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

ROGER NORMAN, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

A.T.S. AUTOMATION, INC.,

Defendant.

**07-2-37180-0SEA**  
No.

INDIVIDUAL AND CLASS  
ACTION COMPLAINT

**RECEIVED**  
In King County Superior Court

NOV 26 2007

Cashier  
Superior Court Clerk

Plaintiff claims against defendant as follows:

**I. NATURE OF ACTION**

1.1 Plaintiff brings this class action for money damages and statutory penalties for wage law violations on behalf of current and former employees of defendant A.T.S. Automation, Inc. ("ATS") pursuant to the Washington Minimum Wage Act ("MWA"), RCW § 49.46, and the Prevailing Wage on Public Works Act, RCW § 39.12.

1.2 Plaintiff also brings individual claims for money damages and statutory penalties against defendant for wage law violations.

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**II. JURISDICTION AND VENUE**

2.1 The Superior Court of Washington has jurisdiction over plaintiff's claims pursuant to RCW § 2.08.010 and CR 23.

2.2 Venue in King County is appropriate pursuant to RCW § 4.12.025.

2.3 All or a significant portion of the acts and omissions alleged herein took place in the State of Washington and King County.

**III. PARTIES**

3.1 Plaintiff Roger Norman is a resident of Renton, Washington in King County, and is currently employed by defendant as a service engineer.

3.2 Defendant A.T.S. Automation, Inc. is a Washington corporation doing business in King County and in the State of Washington. Defendant is an "employer" for purposes of the wage laws at issue in this case.

**IV. FACTUAL ALLEGATIONS**

4.1 Plaintiff and members of the proposed class work and have worked for defendant as "service engineers," "construction engineers," and in other similar positions.

4.2 Class members are dispatched from their homes to job sites, where they perform such services as installation, repair, and maintenance of digital control devices and software for HVAC systems.

4.3 Plaintiff and class members do not receive and have not received required wages for all work performed, including all of their "drive time" (i.e., the time it takes to travel in company vehicles from their homes to job sites and from job sites to their homes).

1 Defendant compensates class members for their drive time at their regular rates of pay, if at  
2 all.  
3

4 4.4 Plaintiff and class members work and have worked in excess of 40 hours per  
5 week, for which defendant has not paid them required overtime wages (i.e., one and one-  
6 half times the regular rate of pay for hours worked in excess of 40 hours a week) for all  
7 time worked.

8 4.5 Class members work and have worked on public works projects (i.e.,  
9 projects undertaken by defendant pursuant to contracts with the State or municipalities), for  
10 which defendant has not compensated them at the prevailing hourly wage rate(s).  
11

12 4.6 Plaintiff was wrongly classified as exempt from Washington wage laws,  
13 including the MWA, during the time period when he was employed as a "Service Team  
14 Leader." As a consequence, plaintiff did not receive overtime wages during this time  
15 period.  
16

17 4.7 Defendant knew that plaintiff and other class members were working "off-  
18 the-clock," for less than prevailing wages, or were working in excess of 40 hours per week  
19 without receipt of overtime wages, and nevertheless continued to require and allow such  
20 pay practices to continue.

21 4.8 In failing to compensate plaintiff and members of the class for, *inter alia*,  
22 drive time, prevailing wages for public works projects, and overtime, defendant has acted  
23 willfully and with the intent of depriving plaintiff and members of the class of the requisite  
24 regular and overtime compensation.  
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**V. CLASS ACTION ALLEGATIONS**

5.1 Plaintiff seeks to represent all past and present employees of defendant working in Washington as “service engineers,” “construction engineers,” and those holding similar positions at any time during the three years preceding the filing of this complaint.

5.2 The action is properly maintainable under CR 23(a) and (b)(3).

5.3 The class described in paragraph 5.1 is sufficiently numerous such that joinder of all of them is impractical, as required by CR 23(a)(1).

5.4 Pursuant to CR 23(a)(2), there are common questions of law and fact including, but not limited to, whether defendant failed to pay class members for drive time, whether defendant failed to pay overtime wages for all work in excess of 40 hours per week, whether defendant failed to pay class members prevailing wages on public works projects, and whether defendant have acted willfully and with the intent to deprive plaintiff and the members of the class of such compensation.

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

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

5.7 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.

1  
2 **VI. FIRST CAUSE OF ACTION - CLASSWIDE FAILURE TO PAY OVERTIME  
WAGES IN VIOLATION OF THE MINIMUM WAGE ACT**

3 6.1 Plaintiff restates and realleges the allegations set forth in paragraphs 1.1  
4 through 5.7 above.

5 6.2 Defendant's failure to pay class members one and one-half their regular rate  
6 of pay for hours worked in excess of 40 hours in their workweek constitutes a violation of  
7 RCW § 49.46.130.

