

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR KING COUNTY

JESSICA JAHN WEBER and BRIAN KURTH,  
on their own behalf and on the behalf of all others  
similarly situated,

Plaintiffs,

v.

KASA DELIVERY, LLC,

Defendant.

No. 16-2-13761-0 SEA

PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION

**I. RELIEF REQUESTED**

Plaintiffs respectfully request certification of the following class (the "Class"):

All individuals employed by Defendant as delivery drivers of motor vehicles in the State of Washington at any time from three years prior to the filing of this complaint through the date of final disposition of this action.

Defendant, its affiliates, and the judge(s) assigned to this case the judge(s)' immediate family would be excluded from the Class. *See* Dkt. # 31 (Third Amended Class Action Complaint) ¶

4.1. Plaintiff also proposes that the Court create two sub-classes for drivers based on their location, as set forth below. In addition, Plaintiffs respectfully ask the Court to designate

1 Plaintiffs Weber and Kurth as Class representatives, Rekhi & Wolk, P.S. as Class counsel, and  
2 order that notice of the action be provided to the Class.

## 3 II. FACTUAL AND LEGAL BACKGROUND

### 4 A. Relevant Background.

5 Defendant is in the business of delivering food from restaurants to customers. *See* Dkt. #  
6 31 ¶ 1.1. Bite Squad handled the ordering process. *See* Declaration of Hardeep S. Rekhi in  
7 Support of Plaintiffs’ Motion for Class Certification (“Rekhi Decl.”), Ex 1. (Deposition  
8 Transcript of Arash Allaei) at 20:16-17. Defendant was responsible for hiring drivers and  
9 delivering the food from restaurants to the customer. *Id.* at 37:17-22. In January of 2017, Bite  
10 Squad acquired Defendant.  
11

12 Defendant began its operations in Minneapolis, Minnesota in 2012. *Id.* at 18:19-21.  
13 Defendant is unaware of how many employees it employed in Minneapolis in 2012 but claims  
14 “it was probably less than 50.” *Id.* at 22:23-23:4. By 2013, Defendant employed 50-100 people.  
15 *Id.* at 23:5-15. In 2014, Defendant opened its first Washington location in Seattle, WA. *Id.* at  
16 25:8-14. In 2016, it opened a second location in Bellevue, WA. *Id.* at 27:9-12. Currently,  
17 Defendant operates in Bellevue, Bothell, Kenmore, Kirkland, Redmond, Seattle and  
18 Woodinville.<sup>1</sup>  
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20 Defendant’s Washington drivers are based out of either Defendant’s Seattle or Bellevue  
21 location. Rekhi Decl., Ex 1. at 28:18-25. As such, Plaintiffs proposed Class consists of: (1) those  
22 drivers who were based out of Defendant’s Seattle location (“Seattle Drivers”), and (2) those  
23 drivers who were based out of Defendant’s Bellevue location (“Bellevue Drivers”).  
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### 25 B. The Customer Ordering Process is Uniform.

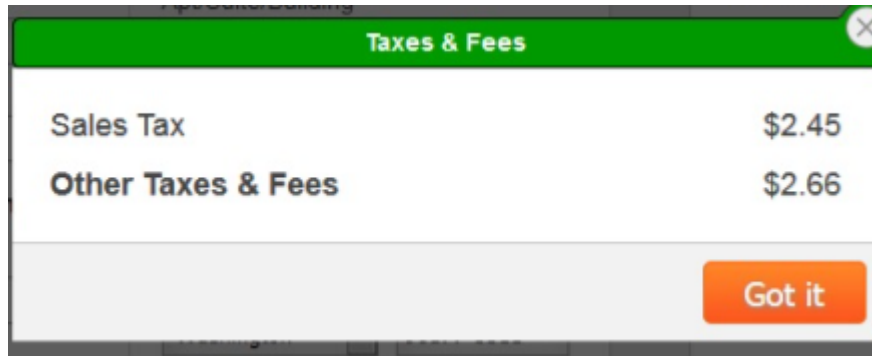
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<sup>1</sup> <https://www.bitesquad.com/>

1 To utilize Defendant’s services, a customer must use the mobile Bite Squad application  
2 or website to place an order. *Id.* at 206:8-11. A customer may then browse or search offerings  
3 from various restaurants.<sup>2</sup> Once a customer places an order, the order goes in a cue for  
4 processing. *Rekhi Decl.*, Ex 1 at 206:13. At the appropriate time, Defendant sends the order to  
5 the restaurant. *Id.* at 206:15-17. At the appropriate time, Defendant’s dispatch alerts a specific  
6 driver to pick up the order at the restaurant. *Id.* at 207:7-11. The driver then will travel to the  
7 restaurant, pick up the food, and deliver it to the customer, as described below in Section II.C.

9 Defendant’s customers must pay through the web site or mobile app. *See* Declaration of  
10 Brian Kurth in Support of Plaintiffs’ Motion for Class Certification (“*Kurth Decl.*”), ¶ 4.  
11 Customers are charged for the food and a delivery fee. *Id.* ¶ 5. In addition to the cost of the food,  
12 a customer is charged for “Taxes & Fees:”



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20 *Id.* “Taxes and Fees” is broken down into two categories, “Sales Tax” and “Other Taxes and  
21 Fees.” *Id.* ¶ 6. Up until early 2017, other “Other Taxes and Fees” was described to customers as  
22 follows:

23 To take care of our drivers, we've chosen to make them employees while others  
24 use Independent Contractors (which allows companies to avoid paying minimum  
25 wage, overtime, unemployment insurance, workers' compensation, payroll tax,  
26 mileage reimbursement & providing healthcare) – Other Taxes & fees simply

<sup>2</sup> *E.g.* <https://www.bitesquad.com/seattle-restaurant-delivery/>

1 allows us to afford the expenses associated with employee status, business &  
2 occupation tax and litter tax.

3 *Id.* ¶ 7. No portion of the “Other Taxes and Fees” goes to the driver or company employees.  
4 Rekhi Decl., Ex 1. at 210:17-25. Defendant’s CR 30(b)(6) designee testified that, “the State gets  
5 some of it. The company gets some of it...None of it goes to any employees directly.”<sup>3</sup> *Id.* There  
6 is no evidence, other than this testimony, that any of the funds for “Other Taxes and Fees” goes  
7 directly to a taxing authority. In April or May of 2017, customers were finally made aware that  
8 none of the “Other Taxes and Fees” was provided to the drivers. *Id.* at 216:14-217:12. The Sales  
9 tax charge is calculated using a formula that is consistent with the local sales tax; “Other Taxes  
10 and Fees”, however, is simply a 2% to 3% portion of the order’s cost. *Id.* at 216:12-17.

11 The site and app also allow for customers to provide tips. *Id.* at 154:3. After January 1,  
12 2017, the default allocation was set to provide drivers with 5% of the tips and the other 95% was  
13 allocated to other staff. *Id.* at 160:11-161:19. Staff includes dispatchers and customer service  
14 employees. *Id.* at 164:5-12, 165:21-166:10.

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16 **C. The Class Work Experience Is Uniform.**

17 Prior to becoming a driver for Defendant, applicants are required to go through an  
18 interview process. *Id.* at 33:3-10. Driver applicants are directed to the Bite Squad website. *Id.* at  
19 35:4-15. To get a job, driver applicants must qualify for insurance, present a certain level of  
20 cleanliness, and obtain approval from a hiring manager. *Id.* at 39:9-40:5. During the interview  
21 process, drivers are required to disclose the year, make, and model of the car they will be using.

