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**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

TAMMY JOHNSON and VANESSA DETTWILER,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

vs.

TRACTOR SUPPLY COMPANY, a Delaware  
Corporation,

Defendant.

Case No.:

**NOTICE OF REMOVAL**

[Filed concurrently with Civil Cover  
Sheet; Declarations of Adam T.  
Pankratz; Karen S. Austin; Christopher  
W. Decker; Ariel Kumpinsky; and  
Melissa Williamson]

**TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN  
DISTRICT OF WASHINGTON AND TO PLAINTIFFS TAMMY JOHNSON AND  
VANESSA DETTWILER AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT Defendant Tractor Supply Company (“Defendant”), by  
and through the undersigned counsel, hereby removes the above-entitled action from the  
Superior Court of the State of Washington for the County of King to the United States District  
Court for the Western District of Washington pursuant to 28 U.S.C. Sections 1332, 1367,  
1441(a), 1446, and 1453. In support of such removal, Defendant states as follows:

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## I. BACKGROUND

1  
2 1. On December 12, 2017, Plaintiffs Tammy Johnson and Vanessa Dettwiler  
3 (“Plaintiffs”) commenced an action in the United States District Court for the Western District of  
4 Washington, *Tammy Johnson & Vanessa Dettwiler v. Tractor Supply Co.*, Case No. 3:17-CV-  
5 06039-RJB. A true and correct copy of this Complaint is attached as “Exhibit 1” to the  
6 Declaration of Adam T. Pankratz in Support of Defendant’s Notice of Removal (“Pankratz  
7 Decl.”). The action alleged: (1) Violation of 29 U.S.C. § 207; (2) Violations of Wash. Rev. Code  
8 § 49.46.130; (3) Violations of Wash. Rev. Code § 49.12.020 and Wash. Admin. Code § 296-126-  
9 092; and (4) Violation of Wash. Rev. Code § 49.52.050. (Pankratz Decl. at Ex. 1).

10 2. After an unsuccessful mediation, Plaintiffs sought leave to dismiss that action  
11 voluntarily without prejudice for the declared purpose of re-filing their state law claims in  
12 Washington state court. (Case No. 3:17-CV-06039-RJB; Dkt. #27 at ¶11). Leave was granted  
13 and the action was dismissed without prejudice on December 26, 2018. (Case No. 3:17-CV-  
14 06039-RJB; Dkt. #45). At the time the action was dismissed, trial was set for September 16,  
15 2019. (Case No. 3:17-CV-06039-RJB; Dkt. #23).

16 3. On January 18, 2019, Plaintiffs Tammy Johnson and Vanessa Dettwiler  
17 (“Plaintiffs”) commenced the instant action by filing a class action complaint for damages in the  
18 Superior Court of the State of Washington, County of King, entitled *Tammy Johnson and*  
19 *Vanessa Dettwiler, individually and on behalf of the Proposed Class v. Tractor Supply Company*,  
20 Case No. 19-2-01975-1 KNT (hereinafter referred to as the “Complaint”). A true and correct  
21 copy of this Complaint is attached as “Exhibit 2” to the Pankratz Decl.

22 4. Plaintiffs’ Complaint asserts the following three claims for relief against  
23 Defendant: (1) Violations of Wash. Rev. Code § 49.12.020 and Wash. Admin. Code § 296-126-  
24 092; (2) Violations of Wash. Rev. Code § 49.46.130; and (3) Violation of Wash. Rev. Code §

1 49.52.050. (*Id.* at Ex. 2). These claims, and the allegations supporting them, are substantially  
2 identical to the state law claims pleaded in Plaintiffs' earlier federal lawsuit, except that the  
3 allegation that Defendant miscalculated Plaintiffs' regular rate of pay has been omitted.  
4 (*Compare id.* at Ex. 1 with *id.* at Ex. 2). The named parties in the two cases are identical.

5 5. On January 18, 2019, the King County Superior Court filed the Order Setting  
6 Civil Case. *Id.* at Ex. 3. A true and correct copy of the Order Setting Civil Case is attached as  
7 "Exhibit 3" to the Pankratz Decl. The Order Setting Civil Case sets trial for January 20, 2020.  
8 (*Id.*).

9 6. Defendant accepted service of the Summons, Complaint, and Case Information  
10 Cover Sheet on January 25, 2019. (Pankratz Decl. at ¶5). On January 25, 2019, Plaintiffs filed  
11 their Affidavit of Service. (*Id.* at Ex. 4). True and correct copies of the Summons, Case  
12 Information Cover Sheet, and Affidavit of Service are attached as "Exhibit 4" to the Pankratz  
13 Decl.

14 7. On February 5, 2019, the Superior Court Clerk filed a Notice Regarding New  
15 Trial Date, setting trial for January 21, 2020. True and correct copies of the Notice Regarding  
16 New Trial Date are attached as "Exhibit 5" to the Pankratz Decl.

17 8. On February 19, 2019, Plaintiffs filed a Note for Hearing and Motion for Limited  
18 Admissions. True and correct copies of the Note for Hearing and Motion for Limited Admissions  
19 are attached as "Exhibit 6" to the Pankratz Decl.

20 9. Exhibits 2-6 to the Pankratz Decl. constitute all of the process, pleadings, and  
21 orders either served upon Defendant or filed in this action. (*Id.* at ¶8). Defendant has not entered  
22 or appeared or voluntarily invoked or submitted to the jurisdiction of the Superior Court of the  
23 State of Washington for the County of King in any manner. (*Id.*). No further proceedings have  
24 been had in the state court as of the date of this Notice. (*Id.*).

1           10. As set out more fully below, based on the allegations of the Complaint and other  
2 evidence collected by Defendant, this Court has original jurisdiction over this action under the 28  
3 U.S.C. § 1332, and hence the action may be removed by Defendant pursuant to 28 U.S.C.  
4 § 1441.

