THE HONORABLE CATHERINE SHAFFER
Department 11
Noted for Hearing: December 6, 2019, 9:00 a.m.
With Oral Argument

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

ZACHARY HUDSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

OATRIDGE SECURITY GROUP, INC., a Washington corporation; and CY A. OATRIDGE, individually and on behalf of the marital community composed of CY and J. DOE OATRIDGE,

Defendants.

NO. 18-2-23611-8 SEA

PLAINTIFF'S AMENDED MOTION FOR CLASS CERTIFICATION

TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

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Seattle, Washington 98103-8869
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Seattle, Washington 98103-8869
TEL. 206.816.6603 • FAX 206.319.5450
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TEL. 206.816.6603 • FAX 206.319.5450
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I. INTRODUCTION

Oatridge Security Group, Inc. and Cy A. Oatridge, the company's President and CEO, have engaged in a systematic course of wage and hour abuse against the security officers and shift leads who work for them. Those abuses include failing to provide the employees with rest and meal breaks and failing to pay the employees for all hours worked, including overtime.

Plaintiff Zachary Hudson worked for Defendants and suffered these violations. He is not alone. Eleven members of the proposed Classes have stepped forward to provide declarations echoing Mr. Hudson's complaints. Four former supervisors also blow the whistle on Defendants' violations, which are rooted in common policies and practices.

Defendants require employees to maintain a visual security presence, stay constantly vigilant, and immediately report any suspicious activities. Defendants also staff so leanly that employees are unable to obtain relief from their duties to take rest and meal breaks. Finally, Defendants require employees to work outside scheduled shift times but either fail to track that time or alter records to avoid paying for it.

To obtain redress for the rampant abuses he and his co-workers have suffered, Mr. Hudson brings this action on behalf of the following proposed Class:

> All current and former employees of Oatridge Security Group, Inc. who have worked as security officers or shift leads in the state of Washington at any time between September 20, 2014 and the date of final disposition of this action.

Mr. Hudson also brings this action on behalf of the following proposed Subclass:

> All current and former employees of Oatridge Security Group, Inc. who have worked as security officers or shift leads in the city of Seattle at any time between September 20, 2014 and the date of final disposition of this action. [1]

[1] The definition for the proposed Class and the addition of a proposed Subclass is a modification from the complaint. Under CR 23, the Court may modify the class definition at the certification stage or at any time, including to add a subclass. *See Chavez v. Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 515, 415 P.3d 224 (2018); *see also* 3 William B. Rubenstein, *Newberg on Class Actions* § 7:30 (5th ed.).

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Certification is appropriate because the numerous questions of law and fact common to all members of the proposed Classes predominate over any individualized issues. Moreover, Mr. Hudson's claims and those of the proposed Classes arise out of a common nucleus of operative facts: Defendants' uniform employment practices. As courts have found in similar disputes, class treatment is both manageable and superior to other methods of adjudication.

Mr. Hudson respectfully asks the Court to certify the Classes as defined above; designate him representative of the Classes; appoint the undersigned counsel for the Classes; and order that notice be provided to the Classes.

II. STATEMENT OF FACTS

A. Defendants' operations are uniform.

1. Defendants employ members of the proposed Classes.

Oatridge Security Group is a Tacoma-based corporation that provides on-site security services for clients across Washington. Ex. 1 at 27:6–7 [2]; Ex. 2. Cy Oatridge, the company's President and CEO, is at the top of the company's chain of command and is the "final word" for all employment policies, including those governing compensation, rest breaks, meal breaks, overtime, hiring, and termination. Ex. 1 at 5:7, 31:3–11, 36:5–12, 41:1–5, 144:25–145:13, 233:6–11; Ex. 8 at 36.[3]

Members of the proposed Classes are security officers and shift leads who provide on-site security services for Oatridge clients at locations in Seattle and across Washington. Ex. 2. Despite having different titles, these employees perform substantially the same work. Ex. 1 at 71:3–73:1, 107:7–25; Hotchkiss ¶ 2; McGregor ¶ 4; Rivera ¶ 4; Texidor ¶ 5. All are required to provide security services, maintain a visible presence, detect and report fire and other safety

[2] All numbered exhibits are attached to the Declaration of Toby J. Marshall.

[3] All citations to Bates-stamped exhibits omit "OSG 00xxxx" preceding the operative numbers.