22 Kurth Decl. ¶ 21.  
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26 <sup>3</sup> After filing this lawsuit, Defendant changed the language, adding a sentence stating drivers don’t receive any  
portion of these fees. *Id.* at 211:13-23.

1           Once hired, drivers also go through an orientation process. Rekhi Decl., Ex 1. at 194:16-  
2 18. Drivers are provided a required uniform, including a shirt and hat with the Bite Squad logo.  
3 *Id.* at 42:20-24, 43:22-23. At some point Defendant required employees to provide a deposit for  
4 their uniforms through a payroll deduction. *Id.* at 42:25-43:6. Defendant claims to have stopped  
5 that practice and has mostly returned all deposits. *Id.* at 45:5-16.

6           From June 10, 2013 until March 29, 2017, Defendant has employed at least 600 Class  
7 members. Rekhi Decl. ¶ 13. In order to accept orders for pick-up and delivery, drivers use the  
8 Bite Squad Driver application (“BS Driver App”). *Id.*, Ex 1. at 89:22-90:4. The BS Driver App  
9 and the software behind it are uniform throughout the United States. *Id.* at 65:2-9. Class members  
10 used bicycles, their own vehicles, or a Bite Squad issued vehicle to pick up and deliver orders.  
11 *See* Declaration of Jessica Jahn Weber in Support of Plaintiffs’ Motion for Class Certification  
12 (“Weber Decl.”), ¶ 4.

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14           All Class members have been paid on an hourly basis. Rekhi Decl., Ex 1. at 147:12-16.  
15 They may also receive a portion of the tips from customers. *Id.* at 154:3. Defendant claims that  
16 Class members who used their own cars to deliver orders were provided additional compensation  
17 of \$1.00 per order, regardless of distance, to reimburse them for the cost of operating their  
18 vehicles.<sup>4</sup> *Id.* at 131:19-23.

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20           Once a driver is needed to pick up and deliver an order, Defendant’s dispatchers located  
21 in Minnesota begin the process of dispatching a Class member. *Id.* at 95:23-25. Dispatch uses a  
22 uniform software program to choose a specific Class member for a specific order.<sup>5</sup> *Id.* at 91:25-  
23 93:2. The software uses several factors to choose a specific driver, including availability and  
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<sup>5</sup> Defendant’s dispatchers have the ultimate decision to choose a driver for a specific job, however, most of the  
time dispatchers pick the driver recommended by the software. *Id.* at 93:3-22.

1 proximity to the restaurant. *Id.* at 96:1-14. The BS Driver App will then alert the designated Class  
2 member of the assigned order by ringing that driver’s phone. *Id.* at 90:14-19. The Class member  
3 taps the screen to inform dispatch that s/he has accepted the order. *Id.* at 90:24-25. The BS Driver  
4 App does not provide a method to reject orders. *Id.* at 90:20-23. If the Class member does not  
5 quickly accept the order, dispatch will call the driver. *Id.* at 90:7-10; Weber Decl. ¶ 15; Kurth  
6 Decl. ¶ 19; Declaration of Coumba Dicko (“Dicko Decl.”) ¶ 13; Declaration of Curt Rowlett  
7 (“Rowlett Decl.”) ¶ 14; Declaration of Ebo Barton (“Barton Decl.”) ¶ 13; Declaration of Timi  
8 Buchanan (“Buchanan Decl.”) ¶ 14; Declaration of Julian Blake (“Blake Decl.”) ¶ 13;  
9 Declaration of Iesha Banks (“Banks Decl.”) ¶ 11; Declaration of Josephine Periello (“Periello  
10 Decl.”) ¶ 14; Declaration of Kaylin Clarke (“Clarke Decl.”) ¶ 12; Declaration of Kebba Bojang  
11 (“Bojang Decl.”) ¶ 13; Declaration of Colin Brasfield (“Brasfield Decl.”) ¶ 13; Declaration of  
12 Hanh Le (“Le Decl.”) ¶ 14; Declaration of Jaclyn Curtis (“Curtis Decl.”) ¶ 13; Declaration of  
13 Garret Bailey (“Bailey Decl.”) ¶ 13; Declaration of Rich Burke (“Burke Decl.”) ¶ 12; Declaration  
14 of April Cirpriano (“Cirpriano Decl.”) ¶ 13. Class members were discouraged from refusing  
15 orders dispatched to them. Weber Decl. ¶ 15; Kurth Decl. ¶ 19; Dicko Decl. ¶ 13; Rowlett Decl.  
16 ¶ 14; Barton Decl. ¶ 13; Buchanan Decl. ¶ 14; Blake Decl. ¶ 13; Banks Decl. ¶ 11; Periello Decl.  
17 ¶ 14; Clarke Decl. ¶ 12; Bojang Decl. ¶ 13; Brasfield Decl. ¶ 13; Le Decl. ¶ 14; Curtis Decl. ¶  
18 13; Bailey Decl. ¶ 13; Burke Decl. ¶ 12; Cirpriano Decl. ¶ 13. Indeed, failing to accept dispatched  
19 orders had negative consequences for Class members. Weber Decl. ¶ 15; Kurth Decl. ¶ 19; Dicko  
20 Decl. ¶ 13; Rowlett Decl. ¶ 14; Barton Decl. ¶ 13; Buchanan Decl. ¶ 14; Blake Decl. ¶ 13; Banks  
21 Decl. ¶ 11; Periello Decl. ¶ 14; Clarke Decl. ¶ 12; Bojang Decl. ¶ 13; Brasfield Decl. ¶ 13; Le  
22 Decl. ¶ 14; Curtis Decl. ¶ 13; Bailey Decl. ¶ 13; Burke Decl. ¶ 12; Cirpriano Decl. ¶ 13.  
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1 Upon accepting a dispatched order through the BS Driver App, Class members are  
2 required to drive to the restaurant to pick up food. Rekhi Decl., Ex 1. at 97:4-25. There are number  
3 of restrictions placed on the driver while waiting at the restaurant. Rekhi Decl., Ex. 2  
4 (Independent Driver Guide). If the food is not ready for pick up, Class members are required to  
5 provide status updates through the BS Driver App to the dispatch. Rekhi Decl., Ex 1. at 130:3-8.  
6 Once the order is ready, the driver must then deliver the food to the customer. *Id.* at 184:11-12.  
7 After the driver delivers the food, the driver must notify dispatch the order is completed using  
8 the BS Driver App. Weber Decl. ¶ 19; Kurth Decl. ¶ 21.  
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10 The BS Driver App. and the software behind it records and stores information related to  
11 each order. Rekhi Decl., Ex 1. at 78:25-79:4, 79:12-25, 80:1-2. It records the driver location and  
12 the time when the driver accepted the dispatched order, when s/he reached the restaurant and  
13 delivered the order to the customer. *Id.* at 100:9-21. The BS Driver App. does not track the actual  
14 route taken by the driver, however using the data above, it can approximate the distance travelled  
15 by drivers. *Id.* at 84:3-20.  
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17 **D. Class Compensation is Uniform.**

