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Scott G. Weber, Clerk, Clark Co.

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

BRANDY JENNINGS, individually and on behalf of all those similarly situated,

Plaintiff,

ASAP TOWING AND RECOVERY, LLC, a Washington company; SUPERIOR TOWING & RECOVERY, LLC, a Washington company; ALEKSANDR SHOPEN; and MARISA SHOPEN,

Defendants.

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No.

CLASS ACTION COMPLAINT FOR DAMAGES

I. NATURE OF ACTION

1. Plaintiff brings this class action for money damages and statutory penalties for wage law violations on behalf of current and former employees of Defendants ASAP Towing and Recovery, LLC, Superior Towing & Recovery, LLC, Aleksandr Shopen, and Marisa Shopen (collectively, "Defendants") for violating the Washington Minimum Wage Act ("MWA"), RCW 49.46, and Wage Rebate Act ("WRA"), RCW 49.52.

II. JURISDICTION AND VENUE

2. The Superior Court of Washington has jurisdiction of Plaintiff's claims pursuant to RCW 2.08.010.

COMPLAINT FOR DAMAGES - 1

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- 3. Venue in Clark County is appropriate pursuant to RCW 4.12.025.
- 4. All or most of the acts and omissions alleged herein took place in Clark County, Washington.

III. PARTIES

- Plaintiff Brandy Jennings is a resident of Clark County, Washington and was formerly employed by Defendants ASAP Towing and Recovery, LLC and Aleksandr Shopen.
- 6. Defendant ASAP Towing and Recovery, LLC is a Washington limited liability company doing business in Clark County and in the State of Washington. Defendant ASAP Towing and Recovery, LLC is an employer for purposes of the MWA and the WRA.
- 7. Defendant Superior Towing & Recovery, LLC is a Washington limited liability company doing business in Clark County and in the State of Washington. Defendant Superior Towing & Recovery, LLC is an employer for purposes of the MWA and the WRA.
- 8. Defendant Superior Towing & Recovery, LLC is either a mere continuation of or successor in interest to Defendant ASAP Towing and Recovery, LLC and is liable for all wage-related liabilities of Defendant ASAP Towing and Recovery, LLC.
- 9. Defendant Aleksandr Shopen is the owner and manager of Defendant ASAP Towing and Recovery, LLC. At all times relevant hereto, Defendant Aleksandr Shopen exerted direct and significant control over the day-to-day operations of Defendants ASAP Towing and Recovery, LLC and Superior Towing & Recovery, LLC and over the employment status, wages, and hours of Plaintiff and the putative class members. Defendant Aleksandr Shopen is an employer for purposes of the MWA and the WRA.

10. Defendant Marisa Shopen is an owner and manager of Defendant Superior Towing & Recovery, LLC. At all times relevant hereto, Defendant Marisa Shopen exerted direct and significant control over the day-to-day operations of Defendant Superior Towing & Recovery, LLC and over the employment status, wages, and hours of the putative class members. Defendant Marisa Shopen is an employer for purposes of the MWA and the WRA.

11. Defendants Aleksandr and Marisa Shopen are a marital community. All actions taken by either or both of them with respect to ASAP Towing and Recovery, LLC, Superior Towing & Recovery, LLC, and the employment status, wages, and hours of Plaintiff and the putative class members are and were for the benefit of the marital community, such that the marital community is liable for all wage-related liabilities of Defendants Aleksandr Shopen and/or Marisa Shopen with respect to Plaintiff and the putative class members.

IV. FACTUAL ALLEGATIONS

- 12. At all times relevant hereto, Defendants are and were engaged in the business of towing, transporting, and warehousing automotive vehicles in Clark County, Washington and elsewhere.
- 13. Plaintiff and members of the class (collectively, "employees") currently work for or formerly have worked for Defendants as dispatchers, tow truck operators, and in other positions.
 - 14. Defendants paid employees on an hourly basis.
- 15. Defendants adopted and implemented a uniform practice of misclassifying employees as independent contractors.
 - 16. Employees frequently worked more than forty (40) hours in a workweek.

- 17. Defendants did not pay employees one and one-half times their regular rate of pay for these overtime hours, nor did they pay them the reasonable equivalent of overtime.
- 18. Defendants did not provide employees with the paid sick leave required under RCW 49.46.210.
- 19. Defendants have acted willfully and with intent to deprive class members of their proper wages.

V. CLASS ACTION ALLEGATIONS

- 20. Plaintiff seeks to represent all past and present employees of ASPA Towing and Recovery and Superior Towing & Recovery who were classified as independent contractors by Defendants beginning three years prior to the filing of the Complaint in this action and continuing thereafter.
- 21. This action is properly maintainable as a class action under CR 23(a) and (b)(3).
- 22. Pursuant to CR 23(a)(1), it is impracticable to join all members of the class as defined herein as named plaintiffs.
- 23. Pursuant to CR 23(a)(2), there are common questions of law and fact including, but not limited to, whether Plaintiff and members of the putative class have been misclassified as independent contractors, whether Defendants violated the MWA by failing to pay overtime premiums or the reasonable equivalent of overtime to employees for hours worked in excess of 40 in a workweek, and whether Defendants have acted willfully and with intent to deprive class members of their proper wages by refusing to pay overtime premiums or the reasonable equivalent of overtime.

- 24. Pursuant to CR 23(a)(3), the named Plaintiff's wage and hour claims are typical of the claims of all class members and of Defendants' anticipated defenses thereto.
- 25. The named Plaintiff will fairly and adequately protect the interests of the class as required by CR 23(a)(4).
- 26. Pursuant to CR 23(b)(3), class certification is appropriate here because questions of law or fact common to members of the class predominate over any questions affecting only individual members and because a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

VI. FIRST CAUSE OF ACTION – VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT

- 27. Defendants' failure to pay employees one and one-half times their regular rate of pay for hours worked in excess of 40 in their workweeks, or the reasonable equivalent of overtime, violates RCW 49.46.130.
- 28. As a result of Defendants' acts and omissions, Plaintiff and the class members have been damaged in amounts to be proven at trial.

VII. SECOND CAUSE OF ACTION VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT

- 29. Defendants' failure to provide employees with paid sick leave violates RCW 49.46.210.
- 30. As a result of Defendants' acts and omissions, Plaintiff and the class members have been damaged in amounts to be proven at trial.

VIII. THIRD CAUSE OF ACTION – WILLFUL WITHHOLDING OF WAGES IN VIOLATION OF RCW 49.52

31. Defendants' failure to pay employees overtime or the reasonable equivalent of overtime and its failure to provide paid sick leave constitute willful withholding of wages,