

1 Honorable Timothy Bradshaw  
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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

LISA ROGERS, TRACY DUNN, JAZMIN  
CARTER, GERALD CALLOWAY, and KARIS  
BJERKE, on their own behalf and on the behalf  
of all others similarly situated,

Plaintiffs,

v.

RECOVERY CENTERS OF KING COUNTY,  
A Washington Non-profit Corporation.

Defendant.

No. 14-2-32248-8 SEA

**ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION**

18  
19 **I. INTRODUCTION**

20 This matter came before the Honorable Timothy Bradshaw on Plaintiffs' Motion for  
21 Class Certification. The Court has considered the parties' briefing and supporting evidence.  
22 For the reasons stated below, the Court GRANTS Plaintiffs' motion.

23  
24 **II. BACKGROUND**

25 **A. Plaintiffs' Allegations**

26 Named Plaintiffs Lisa Rogers, Tracy Dunn, Jazmin Carter, Gerald Calloway, and Karis  
Bjerke ("Plaintiffs") bring this action individually and on behalf of a proposed class of current  
and former employees of Defendant Recovery Centers of King County ("Defendant" or

ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION

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**COPY**

1 "RCKC"). *See* First Amended Complaint at ¶ 10. Plaintiffs allege Defendant has engaged in a  
2 common scheme of wage and hour violations against its employees, including failing to pay  
3 them for all time worked, including overtime work, as well as failing to pay them for the rest  
4 breaks to which they were entitled under Washington law and deducting time from the payroll  
5 records of employees for meal breaks that were not received. *Id.* at ¶¶ 14, 19-23. Plaintiffs  
6 allege these practices violate Washington law.

7 **B. The Proposed Class**

8 Plaintiffs bring this case individually and on behalf of the following class (the "Class"):

9 All current and former employees who worked for RECOVERY  
10 CENTERS OF KING COUNTY for any period of time in the last  
three years.

11 **C. The Proposed Claims of the Class**

12 Plaintiffs assert the following claims against Defendant individually and on behalf of  
13 the Class members:

14 1. Breach of Contract  
15 2. Payment of Wages Less Than Entitled – RCW 49.46.090, RCW 49.46.130  
16 3. Unpaid Wages on Termination – RCW 49.48  
17 4. Willful Refusal to Pay Wages – RCW 49.52.050

18 For their alleged injuries as well as injuries suffered by the Class members, Plaintiffs  
19 seek actual damages and exemplary damages, including interest thereon, and attorneys' fees  
20 and costs.

21 **III. ANALYSIS**

22 The four prerequisites to class certification are numerosity, commonality, typicality, and  
23 adequacy of representation. CR 23(a); see also, Moeller v. Farmer's Ins. Co., Inc., 173 Wn.2d  
24 264, 278, 267 P.3d 998 (2011); Pellino v. Brink's Inc., 164 Wn. App. 668, 682, 267 P.3d 383  
25 (2011). In addition, one of the three conditions of CR 23(b) must be met. CR 23(b); see also  
26 Moeller, 173 Wn.2d at 279; Brink's, 164 Wn. App. at 682-83. Here, Plaintiffs seek

1 certification under CR 23(b)(3), which requires a finding that questions of law or fact common  
2 to class members predominate over any questions affecting only the individual members and  
3 that a class action is superior to other available methods for the fair and efficient adjudication  
4 of the controversy.

5 CR 23 is liberally interpreted because the “rule avoids multiplicity of litigation, saves  
6 members of the class the cost and trouble of filing individual suits, and also frees the defendant  
7 from the harassment of identical future litigation.” Moeller, 173 Wn.2d at 278. Because a  
8 class is always subject to later modification or decertification, “the trial court should err in  
9 favor of certifying the class.” *Id.*

10 **A. Plaintiffs Satisfy the Requirements for Class Certification Under Rule 23(a)**