18 All Class members are Defendant's employees. From 2014 until 2016, Defendant's only  
19 location in Washington state was in the city of Seattle. *Id.* at 25:8-9, 25:17-21. In 2016, Defendant  
20 added a Bellevue location. *Id.* at 27:9-15. After adding the Bellevue location, Class members have  
21 been divided into two groups, Bellevue Drivers and Seattle Drivers. Except for the pay rates  
22 (with Bellevue Drivers paid less per hour), Class members in both locations had similar  
23 experiences and pay practices were uniform. Weber Decl.; Kurth Decl.; Dicko Decl.; Rowlett  
24 Decl.; Barton Decl.; Buchanan Decl.; Blake Decl.; Banks Decl.; Periello Decl.; Clarke Decl.;  
25 Bojang Decl.; Brasfield Decl.; Le Decl.; Curtis Decl.; Bailey Decl.; Burke Decl.; Cirpiano Decl.  
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1 Class compensation consists of a few different elements. First, Class members are paid  
2 an hourly rate. Rekhi Decl., Ex 1. at 147:12-16. Second, those who drive their own vehicles are  
3 paid \$1.00 reimbursement for each order. *Id.* at 131:19-23. Finally, Defendant has provided to  
4 the Class a 4-cent reimbursement for each work hour recorded for data usage associated with  
5 using the BS Driver App.<sup>6</sup> *Id.* at 135:19-22. Some Class members were additionally compensated  
6 for agreeing to wrap their personal cars with the Bite Squad logo. *Id.* at 49:11-13. In addition to  
7 pay received by the Defendant, Class members may have also received tips, or a portion of tips,  
8 from customers. *Id.* at 154:3, 158:22-159:2. If a credit card was used to pay tips, then Defendant  
9 reduced the tip to account for credit card fees. *Id.* at 158:19-159:6. Defendant's payroll systems  
10 store information related to Class member payment. Rekhi Decl. ¶ 12.

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13 **E. Defendant's Compensation Scheme Systemically Violates Seattle and Washington  
Wage and Hour Laws.**

14 *i. Defendant Failed to Raise Seattle Drivers Wages to Comply with Seattle  
15 Minimum Wage.*

16 Under Washington law, all non-exempt employees are required to be paid at or above the  
17 applicable minimum wage rate for all hours worked. RCW 49.46.020; *see also* RCW 49.46.120.  
18 The Seattle Minimum Wage Ordinance was enacted April 1, 2015. *See* SMC 14.19 *et seq.*  
19 Seattle's minimum wage depends on the employer's size, which is determined by the number of  
20 its full time employees that work anywhere. *Id.* An employer with 500 or fewer employees is  
21 defined as a "Schedule 2 employer." SMC 14.19.010. Defendant, for purposes of this action, has  
22 been a Schedule 2 employer throughout the Class period. Rekhi Decl., Ex 1 at 23:5-24:8.  
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26 <sup>6</sup> Historically, the drivers were paid 5 cents per hour worked as reimbursement for data usage associated with  
using the BS Driver App. Defendant was unable to provide information on when the rate was changed to 4 cents  
per hour worked. *Id.* at 135:19-136:13.



1 The Seattle Minimum Wage Ordinance sets a minimum *wage* and it also sets a separate  
 2 minimum *compensation* for all Schedule 2 employees. *Compare* SMC 14.19.035 with SMC  
 3 14.19.040. An employer must comply with both the minimum *wage* and the minimum  
 4 *compensation* requirements. SMC 14.19.040(B). Starting on April 1, 2105, an “employer must  
 5 pay each employee [working in Seattle] an hourly minimum *wage* of at least \$10.00.” SMC  
 6 14.19.035(A). Each year thereafter, the minimum wage increased on January 1 as listed  
 7 below:<sup>7</sup>

### Seattle’s Minimum Wage

|      | Small Employers<br>(500 or Fewer Employees)  |                | Large Employers<br>(501 or More Employees) |                |
|------|--|----------------|--|----------------|
|      | Does the employer pay towards the individual employee's medical benefits and/or does the employee earn tips? |                |  |                |
|      | YES  | NO             | YES  | NO             |
| 2015 | \$10.00  | \$11.00        | \$11.00                                    | \$11.00        |
| 2016 | \$10.50  | \$12.00        | \$12.50                                    | \$13.00        |
| 2017 | \$11.00  | \$13.00        | \$13.50                                    | \$15.00        |
| 2018 | \$11.50  | \$14.00        | <b>\$15.00</b>                             | <b>\$15.45</b> |
| 2019 | \$12.00  | <b>\$15.00</b> |  |                |
| 2020 | \$13.50  |                |  |                |
| 2021 | <b>\$15.00</b>   |                |  |                |

21 Employers can meet the applicable hourly minimum wage requirements by paying the  
 22 minimum wage, provided the employer complies with all applicable requirements. SMC  
 23 14.19.035(B). In contrast, the hourly minimum *compensation* requirement can be met through

<sup>7</sup> <https://www.seattle.gov/Documents/Departments/LaborStandards/OLS-MW-multiyearChart.pdf>

1 wages, tips, and/or medical benefits, but only if the employer also meets the applicable hourly  
2 minimum *wage* requirements. SMC 14.19.040 (B) (emphasis added).

3 From January 1, 2016 to January 16, 2016, Defendant failed to pay Seattle Drivers the  
4 Seattle minimum wage of \$10.50 per hour. Rekhi Decl., Ex. 3 (Payroll Records).

5 *ii. Defendant Violated Seattle Paid and Sick Leave Time Laws.*

6 Beginning on September 1, 2012, employers were required to provide paid sick and safe  
7 time (“PSST”) to their employees working in Seattle. SMC 14.16 *et seq.* The amount of PSST  
8 depends on the size of the employer. The law established Tier 1, Tier 2, and Tier 3 employees.  
9 SMC 14.16.010 & 020. Defendant is a Tier 2 employer. Rekhi Decl., Ex 1. at 23:13-18. Under  
10 Seattle’s PSST ordinance, Defendant is required to provide its Seattle Drivers one hour of PSST  
11 for every 40 hours worked. SMC 14.16.025 (B)(1).

12 Seattle’s PSST law requires that “new employers” have until 24 months after the hire date  
13 of their “first employee” to comply with PSST. SMC 14.16.040.<sup>8</sup> Defendant hired its first  
14 employee in 2012 in Minneapolis, Minnesota. Rekhi Decl., Ex 1. at 22:6-16.<sup>9</sup> As such it was  
15 required to comply with Seattle’s PSST 24 months after its first hire, in 2014.<sup>10</sup>

16 However, the first time Defendant began providing Seattle Drivers PSST time was on or  
17 about September 11, 2016. Weber Decl., Ex. 1 (Paystub with PSST), 2 (Paystub with PSST).  
18 Prior to that Defendant uniformly failed to comply with Seattle’s PSST law for its Seattle Drivers.  
19 Weber Decl. ¶ 17, Exs. 3 (Paystub without PSST), 4 (Paystub without PSST); Rekhi Decl. ¶ 15.

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23 <sup>8</sup> In January 2018, the ordinance was amended. Exhibit 4 to Rekhi Decl. is a screenshot of the ordinance,  
24 indicating the difference between the prior law and the amended law.