5                   **II. DEFENDANT HAS SATISFIED THE PROCEDURAL**  
6                   **REQUIREMENTS FOR REMOVAL.**

7           **A. Timeliness.**

8           11. In accordance with 28 U.S.C. §1446(b), Defendant's Notice of Removal was filed  
9 within 30 days after the initial service of the Complaint on Defendant which was completed on  
10 January 25, 2019. Because the 30th day after service is a Sunday (February 24, 2019), the time  
11 for Defendant to remove is extended until the next court day, Monday, February 25, 2019. Fed.  
12 R. Civ. Pr. 6(a)(1)(C). Defendant is filing this Notice of Removal on February 25, 2019,  
13 therefore, it is timely.

14           **B. Venue.**

15           12. In accordance with 28 U.S.C. §1446(a), this Notice is filed in the District Court of  
16 the United States in which the action is pending. The Superior Court of Washington, King  
17 County is located within the Western District of Washington. Therefore, venue is proper in this  
18 Court pursuant to 28 U.S.C. § 128(b) because it is the "district and division embracing the place  
19 where such action is pending." 28 U.S.C. §1441(a).

20           **C. Procedural Requirements.**

21           13. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders  
22 served upon Defendant are attached as Exhibits to this Notice of Removal. (*See* Pankratz Decl.).

23           14. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served  
24 upon counsel for Plaintiff and a copy is being filed with the Clerk of the Superior Court of

1 Washington in the County of King and with the Clerk of the Western District of Washington.

2 True and correct copies of the Notice to the Plaintiff and the state court shall be filed promptly.

3 **III. THE CASE IS REMOVABLE PURSUANT TO THE**  
4 **CLASS ACTION FAIRNESS ACT (“CAFA”)**

5 15. As set forth below, Plaintiffs’ claims as alleged in the Complaint are removable  
6 under 28 U.S.C. §1332(d) (CAFA).

7 16. Under CAFA, the Federal District Court has jurisdiction if:

8 (a) There are at least 100 class members in all proposed plaintiff classes; and

9 (b) The combined claims of all class members exceed \$5 million exclusive of interest  
10 and costs; and

11 (c) Any class member (named or not) is a citizen of a different state than any  
12 defendant. 28 U.S.C. §§ 1332(d), 1453(a).

13 **A. There are at Least 100 Class Members in the Proposed Class.**

14 17. In this action, Plaintiffs seek to represent a class of all current and former persons:  
15 “who have worked in one of Defendant’s stores in Washington in a position Defendant classified  
16 as non-exempt, at any time between December 12, 2014, and the date of final disposition of this  
17 action,” which Plaintiffs refer to as the “Class.” (Complaint ¶4.1). Using the present date as the  
18 period end date, the putative Class exceeds 100 members (*See* Declaration of Ariel Kumpinsky  
19 (“Kumpinsky Decl.”) ¶9), and, therefore, the requirement of 28 U.S.C. § 1332(d)(5)(B) is  
20 satisfied.

21 18. Plaintiffs’ assert that there “are hundreds of current or former employees of  
22 Defendant in the Class.” (Complaint ¶4.2). Based on a review and analysis of Defendant’s  
23 timekeeping and payroll records, the company has employed at least 1,051 individuals in non-  
24

1 exempt positions in its Washington stores from December 12, 2014 to present.<sup>1</sup> (Kumpinsky  
2 Decl. ¶11).<sup>2</sup> Thus, the first requirement for CAFA jurisdiction is satisfied.

3 19. Based on the above, there are more than 100 class members in Plaintiffs'  
4 proposed Class.

5 **B. The Combined Claims of all Class Members Exceed \$5 Million, Exclusive of**  
6 **Interest and Costs.**

7 20. Based on Plaintiffs' allegations in the Complaint and other evidence collected by  
8 Defendant, the aggregate value of the claims of all proposed plaintiff classes exceeds the \$5  
9 million threshold needed to establish federal jurisdiction under the Class Action Fairness Act.  
10 The \$5 million jurisdictional minimum may be based on aggregation of the claims of all  
11 potential class members. 28 U.S.C. § 1132(d)(6). As is shown below, the evidence shows that  
12 Plaintiffs' Complaint places more than \$5 million in controversy.

13 21. The Complaint does not allege an amount in controversy. A removing defendant  
14 properly satisfies its burden by submitting a declaration or affidavit to prove the amount in  
15 controversy by the preponderance of the evidence. *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d  
16 395, 397 (9th Cir. 2010). A removing defendant "must inevitably rely on some assumptions to  
17 support removal; a removing defendant is not required to go so far as to prove plaintiff's case for  
18 him by proving the actual rates of violation." *Feaov. UFP Riverside, LLC*, No. CV 17-3080 PSG  
19 (JPRX), 2017 WL 2836207, at \*5 (C.D. Cal. June 29, 2017) (citations omitted). In cases alleging  
20 failure to provide meal and/or rest breaks, courts frequently assume a 100% violation rate for

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21 <sup>1</sup> Specifically, the date February 17, 2019 is used as the "present date."

22 <sup>2</sup> Mr. Kumpinsky attests to certain calculations performed on employment and payroll  
23 data provided by Defendant. The precise contents of that data set are described in the Declaration  
24 of Melissa Williamson, filed concurrently herewith, and the transmission of that data set to Mr.  
Kumpinsky is confirmed by the Declaration of Christopher W. Decker, also filed concurrently  
herewith.

1 purposes of determining the amount-in-controversy. *See, e.g., See Duberry v. J. Crew Grp., Inc.*,  
2 No. 2:14-cv-08810-SVW-MRW, 2015 WL 4575018, at \*6 (C.D. Cal. July 28, 2015); *Mejia v.*  
3 *DHL Express (USA), Inc.*, No. CV 15-890 GHK (JCx), 2015 WL 2452755, at \*4 (C.D. Cal. May  
4 21, 2015); *Lopez v. Aerotek, Inc.*, No. SACV 14-00803-(CJGx), 2015 WL 2342558, at \*3 (C.D.  
5 Cal. May 14, 2015); *Sanchez v. Russell Sigler, Inc.*, No. CV 15-01350-AB (PLAx), 2015 WL  
6 12765359, at \*6 (C.D. Cal. Apr. 28, 2015).

