SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

LARRY WESTBERRY and a class of similarly situated individuals, Plaintiffs, v. INTERSTATE DISTRIBUTOR CO., Defendant.	)	NO. COMPLAINT [CLASS ACTION]

Plaintiff Larry Westberry brings this action on behalf of himself and a class of similarly situated individuals.

I. PARTIES AND VENUE

1.1. Defendant Interstate Distributor Co. is a trucking company incorporated in Washington and headquartered in Tacoma, Pierce County, Washington.

1.2. The Plaintiff resides in Jesup, Wayne County, Georgia.

1.3. The acts complained of occurred in the United States, including Washington State.

II. FACTS

2.1. RCW 49.46.130 (the Washington Minimum Wage Act) provides that no employer shall employ any employee for a work week longer than forty hours unless such employee receives compensation for the work he performs in excess of forty hours at a rate not less than one and one-half times the regular rate at which he is employed.

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2.2. From 2003 through 2007, Westberry was employed by Interstate Distributor as a truck driver and performed an average of between sixty and seventy hours of work per week, for which he was compensated on a per-mile basis. On a per-week basis, his per-mile compensation remained the same subsequent to his performing forty hours of work as it did prior to his performing forty hours of work. He did not receive overtime pay for hours worked in excess of forty hours per week.

2.3 Westberry drove in excess of forty hours a week in Washington and in other states as well.

III. CLASS ACTION ALLEGATIONS

3.1. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all other similarly situated individuals pursuant to Civil Rule 23(b)(3).

3.2. **Class Members.** The proposed class is defined as individuals who were harmed as a consequence of Interstate Distributor's failure to pay overtime wages to those of its employees who worked in excess of forty hours per week.

3.3. **Numerosity.** Interstate Distributor's own website states that the Interstate Distributor "has over 3,000 employees."[1] Accordingly, the class is so numerous that joinder of all members is impracticable.

3.4. **Common Questions of Law and Fact**. The common question is the same for all class members: whether Interstate Distributor acted unlawfully in failing to pay overtime to those of its employees who were entitled to receive it.

3.5. **Representatives Claims are Typical of the Class.** Plaintiff's claims are typical of the class in that they arise from the failure of Interstate Distributor to pay overtime wages.

3.6. **Representative Party Will Fairly and Adequately Protect Class**. Plaintiff will adequately represent and protect the interests of the class because he has retained

[1] http://www.intd.com/intd.nsf/id/10-10?opendocument

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competent and experienced counsel and his interests in the litigation are not antagonistic to the members of the class.

3.7. **A Class Action is Maintainable**. The questions of law and fact arising from the failure of Interstate Distributor to pay overtime to those of its employees who were entitled to it predominate over any questions affecting only individual members of the proposed class, and a class action is superior to other methods for the fair and efficient adjudication of the controversy. Thus, class certification under CR 23(b)(3) is appropriate. In addition, Interstate Distributor has acted on grounds generally applicable to the class, and thus, alternatively, class certification under CR 23(b)(2) is appropriate.

IV. RELIEF

The plaintiff, on behalf of himself and the class of similarly situated individuals, seeks the following relief:

A. an order directing the defendant to pay plaintiff and the class for their losses arising from the defendant's unlawful acts;

B. a declaratory judgment holding that the defendant failed to comply with RCW 49.46.130;

C. doubling of omitted overtime pay pursuant to RCW 49.52.070.

D. attorney fees pursuant to the common fund doctrine;

E. attorney fees pursuant to RCW 49.48.030;

F. prejudgment interest; and

G. any other or further relief which the Court deems just or equitable.

DATED this ___ day of May, 2008.

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