25 <sup>9</sup> <https://mblsportal.sos.state.mn.us/Business/SearchDetails?filingGuid=fe32b15f-699f-e111-afc0-001ec94ffe7f>

26 <sup>10</sup> Defendant’s delinquency may rely upon the assumption that “first employee” means the first employee to be  
hired in Seattle, but the law’s text does not support this assumption as it is inconsistent with other sections of the  
law. For example, for purposes of determining an employer’s Tier, the PSST law requires that an employer count  
“all employees worldwide.” See [http://www.seattle.gov/Documents/Departments/LaborStandards/PSST-  
QA\\_%2012\\_21\\_17.pdf](http://www.seattle.gov/Documents/Departments/LaborStandards/PSST-<br/>QA_%2012_21_17.pdf)

1           iii.     *Defendant's Mileage Reimbursement Policy Is Uniform.*

2           Defendant's CR 30(b)(6) designee testified it "offer[s] a reimbursement for all vehicle  
3 related stuff if a driver is driving their own car...It is \$1 per order." Rekhi Decl., Ex 1. at 131:19-  
4 23. Defendant's \$1.00 reimbursement is uniform, regardless of how far Class member drives to  
5 complete an order. *Id.* at 188:2-16. Plaintiffs' experiences are consistent with Defendant's  
6 admission. Weber Decl. ¶ 7; Kurth Decl. ¶ 12. Defendant is unable to specify how it arrived at  
7 the \$1.00 per order reimbursement rate. Rekhi Decl., Ex 1. at 133:14-135:18. When asked as to  
8 what vehicle expenses were considered in reaching the \$1.00 reimbursement rate Defendant  
9 testified as follows:  
10 testified as follows:

11           Q.    I want to know what was actually considered. So do you have no  
12 recollection of what was considered?

13           A.    Not strong enough recollection to testify to it, no.

14           Q.    Does anybody know that information that was considered?

15           A.    It was done by me so no.

16           *Id.* at 135:8-18.

17           Defendant does not track the actual miles driven by drivers. *Id.* at 200:19-21. However,  
18 Defendant maintains data that enables it to make reasonable estimates of the number of miles  
19 driven by Class Members. *Id.* at 84:3-15.

20           Employers may not deduct business expenses from employees' pay. *See, e.g.*, 29 C.F.R.  
21 531.35, 531.36(b), & 779.217. Here, Defendant's reimbursement policy failed to adequately  
22 reimburse Class members for mileage they drove at Defendant's direction in the furtherance of  
23 Defendant's business when compared to IRS and AAA rates. It failed to adequately estimate  
24 expenses associated with Class members using their own vehicles. Defendant's policy affected  
25 all Class members that drove their own vehicles, both in Seattle and Bellevue. Weber Decl. ¶ 7;  
26 Kurth Decl. ¶ 12; Rowlett Decl. ¶ 7; Buchanan Decl. ¶ 8; Blake Decl. ¶ 7; Banks Decl. ¶ 5;

1 Periello Decl. ¶ 7; Clarke Decl. ¶ 7; Bojang Decl. ¶ 7; Brasfield Decl. ¶ 7; Le Decl. ¶ 7; Curtis  
2 Decl. ¶ 7; Bailey Decl. ¶ 7; Burke Decl. ¶ 7; Cirpiano Decl. ¶ 7. Plaintiffs allege that Defendant's  
3 uniform policy which failed to adequately reimburse Class members for business expenses  
4 resulted in improper deductions under RCW 49.52.050.

5 Other courts have similarly held that failure to reimburse for expenses incurred are  
6 tantamount to a deduction and have certified class actions on behalf of delivery drivers on this  
7 very basis. *Perrin v. Papa John's Int'l, Inc.*, No. 4:09CV01335 AGF, 2011 WL 4089251, at \*6  
8 (E.D. Mo. Sept. 14, 2011) (certifying class for failure to adequately reimburse pizza delivery  
9 drivers for mileage costs); *Smith v. Pizza Hut, Inc.*, Civ. No. 09-01632-CMA-BNB, 2012 WL  
10 1414325, at \*5 (D.Colo. Apr. 21, 2012) (conditionally certifying delivery driver class because  
11 individual variations in wages and vehicle expenses were "not sufficient to preclude joining the  
12 claims in one action"); *Luiken v. Domino's Pizza, LLC*, Civ. No. 09-516 (DWF/AJB), 2010 WL  
13 2545875, at \*5 (D.Minn. June 21, 2010) (conditionally certifying delivery driver class based on  
14 affidavits that drivers had been "compensated for deliveries at a flat-rate on a per delivery basis  
15 and [were] owed compensation").

16 Indeed, during the applicable limitations period, the IRS business mileage reimbursement  
17 rate has ranged between \$.54 and \$.575 per mile. Rekhi Decl. ¶ 21. Reputable companies that  
18 study the cost of owning and operating a motor vehicle and/or reasonable reimbursement rates,  
19 including the American Automobile Association ("AAA"), have determined that the average cost  
20 of owning and operating a vehicle has ranged between \$.476 and \$.502 per mile during the same  
21 period. Rekhi Decl. ¶ 22. These figures represent reasonable approximations of the average cost  
22 of owning and operating a vehicle. In contrast, Defendant pays on average \$0.32 per mile. *See*  
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1 Declaration of Jeffrey Munson in Support of Plaintiffs’ Motion for Class Certification (“Munson  
2 Decl.”) ¶ 25.

3 Likewise, under Seattle’s Wage Theft Ordinance, an employer is required to reimburse  
4 all employees working in Seattle as follows:

5 For reimbursement for employer expenses, an employer shall indemnify the  
6 employee for all necessary expenditures or losses incurred by the employee in  
7 direct consequence of the discharge of the employee's duties

8 SMC 14.20.010. Here, Defendant failed to reimburse Seattle Drivers for all necessary  
9 expenditures incurred by the employee in discharging his or her duties.

10 The failure to reimburse drivers for costs associated with driving for Defendant caused  
11 two separate pay violations for Class members driving their own cars. First, it had the effect of  
12 dropping Class member pay below the Washington Minimum Wage and/or the Seattle Minimum  
13 Wage. Munson Decl. ¶¶ 30, 33. Second, it was tantamount to an unlawful wage deduction in  
14 violation of RCW 49.52.050/.070 and Seattle’s Wage Theft Ordinance. As such drivers must be  
15 compensated and reimbursed for the reasonable value of the cost and be made whole.

16 *iv. Defendant Fails to Pay Class Members the Service Charges It Imposed.*

17 Washington’s Minimum Wage Act defines a “service charge” as:

18 a separately designated amount collected by employers from customers that  
19 is for services provided by employees, or is described in such a way that  
20 customers might reasonably believe that the amounts are for such services.

21 RCW 49.46.160. The law requires accurate and truthful disclosures when charging a customer  
22 with an automatic service charge:

23 An employer that imposes an automatic service charge related to food [or]  
24 beverages... provided to a customer must disclose in an itemized receipt .. the  
25 percentage of the automatic service charge that is paid or is payable directly to  
26 the employee or employees serving the customer.

*Id.*

1 Here, Defendant charged a separately designated automatic fee to its customers. Kurth  
2 Decl. ¶¶ 5-7. Defendant’s CR 30(b)(6) designee testified the fee was set to 2-3% of the order fee.  
3 Rekhi Decl., Ex 1. at 213:12-17. Defendant collected the fee. *Id.* at 210:9-25. Further, the fee  
4 was for services provided by Class members, the delivery of food and beverages. Defendant’s  
5 description of the charge would make a reasonable customer believe that the charge would go to  
6 the drivers. Kurth Decl. ¶ 7. The first thing a customer sees when reading the Defendant’s  
7 explanation of the charge is “To take care of our drivers...” The Defendant used its drivers to  
8 justify the fee to its customers. However, Defendant admits that none of the fee actually goes to  
9 any employee. Rekhi Decl., Ex 1. at 210:9-25.