11 **1. The Numerosity Requirement Is Satisfied**

12 The first prerequisite for certification is that the class is “so numerous that joinder of all  
13 members is impracticable.” CR 23(a)(1). Although there is no fixed rule, more than 40  
14 members generally suffice. Miller v. Farmer Bros. Co., 115 Wn. App. 815, 821-22, 64 P.3d 49  
15 (2003). In addition to sheer numbers, courts look at geographical dispersion, degree of  
16 sophistication, and class members’ reluctance to sue individually.” Rodriguez v. Carlson, 166  
17 F.R.D. 465, 471 (E.D. Wash. 1996).<sup>1</sup>

18 Here, the Class consists of more than 225 former employees of RCKC. The Class  
19 members are unlikely to have the resources to retain their own individual counsel to protect  
20 their rights at issue. Defendant failed to dispute this element. Numerosity has been satisfied.

21 **2. There Are Numerous Questions of Law and Fact Common to the Class**

22 The second prerequisite for class certification is the existence of “a single issue  
23 common to all members of the class.” Smith v. Behr Process Corp., 113 Wn. App. 306, 320,  
24 54 P.3d 665 (2002); *see also* CR 23(a)(2). Washington courts have noted, “there is a low

25  
26 <sup>1</sup> Because Rule 23 is based on its federal counterpart, interpretations of analogous provisions by federal courts are  
persuasive to the extent they do not contradict the decisions of Washington’s courts. Pickett v. Holland Am. Line-  
Westours, Inc., 145 Wn.2d 178, 188, 35 P.3d 351 (2001).

1 threshold to satisfy this test.” Behr Process, 113 Wn. App. at 320. If a defendant has “engaged  
2 in a ‘common course of conduct’ in relation to all potential class members,” class certification  
3 is appropriate regardless of whether “different facts and perhaps different questions of law exist  
4 within the potential class.” Brown v. Brown, 6 Wn. App. 249, 255, 492 P.2d 581 (1971);  
5 accord Miller, 115 Wn. App. at 825. Furthermore, a common course of conduct need not affect  
6 all potential class members uniformly. Instead, a “common” question is one that is  
7 “characteristic of a *usual* type or standard: *representative* of a type.” Anfinson v. FedEx  
8 Ground Package Sys., Inc., 174 Wn.2d 851, 875, 281 P.3d 289 (2012) (emphasis in original)  
9 (citation omitted).

10 “[C]laims by workers that their employers have unlawfully denied them wages to which  
11 they were legally entitled have repeatedly been held to meet the prerequisites for class  
12 certification[],” including commonality. Ramos v. SimplexGrinnell LP, 796 F. Supp. 2d 346,  
13 355 (E.D.N.Y. 2011). This is because the glue holding together such claims is the common  
14 question of whether an unlawful wage policy prevented employees from collecting lawfully  
15 earned wage compensation. Id.; see also Avilez v. Pinkerton Gov’t Servs, 286 F.R.D. 450,  
16 463-64 (C.D. Cal. 2014); Dilts v. Penske Logistics, LLC, 769 F.3d 637, 640 (9th Cir. Sept. 8,  
17 2014) (reversing dismissal of rest break claims in certified class action on behalf of truck  
18 drivers).

19 Here, there are numerous common questions for which there are common answers,  
20 including but not limited to: (1) whether RCKC has engaged in a common course of failing to  
21 pay Class members for all hours worked; (2) whether RCKC has engaged in a common course  
22 of failing to pay Class members at a rate of time and a half for all overtime hours worked  
23 regardless of whether the member sought approval to work overtime; (3) whether RCKC has  
24 engaged in a common course of failing ensure that Class members receive the rest and meal  
25 breaks to which they are entitled under the law; (3) whether RCKC has engaged in a common  
26 course of failing to compensate Class members for rest breaks ; and (4) whether RCKC has

1 engaged in a common course of deducting time from the payroll records of members for meal  
2 breaks that were not received; and, (5) whether RCKC has engaged in a common course of  
3 failing to pay for overtime worked even if the member was designated as “salaried” because the  
4 member was not paid “on a salary basis.” Again, Defendant failed to dispute this element.  
5 Because there are numerous questions of law and fact common to all Class members, the  
6 commonality requirement is satisfied.