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hazards, and report criminal activity or policy violations. Ex. 3 at 6; Ex. 4 at 1570; Ex. 5 at 1616; Ex. 6 at 1644; Ex. 7 at 1985.

Moreover, shift leads have no more authority than security officers. Ex. 1 at 61:12–62:8; 71:3–73:1. Neither may set shifts, hours, or locations of work (*id*. at 56:12–21); oversee or conduct employee reviews (*id*. at 56:2–7); or hire, discipline, or fire any employee (*id*. at 53:19–23, 55:7–9, 55:13–15).

2. Defendants' employment policies and practices are uniform as to all members of the proposed Classes.

All employees are "expected to meet [Oatridge] standards of work performance" as set forth in Oatridge's uniform employee handbook. Ex. 8 at 54; Ex. 1 at 143:24–144:9, 231:10–24. The handbook covers employee conduct, compensation, overtime, attendance, hiring, termination, and disciplinary procedures for all employees. Ex. 8 at 42–43, 54–61, 69–70.

Oatridge also creates and distributes "post orders" for many of its locations. Ex. 1 at 37:2–13, 58:16–59:2. Post orders include information about the client and job site as well as duties and general procedures for security officers and shift leads. Ex. 3 at 4; Ex. 1 at 37:14–15, 58:22–59:2. Employees are required to follow post orders as part of their general procedures and are warned that failure to comply is "cause for immediate dismissal." *Id.* at 58:19–21; Ex. 3 at 16–18; Ex. 4 at 1581–82; Ex. 5 at 1626–27; Ex. 6 at 1654–55; Ex. 7 at 1995–96; Ex. 9 at 1607; Ex. 10 at 1781; Ex. 11 at 1789; Ex. 12 at 1817. These directives are substantially identical in each set of post orders regardless of location or client. *Id*.; *see also* McGregor ¶ 4. Moreover, post orders do not supersede, contradict, or invalidate the company-wide policies in the employee handbook but are "to be used in conjunction with the most current OSG Security Handbook." Ex. 9 at 1592; Ex. 10 at 1775; Ex. 11 at 1783; Ex. 12 at 1807.

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Oatridge has uniform policies related to orientation and training. Ex. 1 at 148:17–149:17. Before officers may begin work on a site, they go through Oatridge's four- to six-hour orientation. *Id*. at 148:21–149:25.

Oatridge also has one human resources representative for all employees statewide: Mr. Oatridge's daughter, Alexandria Oatridge. *Id*. at 27:15–28:4, 28:5–11. It is Ms. Oatridge's duty, along with Operations Manager Christian Velez-Moya and a field supervisor, to process payroll using common procedures. *Id*. at 27:8–14, 154:4–25, 156:1–7, 180:7–14, 184:1–20.

B. Defendants systematically violate Washington's wage and hour laws.

1. Defendants routinely fail to provide members of the proposed Classes legally mandated rest and meal breaks and ensure those breaks are taken.

WAC 296-126-092 "imposes a mandatory obligation on the employer" to provide a paid ten-minute rest break for every four hours of work. *Demetrio v. Sakuma Bros. Farms, Inc.*, 183 Wn.2d 649, 658 (2015) (quoting *Pellino v. Brink's, Inc.*, 164 Wn. App. 668, 688 (2011)). Employers also have an "affirmative obligation" to ensure those rest breaks are "taken." *Pellino*, 164 Wn. App. at 685–88. An employer is required to maintain an adequate system for employees to record missed breaks. *Chavez*, 190 Wn.2d at 518–19.

Because rest breaks are paid time, an employee who misses one rest break is entitled to an additional ten minutes of pay. *Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 849, 50 P.3d 256 (2002). Failure to provide rest breaks is a violation of the Minimum Wage Act's (MWA) overtime provisions for weeks in which employees work more than forty hours or the missed rest break time pushes the hours beyond forty. *Wash. State Nursing Ass'n v. Sacred Heart Med. Ctr.*, 175 Wn.2d 822, 830–33 (2012).

Washington employers must also provide employees with a meal break "of at least thirty minutes which commences no less than two hours nor more than five hours from the beginning of the shift." WAC 296-126-092(1). "Meal periods shall be on the employer's time when the employee is required by the employer to remain on duty on the premises or at a

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prescribed work site in the interest of the employer." *Id.*; *see also White v. Salvation Army*, 118 Wn. App. 272, 277, 75 P.3d 990 (2003).

