THE HONORABLE JULIA GARRATT
Noted for Hearing: December 14, 2018
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR KING COUNTY

KRIS HARDIE and TY BUFANDA, individually and on behalf of all others similarly situated, Plaintiff, vs. BEST PARKING LOT CLEANING INC., a Washington Corporation, Defendant.	NO. 17-2-27730-4 KNT [ ] **ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

I. INTRODUCTION

This matter came before the Honorable Julia Garratt on Plaintiffs' Motion for Class Certification. The Court has considered the parties' briefing and supporting evidence and has heard from the parties at oral argument. For the reasons set forth below, the Court GRANTS Plaintiffs' motion.

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II. BACKGROUND

A. Plaintiffs' Allegations.

Named Plaintiff Kris Hardie and Plaintiff Ty Bufanda[1] ("Plaintiff") brought this action individually and on behalf of a proposed class of current and former non-exempt employees of Defendant Best Parking Lot Cleaning, Inc. ("Defendant") alleging various wage and hour abuses committed by Defendant against Plaintiffs and the proposed Class. *See* Class Action Complaint.

Specifically, Plaintiffs allege Defendant has engaged in a scheme of wage and hour violations common against the proposed class under Washington law, including failing to pay drivers their prevailing wage for the "mobilization time" they worked on prevailing wage projects, failing to pay drivers at the appropriate overtime rate on prevailing wage projects, and failing to comply with meal and rest beak laws. Finally, Plaintiffs allege that Defendant's alleged failures to pay the proposed class resulted in violations of RCW 49.48.010 for those drivers who have terminated employment with Defendant and that Defendant's above-mentioned violations as to the Plaintiffs and proposed class were "willful" within the meaning of RCW 49.52.050 and RCW 49.52.070.

B. The Proposed Class.

Plaintiffs' Motion seeks to limit the proposed class from all non-exempt employees to just non-exempt driver employees of Defendant. Thus, Plaintiffs assert the following definition for the proposed class (the "Class"):

> All employees who have worked as non-exempt drivers for Defendant in Washington during the statutory time period.

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[1] Plaintiffs have informed the Court that Mr. Bufanda intends to remove himself as a named Plaintiff in this matter, although he seeks to remain a member of the proposed Class. Plaintiffs have further affirmed they will move to amend the complaint accordingly.

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C. The Proposed Class' Claims

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

1. Defendant has failed to pay drivers for all their hours worked, including at the prevailing wage rate as required;
2. Defendant has failed to pay drivers the overtime compensation for their hours worked in excess of eight hours per day or forty hours per week;
3. Defendant has failed to provide drivers with proper rest breaks;
4. Defendant has failed to provide drivers with proper meal breaks;
5. Defendant has failed to pay drivers all their earned wages upon termination; and
6. Defendant has willfully committed the above violations.

III. ANALYSIS

The four prerequisites to class certification are numerosity, commonality, typicality, and adequacy of representation. CR 23(a); *see also Moeller v. Farmer's Ins. Co., Inc.*, 173 Wn.2d 264, 278, 267 P.3d 998 (2011); *Pellino v. Brink's Inc.,* 164 Wn. App. 668, 682, 267 P.3d 383 (2011). In addition, one of the three conditions of CR 23(b) must be met. CR 23(b); *see also Moeller*, 173 Wn.2d at 279; *Pellino*, 164 Wn. App. at 682–83. Here, Plaintiffs seek certification under CR 23(b)(3), which requires a finding that questions of law or fact common to class members predominate over any questions affecting only the individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

CR 23 is liberally interpreted because the "rule avoids multiplicity of litigation, saves members of the class the cost and trouble of filing individual suits, and also frees the defendant from the harassment of identical future litigation." *Moeller*, 173 Wn.2d at 278. Because a class is always subject to later modification or decertification, "the trial court should err in favor of certifying the class." *Id.*; *see also Hill v. Garda CL Nw., Inc.,* 198 Wn. App. 326, 340, 394 P.3d 390, 398 (2017), *review granted in part, denied in part*, 189 Wn.2d 1016, 403 P.3d 839 (2017)

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

1. The Numerosity Requirement Is Satisfied.

The first prerequisite for certification is that the class is "so numerous that joinder of all members is impracticable." CR 23(a)(1). Although there is no fixed rule, more than 40 members generally suffice. *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 821-22, 64 P.3d 49 (2003).

Here, the Class consists of at least 127 current and former drivers of Defendant. Numerosity has been satisfied.

