omissions, Plaintiff and members of the putative
7 class have been damaged in amounts as will be proven at trial.

8 **IX. FOURTH CAUSE OF ACTION – CLASSWIDE WILLFUL**
9 **WITHHOLDING OF WAGES IN VIOLATION OF THE**
10 **WASHINGTON WAGE REBATE ACT**

11 9.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

12 9.2. By the foregoing, Defendant's actions constitute willful withholding of wages due
13 in violation of RCW 49.52.050 and 070.

14 9.3. As a result of Defendant's acts and omissions, Plaintiff and members of the putative
15 class have been damaged in amounts as will be proven at trial.

16 **X. PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff requests this Court enter an order against Defendant granting the
18 following relief:

- 19 A. Certification of this case as a class action pursuant to CR 23(a) and (b)(3);
20 B. Damages for unpaid wages in amounts to be proven at trial;
21 C. Exemplary damages pursuant to RCW 49.52.070;
22 D. Attorneys' fees and costs pursuant to RCW 49.46.090, 49.48.030, 49.52.070,
23 49.60.030;
24 E. Additional Attorneys' fees pursuant to all applicable factors outlined in *Bowers v.*
25 *Transamerica Title Ins.*, 100 Wn.2d 581, 593-597 (1983);
26 F. Prejudgment interest pursuant to RCW 19.52.010; and

1 G. Such other and further relief as the Court deems just and proper.

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3 DATED this May 8, 2024

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5 **JUSTICE LAW CORPORATION**

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