

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

JAKE LONG and JEANNEA WINSTEAD, on
their own behalf and on the behalf of all
others similarly situated,

Plaintiffs,

v.

TRAPPERS SUSHI SILVERDALE INC, a
Washington Corporation, TRAPPERS SUSHI
TACOMA, INC, a Washington Corporation, and
TRAPPER O'KEEFFE, individually and/or the
marital community composed of Trapper
O'Keeffe and spouse,

Defendants.

NO. 23-2-02318-8 SEA

**~~[PROPOSED]~~ ORDER GRANTING
STIPULATED MOTION FOR CLASS
CERTIFICATION**

This matter came before the Honorable Maureen McKee on the Parties' Stipulated Motion for Class Certification (the "Motion"). In that Motion, the Plaintiffs and Defendants (the "Parties") stipulated to and applied for an order granting class certification of the claims for two proposed classes. The Court has considered the Motion and declarations submitted in support thereof and is fully advised. For the reasons set forth below, the Court GRANTS the Parties' Stipulated Motion for Class Certification.

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I. BACKGROUND

A. Plaintiffs' Allegations.

Named Plaintiffs Jake Long and Jeannea Winstead ("Plaintiffs") bring this action individually and on behalf of two proposed classes of current and former employees of thirteen restaurants located in Washington State and owned by Defendant Trapper O'Keeffe ("Trapper's Restaurants").¹ See First Amended Class Action Complaint, Dkt. No. 68. The two proposed classes are the "Salaried Manager Class" and the "Silenced No More Class." *Id.* at ¶¶ 15-16.

As to the Salaried Manager Class, Plaintiffs allege that the salaried managers at the Trapper's Restaurants were misclassified based on a common policy or practice that negated their exemption from overtime requirements under the Washington Minimum Wage Act, RCW 49.46 *et seq.* ("MWA"). See *id.* ¶¶ 26-28. Based on this, Plaintiffs allege that the managers were subjected to a common scheme of wage and hour violations, including (i) failure to pay for all time worked and overtime wages pursuant to RCW 49.46.130, (ii) breach of contract of their promised compensation, (iii) failure to provide and pay for proper rest and meal periods pursuant to RCW 49.12.020 and WAC 296-126-092, (iv) failure to pay all wages on termination, and (v) willful refusal to pay wages pursuant to RCW 49.52.050. See *id.* at ¶¶ 26-35, 56-78. Defendants deny these claims.

As to the Silenced No More Class, Plaintiffs allege that these employees were subjected to an agreement in the Trappers Sushi Handbook that violated Washington's Silenced No More Act, RCW 49.44.211. *Id.* at ¶¶ 36, 38. Defendants also deny these claims.

¹ Per Plaintiffs' First Amended Complaint, Plaintiff Long worked at Defendant Trappers Sushi of Silverdale Inc. and Defendant Trappers Sushi Tacoma, Inc. and Plaintiff Winstead worked at Defendant O'Keeffe's Burche restaurant. See Dkt. No. 68 at 12-13. Along with Mr. O'Keeffe, Trappers Sushi of Silverdale Inc. and Trappers Sushi Tacoma, Inc. are collectively, "Defendants." The thirteen Washington restaurants who employed the two classes are referred to as "Trapper's Washington Restaurants" and the twelve Trappers Sushi restaurants in Washington owned by Defendant O'Keeffe are referred to as "Trappers Sushi."

1 **B. The Stipulated Proposed Classes.**

2 The Parties have stipulated to the following definitions for the two classes:

3 The "Salaried Manager Class" is defined as follows:

4 All current and former managerial employees who worked for Defendants,
5 including Trapper O'Keeffe and all restaurants owned by Trapper O'Keeffe
6 which have operated in Washington State, who were based or resided in the
7 State of Washington for any period of time from February 6, 2020 until ninety
8 (90) days prior to trial.

9 The "Silenced No More Class" is defined as:

10 All current and former employees who worked for Defendants, including
11 Trapper O'Keeffe and all restaurants owned by Trapper O'Keeffe and have
12 operated in Washington State, who were based or resided in the State of
13 Washington for any period of time from June 9, 2022 to ninety (90) days
14 before trial.

15 Excluded from these Classes are Defendants, any entity in which Defendants have a
16 controlling interest or which has a controlling interest of Defendants, and Defendants' legal
17 representatives, corporate officers, Board members, assignees and successors. Also
18 excluded is the Judge to whom this case is assigned and any member of the Judge's
19 immediate family.

20 **C. The Stipulated Proposed Class's Claims**

21 The parties have stipulated to class certification of the following claims:

- 22 1. As to the Salaried Manager Class, Claims for Relief One through
23 Four, as set forth in the First Amended Complaint; and,
- 24 2. As to the Silenced No More Class, Claim for Relief Five, as set
25 forth in the First Amended Complaint.