The Washington Supreme Court has held that "WAC 296-126-092 imposes a mandatory obligation on the employer to provide meal breaks and to ensure those breaks comply with the requirements of WAC 296-126-092." *Brady v. Autozone Stores, Inc.*, 188 Wn.2d 576, 584, 397 P.3d 120 (2017). The "failure to provide meal periods is a wage violation." *Hill v. Garda CL Nw., Inc.*, 198 Wn. App. 326, 362, 394 P.3d 390 (2017), *review granted in part, denied in part*, 189 Wn.2d 1016, 403 P.3d 839 (2017). Thus, an employer must provide employees with thirty minutes of additional pay for each missed meal break.

An employer is also required to maintain an adequate system for employees to record missed breaks. *Chavez*, 190 Wn.2d at 518. Employees who receive a paid meal break may receive that break on an intermittent basis so long as the total time adds up to thirty minutes. *Pellino*, 164 Wn. App. at 685–86. But for time to count, employees must be relieved of all job duties. *Id.* at 685, n.8.

A purported rest or meal break is unlawful if the employee must maintain a constant vigilance and cannot engage in personal activities or make personal choices regarding how to spend the time. *Id.* at 686. The fact that the employee may have been able to eat or drink during the purported break does not change this. *Id*. An employee must be relieved of all "physical and mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer." *Id*. at 685, n.8 (quoting *Alvarez v. IBP, Inc.*, 339 F.3d 894, 902 (9th Cir. 2003)).

a. *Defendants require members of the proposed Classes to maintain their posts and remain constantly vigilant unless relieved.*

Defendants have systematically violated Washington law by failing to provide required rest and meal breaks and ensure those breaks are taken. Security officers and shift leads must remain at their post and continue performing their job duties at all times. Ex. 14 at 46:11–47:2, 51:12–52:3, 56:13–18, 77:20–24, 86:16–22; Ex. 3 at 6; Benz ¶¶ 9–11; Coolidge ¶¶ 10–

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12; Hotchkiss ¶¶ 8–10, 14–16, 20–22; Kellington ¶¶ 8–11; Kier ¶¶ 9–12; McGregor ¶¶ 9–16; Peters ¶¶ 8–10; Rascon ¶¶ 11–16; Rivera ¶¶ 8–11; Sarter ¶¶ 8–10; Texidor ¶¶ 9–13. In fact, Oatridge has instructed security officers and shift leads that they are only allowed "working breaks" during which they may eat so long as they stay at their post and continue performing their job duties by maintaining a visual presence, staying constantly vigilant, and immediately reporting any suspicious activities. Ex. 14 at 46:11–24, 56:13–25; Benz ¶¶ 11–12; Coolidge ¶ 12; Hotchkiss ¶¶ 10, 16, 22; Kellington ¶ 10; Kier ¶ 12; McGregor ¶¶ 8–16; Peters ¶ 10; Rascon ¶¶ 14–15; Rivera ¶¶ 10–11; Sarter ¶¶ 10–11; Texidor ¶¶ 9–12.

Oatridge emphasizes this in its post orders, stating: "Visibility is an important part of security at [the site] in deterring criminal activity from happening . . . . You should be highly visible and should do as much as possible to deter a crime. If you observe or suspect a crime and are unable to prevent it, it is then your responsibility to observe, report, and contact—immediately—the appropriate enforcement authorities, your Supervisor, and the Client." Ex. 3 at 15; Ex. 4 at 1579; Ex. 5 at 001625; Ex. 6 at 1653; Ex. 7 at 1994. Oatridge also instructs each member of the proposed Classes that you may "[l]eave your post only when properly relieved of duty or your shift is over with no relief coming." Ex. 3 at 16; Ex. 4 at 1581; Ex. 5 at 1626; Ex. 6 at 1654; Ex. 7 at 1995; Ex. 9 at 1607; Ex. 10 at 1781; Ex. 11 at 1789; Ex. 12 at 1817. Failure to comply with this and other orders "is cause for immediate dismissal." Ex. 3 at 18; Ex. 4 at 1582; Ex. 5 at 1627; Ex. 6 at 1655; Ex. 7 at 1996; Ex. 9 at 1607; Ex. 10 at 1781; Ex. 11 at 1789; Ex. 12 at 1817; Benz ¶ 12; McGregor ¶ 12; Texidor ¶ 9.