7       3.     The Claims of the Named Plaintiffs Are Typical of the Class Claims

8       The third prerequisite for certification is that the claims of Plaintiffs are typical of the  
9 proposed class. CR 23(a)(3). “Typicality is satisfied if the claim ‘arises from the same event  
10 or practice or course of conduct that gives rise to the claims of other class members, and if his  
11 or her claims are based on the same legal theory.’” See Pellino, 164 Wn. App. at 684 (quoting  
12 Behr Process, 113 Wn. App. at 320 (citation omitted)). “Where the same unlawful conduct is  
13 alleged to have affected both named plaintiffs and the class members, varying fact patterns in  
14 the individual claims will not defeat the typicality requirement.” Id.

15       Plaintiffs’ claims are typical of the Class members’ claims because they all arise from  
16 the conduct of RCKC and are based on the same legal theories, namely alleged systematic  
17 violations of Washington’s wage and hours laws, which Defendant has not disputed.

18       4.     The Named Plaintiffs and Their Counsel Will Fairly and Adequately  
19           Protect the Interests of the Class

20       The fourth prerequisite for certification is a finding that the named plaintiffs will “fairly  
21 and adequately protect the interest of the class.” CR 23(a)(4). This test is satisfied if the  
22 named plaintiffs are able to prosecute the action vigorously through qualified counsel, and the  
23 plaintiffs do not have interests antagonistic to those of absent class members. See Hansen v.  
24 Ticket Track, Inc., 213 F.R.D. 412, 415 (W.D. Wash. 2003).

1       With respect to the first element, Plaintiffs' counsel have extensive experience  
2 certifying, litigating, trying, and settling class actions, including wage and hour actions  
3 involving the same laws and regulations at issue here.

4       With respect to the second element, the claims of Plaintiffs are coextensive with and not  
5 antagonistic to the claims asserted on behalf of the Class. Plaintiffs and Class members are  
6 alleged to have suffered the same injuries: not being paid for all their hours worked, including  
7 overtime, as well as not being paid for their statutorily mandated rest and meal breaks. Again  
8 Defendant has failed to dispute this element.

9       The adequacy requirement is satisfied.

10 **B. Plaintiffs Meet the Requirements for Certification under Rule 23(b)(3)**

11       1. Common Factual and Legal Questions Concerning Skagit's Conduct  
Predominate Over Any Individual Damages Issues

12       The predominance requirement "is not a rigid test, but rather contemplates a review of  
13 many factors, the central question being whether 'adjudication of the common issues in the  
14 particular suit has important and desirable advantages of judicial economy compared to all  
15 other issues, or when viewed by themselves.'" Sitton v. State Farm Mut. Auto. Ins. Co., 116  
16 Wn. App. 245, 254, 63 P.3d 198 (2003) (quoting 2 *Newberg* § 4.25). The requirement "is not a  
17 demand that common issues be dispositive, or even determinative .... '[A] single common  
18 issue may be the overriding one in the litigation, despite the fact that the suit also entails  
19 numerous remaining individual questions.'" Id. (quoting 2 *Newberg* § 4.25). In deciding  
20 whether common issues predominate, the Court "is engaged in a pragmatic inquiry into  
21 whether there is a common nucleus of operative facts to each class member's claim." Behr  
22 Process, 113 Wn. App. at 323.

23       The focus of this case is on the lawfulness of RCKC's uniform policies and practices.  
24 To prevail on their claims, Plaintiffs must demonstrate that Defendant engaged in a pattern and  
25 practice of failing to pay for all hours worked, including overtime, as well as missed meal  
26

1      breaks and mandatory rest breaks in compliance with Washington law. These common issues  
2      predominate over individualized issues. Defendant has failed to dispute this.