11 For most of the Class period, Defendant did not disclose how much of the automatic  
12 service charge it was paying to Class members. *See e.g.*, Kurth Decl. ¶ 16; Weber Decl. ¶12;  
13 Cipriano Decl. ¶ 11; Clarke Decl. ¶ 10. However, after filing this lawsuit Defendant made  
14 substantial changes to its charge and disclosures, including explicitly stating that the charge goes  
15 to Bite Squad. Rekhi Decl., Ex 1. at 211:1-16.

17 Other Courts have certified class actions based on failure to pay service charges. *See*  
18 *Blasco, et al. v. El Gaucho Tacoma, LLC, et al.*, Pierce County Superior Court granting order for  
19 preliminary approval of class settlement in part for failure to pay service charges; *see also*  
20 *Romatka, et al. v. Brinker Intl. Payroll Co. et al.*, (cause # 16-2-07538-5) (King County Superior  
21 Court Judge Catherine Shaffer, denied summary judgment recognizing that employees have a  
22 private right of action entitling employees to money collected as a service charge.)

24 The proposed Class has an implicit right to be paid the service charge when Defendant  
25 has violated RCW 49.46.160. In this matter, Defendant uniformly charged all customers the fee  
26 as described above.

1 v. *Defendant Failed to Provide Drivers with Rest Breaks.*

2 Under Washington law, employees are entitled to a paid ten-minute rest period for each  
3 four hours of work. WAC 296-126-092(4). As the Ninth Circuit has recognized, Washington’s  
4 rest period regulation is “unequivocal.” *Alvarez v. IBP, Inc.*, 339 F.3d 894, 913 (9th Cir. 2003).  
5 “[T]he mandatory language of Wash. Admin. Code § 296-126-092” operates “to create a duty”  
6 on employers to provide the minimum breaks allowed, and “[n]o intrusions” on those breaks “are  
7 condoned or even acknowledged.” *Id.* at 913 (quoting *Wash. State Liquor Control Bd. v. Wash.*  
8 *State Pers. Bd.*, 88 Wn.2d 368, 377, 561 P.2d 195 (1977)). Indeed, Washington courts have  
9 consistently interpreted the plain language of WAC 296-196-092 to impose “a mandatory  
10 obligation on the employer.” *Demetrio v. Sakuma Bros. Farms, Inc.*, 183 Wn.2d 649, 658, 355  
11 P.3d 258 (2015) quoting *Pellino v. Brink’s Inc.*, 164 Wn. App. 668, 688, 267 P.3d 383 (2011);  
12 *see also Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 852, 50 P.3d 256 (2002)  
13 (“Washington’s manifest policy of protecting the health and welfare of its employees by  
14 requiring periodic rest periods may not be abrogated”). “It is not enough for an employer to  
15 simply schedule time throughout the day during which an employee can take a break if he or she  
16 chooses. Instead, employers must affirmatively promote meaningful break time.” *Demetrio*, 183  
17 Wn.2d at 658 (citations omitted).

20 An employer who puts employees “in a situation where they could not take their breaks”  
21 is in violation of this obligation. *Wash. State Nurses Ass’n v. Sacred Medical Center*, 175 Wn.2d  
22 822, 831, 287 P.3d 516 (2012). When employees are not provided with the mandated rest period,  
23 their workday is extended by 10 minutes, and they are entitled to compensation for that time. *Id.*  
24 at 829 (citing *Wingert*, 146 Wn.2d at 849). Further, the overtime provisions of RCW  
25

1 49.46.130(1) are triggered, when the additional 10 minutes of working time extends employees’  
2 workweek beyond 40 hours. *Id.* at 832.

3 Defendant does not provide or compensate Class members for rest breaks. *See* Dkt. # 31  
4 ¶ 5.39; Weber Decl. ¶ 8; Kurth Decl. ¶¶ 8, 13; Dicko Decl. ¶¶ 8, 9; Rowlett Decl. ¶ 11; Barton  
5 Decl. ¶¶ 9, 10; Buchanan Decl. ¶ 10; Blake Decl. ¶ 9; Banks Decl. ¶ 6; Periello Decl. ¶ 8; Clarke  
6 Decl. ¶ 8; Bojang Decl. ¶¶ 8, 9; Brasfield Decl. ¶ 9; Le Decl. ¶ 9; Curtis Decl. ¶ 8; Bailey Decl.  
7 ¶¶ 8, 9; Burke Decl. ¶ 9; Cirpiano Decl. ¶¶ 8, 9. After Class members clock in for their shift,  
8 they identify themselves as available to accept orders. Rekhi Decl., Ex 1. at 72:7-24. Once a Class  
9 member is dispatched for a delivery, s/he goes to the restaurant to be ready to deliver the food.  
10 *Id.* at 97:8-25. Class members are given an independent driver guide that provides instruction as  
11 to what the driver can and cannot do while in the restaurant. Rekhi Decl., Ex. 2. Class members  
12 are instructed not to sit, not to take phone calls, stay out of the way if food is not ready, and to be  
13 timely. Rekhi Decl., Exs. 2, 5 (Excerpts from Kasa Delivery Handbook). Class members are also  
14 instructed not to smoke while waiting for food while at the restaurant. Rekhi Decl., Exs. 5, 6  
15 (Driver Quiz).

16 Time spent waiting for food under these conditions is under Defendant’s control and  
17 Class members have testified they are unable to take 10 minute rest breaks during this time.  
18 Defendant also considers other “idle time” throughout a shift as break time. *Id.*, Ex. 1 at 126:16-  
19 127:3, 233:10-13. While WAC 296-126-092(5) does provide for intermittent breaks, many Class  
20 members testify they are unable to take a ten-minute break due to the demands of their work  
21 duties. Weber Decl. ¶ 8; Kurth Decl. ¶ 8; Dicko Decl. ¶ 8; Rowlett Decl. ¶ 11; Barton Decl. ¶ 9;  
22 Buchanan Decl. ¶ 10; Blake Decl. ¶ 9; Banks Decl. ¶ 6; Periello Decl. ¶ 8; Clarke Decl. ¶ 8;  
23  
24  
25  
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1 Bojang Decl. ¶ 8; Brasfield Decl. ¶ 9; Le Decl. ¶ 9; Curtis Decl. ¶ 8; Bailey Decl. ¶ 8; Burke  
2 Decl. ¶ 9; Cirpiano Decl. ¶ 8.

3 Defendant does not permit Class members to use time between deliveries for their  
4 personal purposes. Defendant instructs Class members to distribute marketing materials between  
5 deliveries, regardless of whether they are in Defendant’s vehicle or their own<sup>11</sup>. Rekhi Decl., Ex  
6 1. at 199:17- 200:7; Weber Decl. ¶ 13; Kurth Decl. ¶ 17; Dicko Decl. ¶ 12; Rowlett Decl. ¶ 13;  
7 Barton Decl. ¶ 12; Buchanan Decl. ¶ 13; Blake Decl. ¶ 12; Banks Decl. ¶ 9; Periello Decl. ¶ 12;  
8 Clarke Decl. ¶ 11; Bojang Decl. ¶ 12; Brasfield Decl. ¶ 12; Le Decl. ¶ 13; Curtis Decl. ¶ 12;  
9 Bailey Decl. ¶ 12; Cirpiano Decl. ¶ 12. If not delivering materials to restaurants, Class members  
10 are waiting for their next dispatch. They are instructed to remain in the delivery zone during this  
11 time. Weber Decl.¶ 20; Kurth Decl. ¶ 22.