8 6.3 As a result of defendant's acts and omissions, plaintiff and class members  
9 have been damaged in amounts as will be proven at trial.  
10

11 **VII. SECOND CAUSE OF ACTION - CLASSWIDE FAILURE TO PAY WAGES  
12 IN VIOLATION OF THE MINIMUM WAGE ACT**

13 7.1 Plaintiff restates and realleges the allegations set forth in paragraphs 1.1  
14 through 6.3 above.

15 7.2 Defendant's violations have occurred on occasion during weeks in which  
16 plaintiff and class members did not work in excess of 40 hours per week. In such instances,  
17 defendant's failure to pay class members for their work time constitutes a violation of RCW  
18 § 49.46.020.

19 7.3 As a result of defendant's acts and omissions, plaintiff and class members  
20 have been damaged in amounts as will be proven at trial.  
21

22 **VIII. THIRD CAUSE OF ACTION - CLASSWIDE FAILURE TO PAY  
23 PREVAILING WAGES IN VIOLATION OF THE PREVAILING WAGE ON  
24 PUBLIC WORKS ACT**

25 8.1 Plaintiff restates and realleges the allegations set forth at paragraphs 1.1  
26 through 7.3 above.

1           8.2     Defendant's failure to pay class members a prevailing hourly wage for their  
2 work on public works contracts constitutes a violation of the Prevailing Wage on Public  
3 Works Act, RCW § 39.12.020.

4           8.3     As a result of defendant's acts and omissions, plaintiff and class members  
5 have been damaged in amounts as will be proven at trial.  
6

7 **IX.   FOURTH CAUSE OF ACTION - CLASSWIDE WILLFUL**  
8 **WITHHOLDING OF WAGES IN VIOLATION OF RCW § 49.52**

9           9.1     Plaintiff restates and realleges the allegations set forth in paragraphs 1.1  
10 through 8.3 above.

11           9.2     By the foregoing, defendant's actions constitutes a willful withholding of  
12 agreed upon wages in violation of RCW §§ 49.52.050 and .070.

13           9.3     As a direct and proximate result of the foregoing, plaintiff and class  
14 members have suffered and continue to suffer loss of compensation in amounts as will be  
15 proven at trial.  
16

17 **X.    FIFTH CAUSE OF ACTION – INDIVIDUAL CLAIM FOR FAILURE TO**  
18 **PAY OVERTIME WAGES IN VIOLATION OF THE MINIMUM WAGE**  
19 **ACT**

20           10.1    Plaintiff restates and realleges the allegations set forth in paragraphs 1.1  
21 through 9.3 above

22           10.2    Due to defendant's misclassification of plaintiff as an exempt employee,  
23 defendant has failed to pay plaintiff one and one-half times his regular rate of pay for hours  
24 worked in excess of 40 hours in his workweek in violation of RCW § 49.46.130.

25           10.3    As a result of defendant's acts and omissions, plaintiff has been damaged in  
26 amounts as will be proven at trial.

1 **XI. SIXTH CAUSE OF ACTION – INDIVIDUAL CLAIM FOR WILLFUL**  
2 **WITHHOLDING OF WAGES IN VIOLATION OF RCW § 49.52**

3 11.1 Plaintiff restates and realleges the allegations set forth in paragraphs 1.1  
4 through 10.3 above.

5 11.2 Defendant's misclassification of plaintiff as an exempt employee and its  
6 failure to pay him overtime wages as a result of that misclassification constitutes a willful  
7 withholding of agreed upon wages in violation of RCW §§ 49.52.050 and .070.

8 11.3 As a direct and proximate result of the foregoing, plaintiff has suffered loss  
9 of compensation in amounts as will be proven at trial.

10 **XII. PRAYER FOR RELIEF**

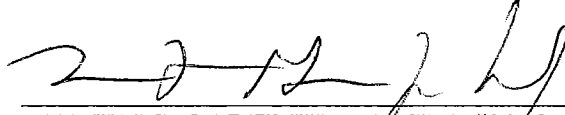
11 WHEREFORE, plaintiff requests this Court to enter an order granting him and class  
12 members the following relief:

- 13
- 14 A. Damages for lost wages in amounts to be proven at trial;
  - 15 B. Exemplary damages in amounts equal to double the wages due to plaintiff  
16 and the class members, pursuant to RCW § 49.52.070;
  - 17 C. Attorneys' fees and costs pursuant to RCW § 49.46.090, RCW § 49.48.030,  
18 and RCW § 49.52.070;
  - 19 D. Prejudgment interest;
  - 20 E. Such other and further relief as the Court deems just and proper.
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DATED this 26<sup>th</sup> day of November, 2007.

SCHROETER, GOLDMARK & BENDER



MARTIN S. GARFINKEL, WSBA #20787

ADAM J. BERGER, WSBA #20714

LINDSAY HALM, WSBA #37141

Counsel for Plaintiff