3            While the amount of damages to which the members of the Class are entitled must be  
4      calculated, the fact that those damages may be varied does not preclude class certification. See  
5      Behr Process, 113 Wn. App. at 323 (citing *Blackie v. Barrack*, 524 F.2d 891, 905 (9th Cir.  
6      1975)); see also Moeller, 173 Wn.2d at 279-280 (affirming class certification even though the  
7      damages model showed that some class members had not been injured by defendants'  
8      conduct"). "[T]he trial court has a variety of tools available to deal with" the management of  
9      any individual damages issues. Sitton, 116 Wn. App. at 259-60. Because common issues  
10     predominate over any individualized issues, the predominance requirement is satisfied.

11            2.      Plaintiffs Satisfy the Superiority Requirement

12            Before granting certification under CR 23(b)(3), the Court must find that a class action  
13     is the superior means of adjudicating this controversy. "This requirement focuses upon a  
14     comparison of available alternatives." Sitton, 116 Wn. App. at 256. Factors to be considered  
15     include "conserving time, effort and expense; providing a forum for small claimants; and  
16     deterring illegal activities." Id. at 257 (citation omitted). The Court also looks at the interest of  
17     Class members in individually controlling the prosecution of claims, the extent of any litigation  
18     already commenced by Class members, the desirability of concentrating the suit in this forum,  
19     and any difficulties that may be encountered in managing the action. CR 23(b)(3)(A)-(D).

20            "A class action may be superior if class litigation of common issues will reduce  
21     litigation costs and promote greater efficiency, or if no realistic alternative exists." Connor v.  
22     Automated Accounts, Inc., 202 F.R.D. 265, 271 (E.D. Wash. 2001). Here, Plaintiffs' claims  
23     raise numerous common factual and legal issues. In addition, class treatment conserves judicial  
24     resources and promotes consistency and efficiency of adjudication. Lerwill v. Inflight Motion  
25     Pictures Inc., 582 F.2d 507, 512-13 (9th Cir. 1978) ("Numerous individual actions would be

1 expensive and time-consuming and would create the danger of conflicting decisions as to  
2 persons similarly situated.”).

3 Here, the only alternative to this class action is for the employees to seek redress  
4 through the bankruptcy claims process individually. The bankruptcy court would then need to  
5 resolve over 225 individual wage claims with other creditors having the opportunity to object to  
6 each of these claims. If an objection is made, each employee will then need to justify his or her  
7 position by providing evidence and, perhaps legal support, for why he or she is entitled to the  
8 claim amount. Indeed, Defendant concedes that if there is an objection, the matter will be  
9 resolved on a motion basis. Each contested claim would then lead to an evidentiary hearing to  
10 resolve factual issues. Given the amounts in controversy, it is unlikely an employee will find  
11 counsel on a contingency basis. Each employee would need to navigate this system by him or  
12 herself, including attempting to identify the amount of wages unlawfully withheld under  
13 Washington law.

14 This Court recognizes that relying on employees (many of whom will be pro se) to file  
15 approximately 225 individual claims, then, defend his or her position though motion practice  
16 and an evidentiary hearing for each disputed claim is not efficient or fair. Given the large  
17 number of Class members and the common issues, a class action is the most appropriate means  
18 of adjudicating the claims arising out of RCKC’s common course of conduct. Additionally, it is  
19 likely that most Class members lack the resources necessary to retain counsel to obtain fair  
20 redress against RCKC for its misconduct and, without class treatment, could well have no  
21 effective remedy for their injuries.

22 Numerous other courts have also found that the class action process is superior to an  
23 individual claims process when the other elements of class action certification have been met.  
24 See, e.g., In re CommonPoint Mortgage Co. (concluding that “the certification of a class proof  
25 of claim in this case is unquestionably the superior—and possibly the only—method for  
26 adjudicating their claims”); In re United Companies Fin. Corp., 276 B.R. 368, 376 (Bankr. D.