12  
13 All this time is clearly for the benefit of Defendant. Furthermore, Defendant does not  
14 promote any sort of meaningful break time. Rekhi Decl., Ex 1. at 179: 2-23. Indeed, Class  
15 members have testified they do not feel free to refuse a dispatch even if they were engaged in  
16 downtime. Rekhi Decl., Ex. 6; Weber Decl. ¶¶ 14, 15; Kurth Decl. ¶¶ 18, 19; Dicko Decl. ¶ 13;  
17 Rowlett Decl. ¶ 14; Barton Decl. ¶ 13; Buchanan Decl. ¶ 14; Blake Decl. ¶ 13; Banks Decl. ¶ 11;  
18 Periello Decl. ¶ 14; Clarke Decl. ¶ 12; Bojang Decl. ¶ 13; Brasfield Decl. ¶ 13; Le Decl., ¶ 14;  
19 Curtis Decl., ¶ 13; Bailey Decl., ¶ 13; Burke Decl., ¶ 12; Cirpiano Decl. ¶ 13. Our Washington  
20 Supreme Court has found, “It is not enough for an employer to simply schedule time throughout  
21 the day during which an employee can take a break if he or she chooses. Instead, employers must  
22 affirmatively promote meaningful break time.” *Demetrio*, 183 Wn.2d at 658 (citations omitted).  
23  
24  
25

26 <sup>11</sup> Defendant stated that only drivers in its Bite Squad cars were instructed to deliver bags or supplies to  
restaurants. Rekhi Decl., Ex. 1 at 131: 1-8.

1 Accordingly, Plaintiff assert that Defendant’s failure to provide or compensate Class members  
2 for rest breaks is a uniform violation of Washington law.

3 **IV. AUTHORITY AND ARUGMENT**

4 **A. Washington Liberally Interprets Class Certification Requirements.**

5 Civil Rule 23 governs class actions. Individuals “may sue or be sued” as representatives  
6 of a class if:

7 (1) the class is so numerous that joinder of all members is impracticable, (2) there  
8 are questions of law or fact common to the class, (3) the claims or defenses of the  
9 representative parties are typical of the claims or defenses of the class, and (4) the  
10 representatives will fairly and adequately protect the interests of the class.

11 CR 23(a). Thus, the four prerequisites to class certification are numerosity, commonality,  
12 typicality, and adequacy of representation. *Id.*; *see also Moeller v. Farmer’s Ins. Co., Inc.*, 173  
13 Wn.2d 264, 278, 267 P.3d 998 (2011); *Pellino v. Brink’s Inc.*, 164 Wn.App. 668, 682, 267 P.3d  
14 383 (2011).

15 In addition, one of the three conditions of CR 23(b) must be met. CR 23(b); *see also*  
16 *Moeller*, 173 Wn.2d at 279; *Pellino*, 164 Wn.App. at 682–83. Here, Plaintiffs seek certification  
17 under CR 23(b)(3), which requires “that the questions of law or fact common to the members of  
18 the class predominate over any questions affecting only individual members, and that a class  
19 action is superior to other available methods for the fair and efficient adjudication of the  
20 controversy.”

21 Washington courts liberally interpret CR 23 because the “rule avoids multiplicity of  
22 litigation, ‘saves members of the class the cost and trouble of filing individual suits[,] and ... also  
23 frees the defendant from the harassment of identical future litigation.’” *Smith v. Behr Process*  
24 *Corp.*, 113 Wash. App. 306, 318, 54 P.3d 665 (2002); *see also Moeller*, 173 Wn.2d at 278 (“[T]he  
25 trial court should err in favor of certifying the class.”). “[A] primary function of the class suit is  
26

1 to provide a procedure for vindicating claims which, taken individually, are too small to justify  
2 individual legal action but which are of significant size and importance if taken as a  
3 group.” *Brown*, 6 Wash. App. at 253. Accordingly, courts should err in favor of certifying a class  
4 since the class is always subject to the trial court's later modification or decertification by the  
5 trial court. *See Oda v. State*, 111 Wash.App. 79, 91, 44 P.3d 8 (2002).

6 Factual allegations in the complaint are assumed to be true, and courts will not attempt to  
7 resolve material factual disputes or make any inquiry into the merits. *See Miller v. Farmer Bros.*  
8 *Co.*, 115 Wn.App. 815, 819, 63 P.3d 49 (2003). As set forth above, Plaintiffs have presented  
9 evidence showing how Defendant’s uniform wage and hour policies and practices at issue have  
10 impacted all members of the proposed Class in a manner that can be resolved by the Court in this  
11 action. As demonstrated below, Plaintiffs satisfy all the requirements of CR 23(a) and (b)(3),  
12 and certification of the proposed Class is appropriate. Indeed, courts have repeatedly certified  
13 for class action treatment claims involving Washington wage and hour violations similar to or  
14 based on the same violations alleged here. *See, e.g., Pellino*, 164 Wn.App. at 668 (affirming  
15 class certification as to employer’s common policy related driver employees’ mandatory breaks);  
16 *Mendis v. Schneider Nat’l Carriers, Inc.*, C15-0144-JCC, 2017 WL 497600, at \*2-\*7 (W.D.  
17 Wash. Feb. 7, 2017) (certifying a class of drivers as to employer’s common policies related to  
18 rest breaks, unlawful wage deductions, and overtime violations under Washington wage laws);  
19 *Miller v. Farmer Bros.*, 136 Wn.App. 650, 657-65, 150 P.3d 598 (2007) (affirming class  
20 certification as to employer’s common policy related to overtime under the Minimum Wage Act).

21 *i. Plaintiffs Satisfy the Four Certification Prerequisites under CR 23(a)*

22 1. Plaintiffs Satisfy the Numerosity Requirement.

1 The first prerequisite for certification is that the class is “so numerous that joinder of all  
2 members is impracticable.” CR 23(a)(1). While there is no fixed rule, more than forty members  
3 generally suffice. *Miller*, 115 Wn.App. at 821–22. That is, where a class contains at least 40  
4 members, federal courts have recognized a rebuttable presumption that joinder is  
5 impracticable. *Id.* Here, the Class consists of more than 600 current and former employees of  
6 Defendant. Rekhi Decl. ¶ 13.

7  
8 2. There Are Common Questions of Law and Fact.

9 The second prerequisite for class certification is the existence of “a single issue common  
10 to all members of the class.” *Behr*, 113 Wn.App. at 320; *see also* CR 23(a)(2). As Washington  
11 courts have noted, “there is a low threshold to satisfy this test.” *Behr*, 113 Wn.App. at 320. If a  
12 defendant has “engaged in a ‘common course of conduct’ in relation to all potential class  
13 members,” class certification is appropriate regardless of whether “different facts and perhaps  
14 different questions of law exist within the potential class.” *Brown*, 6 Wn.App. at 255; *accord*  
15 *Miller*, 115 Wn.App. at 825. Furthermore, a common course of conduct need not affect all  
16 potential class members uniformly. Instead, a “common” question is one that is “characteristic  
17 of a *usual* type or standard: *representative* of a type.” *Anfinson v. FedEx Ground Package Sys.,*  
18 *Inc.*, 174 Wn.2d 851, 875, 281 P.3d 289 (2012).