7 **(a) Plaintiffs’ Allege Pervasive Meal and Rest Period Violations.**

8 22. **Meal Periods.** Plaintiffs allege that “Defendant failed to affirmatively provide her  
9 with thirty-minute meal breaks.” (Complaint at ¶¶3.1, 3.2). Plaintiffs further allege: (a)  
10 “Defendant has engaged in, and continues to engage in, a common course of failing to provide  
11 their hourly paid employees in Washington with an uninterrupted, thirty-minute meal break for  
12 every five hours of work and requiring or permitting their hourly paid employees to work more  
13 than five consecutive hours without a meal break;” (b) “Plaintiffs and Class members regularly  
14 are unable to take the full, thirty-minute meal breaks to which they are entitled because of how  
15 busy Defendant’s stores are;” (b) “Plaintiffs and Class members often only eat while on-the-go to  
16 ensure they can complete all their necessary work;” (c) “hourly paid employees in Washington  
17 do not receive uninterrupted, thirty-minute meal breaks for every five hours of work and are  
18 required or permitted to work more than five consecutive hours without a meal break.” (*Id.* at  
19 ¶5.1).

20 23. **Rest Periods.** Plaintiffs allege that “Defendant failed to affirmatively provide  
21 Plaintiff Johnson with paid ten-minute rest breaks for every four hours of work and regularly  
22 required her to work more than three consecutive hours without a rest break.” (Complaint at  
23 ¶¶3.1, 3.2). Plaintiffs further allege: (a) “Defendant has engaged in, and continues to engage in, a  
24 common course of failing to provide paid rest breaks to their hourly paid employees in

1 Washington;” (b) “Defendant does not provide hourly paid employees ten-minute rest breaks for  
2 every four hours of work; it requires hourly paid employees to work more than three consecutive  
3 hours without a rest break; and it does not provide ten minutes of additional pay for each rest  
4 break employees miss;” (c) “Defendant’s hourly paid employees in Washington do not have time  
5 to take rest breaks because of the volume of their work, and Defendant has no system in place to  
6 relieve employees during busy periods in order for the employees to take rest breaks;” and (d)  
7 “Defendant has had actual or constructive knowledge of the fact that hourly paid employees do  
8 not receive ten-minute rest breaks for every four hours of work, must work more than three  
9 consecutive hours without a rest break, and do not receive ten minutes of additional pay for each  
10 rest break they miss.” (*Id.* at ¶5.2).

11 24. Plaintiffs also allege that Defendant’s meal and rest period policies and  
12 procedures, in themselves, are violations of Washington Law. (*Id.* at ¶¶6.6, 6.7).

13 25. Meal and rest period violations are sought as wages under the MWA. *See, e.g.,*  
14 *Wingert v. Yellow Freight Sys., Inc.*, 146 Wash. 2d 841, 850, 50 P.3d 256, 261 (2002)  
15 (explaining that Wash. Admin. Code § 296-126-092 give rise to a cause of action for unpaid  
16 wages); *Washington State Nurses Ass’n v. Sacred Heart Med. Ctr.*, 175 Wash. 2d 822, 832, 287  
17 P.3d 516, 520 n.1 (2012) (applying *Wingert* and explaining that the IWA and MWA “often work  
18 in concert”).

19 26. Accordingly, if the allegations of the Complaint are true, Defendant owes the  
20 Class 10 minutes of wages for each rest period violation and 30 minutes of wages for each meal  
21 period violation. Those additional wages would be paid to the putative Class Members at their  
22 overtime rate if, when including the additional minutes, the class member worked more than 40  
23 hours in that workweek. *See Washington State Nurses Ass’n*, 175 Wash. 2d at 833.

24 27. Plaintiffs further allege that they are entitled to treble wages. (*Id.* at ¶8.6) (“As a



1 result of the willful and unlawful acts of Defendant, Plaintiff and the putative Class have been  
2 deprived of wages in amounts to be determined at trial, and pursuant to RCW 49.52.070,  
3 Plaintiff and the putative Class are entitled to an *additional* recovery of twice the amount of such  
4 wages, as well as attorneys’ fees and costs.”) (emphasis added).<sup>3</sup> Accepting Plaintiffs’ legal  
5 theories as meritorious, Defendant would owe the putative Class treble wages for each violation  
6 plus attorneys’ fees. (*Id.*). Plaintiff alleges that Defendant owes such treble wages for violations  
7 between December 12, 2014 through final disposition of this case. (Complaint ¶4.1).<sup>4</sup>

8 28. Given Plaintiffs’ allegations and Washington law, assuming a 100% violation rate  
9 is appropriate. If Plaintiffs’ allegations are true, it would establish a “universal” violation under  
10 Washington law. *See Pellino v. Brink's Inc.*, 164 Wash. App. 668, 681, 267 P.3d 383, 391  
11 (2011). In *Pellino*, the Court of Appeals affirmed summary judgment against an employer whose  
12 policies and practices unlawfully required employees to engage in constant mental exertion  
13 during their breaks. *Id.* at 685-86, 267 P.3d at 393-94. The court further found that the policies  
14 and practices resulted in universal or near-universal violations. *See id.* at 681, 267 P.3d at 391  
15 (agreeing with the trial court’s conclusion that employees were denied compliant breaks “almost  
16 all the time”); *see also Hill v. Garda CL Nw., Inc.*, 198 Wash. App. 326, 358, 394 P.3d 390, 407,  
17 *rev'd on other grounds*, 191 Wash. 2d 553, 424 P.3d 207 (2018) (affirming trial court’s grant of  
18 summary judgment on liability for all breaks because there was a “policy against taking true  
19 breaks”); *Wash. Dep’t of Labor & Indus., Admin. Policy ES.C.6.1 § 12, at 4-5 (rev. Dec. 1,*

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20  
21 <sup>3</sup> Defendant disputes that Washington law permits treble recovery. *See* Wash. Rev. Code  
§ 49.52.070.