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

The second prerequisite for class certification is the existence of "a single issue common to all members of the class." *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320, 54 P.3d 665 (2002); *see also* CR 23(a)(2). Washington courts have noted, "there is a low threshold to satisfy this test." *Behr Process*, 113 Wn. App. at 320. If a defendant has "engaged in a 'common course of conduct' in relation to all potential class members," class certification is appropriate regardless of whether "different facts and perhaps different questions of law exist within the potential class." *Brown v. Brown*, 6 Wn. App. 249, 255, 492 P.2d 581 (1971); *accord Miller*, 115 Wn. App. at 825. Furthermore, a common course of conduct need not affect all potential class members uniformly. Instead, a "common" question is one that is "characteristic of a *usual* type or standard *representative* of a type." *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 875, 281 P.3d 289 (2012) (emphasis in original) (citation omitted).

"'[C]laims by workers that their employers have unlawfully denied them wages to which they were legally entitled have repeatedly been held to meet the prerequisites for class certification[],' including commonality." *Mendis v. Schneider Nat'l Carriers, Inc.*, C15-0144-JCC, 2017 WL 497600, at *2 (W.D. Wash. Feb. 7, 2017) (*quoting Ramos v. SimplexGrinnell LP*, 796 F

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Supp. 2d 346, 355 (E.D.N.Y. 2011)).[2] Washington courts have a long history of favoring class actions for wage and hour claims, including the claims alleged here. *See e.g.*, *Chavez v. Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 511, 415 P.3d 224 (2018) (reversing trial court's failure to certify a class of nurses for unpaid rest breaks); *Pellino*, 164 Wash. App. 668, 699 (2011) (affirming class certification as to employer's common policy related driver employees' mandatory breaks); *Mendis v. Schneider Nat'l Carriers, Inc.*, C15-0144-JCC, 2017 WL 497600, at *2-*7 (W.D. Wash. Feb. 7, 2017) (certifying a class of drivers as to employer's common policies related to rest breaks, unlawful wage deductions, and overtime violations under Washington wage laws); *Miller*, 136 Wn.App. at 657-665 (affirming class certification as to employer's common policy related to overtime).

Common questions of law and fact arise from Defendant's conduct as to the Class, including whether: (1) Defendant failed to pay "mobilization time" at the prevailing wage rate to the Class; (3) Defendant's 4/10 Agreements with Class members are valid and enforceable; (4) Defendant failed to adequately ensure that Class members took their rest breaks, and paid for their missed rest breaks; (5) Defendant failed to provide and pay Class members for missed meal breaks; (6) Defendant failed to pay the wages otherwise earned for the above-identified alleged violations when Class members' employment with Defendant terminated; and (7) the above-identified failures to pay the Class all their wages were "willful." Due to these common questions among the Class, the Court finds the commonality requirement is satisfied.

3. The Claims of Plaintiff Hardie is Typical of the Class Claims.

The third prerequisite for certification is that the claims of Plaintiff Hardie are typical of the proposed class. CR 23(a)(3). "Typicality is satisfied if the claim 'arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her

[2] Because Civil 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).

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claims are based on the same legal theory.'" *Pellino*, 164 Wn. App. at 684 (quoting *Behr Process*, 113 Wn. App. at 320 (citation omitted)). "Where the same unlawful conduct is alleged to have affected both named plaintiffs and the class members, varying fact patterns in the individual claims will not defeat the typicality requirement." *Id.*

Plaintiff Hardie's claims are typical of the Class members' claims because they all arise from the same conduct of Defendant and are based on the same legal theories, namely alleged systematic violations of the Washington wage and hour laws at issue. The record shows that Plaintiff Hardie was a driver. The harm suffered was of a similar nature to that of the Class and arose from Defendant's uniform pay policies and practices. Plaintiff Hardie's claims are based on the same legal theory and statutes as to the Class.

4. The Named Plaintiff and His Counsel Will Fairly and Adequately Protect the Interests of the Class.

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

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

With respect to the second element, Plaintiff Hardie's claims are coextensive with and not antagonistic to the claims asserted on behalf of the Class. Plaintiff is alleged to have suffered the same injuries as the Class.

The adequacy requirement is satisfied.