While Oatridge purports to schedule rest and meal breaks at a few of its sites, it regularly fails to give employees lawful breaks. At the Seattle Tunnel Project, for example, all members of the proposed Classes were scheduled to take their breaks at exactly the same time. Ex. 14 at 54:23–56:12; Ex. 15. Some officers acted as rovers and could temporarily stand in at another officer's post, but there was often no rover on site. Ex. 1 at 58:1–5, 64:6–12, 65:21–25; Ex. 14 at 88:19–89:1; 90:4–18. If there was, it was only one rover tasked with

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relieving several officers, all of whom were scheduled to take their break simultaneously. Ex. 14 at 69:2–22; Ex. 1 at 67:11–24, 215:7–12; Ex. 15. Thus, officers were rarely relieved and when they were, it was only to provide a few minutes to run to the restroom or heat up food before returning to their post and continuing work. Ex. 14 at 69:12–70:9, 100:1–11; Kier ¶ 12. The experience at other locations was the same. Benz ¶¶ 4, 11, 14; Coolidge ¶ 12; Hotchkiss ¶¶ 10, 16, 22; Kellington ¶ 10; Kier ¶ 12; McGregor ¶ 13; Peters ¶ 10; Rascon ¶ 14; Rivera ¶ 10; Sarter ¶ 10; Texidor ¶ 11.

Mr. Hudson and other officers complained to Oatridge about missing breaks, but nothing was done to fix the violations. Ex. 14 at 88:2–92:8; Benz ¶ 14; McGregor ¶ 16; Sarter ¶ 13.

b. *Defendants fail to maintain an adequate system for employees to record missed breaks.*

Mr. Oatridge testified the company informs security officers and shift leads of their right to rest and meal breaks at orientation. Ex. 1 at 204:17–205:3, 234:23–235:5. But Defendants have failed to produce any documentation of this. Marshall ¶ 27; Ex. 16 at 1. Moreover, there are no written rest or meal break policies or procedures in the employee handbook, and Mr. Oatridge was unable during his deposition to point to any that exist anywhere. *See* Ex. 8; Ex. 1 at 233:12–235:5, 153:6–12.

Oatridge does not have a system in place for tracking missed breaks and compensating employees accordingly. Mr. Oatridge testified that security officers are supposed to record breaks on daily reports, but he admitted the person reviewing reports for payroll would not assume a break had been missed if such a record was lacking. Ex. 1 at 202:3–16. And management instructed members of the proposed Classes to record that breaks were taken when, in fact, they were not. McGregor ¶ 10, 15; Rascon ¶ 16; Sarter ¶ 12; *see also* Benz ¶ 13; Ex. 1 at 185:25–186:5.

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2. Defendants have routinely failed to pay members of the proposed Classes for all hours worked.

Under the MWA, all non-exempt employees are required to be paid at or above the applicable minimum wage rate for all hours worked. RCW 49.46.020. "Hours worked" means "all work requested, suffered, permitted, or allowed" and includes "a situation where an employee may voluntarily continue to work at the end of the shift . . . to finish an assigned task . . . ." Ex. 17 at 1. "The reason or pay basis is immaterial. If the employer knows or has reason to believe that the employee is continuing to work, such time is working time." *Id.* The MWA further provides that "[a]ny employer who pays any employee less than the amounts to which such employee is entitled under or by virtue of [Washington's wage and hour laws], shall be liable to such employee affected for the full amount due to such employee under this chapter, less any amount actually paid to such employee by the employer . . . ." RCW 49.46.090.

a. *Defendants have required members of the proposed Classes to perform work off the clock.*

Defendants have required members of the proposed Classes to perform work off the clock. For example, security officers and shift leads were required to arrive at least ten minutes earlier than the scheduled start of the shift to pick up paperwork and equipment, get briefed by the officer they were relieving, and perform other work, but Oatridge failed to pay for this time. Ex. 14 at 72:11–23, 105:20–106:5; Benz ¶ 15; Hotchkiss ¶¶ 11, 17, 23; Kellington ¶¶ 6, 12, 14; Kier ¶ 5; McGregor ¶ 17; Peters ¶ 11; Rascon ¶ 17; Rivera ¶ 12; Sarter ¶ 14; Texidor ¶ 6, 15. Employees also regularly stayed at least ten minutes later than the scheduled end of their shift to perform necessary work, but Oatridge failed to pay them. Ex. 14 at 38:10–16; Benz ¶ 16; Hotchkiss ¶¶ 12, 18, 24; Kellington ¶¶ 6, 13–14; Kier ¶ 6; McGregor ¶ 18; Peters ¶ 12; Rascon ¶ 17; Rivera ¶ 13; Sarter ¶ 15; Texidor ¶ 16.

