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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PEND OREILLE

WILLIAM FAIRCHILD and JACOB
ACKLEY, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

PONDERAY NEWSPRINT COMPANY,

Defendant.

No. 14-2-00061-4

CLASS ACTION COMPLAINT

Plaintiffs claim against defendant as follows:

I. NATURE OF ACTION

1.1 Plaintiffs bring this class action for money damages and statutory penalties for wage law violations on behalf of current and former employees of defendant Ponderay Newsprint Company ("Ponderay," "company," or "employer") 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, and the Washington Wage Rebate Act, RCW 49.52.

II. JURISDICTION AND VENUE

2.1 The Superior Court of Washington has jurisdiction of plaintiffs' claims

1 pursuant to RCW 2.08.010 and CR 23.

2 2.2 Venue in Pend Oreille 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 Pend Oreille County.

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6 **III. PARTIES**

7 3.1 Plaintiff William Fairchild is a resident of Spokane, Washington and is
8 currently employed by Ponderay.

9 3.2 Plaintiff Jacob Ackley is a resident of Priest River, Idaho and is currently
10 employed by Ponderay.

11 3.2 Defendant Ponderay is a partnership doing business in Pend Oreille County,
12 Washington with a principal place of business in Usk, Washington. Ponderay is an
13 employer for purposes of the MWA and the IWA.
14

15 **IV. FACTUAL ALLEGATIONS**

16 4.1 Defendant manufactures newsprint at a plant in Usk, Washington.

17 4.2 Plaintiffs and members of the class work and have worked for defendant in
18 the newspaper production process in one or more of the following job categories: “dry end
19 tester,” “winder operator,” “winder fourth hand,” “winder fifth hand,” “wrapline operator,”
20 “utility,” “lead loader,” and “shipping/shipper.”
21

22 4.3 Plaintiffs and class members routinely worked 12.5 hour shifts and were
23 referred to as “rotating shift workers” because they would regularly rotate between day and
24 night shifts.
25

26 4.4 Class members were not provided with legally sufficient paid meal periods

1 in accordance with Washington law, in part because class members were required to
2 perform work duties at all times during their work day.

3 4.5 Defendant's Employee Handbook specifically states, "All rotating shift
4 workers will eat their lunch 'on the run'...."

5 4.6 During the class period, plaintiffs and other class members regularly worked
6 in excess of forty hours per week.

7 4.7 Defendant knew or should have known that plaintiffs and other members of
8 the class were not able to take the required meal breaks and were working in excess of forty
9 hours per week without receipt of overtime or regular compensation for all hours worked
10 and nonetheless continued to require and allow such practices to continue.

11 4.8 In failing to provide the required meal breaks, defendant acted willfully and
12 with the intent of depriving plaintiffs and members of the class of the requisite overtime or
13 regular compensation.

14 **V. CLASS ACTION ALLEGATIONS**

15 5.1 Plaintiffs seek to represent all past and present employees who performed
16 work for defendant in Washington in the job categories listed in paragraph 4.2 above at any
17 time starting three years before the filing of this Complaint and continuing thereafter.

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 that joinder of
20 all of them is impractical, as required by CR 23(a)(1).

21 5.4 Pursuant to CR 23(a)(2), there are common questions of law and fact
22 including, but not limited to whether the defendant has an illegal policy and practice of not
23 providing class members with statutorily required meal breaks and whether the defendant,
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1 in failing to provide the required meal breaks, has acted willfully and with the intent to
2 deprive plaintiffs and the members of the class of required compensation.

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

6 5.6 The named plaintiffs will fairly and adequately protect the interests of the
7 class as required by CR 23(a)(4).

8 5.7 Pursuant to CR 23(b)(3), class certification is appropriate here because
9 questions of law or fact common to members of the class predominate over any questions
10 affecting only individual members and because a class action is superior to other available
11 methods for the fair and efficient adjudication of the controversy.
12

13 **VI. FIRST CAUSE OF ACTION - CLASSWIDE FAILURE TO**
14 **PROVIDE AND PAY FOR MEAL BREAKS AS REQUIRED**
15 **UNDER WASHINGTON LAW**

16 6.1 Plaintiffs restate and reallege the allegations set forth in all paragraphs
17 above.

18 6.2 Defendant's failure to provide and pay for legally sufficient meal breaks
19 constitutes a violation of RCW 49.12 and WAC 296-126-092.

20 6.3 As a result of defendant's acts and omissions, plaintiffs and the class
21 members have been damaged in amounts as will be proven at trial.
22

23 **VII. SECOND CAUSE OF ACTION - CLASSWIDE FAILURE TO PAY**
24 **OVERTIME WAGES IN VIOLATION OF THE WASHINGTON**
25 **STATE MINIMUM WAGE ACT**

26 7.1 Plaintiffs restate and reallege the allegations set forth in all paragraphs
above.

1 7.2 Defendant's failure to pay class members one and one-half times their
2 regular rate of pay for missed meal periods in work weeks in which they worked in excess
3 of forty hours constitutes a violation of RCW 49.46.130.

4 7.3 As a result of defendant's acts and omissions, plaintiffs and the class
5 members have been damaged in amounts as will be proven at trial.

6
7 **VIII. THIRD CAUSE OF ACTION - CLASSWIDE FAILURE TO PAY FOR**
8 **WORK AS REQUIRED BY EMPLOYMENT POLICIES AND**
9 **AGREEMENTS**

10 8.1 Plaintiffs restate and reallege the allegations set forth in all paragraphs above.

11 8.2 Some of the missed meal periods fell in work weeks in which class members
12 worked less than forty hours.

13 8.3 As to those missed meal periods, defendant has breached the employment
14 policies and agreements applicable to plaintiffs and the class members and has been violating
15 statutory requirements, including RCW 49.46.020 and RCW 49.48.010, by failing to pay for
16 the additional work time represented by the missed meal periods at the agreed upon hourly pay
17 rates.

18 8.4 As a result of defendant's acts and omissions, plaintiffs and the class
19 members have been damaged in amounts as will be proven at trial.

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

22 9.1 Plaintiffs restate and reallege the allegations set forth in all paragraphs
23 above.

24 9.2 By the foregoing, defendant's actions constitute willful withholding of
25 agreed upon wages in violation of RCW 49.52.050 and .070.
26

1 9.3 As a direct and proximate result of the foregoing, plaintiffs and the class
2 members have suffered and continue to suffer loss of compensation in amounts as will be
3 proven at trial.

4 **X. PRAYER FOR RELIEF**

5 WHEREFORE, plaintiffs request this Court enter an order granting them and the
6 class members the following relief:

7 A. Damages for lost wages in amounts to be proven at trial;

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

10 C. Attorneys fees and costs pursuant to RCW 49.46.090, 49.48.030 and RCW
11 49.52.070;

12 D. Prejudgment interest; and

13 E. Such other and further relief as the Court deems just and proper.

14 DATED this 8th day of April, 2014.

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17 SCHROETER GOLDMARK & BENDER

18 

19 Martin S. Garfinkel, WSBA #20787

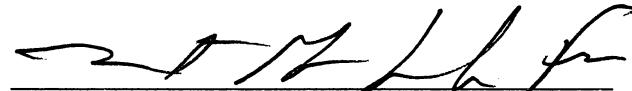
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