1 Del. 2002) (concluding that use of a class is a superior method to resolve these claims); In re  
2 Taylor Bean & Whitaker Mortgage Corp., No. 3:09-BK-07047-JAF, 2010 WL 4025873, at \*8  
3 (Bankr. M.D. Fla. Sept. 27, 2010) (finding it is in the best interests of the class members and  
4 judicial economy to adjudicate these matters in a single action.); In re Partsearch Techs., Inc.,  
5 453 B.R. 84, 96 (Bankr. S.D.N.Y. 2011) (certifying the class for settlement because proceeding  
6 individually would likely be impractical for individual members); In re BGI, Inc., 465 B.R.  
7 365, 384 (Bankr. S.D.N.Y. 2012) (confirming that class certification complies with Rule 23(a)  
8 and (b)(3)); In re ABMD Ltd., 439 B.R. 475, 488 (Bankr. S.D. Ohio 2010) (finding that judicial  
9 economy will be served by resolving the common legal and factual disputes in one action); In  
10 re Protected Vehicles, Inc., 397 B.R. 339, 345 (Bankr. D.S.C. 2008) (certifying the class); In re  
11 Spring Ford Indus., Inc., No. 02-15015DWS, 2004 WL 231010, at \*10 (Bankr. E.D. Pa. Jan.  
12 20, 2004) (finding the claimants satisfied Rule 23, and certifying the class claim.) The inquiry  
13 is fact specific, and depends on the circumstances of the case. In re MF Glob. Inc., 512 B.R.  
14 757, 768 (Bankr. S.D.N.Y. 2014) (certifying the class claim).

15 3. This Case Presents No Management Difficulties

16 “[O]ne of the elements that goes into the balance to determine the superiority of a class  
17 action in a particular case” is “manageability.” Sitton, 116 Wn. App. at 257 (citation omitted).  
18 “[A]ny complex class action is likely to present a challenge,” but there are “a variety of tools  
19 available to deal with” the management of any individual damages issues. Sitton, 116 Wn.  
20 App. at 259-60.

21 Here, Defendant fails to dispute that the Court will not face any difficulties managing  
22 and resolving the case. Liability turns on RCKC’s conduct, which was uniform with respect to  
23 Class members, and there are various ways in which to manageably determine any resulting  
24 damages. As such, the Court finds it will not face any difficulties managing and resolving the  
25 case.

#### 4. Constitutionally Sound Notice Can Be Provided to Class Members

To protect their rights, absent class members must be provided with the best notice practicable when an action is certified under Rule 23(b)(3). CR 23(c)(2); see also Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 174-175, 94 S. Ct. 2140, 40 L. Ed. 2d 732 (1974). Here, RCKC has already identified all employees who worked for the company during the Class period, which includes each person's last known mailing address.

Notice can be sent directly via First Class mail to all employees who worked for the company at any time from December 1, 2011 to the present. In addition, notice can be published on a website maintained and updated by Plaintiffs' attorneys. Together, these approaches will provide the best practicable notice to the Class members.

If the parties are unable to agree on the form of notice, Plaintiffs shall present their proposed form to the Court for approval.

#### IV. CONCLUSION

For the reasons set forth above, NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The following Class is certified for purposes of litigation and trial:

All employees who worked for Recovery Centers of King County at any time from December 1, 2011 through the date of final disposition of this action.

Excluded from the Class are Recovery Centers of King County, any entity in which Recovery Centers of King County has a controlling interest or which has a controlling interest of Recovery Centers of King County, Recovery Centers' of King County current and former CEO(s), CFO(s), and Executive Director(s), and Recovery Centers' of King County legal representatives, assignees and successors. Also excluded are the Judge to whom this case is assigned and any member of the Judge's immediate family;

2. Plaintiffs Rogers, Dunn, Carter, Calloway, and Bjerke are designated and appointed as representatives for the Class;

4. The law firms of Rekhi & Wolk, P.S. and The Hanley Law Firm, PLLC are appointed as counsel for the Class;

5. If the parties are unable to agree on the form of notice, Plaintiffs shall present their proposed form to the Court for approval no later than 21 days from the date of this order.

## IT IS SO ORDERED

DATED this 22nd day of March, 2016.

Hon. Timothy A. Bradshaw

Presented by:

## REKHI & WOLK, P.S.

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