Mr. Hudson and other officers complained about working off the clock without compensation. Ex. 14 at 92:9–93:14; Hotchkiss ¶¶ 26–27; Texidor ¶ 21. And Oatridge should have known that employees were performing work off the clock based on the company

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setting schedules to begin and end at the top of the hour—with no overlap at shift change—while at the same time requiring outgoing officers to brief their incoming replacements. Ex. 3 at 6, 16; Ex. 4 at 1580; Ex. 5 at 1626; Ex. 6 at 1654; Ex. 7 at 1995; Ex. 9 at 1591, 1607; Ex. 10 at 1781; Ex. 11 at 1789; Ex. 12 at 1817; Ex. 15; Ex. 18. Because shifts do not overlap, at least one officer must be working off the clock to conduct the briefing.

b. *Defendants alter timekeeping records.*

Defendants have also engaged in a common course of systematic time-shaving, which results in members of the proposed Classes being paid less than what they are owed for the hours they worked, including overtime hours. Four former supervisors testify that Oatridge regularly altered timekeeping records and instructed supervisors to do the same. Hotchkiss ¶ 28; McGregor ¶¶ 19–20; Sarter ¶ 17; Texidor ¶¶ 19–21. Mr. Velez-Moya told one supervisor that his orders to alter records came from as high up as Mr. Oatridge himself. Texidor ¶ 21.

3. Defendants fail to pay overtime compensation to members of the proposed Classes.

Under Washington law, "no employer shall employ any . . . employees for a workweek longer than forty hours unless such employee receives compensation . . . in excess of the hours above specified at a rate of not less than one and one-half times the regular rate . . . ." RCW 49.46.130(1).

As noted above, Defendants have failed to pay members of the proposed Classes for all hours worked, whether by failing to separately compensate them for missed rest and meal breaks, failing to compensate them for work performed off the clock, or altering timekeeping records to reduce the number of hours. Security officers and shift leads are regularly assigned 40 hours per week. Benz ¶ 6; Coolidge ¶ 6; Hotchkiss ¶ 4; Kellington ¶ 6; Kier ¶ 5; McGregor ¶¶ 5–6; Rascon ¶¶ 5–6; Rivera ¶ 5; Sarter ¶ 5; Texidor ¶¶ 6–7. Whenever employees work 40 or more hours in a week but are not compensated for all of those hours, any additional compensation Defendants owe them must be paid at time-and-a-half. RCW 49.46.130(1); *see also Wash. State Nursing Ass'n,* 175 Wn.2d at 830–33.

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III. STATEMENT OF ISSUES

1. Should the Court certify this case as a class action where Defendants' courses of wage and hour abuse give rise to common and predominating issues that can manageably be tried in one action on behalf of the Classes? Yes.

2. Should the Court designate Plaintiff Zachary Hudson as the representative of the Classes? Yes.

3. Should the Court appoint the undersigned as counsel for the Classes? Yes.

IV. EVIDENCE RELIED UPON

Plaintiff relies on the declarations and exhibits submitted by Toby Marshall, Elizabeth Hanley, Devon Benz, Joseph Coolidge, Joshua Hotchkiss, Andrew Kellington, Justin Kier, Alec McGregor, Donald E. Peters, Kaleb Rascon, Giovanni Rivera, Triton Sarter, and Bradley Texidor.

V. ARGUMENT AND AUTHORITY

A. Plaintiff satisfies the class certification requirements under Rule 23(a)

"Washington courts liberally interpret CR 23 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." *Chavez*, 190 Wn.2d at 515 (internal marks omitted); *see also Moeller v. Farmer's Ins. Co., Inc.*, 173 Wn.2d 264, 278, 267 P.3d 998 (2011). Factual allegations in the complaint are assumed to be true, and courts will not attempt to resolve material factual disputes or make any inquiry into the merits. *See Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 819, 64 P.3d 49 (2003). "[C]ourts should err in favor of certifying a class because the class is always subject to the trial court's later modification or decertification." *Chavez*, 190 Wn.2d at 515.