22 <sup>4</sup> Defendant disputes Plaintiffs’ calculation of the statute of limitations. The applicable  
23 statute of limitations for unpaid wage claims is three years. *Seattle Prof’l Eng’g Emps. Ass’n v.*  
24 *Boeing Co.*, 139 Wash.2d 824, 837-38, 991 P.2d 1126 (2000). Plaintiffs filed their action on  
January 18, 2019. Thus, the period of recovery is January 18, 2016 through disposition of the  
matter.

1 2017), at 4-5 (advising that if the employee’s 10-minute break requires “constant mental  
2 exertion,” then it is a violation even though the employee received the allotted time); *see also*  
3 *Lopez Demetrio v. Sakuma Bros. Farms*, 183 Wash. 2d 649, 658, 355 P.3d 258, 263 (2015)  
4 (“workplace culture” that encourages employees to skip breaks results in violations).

5 29. In this case, Plaintiffs allege that they and the putative Class could not take timely  
6 uninterrupted meal and rest breaks because of the busyness of Defendant’s stores, the amount of  
7 necessary work, the lack of system in place to relieve employees, and because Defendant either  
8 required employees to violate Wash. Admin. Code § 296-126-092 or permitted employees to  
9 violate the regulation. (Complaint at ¶¶5.1-5.2). Nowhere in the Complaint do Plaintiffs concede  
10 that they or any putative class member received a compliant meal or rest break, even on  
11 occasion. To the contrary, Plaintiffs describe Defendant’s practices as “a common course of  
12 failing to provide their hourly paid employees in Washington with an uninterrupted, thirty-  
13 minute meal break for every five hours of work and requiring or permitting their hourly paid  
14 employees to work more than five consecutive hours without a meal break.” (Complaint at ¶5.1).  
15 Plaintiffs allege that “Plaintiffs and Class members *regularly* are unable to take the full, thirty-  
16 minute meal breaks to which they are entitled,” (*Id.* at ¶5.1.1), and “often eat only while on-the-  
17 go,” (*Id.* at ¶5.1.2). Plaintiff similarly alleges a “common course of failing to provide paid rest  
18 breaks.” (Complaint at ¶5.2).

19 30. In sum, Plaintiffs allege pervasive “common course” violations and further allege  
20 that Defendant’s meal and rest period policies and procedures, in themselves, are violations of  
21 Washington Law. (*Id.* at ¶¶6.6, 6.7). Given Plaintiffs’ allegations and Washington law (which  
22 permits finding universal violations), assuming a 100% violation rate is appropriate for purposes  
23 of calculating the amount-in-controversy at the time of removal.

24 //



1 which was not provided) for each putative Class member. (*Id.* at ¶8).

2 d. Mr. Kumpinsky calculated the wages based on the employee's hourly base  
3 hourly rate in effect at the time the hours were worked, and Mr. Kumpinsky  
4 further added the appropriate overtime premium for any minutes which, when  
5 added to the hours the employee had recorded for the workweek, exceeded  
6 forty hours in the workweek. (*Id.*).

7 e. Mr. Kumpinsky's calculations were based on timekeeping records for  
8 Washington employees between December 12, 2014 and February 17, 2019,  
9 inclusive, and earnings information for Washington employees between  
10 December 6, 2014 and February 9, 2019 inclusive. (*Id.* at ¶9).

11 f. Using the methodology described above, the results were as follows: the  
12 Washington employees, collectively, would be owed \$1,228,875.73 in unpaid  
13 wages for the period December 12, 2014 through February 17, 2019 if they  
14 received no legally-compliant meal periods during that period. (*Id.* at ¶10).

15 33. As stated above, Plaintiffs allege treble wages. (Complaint ¶¶5.2, 6.1-8.6). Based  
16 on Mr. Kumpinsky's \$1,228,875.73 meal wage calculation, Defendants are alleged to owe  
17 \$3,686,627.19 when including the alleged treble wages multiplier.

18 (c) **Plaintiffs' Cause of Action for Failure to Provide Rest Periods Places**  
19 **at Least \$1,882,494.78 in Controversy.**

20 34. Plaintiffs' seek treble wages for Defendant's alleged failure to provide rest  
21 periods as provided by law. (Complaint ¶¶5.2, 6.1-8.6).

22 35. Defendant denies that it failed to provide rest periods to Plaintiffs and the putative  
23 Class. However, Defendant is able to calculate the number of potential rest period violations for

24 meal period." Wash. Admin. Code § 296-126-0092(2).

1 the putative class if Plaintiffs' allegations are true. (Kumpinsky Decl." at ¶7-9).<sup>7</sup> Based on  
2 Plaintiffs' allegations in the Complaint and other evidence collected by Defendant, Plaintiffs and  
3 the putative Class place at least \$627,498.26 in controversy (prior to alleged wage multipliers)  
4 relating to purported rest period violations. *Id.* Mr. Kumpinsky's methodology is as follows:

- 5 a. Mr. Kumpinsky analyzed the business Records of TSC to calculate the  
6 elapsed time between each pair of time punches for each day, the total elapsed  
7 time between all pairs of punches for each workday, and the total elapsed time  
8 between all pairs of time punches for each workweek. (*Id.* at ¶7).
- 9 b. Mr. Kumpinsky then calculated each putative Class member's applicable  
10 hourly rate of pay for each workweek from the information provided  
11 regarding his or her earnings. (*Id.*).
- 12 c. Based on the above, Mr. Kumpinsky's then calculated ten minutes of wages  
13 owed for every four hours<sup>8</sup> of work in a workday (to account for the rest break  
14 which was not provided) for each putative Class member. (*Id.* at ¶8).
- 15 d. Mr. Kumpinsky calculated the wages based on the employee's hourly base  
16 hourly rate in effect at the time the hours were worked, and Mr. Kumpinsky  
17 further added the appropriate overtime premium for any minutes which, when  
18 added to the hours the employee had recorded for the workweek, exceeded  
19 forty hours in the workweek. (*Id.*).

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20 <sup>7</sup> Mr. Kumpinsky attests to certain calculations performed on employment and payroll  
21 data provided by Defendant. The precise contents of that data set are described in the Declaration  
22 of Melissa Williamson, filed concurrently herewith, and the transmission of that data set to Mr.  
23 Kumpinsky is confirmed by the Declaration of Christopher W. Decker, also filed concurrently  
24 herewith.