20 “[C]laims by workers that their employers have unlawfully denied them wages to which  
21 they were legally entitled have repeatedly been held to meet the prerequisites for class  
22 certification[,]’ including commonality.” *Mendis*, 2017 WL 497600, at \*2.<sup>12</sup> This is because the  
23 “glue” holding together such claims is the “common question” of “whether an unlawful [wage]  
24

25  
26 <sup>12</sup> Since the Federal Rules of Civil Procedure governing class certification are substantially similar to  
Washington’s Civil Rules, “this court may look to federal decisions for guidance.” *Behr*, 113 Wn. App. at 319,  
n.2, *cert. denied*, 536 U.S. 941, 122 S.Ct. 2624, 153 L.Ed.2d 806 (2002).

1 policy prevented employees from collecting lawfully earned [wage] compensation.” *Ramos*, 796  
2 F. Supp. 2d at 355.

3 Defendant’s systematic practice of wage and hour abuse constitutes a common course of  
4 conduct that has adversely affected the proposed Class. Common questions of law and fact arise  
5 from Defendant’s conduct, including (1) whether Defendant failed to comply with Seattle  
6 minimum wage when it failed to pay such wages to its Seattle Drivers; (2) whether Defendant  
7 failed to comply with Seattle Paid Sick and Safe Time laws as to those same Class members; (3)  
8 whether Defendant’s failure to reasonably reimburse Class members for vehicle costs resulted in  
9 unlawful deductions and/or Class members receiving less than the applicable minimum wage;  
10 (4) whether Defendant failed to provide or compensate Class members for missed meal breaks;  
11 (5) whether Defendant’s failure to comply with RCW 49.46.160 obligates Defendant to pay the  
12 service charge to the drivers responsible for the service. Due to these common questions among  
13 the proposed Class, the commonality requirement is satisfied.  
14

15  
16 As detailed above, Plaintiffs recognize that Seattle Drivers are afforded some additional  
17 protections under the Seattle Ordinances at issue than are available to Bellevue Drivers under  
18 similar Washington laws. As such, Plaintiffs propose the Court create two sub-classes: (1)  
19 individuals who were based out of Defendant’s Seattle location at any time during the Class  
20 period; and, (2) Individuals who were based out of Defendant’s Bellevue location at any time  
21 during the Class period. *Sitton v. State Farm Mut. Auto. Ins. Co.*, 116 Wn.App. 245, 255, 260,  
22 63 P.3d 198 (2003) (recognizing that courts have the authority to create subclasses to manage  
23 differences in liability and damages that are common to subclasses of individuals within a Class).  
24

25 3. Plaintiffs’ Claims Are Typical of the Class Claims.  
26

1 The third prerequisite is that Plaintiffs' claims are typical of the Class. CR 23(a)(3).  
2 "Typicality is satisfied if the claim 'arises from the same event or practice or course of conduct  
3 that gives rise to the claims of other class members, and if his or her claims are based on the same  
4 legal theory.'" *Pellino*, 164 Wn.App. at 684 (quoting *Behr*, 113 Wn.App. at 320). "Where the  
5 same unlawful conduct is alleged to have affected both named plaintiffs and the class members,  
6 varying fact patterns in the individual claims will not defeat the typicality requirement." *Id.*  
7 Plaintiff Kurth has been a Bellevue Driver. Kurth Decl. ¶ 11. Plaintiff Weber has been a Seattle  
8 Driver. Weber Decl. ¶ 6.

10 Plaintiffs' claims are typical of the claims of other Class members because they arise from  
11 the same conduct of the Defendant's—systematic violations of Washington and Seattle wage and  
12 hour laws—and are based on the same legal theories, namely systematic violations of  
13 Washington's and Seattle's wage and hours laws and meal and rest breaks laws. *See supra* § II;  
14 *see also* Rekhi Decl. ¶ 23; Weber Decl.; Kurth Decl.; Dicko Decl.; Rowlett Decl.; Barton Decl.;  
15 Buchanan Decl.; Blake Decl.; Banks Decl.; Periello Decl.; Clarke Decl.; Bojang Decl.; Brasfield  
16 Decl.; Le Decl.; Curtis Decl.; Bailey Decl.; Burke Decl.; Cirpiano Decl. As set forth above,  
17 Defendant's CR 30(b)(6) designee has already admitted that the policies and practices which put  
18 these questions of law and fact at issue were common throughout Defendant's organization.  
19 Accordingly, it is undisputable that this requirement has been met.

21 Further, Plaintiffs' testimony, testimony of drivers and Defendant's own evidence reflects  
22 that Plaintiffs' experiences are typical of the Class as a whole. Plaintiff Weber worked in Seattle.  
23 She drove her own car. She was subjected to the same reimbursement policies as all other drivers.  
24 Weber Decl. ¶ 7; Kurth Decl. ¶ 12; Rowlett Decl. ¶ 7; Buchanan Decl. ¶ 8; Blake Decl. ¶ 7; Banks  
25 Decl. ¶ 5; Periello Decl. ¶ 7; Clarke Decl. ¶ 7; Bojang Decl. ¶ 7; Brasfield Decl. ¶ 7; Le Decl. ¶

1 7; Curtis Decl. ¶ 7; Bailey Decl. ¶ 7; Burke Decl. ¶ 7; Cirpiano Decl. ¶ 7. Defendant failed to  
2 raise Plaintiff Weber’s rate of pay to comply with Seattle’s minimum wage. See Weber Decl.,  
3 Exs. 5-6 (Payroll Records). Defendant also failed to accrue PSST for Plaintiff Weber prior to  
4 September 2016. Weber Decl. ¶ 17, Exs. 1-4. Plaintiff Weber, just like the declaration submitted  
5 by other Class members, was unable to take meaningful rest breaks. Weber Decl. ¶ 8.

6 Plaintiff Kurth was subjected to the same reimbursement policies as all other Bellevue  
7 Drivers. Plaintiff Kurth was not adequately compensated for the mileage driven which resulted  
8 in him receiving less than Washington minimum wage. He was also unable to take meaningful  
9 rest breaks. Kurth Decl. ¶¶ 7, 8.

11 4. Plaintiffs’ and Their Counsel Will Fairly and Adequately  
12 Protect the Interests of the Class.

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

18 Plaintiffs’ counsel are qualified as they have extensive experience certifying, litigating,  
19 and settling class actions, including wage and hour actions involving the same or similar laws  
20 and regulations at issue here. Rekhi Decl. ¶¶ 2-10. Plaintiffs’ counsel has worked extensively to  
21 investigate this case and is dedicated to litigating the Class claims. Rekhi Decl. ¶ 11.