26 Dkt. No. 68. The Court notes that Defendants have stipulated to certification of these classes
in order to advance the efficient adjudication of Plaintiffs' class claims and do so without
prejudice to their position that Plaintiffs will be unable to prevail on any such claims with
Defendants further confirming that they are not waiving any defenses to Plaintiffs' claims
asserted on behalf of themselves or the classes.

II. 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, the Parties have stipulated to 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).

Based on the foregoing, the Court makes the following findings:

1. As to the above claims set forth for both the Salaried Manager Class and the Silenced No More Class, as defined above, the Court finds the four prerequisites to class certification—numerosity, commonality, typicality, and adequacy of representation—are met as required by CR 23(a) and that common questions predominate as required by CR 23(b)(3). The Court also finds that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

2. The numerosity requirement of CR 23(a) is satisfied because the Salaried Manager Class currently consists of approximately 80 salaried managers and the Silenced

1 No More Class currently consists of approximately 1,750 employees. *See* CR 23(a)(1); *Miller*
2 *v. Farmer Bros. Co.*, 115 Wn. App. 815, 821, 64 P.3d 49 (2003) (as a general rule, 40 or more
3 class members suffice to establish numerosity).

4 3. For the Salaried Manager Class, the commonality requirement is satisfied
5 because there are common questions of law and fact concerning whether these salaried
6 managers were subjected to a uniform practice while employed by Defendants resulting in
7 them being misclassified as exempt from overtime. *See* CR 23(a)(2); *Smith v. Behr Process*
8 *Corp.*, 113 Wn. App. 306, 320, 54 P.3d 665 (2002) (commonality is met with the existence of
9 "a single issue common to all members of the class"). Washington courts have noted, "there
10 is a low threshold to satisfy this test." *Behr Process*, 113 Wn. App. at 320. The Salaried
11 Manager Class claims apply to all such class members and flow from whether this practice
12 exists, which the Parties dispute. This dispute can and should be resolved once for the entire
13 Salaried Manager Class.

14 4. Likewise, for the Silenced No More Class, the commonality requirement is
15 satisfied because there are common questions of law and fact concerning whether all these
16 employees were subjected to an agreement while employed by Defendants that violated the
17 Silenced No More Act. Again, whether the agreement violates the law can and should be
18 answered once for the Silenced No More Class.

19 5. The typicality requirement is satisfied because Plaintiffs' claims arise from the
20 same courses of conduct. As to the Salaried Manager Class, the claims of both Plaintiffs and
21 class members are based on whether Defendants improperly misclassified their salaried
22 managers as exempt from overtime. As to the Silenced No More Class, the claims of Plaintiff
23 Long and members of this class turn on whether the confidentiality agreements violated RCW
24 49.44.211. *See* CR 23(a)(3); *Pellino*, 164 Wn. App. at 684 ("Typicality is satisfied if the claim
25 'arises from the same event or practice or course of conduct that gives rise to the claims of
26 other class members, and if his or her claims are based on the same legal theory.'") (quoting

1 *Behr Process*, 113 Wn. App. at 320 (citation omitted)).

2 6. Finally, the adequacy of representation requirement is satisfied because the
3 named Plaintiffs will “fairly and adequately protect the interest of the class.” CR 23(a)(4).
4 This test is satisfied if the named Plaintiffs are able to prosecute the action vigorously
5 through qualified counsel, and the Plaintiffs do not have interests antagonistic to those of
6 absent class members. *See Hansen v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash.
7 2003).² Plaintiffs' attorneys have extensive experience in litigating wage and hour cases in
8 general, including Rekhi & Wolk having litigated many class actions as set forth in their
9 declarations in support of this motion. Plaintiffs' interests are also coextensive with, and
10 not antagonistic to, the interests of the Class.

11 7. The predominance requirement of CR 23(b)(3) is satisfied because common
12 questions present a significant aspect of the case and can be resolved for all class members
13 in a single proceeding. *See* CR 23(b)(3); *Sitton v. State Farm Mut. Auto. Ins. Co.*, 116 Wn. App.
14 245, 254, 63 P.3d 198 (2003) (quoting 1 Alba Conte & Herbert Newberg, *Newberg on Class*
15 *Actions* § 4:25 (3d ed. 1992)) (holding predominance “is not a rigid test, but rather
16 contemplates a review of many factors, the central question being whether ‘adjudication of
17 the common issues in the particular suit has important and desirable advantages of judicial
18 economy compared to all other issues, or when viewed by themselves’”). Here the central
19 questions for all members of the two classes involve: (1) whether the proposed class of
20 salaried managers was misclassified as exempt from overtime, and (2) whether the
21 proposed Silenced No More class entered into agreements in Trappers Sushi Employee
22 Handbook that violated RCW 49.44.211.

