

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**

I. INTRODUCTION

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

II. BACKGROUND

A. Plaintiffs' Allegations

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

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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).¹

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 ¹ 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
12 Predominate Over Any Individual Damages Issues

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

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

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
26

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 through 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.

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

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

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

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

13 **IV. CONCLUSION**

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

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

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

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

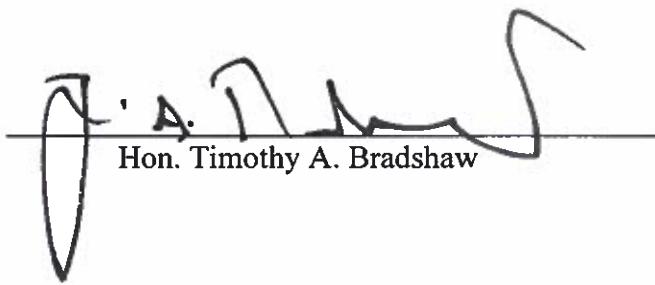
25 2. Plaintiffs Rogers, Dunn, Carter, Calloway, and Bjerke are designated and
26 appointed as representatives for the Class;

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

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

5 IT IS SO ORDERED

6 DATED this 22nd day of March, 2016.

7
8 
9 Hon. Timothy A. Bradshaw

10 Presented by:

11
12 **REKHI & WOLK, P.S.**

13 By: s/ Gregory A. Wolk
14 Gregory A. Wolk, WSBA No. 28946
15 E-Mail: greg@rekhiwolk.com
16 1411 Fourth Avenue, Suite 1101
17 Seattle, WA 98101
18 Telephone: (206) 388-5887
19 Fax: (206) 577-3924

20 *Attorney for Plaintiff*
21
22
23
24
25
26