<sup>8</sup> "No employee shall be required to work more than five consecutive hours without a  
meal period." Wash. Admin. Code § 296-126-0092(2).

1 e. Mr. Kumpinsky's calculations were based on timekeeping records for  
2 Washington employees between December 12, 2014 and February 17, 2019,  
3 inclusive, and earnings information for Washington employees between  
4 December 6, 2014 and February 9, 2019 inclusive. (*Id.* at ¶9).

5 f. Using the methodology described above, the results were as follows: the  
6 Washington employees, collectively, would be owed \$627,498.26 in unpaid  
7 wages for the period December 12, 2014 through February 17, 2019 if they  
8 received no legally-compliant rest periods during that period. (*Id.* at ¶10).

9 36. As stated above, Plaintiffs allege treble wages. (Complaint ¶¶5.2, 6.1-8.6). Based  
10 on Mr. Kumpinsky's \$627,498.26 rest wage calculation, Defendants are alleged to owe  
11 \$1,882,494.78 when including the alleged treble wages multiplier.

12 **(c) Plaintiffs' Prayer for Attorneys' Fees Places an Additional**  
13 **\$1,392,280.49 in Controversy.**

14 37. Plaintiff seeks attorneys' fees on behalf of the putative class. (Complaint, Prayer  
15 for Relief). Attorneys' fees are properly included in the amount in controversy. *See, Guglielmino*  
16 *v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007) (statutorily-mandated attorneys' fees  
17 are properly included in the amount in controversy for CAFA jurisdiction purposes); *see also*  
18 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (attorneys' fees may properly  
19 be included in calculation of the amount of controversy where an underlying statute authorizes  
20 an award of attorneys' fees).

21 38. In class action litigation, courts routinely grant attorneys' fees awards that range  
22 from 25% to 33% of the settlement or verdict amount. *See, e.g., Hanlon v. Chrysler Corp.*, 150  
23 F.3d 1011, 1029 (9th Cir. 1998) ("This circuit has established 25% of the common fund as a  
24 benchmark award for attorney fees."); *In re Activision Securities Litigation*, 723 F. Supp. 1373,

1 1378 (N.D. Cal. 1989) (awarding 30% attorneys' fee award and compiling cases where range of  
2 attorneys' fee award ranged between 25% and more than 40%). Accordingly, including  
3 attorneys' fees of 25% is reasonable when calculating the amount in controversy. *See, e.g.,*  
4 *Giannini v. Northwestern Mut. Life Ins. Co.*, No. C 12-77 CW, 2012 WL 1535196, at \*4 (N.D.  
5 Cal. Apr. 30, 2012) (holding that defendant's inclusion of attorneys' fees to satisfy amount in  
6 controversy was reasonable where defendant's "base this amount by multiplying by twenty-five  
7 percent the sum of the amounts placed in controversy by the four claims" asserted by plaintiff.);  
8 *Jasso v. Money Mart Express, Inc.*, No. 11-CV-5500 YGR, 2012 WL 699465, at \*6-7 (N.D. Cal.  
9 Mar. 1, 2012) (holding that "it was not unreasonable for [Defendant] to rely on" an "assumption  
10 about the attorneys' fees recovery as a percentage of the total amount in controversy" and noting  
11 that "it is well established that the Ninth Circuit 'has established 25% of the common fund as a  
12 benchmark award for attorney fees.'") (citation omitted).

13 39. Additionally, the Ninth Circuit has recently confirmed that future attorneys' fees  
14 must be included in an amount in controversy calculation under CAFA. *Fritsch v. Swift Transp.*  
15 *Co. of Ariz., LLC*, 889 F.3d 785, 794 (9th Cir. 2018). Accordingly, assuming the low-end 25%  
16 figure reflected in the case law, a reasonable and conservative assumption for purposes of  
17 establishing the amount-in-controversy, attorneys' fees in this matter would amount to at least  
18 25% of the unpaid wages and penalties sought, which, as detailed above, amount to  
19 \$5,569,121.97 [ $\$3,686,627.19 + \$1,882,494.78 = \$5,569,121.97$ ]. Plaintiff's prayer for  
20 attorney's fees therefore adds at least \$1,392,280.49 (25% of \$5,569,121.97) to the amount-in-  
21 controversy. This brings the total amount-in-controversy to \$6,961,402.46 ( $\$5,569,121.97 +$   
22  $\$1,392,280.49$ ), exceeding the \$5 million threshold needed to establish federal jurisdiction under  
23 the Class Action Fairness Act.

24 //

1           **C.     Any Class Member is a Citizen of a Different State than Any Defendant.**

2           40.     For purposes of establishing diversity under CAFA, this Court need only find that  
3 there is diversity between one putative class member and the named Defendant, Tractor Supply  
4 Company. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B), 1453(a).

5           41.     For diversity purposes, an individual is a "citizen" of the state in which she is  
6 domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). An  
7 individual's domicile is the place he resides with the intention to remain or to which he intends to  
8 return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

9           42.     Pursuant to 28 U.S.C. § 1332(c), "a corporation shall be deemed to be a citizen of  
10 any State by which it has been incorporated and of the State where it has its principal place of  
11 business." The United States Supreme Court established the proper test for determining a  
12 corporation's principal place of business for purposes of diversity jurisdiction in *The Hertz*  
13 *Corporation v. Friend*, 559 U.S. 77 (2010). The Supreme Court concluded that the "principal  
14 place of business' is best read as referring to the place where a corporation's officers direct,  
15 control, and coordinate the corporation's activities." *Id.* at 92-93. The Court further clarified that  
16 the principal place of business is the place where the corporation "maintains its headquarters —  
17 provided that the headquarters is the actual center of direction, control, and coordination." *Id.*

18                   **(a)     Plaintiffs are Citizens of Washington.**

19           43.     The Complaint alleges that Plaintiffs Tammy Johnson and Vanessa Dettwiler are  
20 each citizens of Washington State. (Complaint ¶¶3.1, 3.2). Accordingly, Plaintiffs are citizens of  
21 the State of Washington for purposes of this removal.