23 8. The Court finds that there are no manageability issues at this time.
24 Resolution of approximately 1,830 employees' claims in one action will be superior to
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26 ² Because CR 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 individual lawsuits and promotes consistent and efficient adjudication. *See* CR 23(b)(3);
2 *Connor v. Automated Accounts, Inc.*, 202 F.R.D. 265, 271-72 (E.D. Wash. 2001); *Lerwill v.*
3 *Inflight Motion Pictures Inc.*, 582 F.2d 507, 512-13 (9th Cir. 1978) (“Numerous individual
4 actions would be expensive and time-consuming and would create the danger of conflicting
5 decisions as to persons similarly situated.”). Trial courts have a variety of tools available to
6 deal with the management of any individual issues, including individual damages issues.
7 *See Sitton*, 116 Wn. App. at 255, 259-60.

8 9. To protect absent class member rights, the Court must provide class
9 members with the best notice practicable. CR 23(c)(2); *see also Eisen v. Carlisle & Jacquelin*,
10 417 U.S. 156, 174- 175, 94 S. Ct. 2140, 40 L. Ed. 2d 732 (1974). Here, Defendants have
11 confirmed they will produce updated lists of the members of both classes, which includes
12 each person's last known mailing address and email addresses, if available. Notice can be
13 sent directly via First Class mail to all class members. This can also be supplemented with
14 email contact from Class Counsel. This will provide the best practicable notice to the Class
15 members.

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

17 1. This Court certifies the class claims in this case, as identified and set forth in
18 the findings above, as a class action under Civil Rule 23.

19 2. The Court certifies the following two classes:

20 All current and former managerial employees who worked for Defendants,
21 including Trapper O'Keeffe and all restaurants owned by Trapper O'Keeffe
22 which have operated in Washington State, who were based or resided in the
23 State of Washington for any period of time from February 6, 2020 until ninety
(90) days prior to trial. (“The Salaried Manager Class”).

24 All current and former employees who worked for Defendants, including
25 Trapper O'Keeffe and all restaurants owned by Trapper O'Keeffe and have
26 operated in Washington State, who were based or resided in the State of
Washington for any period of time from June 9, 2022 to ninety (90) days before
trial. (“The Silenced No More Class”).

1 Excluded from these Classes are Defendants, any entity in which Defendants have a
2 controlling interest or which has a controlling interest of Defendants, and Defendants' legal
3 representatives, corporate officers, Board members, assignees, and successors. Also
4 excluded is the Judge to whom this case is assigned and any member of the Judge's
5 immediate family.

6 3. The two classes satisfy the elements of Civil Rule 23(a) and Civil Rule
7 23(b)(3) and thus a class action is appropriate.

8 4. The Court appoints Plaintiff Long as a representative for both classes with
9 Plaintiff Winstead appointed as a representative of the Salaried Manager Class only. Per
10 Civil Rule 23(a)(3), the claims of Plaintiffs Long and Winstead as salaried managers are
11 typical of the claims of the Salaried Manager Class, and the claim of Plaintiff Long as a
12 signatory of Trapper's Sushi confidentiality agreement is typical of the claims of the
13 Silenced No More Class. Both Plaintiffs Long and Winstead satisfy the adequacy of
14 representation requirement of Civil Rule 23(a)(4).

15 5. The Court appoints the law firms Rekhi & Wolk, P.S. and Hones Law, PLLC as
16 Class Counsel.

17 6. The Court approves, as to form and content, the notices to be sent to the class
18 members, attached to the Declaration of Gregory Wolk in Support of Stipulated Motion for
19 Class Certification as Exhibits 1 and 2. In addition, the Court finds that distribution of the
20 notices substantially in the manner set forth in Paragraph 9 above of this Order will meet
21 the requirements of due process and applicable law, will provide the best notice practicable
22 under the circumstances, and will constitute due and sufficient notice to all individuals
23 entitled thereto.

24 7. The procedure for distributing the notices shall be as follows:

25 (a) To the extent they have not already done so, Defendants shall produce an

26 updated list of all class members (including their last known mailing and email

addresses, and phone numbers) through November 30, 2024 no later than 30 days from the date of this Order.

(b) The notices mailed to class members shall advise them of their right to exclude themselves from this lawsuit and explain the exclusion process.

(c) Should any notices be returned as undeliverable, Class Counsel or their agents shall email and/or call the class member(s), if available, to provide a link to the notice on Class Counsel's website, and/or also attempt one trace to locate a good mailing address, and if located, make a second attempt at mailing the notice, unless the class member has confirmed receipt of the notice on Class Counsel's website. If there is no response by email or phone, and the second mailed notice is again returned as undeliverable, no further attempts at delivery of the notice are required to be made.

(d) A class member who wishes to be excluded from this lawsuit must submit a timely and valid written request for exclusion to Class Counsel or their agents as described in the notices.

8. This Order Granting the Parties' Stipulated Motion for Class Certification is entered without prejudice to Defendants' position that Plaintiffs will be unable to prevail on any such claims with Defendants further confirming that they are not waiving any defenses to Plaintiffs' claims asserted on behalf of themselves or the classes and deny all such claims.

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

3 Entered this 10 day of December, 2024.
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