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

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

The predominance requirement "is not a rigid test, but rather contemplates a review of many factors, the central question being whether 'adjudication of the common issues in the particular suit has important and desirable advantages of judicial economy compared to all other issues, or when viewed by themselves.'" *Sitton v. State Farm Mut. Auto. Ins. Co.*, 116 Wn.App. 245, 254, 63 P.3d 198 (2003) (*quoting* 1 Newberg & Conte, Newberg on Class Action, § 4:25, at 4-86(3rd ed. 1992). The requirement "is not a demand that common issues be dispositive, or even determinative .... '[A] single common issue may be the overriding one in the litigation, despite the fact that the suit also entails numerous remaining individual questions.'" *Id.* In deciding whether common issues predominate, the Court "is engaged in a pragmatic inquiry into whether there is a common nucleus of operative facts to each class member's claim." *Behr Process*, 113 Wn. App. at 323.

The focus of this case is on the lawfulness of Defendant's uniform policies and practices. To prevail on his claims, Plaintiff Hardie must demonstrate that Defendant engaged in a pattern and practice of violating the Washington laws at issue. These common issues will predominate at trial.

While the amount of damages to which the members of the Class are entitled must be calculated, the fact that those damages may be varied does not preclude class certification *See Chavez* 190 Wash. 2d at 523 ("Where individual damages are small, the class vehicle is usually deemed to be superior"); *see also, Rodriguez v. Carlson*, 166 F.R.D. 465, 479 (E.D. Wash. 1996). Because common issues predominate over any individualized issues, the predominance requirement is satisfied.

2. Plaintiffs Satisfy the Superiority Requirement.

Before granting certification under CR 23(b)(3), the Court must find that a class action is the superior means of adjudicating this controversy. "This requirement focuses upon a comparison of available alternatives." *Sitton*, 116 Wn. App. at 256. Factors to be considered include "conserving

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time, effort and expense; providing a forum for small claimants; and deterring illegal activities." *Id.* at 257 (citation omitted). The Court also looks at the interest of Class members in individually controlling the prosecution of claims, the extent of any litigation already commenced by Class members, the desirability of concentrating the suit in this forum, and any difficulties that may be encountered in managing the action. CR 23(b)(3)(A)-(D).

There are more than 120 drivers. Joinder of all 127 drivers would be inferior to a class action. It would be a burden on the Court to manage the claims of 127 separate Plaintiffs. Also filing 127 different claims would be a drain on judicial resources. A class action may be superior if class litigation of common issues will reduce litigation costs and promote greater efficiency, or if no realistic alternative exists." *Chavez* 190 Wash. 2d at 522-23. Here, forcing numerous plaintiffs to litigate the alleged pattern or practice of underpaying statutory wage claims in repeated individual trials runs counter to the very purpose of the class action. Class treatment conserves judicial resources and promotes consistency and efficiency of adjudication for both the Defendant and Plaintiff. *Id.*

Here, Plaintiff Hardie's claims raise numerous common factual and legal issues. In addition, class treatment conserves judicial resources and promotes consistency and efficiency of adjudication. Given the large number of Class members and the common issues, a class action is the most appropriate means of adjudicating the claims arising out of Defendant's common course of conduct.

Additionally, it is likely that most Class members lack the resources necessary to seek legal redress against Defendant for their misconduct and, without class treatment, would have no effective remedy for their injuries.

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3. This Case Presents No Management Difficulties.

"[O]ne of the elements that goes into the balance to determine the superiority of a class action in a particular case" is "manageability." *Sitton*, 116 Wn. App. at 257 (citation omitted). Trial courts have a "variety of procedural options to reduce the burden of resolving individual damage issues, including bifurcated trials, use of subclasses or masters, pilot or test cases with selected class members, or even class decertification after liability is determined." *Chavez*, 190 Wash. 2d at 521 (*citing Sitton*, 116 Wn. App. at 255).

Here, the Court will not face any difficulties managing and resolving the case. Liability turns on Defendant's conduct, which was uniform with respect to Class and subclass members, and there are various ways in which to manageably determine any resulting damages.

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, Defendant has already produced a list of all drivers who worked for the company during the Class period, which includes each person's last known mailing address.

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.

II. 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 have worked as non-exempt drivers for Defendant in Washington during the statutory time period.

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Excluded from the Class are Defendant, any entity in which Defendant has a controlling interest or which has a controlling interest of Defendant, and Defendant's 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. Plaintiff Hardie is designated and appointed as representatives for the Class;

4. The law firm Rekhi & Wolk, P.S. is 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.

IV. CONCLUSION

For the reasons set forth above, NOW, THEREFORE, IT IS SO ORDERED.

DATED this DEC 14 2018 day of _____, 2018.

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