22                   **(b)     Defendant is a Citizen of Delaware and Tennessee.**

23           44.     Defendant was at the time of the filing of this action, and still is, incorporated  
24 under the laws of the State of Delaware. (*See* Declaration of Karen S. Austin ("Austin Decl.") at



1 ¶3). Further, Defendant's principal place of business and the location that its officers direct,  
2 control, and coordinate its corporate activities is Brentwood, Tennessee. (*See id.* at ¶¶3-5).  
3 Therefore, at all material times, Defendant has been a citizen of the State of Delaware and the  
4 State of Tennessee, and not a citizen of the State of Washington, as it is neither incorporated in  
5 Washington nor does it maintain its principal place of business in Washington.

6 45. There are no other named defendants in this action. Accordingly, there is no  
7 requirement for anyone else to join in this removal.

8 46. Since Plaintiffs and Defendant are citizens of different states, the third  
9 requirement of CAFA jurisdiction is satisfied. Moreover, because Defendant is not a citizen of  
10 Washington, the exceptions to CAFA jurisdiction under 28 U.S.C. § 1332(d)(3) and (d)(4) are  
11 inapplicable.

### 12 **III. THE COURT HAS SUPPLEMENTAL JURISDICTION** 13 **OVER THE REMAINING CLAIMS**

14 47. As set forth above, this action is removable under 28 U.S.C. § 1332(d).

15 48. If there is original jurisdiction over one named plaintiff, then supplemental  
16 jurisdiction attaches to all other plaintiffs' claims. *Exxon Mobil Corp. v. Allapattah Servs.*, 545  
17 U.S. 546, 549, 550-51; 28 U.S.C. § 1367(a). Section 1367(a) provides that "in any civil action of  
18 which the district courts shall have original jurisdiction, the district courts shall have  
19 supplemental jurisdiction over all other claims that are so related to claims in the action within  
20 such original jurisdiction that they form part of the same case or controversy."

21 49. In this case, the Court has original jurisdiction over each of Plaintiffs' claims. To  
22 the extent, however, that Plaintiffs argue that their wage claim is limited to one of the interrelated  
23 claims (*see Washington State Nurses Ass'n*, 175 Wash. 2d at 832 (industrial welfare regulations  
24 and wage statute "often work in concert")), the Court nonetheless has supplemental jurisdiction

1 over remaining claims, as Plaintiffs have alleged a “common course” of conduct which led to the  
2 alleged meal and rest break violations, *i.e.* the same case or controversy. The Court may exercise  
3 supplemental jurisdiction over such a claim pursuant to 28 U.S.C. § 1367.

4 **V. CONCLUSION**

5 50. This Court, therefore, has original jurisdiction over Plaintiffs’ claims by virtue of  
6 the Class Action Fairness Act 28 U.S.C. § 1332(d)(2). This action is thus properly removable to  
7 federal court pursuant to 28 U.S.C. § 1441.

8 51. In the event this Court has a question regarding the propriety of this Notice of  
9 Removal, Defendant requests that it issue an Order to Show Cause so that it may have the  
10 opportunity to more fully brief the basis for this removal.

11 WHEREFORE, Defendant removes this action to this Court.

12 Respectfully submitted this 25th day of February, 2019 by:

13 By: /s/ Adam T. Pankratz

14 By: /s/ Kyle D. Nelson

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

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1201 Third Avenue, Ste. 5150

Seattle, WA 98101

T: 206-693-7057

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**Attorneys for Defendant**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of February 2019, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the below counsel of record for the Parties in the above-captioned litigation.

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s/Marissa Lock  
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Practice Assistant

34371955.4

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

TAMMY JOHNSON and VANESSA DETTWILER

(b) County of Residence of First Listed Plaintiff Pierce County, WA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael Subit and Marc C. Cote, Frank Freed Subit & Thomas LLP, 705 Second Avenue, Suite 1200 Seattle, Washington 98104, (206) 682-6711

DEFENDANTS

TRACTOR SUPPLY COMPANY

County of Residence of First Listed Defendant Williamson County, TN (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Adam T. Pankratz and Kyle D. Nelson, Ogletree, Deakins, 1201 Third Avenue, Suite 5150, Seattle, WA 98101, (206) 693-7057

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes options for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, and Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1332, 1441, 1446(d), and 1453

Brief description of cause: Wage and hour class action brought under Wash. Civ. Ct. R. 23

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Robert J. Bryan DOCKET NUMBER 3:17-cv-06039-RJB

DATE 02/25/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Adam T. Pankratz

FOR OFFICE USE ONLY

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## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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

**TAMMY JOHNSON and VANESSA  
DETTWILER, individually and on behalf of  
the Proposed Class,**

**Plaintiffs,**

**v.**

**TRACTOR SUPPLY COMPANY,**

**Defendant.**

**NO.**

**CLASS ACTION COMPLAINT**

Plaintiffs Tammy Johnson and Vanessa Dettwiler allege as follows:

**I. INTRODUCTION**

1.1 Nature of Action. Plaintiffs bring this action on behalf of themselves and the Proposed Class against Defendant Tractor Supply Company (“TSC” or “Defendant”) for engaging in a systematic scheme of wage and hour violations. The scheme involves systemic failure to affirmatively provide meal and rest breaks. Plaintiffs bring their claims as a class action on behalf of a Washington state class pursuant to CR 23(a) and (b)(3).

**II. JURISDICTION AND VENUE**

2.1 The Superior Court of Washington has jurisdiction over Plaintiffs’ claims pursuant to RCW 2.08.010.

1 2.2 Venue in King County is appropriate pursuant to RCW 4.12.025(3)(d) and RCW  
2 4.12.025(1)(a) because Defendant has residence in King County by virtue of transacting business  
3 there.