22 With respect to the second element, Plaintiffs’ claims against the Defendant are  
23 coextensive with, and not antagonistic to, the claims asserted on behalf of the Class. Indeed,  
24 Plaintiffs and Class members have suffered the same injuries: they have not been paid for their  
25 statutorily mandated wages and rest breaks. They have also been denied payment of service  
26

1 charges. Plaintiffs seek to hold Defendant responsible for its systematic course of wage and hour  
2 abuses against the proposed Class as a whole. Plaintiffs are committed to prosecuting this action  
3 vigorously on behalf of the Class: they have agreed to participate fully in the litigation, and have  
4 already devoted efforts to that end. Rekhi Decl. ¶ 11. Among other things, Plaintiffs have  
5 provided records and declarations, have responded to discovery requests, and are prepared to sit  
6 for depositions and to testify at trial. *Id.* Accordingly, the adequacy requirement is satisfied.

7  
8 **B. Plaintiffs Meet the Requirements Under Rule 23(b)(3).**

9 *i. Common Factual and Legal Questions Concerning Defendant’s Conduct  
10 Predominate Over Any Individual Damages Issues.*

11 Predominance “is not a rigid test, but rather contemplates a review of many factors, the  
12 central question being whether ‘adjudication of the common issues in the particular suit has  
13 important and desirable advantages of judicial economy compared to all other issues, or when  
14 viewed by themselves.’” *Sitton*, 116 Wn.App. at 254 (*quoting* 1 Newberg & Conte, Newberg on  
15 Class Action, § 4:25, at 4-86(3<sup>rd</sup> ed. 1992). The requirement “is not a demand that common  
16 issues be dispositive, or even determinative. . . . [A] single common issue may be the overriding  
17 one in the litigation, despite the fact that the suit also entails numerous remaining individual  
18 questions.” *Id.* In deciding this, the Court “is engaged in a pragmatic inquiry into whether there  
19 is a common nucleus of operative facts to each class member’s claim.” *Behr*, 113 Wn.App.  
20 at 323.

21 This case is particularly well-suited for class certification because it involves common  
22 legal questions regarding the lawfulness of Defendant’s uniform policies and practices. To  
23 prevail on their claims, Plaintiffs must demonstrate that Defendant engaged in a pattern and  
24 practice of violating the Seattle Ordinances and Washington laws at issue.  
25  
26



1 If the Class is certified and Plaintiffs prevail, “the amount of damages to which each  
2 member of the Class is entitled must be calculated. But the fact that damages vary for each class  
3 member, as they will in virtually any wage and hour class action, does not preclude certification.”  
4 *See Mendis*, 2017 WL 497600, at\*7. Because common issues predominate over any  
5 individualized issues, the predominance requirement is satisfied.

6 *ii. Plaintiffs Satisfy the Superiority Requirement.*

7  
8 Before granting certification under CR 23(b)(3), the Court must find that a class action is  
9 the superior means of adjudicating this controversy. “This requirement focuses upon a  
10 comparison of available alternatives.” *Sitton*, 116 Wn. App. at 256. Factors to be considered  
11 include “conserving time, effort and expense; providing a forum for small claimants; and  
12 deterring illegal activities.” *Id.* at 257 (citation omitted). The Court also looks at the interest of  
13 Class members in individually controlling the prosecution of claims, the extent of any litigation  
14 already commenced by Class members, the desirability of concentrating the suit in this forum,  
15 and any difficulties that may be encountered in managing the action. CR 23(b)(3)(A)–(D).

16  
17 1. Class Treatment Allows for the Fair and Efficient Resolution  
18 of Common Claims that Would Otherwise Go Without  
19 Redress.

20 “[W]here individual claims of class members are small, a class action will usually be  
21 deemed superior to other forms of adjudication.” *Miller*, 115 Wash. App. at 828. Plaintiffs  
22 estimates that average recovery of the Class members will be less than \$2,000. *Rekhi Decl.* ¶ 24.  
23 Here, forcing numerous plaintiffs to litigate the alleged pattern or practice of underpaying  
24 statutory wage claims in repeated individual trials runs counter to the very purpose of the class  
25 action. Class treatment conserves judicial resources and promotes consistency and efficiency of  
26 adjudication. Given the large number of Class members here and the clear common issues, a

1 class action is the most appropriate means of adjudicating the claims arising out of Defendant’s  
2 common course of conduct. Additionally, it is likely that most Class members lack the resources  
3 necessary to obtain their own legal and financial counsel to ascertain the extent to which they are  
4 legally entitled to damages.

5           2.       This Case Presents No Management Difficulties.

6           “[O]ne of the elements that goes into the balance to determine the superiority of a class  
7 action in a particular case” is “manageability.” *Sitton*, 116 Wn.App. at 257 (citation omitted).  
8 “[A]ny complex class action is likely to present a challenge,” but there are “a variety of tools  
9 available to deal with [any] challenges” that may arise. *Id.* at 256, 259–60; *see also Miller*,  
10 115 Wn. App. at 826. Courts, including those in Washington, routinely find that class actions  
11 involving wage violations are manageable. *See, e.g., Pellino*, 164 Wash. App. at 684 (concluding  
12 the trial court did not abuse its discretion in certifying the class nor in denying the motion to  
13 decertify in a case claiming violations of Washington’s wage and hours and rest break laws); *see*  
14 *also Rekhi Decl.* ¶ 10.

15  
16           Here, the Court will not face any difficulties managing and resolving the case. The  
17 central question in this case is whether the Defendant failed to compensate the Class in  
18 compliance with the Seattle Ordinances and Washington laws at issue. Plaintiffs’ claims can be  
19 proven with common evidence taken from or based on the Defendant’s own records and the  
20 testimony of the Class. Defendant has already provided extensive data on a class wide basis.  
21 *Rekhi Decl.* ¶¶ 12-13. Using these records, Plaintiffs will calculate unpaid wages for each  
22 employee.  
23

24           Further courts commonly allow representative employees to prove violations with respect  
25 to all employees. *Anfinson*, 174 Wn.2d at 874–876 (approving use of representative evidence  
26

1 for Washington wage claims); *Pellino*, 164 Wash. App. at 684 (same). All Plaintiffs need to  
2 establish is that the employer engaged in a “pattern or practice of violations by the defendant  
3 with respect to the class.” *Pellino*, 164 Wash. App. at 684. Because class treatment of these  
4 issues is both manageable and superior to other methods of adjudicating the controversy,  
5 certification of the Class is appropriate.

6 3. Appropriate Notice Can Be Provided to Class Members.

7 To protect their rights, absent class members must be provided with the best notice  
8 practicable when an action is certified under Rule 23(b)(3). CR 23(c)(2); *see also* *Eisen v.*  
9 *Carlisle & Jacquelin*, 417 U.S. 156, 174–75 (1974). Defendant has already produced a list of the  
10 Class which includes each person’s last known phone number and mailing address. Rekhi Decl.

11 ¶ 13. As a result, notice can be sent directly via First Class mail and email to all Class members.  
12 In addition, notice can be published on a website maintained and updated by Plaintiffs’ attorneys.  
13 Class members will be able to use the site to stay apprised of important dates and to access the  
14 notice form and other key documents. Together, these approaches will provide the best  
15 practicable notice to the Class members. If certification is granted, Plaintiffs will submit a  
16 detailed notice plan and form to the Court.  
17  
18

19 **V. CONCLUSION**

20 For the foregoing reason, Plaintiffs request the Court grant the relief requested as stated  
21 in Section I, above.  
22  
23  
24  
25  
26

1 Signed on February 16, 2018 at Seattle, WA.

2  
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14 I certify this memorandum contains less than  
15 8,400 words, which complies with the Local  
16 Civil Rules.