4 **III. PARTIES**

5 3.1 Plaintiff Tammy Johnson is a citizen of Washington State. Defendant hired her as  
6 a non-exempt Assistant Manager in 2009. She has worked at several of Defendant’s store  
7 locations throughout Washington, including the Auburn and Enumclaw stores, and she currently  
8 works at the store located at 15615 Pacific Ave. in Tacoma. During the three years prior to filing  
9 this complaint, Plaintiff Johnson worked as both an exempt Acting Manager, as well as a non-  
10 exempt Assistant Manager. When she worked as a non-exempt Assistant Manager during the last  
11 three years, Defendant failed to affirmatively provide her with thirty-minute meal breaks.  
12 Moreover, Defendant failed to affirmatively provide Plaintiff Johnson with paid ten-minute rest  
13 breaks for every four hours of work and regularly required her to work more than three  
14 consecutive hours without a rest break.

15 3.2 Plaintiff Vanessa Dettwiler is a citizen of the state of Washington. Defendant  
16 hired her as a non-exempt receiver at Defendant’s Spanaway location on or around April 6, 2012.  
17 Plaintiff Dettwiler began working at Defendant’s Tacoma location on or around March 18, 2015.  
18 Defendant failed to affirmatively provide Plaintiff Dettwiler with thirty-minute meal breaks.  
19 Moreover, Defendant failed to affirmatively provide her with paid ten-minute rest breaks for  
20 every four hours of work and regularly required her to work more than three consecutive hours  
21 without a rest break.

22 3.3. Defendant Tractor Supply Company is a Delaware corporation with its  
23 headquarters in Tennessee. TSC has employed hundreds of employees in Washington, including  
24

1 Plaintiffs and proposed Class members. TSC transacts business in Washington including in King  
2 County.

3 **IV. CLASS ACTION ALLEGATIONS**

4 4.1 Class Definition. Pursuant to CR 23, Plaintiffs bring this case as a class action  
5 against Defendant on behalf of a Class (“the Class”) defined as follows:

6 All individuals who have worked in one of Defendant’s stores in Washington in a position  
7 Defendant classified as non-exempt, at any time between December 12, 2014, and the  
8 date of final disposition of this action.

9 4.2 Numerosity. Plaintiffs believe there are hundreds of current or former employees  
10 of Defendant in the Class. The members of the Class are so numerous that joinder of all members  
11 is impracticable. Moreover, the disposition of the claims of the Class in a single action will  
12 provide substantial benefits to all parties and the Court.

13 4.3 Commonality. There are numerous questions of law and fact common to  
14 Plaintiffs and Class members. These questions include, but are not limited to, the following:

- 15 a. Whether Defendant has engaged in a common course of failing to provide  
16 Class members with a ten-minute rest break for every four hours of work;
- 17 b. Whether Defendant has engaged in a common course of requiring Class  
18 members to work more than three consecutive hours without a rest break;
- 19 c. Whether Defendant has engaged in a common course of failing to pay  
20 Class members an additional ten minutes of compensation for each rest  
21 break the Class members miss;
- 22 d. Whether Defendant has engaged in a common course of failing to provide  
23 Class members with an uninterrupted, thirty-minute meal break for every  
24 five hours of work;



- e. Whether Defendant has violated RCW 49.46.130;
- f. Whether Defendant has violated RCW 49.46.090;
- g. Whether Defendant has violated RCW 49.52.050;
- h. Whether Defendant has violated RCW 49.12.020;
- i. Whether Defendant has violated WAC 296-126-092;
- and
- j. The nature and extent of class-wide injury and the measure of compensation for such injury.

4.4 Typicality. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs work for Defendant as non-exempt employees and thus are members of the Class. Plaintiffs' claims, like the claims of the Class, arise out of the same common course of conduct by Defendant and are based on the same legal and remedial theories.

4.5 Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained competent and capable attorneys who have significant experience in complex employment law litigation and class action litigation. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so. Neither Plaintiffs nor their counsel have interests that are contrary to or that conflict with those of the Class.

4.6 Predominance. Defendant has engaged in a common course of wage and hour abuse toward Plaintiffs and members of the Class. The common issues arising from this conduct that affect Plaintiffs and members of the Class predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

1           4.7    Superiority. Plaintiffs and Class members have suffered and will continue to  
2 suffer harm and damages as a result of Defendant’s unlawful and wrongful conduct. Absent a  
3 class action, however, most Class members likely would find the cost of litigating their claims  
4 prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation  
5 because it conserves judicial resources, promotes consistency and efficiency of adjudication,  
6 provides a forum for small claimants, and deters illegal activities. There will be no significant  
7 difficulty in the management of this case as a class action. The Class members are readily  
8 identifiable from Defendant’s records.

9   **V. SUMMARY OF FACTUAL ALLEGATIONS**

10           5.1    Common Course of Conduct Against Class: Failure to Provide Meal Breaks.  
11 Defendant has engaged in, and continues to engage in, a common course of failing to provide  
12 their hourly paid employees in Washington with an uninterrupted, thirty-minute meal break for  
13 every five hours of work and requiring or permitting their hourly paid employees to work more  
14 than five consecutive hours without a meal break.

15                   5.1.1 Plaintiffs and Class members regularly are unable to take the full, thirty-  
16 minute meal breaks to which they are entitled because of how busy Defendant’s stores are.

17                   5.1.2 Plaintiffs and Class members often eat only while on-the-go to ensure they  
18 can complete all their necessary work.

19                   5.1.3 Defendant has had actual or constructive knowledge of the fact that hourly  
20 paid employees in Washington do not receive uninterrupted, thirty-minute meal breaks for every  
21 five hours of work and are required or permitted to work more than five consecutive hours  
22 without a meal break.

1           5.2    Common Course of Conduct: Failure to Provide Proper Rest Breaks. Defendant  
2 has engaged in, and continues to engage in, a common course of failing to provide paid rest  
3 breaks to their hourly paid employees in Washington.

4           5.2.1. Defendant does not provide hourly paid employees ten-minute rest breaks  
5 for every four hours of work; it requires hourly paid employees to work more than three  
6 consecutive hours without a rest break; and it does not provide ten minutes of additional pay for  
7 each rest break employees miss.

8           5.2.2 Each time an employee misses a rest break, Defendant receives the benefit  
9 of 10 minutes of work without paying for the hours worked.

10          5.2.3 Defendant’s hourly paid employees in Washington do not have time to  
11 take rest breaks because of the volume of their work, and Defendant has no system in place to  
12 relieve employees during busy periods in order for the employees to take rest breaks.

13          5.2.4 Defendant has had actual or constructive knowledge of the fact that hourly  
14 paid employees do not receive ten-minute rest breaks for every four hours of work, must work  
15 more than three consecutive hours without a rest break, and do not receive ten minutes of  
16 additional pay for each rest break they miss.

17                                   **VI. FIRST CLAIM FOR RELIEF**

18                           **Violations of RCW 49.12.020 and WAC 296-126-092**  
19                           **Failure to Provide Proper Rest and Meal Periods**

20          6.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth  
21 in paragraphs 1.1 through 5.2.4.

22          6.2 RCW 49.12.010 provides that “[t]he welfare of the state of Washington demands  
23 that all employees be protected from conditions of labor which have a pernicious effect on their  
24

1 health. The state of Washington, therefore, exercising herein its police and sovereign power  
2 declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.”

3 6.3 RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in any  
4 industry or occupation within the state of Washington under conditions of labor detrimental to  
5 their health.”

6 6.4 Pursuant to RCW 49.12.005 and WAC 296-126-002, “conditions of labor”  
7 “means and includes the conditions of rest and meal periods” for employees.

8 6.5 WAC 296-126-092 requires that employers shall provide employees certain rest  
9 and meal periods.

10 6.6 Defendant has failed or refused to create or enforce adequate employment policies  
11 and procedures for providing rest and meal breaks.

12 6.7 By the actions alleged above, including the failure to provide Plaintiffs and Class  
13 members with proper rest and meal periods, Defendant has violated the provisions of  
14 RCW 49.12.020 and WAC 296-126-092.

15 6.8 As a result of these unlawful actions, Plaintiffs and the Class have been deprived  
16 of compensation in amounts to be determined at trial, and Plaintiffs and the Class are entitled to  
17 the recovery of such damages, including interest thereon, as well as attorneys’ fees and costs  
18 pursuant to RCW 49.48.030.

19 **VII. SECOND CLAIM FOR RELIEF**

20 **Violations of RCW 49.46.130 – Failure to Pay Proper Overtime Wages**

21 7.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth  
22 in the preceding paragraphs.

23 7.2 RCW 49.46.130 provides that “no employer shall employ any of his employees  
24 for a workweek longer than 40 hours unless such employee receives compensation for his

1 employment in excess of the hours above specified at a rate not less than one and one-half times  
2 the regular rate at which he is employed.”

3 7.3 By the actions alleged above, Defendant has violated the provisions of  
4 RCW 49.46.130 by failing to pay proper overtime wages to Plaintiffs and members of the Class  
5 for workweeks in which missed rest and/or meal break time extended the workweek beyond forty  
6 hours and during workweeks in which Plaintiffs and members of the Class worked over forty  
7 hours but did not receive all rest breaks and meal breaks to which they were entitled.

8 7.4 As a result of these unlawful acts, Plaintiffs and the Class have been deprived of  
9 compensation in amounts to be determined at trial, and pursuant to RCW 49.46.090, Plaintiffs  
10 and the Class are entitled to recovery of such damages, including interest thereon, as well as  
11 attorneys’ fees and costs.

12 **VIII. THIRD CLAIM FOR RELIEF**

13 **Violation of RCW 49.52.050 — Willful Refusal to Pay Wages**

14 8.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth  
15 in the preceding paragraphs.

16 8.2 RCW 49.52.050 provides that any employer or agent of any employer who,  
17 “[w]illfully and with intent to deprive the employee of any party of his wages, shall pay any  
18 employee a lower wage than the wage such employer is obligated to pay such employee by any  
19 statute, ordinance, or contract” shall be guilty of a misdemeanor.

20 8.3 Defendant’s violations of RCW 49.46.130 and WAC 296-126-092 were willful  
21 and constitute violations of RCW 49.52.050.

22 8.4 RCW 49.52.070 provides that any employer who violates the provisions of  
23 RCW 49.52.050 shall be liable in a civil action for twice the amount of wages withheld, plus  
24 attorneys’ fees, and costs.

1 8.5 By the actions alleged above, Defendant has violated the provisions of  
2 RCW 49.52.050.

3 8.6 As a result of the willful and unlawful acts of Defendant, Plaintiff and the Class  
4 have been deprived of wages in amounts to be determined at trial, and pursuant to  
5 RCW 49.52.070, Plaintiff and the Class are entitled to an additional recovery of twice the amount  
6 of such wages, as well as attorneys' fees and costs.

7 **IX. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the members of Class,  
9 pray for relief against Defendant, as follows:

10 A. Certification of the proposed Class for the claims against Defendant;

11 B. Appointment of the undersigned counsel as counsel for the Class;

12 C. A declaration that Defendant's actions complained of herein violate RCW  
13 49.46.130, RCW 49.52.050, RCW 49.12.020, and WAC 296-126-092;

14 D. An order enjoining Defendant and its officers, agents, successors, employees,  
15 representatives, and any and all persons acting in concert with Defendant, as provided by law,  
16 from engaging in the unlawful and wrongful conduct set forth herein;

17 E. An award to Plaintiffs and the Class of actual, compensatory, and exemplary  
18 damages, as allowed by law;

19 F. An award to Plaintiffs and the Class of attorneys' fees and costs, as allowed by  
20 law;

21 G. An award to Plaintiffs and members of the Class prejudgment and post-judgment  
22 interest, as provided by law; and

23 H. Such other and further relief as the Court deems necessary, just, and proper.  
24

1 DATED this 18<sup>th</sup> day of January, 2019.

2 FRANK FREED SUBIT & THOMAS LLP

3 By: /s/ Marc C. Cote, WSBA #39824

4 By: /s/ Michael C. Subit, WSBA #29189

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16 Los Angeles, California 90035

17 Telephone: (310) 203-0016

18 Facsimile: (310) 499-5210

19 Email: [mm@malklawfirm.com](mailto:mm@malklawfirm.com)

20 *Attorneys for Plaintiffs and Proposed Class*

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