Plaintiff satisfies the requirements of CR 23(a) and (b)(3), and certification of the proposed Classes is appropriate. Indeed, courts have repeatedly certified claims involving wage and hour violations similar to those alleged here. *Pellino*, 164 Wn. App. at 682–84 (rest

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and meal break claims); *Chavez*, 190 Wn.2d at 514–26 (same); *Hill*, 198 Wn. App. at 339–42 (same); *Miller*, 115 Wn. App. at 825–26 (overtime claims).

1. Plaintiff satisfies the numerosity requirement.

The first prerequisite for certification is that the class is "so numerous that joinder of all members is impracticable." CR 23(a)(1). While there is no fixed rule, more than 40 members generally suffices. *Miller*, 115 Wn. App. at 821−22. In addition to sheer numbers, courts may look at the geographic dispersal of class members, the size of individual claims, and class members' ability to institute individual suits. *Id*. at 822.

Approximately 401 current and former employees comprise the proposed Class and approximately 217 comprise the proposed Subclass. Marshall ¶¶ 33–34. Members are dispersed throughout Washington and, as low-wage workers, are unlikely to have relatively large damages claims or the resources to sue individually. *Id*. ¶ 35. For these reasons, Plaintiff satisfies numerosity for both proposed Classes.

2. There are numerous common questions of law and fact.

The second prerequisite is "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). "[T]here 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. 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).

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Numerous common factual and legal issues exist here, including:

- Whether Defendants have engaged in a common course of:
  - failing to provide members of the proposed Classes with rest and meal breaks, ensure those breaks were taken, and pay additional compensation for missed breaks;
  - failing to properly compensate members of the proposed Classes for all hours worked, including overtime;
  - failing to pay all overtime wages owed to members of the proposed Classes for hours worked over forty per workweek;
  - failing to keep true and accurate time records for all hours worked by members of the proposed Classes and/or altering time records;
- Whether Defendants' failure to pay all wages owed to members of the proposed Classes was willful;
- Whether Defendants engaged in unfair or deceptive acts or practices in relation to proposed Class members; and
- Whether Defendants' unfair or deceptive acts or practices:
  - occurred in trade or commerce;
  - are injurious to the public interest under RCW 19.86.093; and
  - injured proposed Class members.

See Dkt. No. 1 ¶ 4.3.

Washington courts have found commonality satisfied in wage and hour actions raising similar common questions. *See Pellino*, 164 Wn. App. at 682–84 (whether security guards required to remain vigilant during breaks were entitled to compensation); *Chavez*, 190 Wn.2d at 514–26 (whether employees received lawful breaks); *Hill*, 198 Wn. App. at 339–42 (whether employees were allowed lawful breaks and entitled to compensation for missed breaks); *Miller*, 115 Wn. App. at 825–26 (employer's conduct relating to overtime satisfied CR 23); *Kirkpatrick v. Ironwood Communications, Inc.*, No. C05-1428JLR, 2006 WL 2381797, at *3–4 (W.D. Wash. Aug. 16, 2006) (whether overtime and meal break policies complied with Washington law). The commonality requirement is satisfied.

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3. Plaintiff's claims are typical of the claims of the Classes.

The third prerequisite for certification is that the claims of the Plaintiff are typical of the proposed classes. 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 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's claims are typical of the claims of members of the proposed Classes because they arise from common courses of conduct by Defendants—namely, failing to provide rest and meal breaks and ensure those breaks are taken, requiring employees to perform work off the clock, and altering records to avoid paying for all hours worked. The claims of Plaintiff and the proposed Classes are also based on the same legal theories. *See* Section II.B, *supra*. Typicality is satisfied.

4. Plaintiff and his counsel will fairly and adequately protect the interests of the Classes.

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 looks at whether plaintiff is represented by qualified counsel and whether plaintiff has interests antagonistic to those of absent class members. *See Hansen v. Ticket Track, Inc.*, 213 F.R.D. 412, 415 (W.D. Wash. 2003).

Plaintiff's counsel have extensive experience certifying, litigating, trying, and settling class actions—including wage and hour actions involving the same laws at issue here—and are dedicated to prosecuting the claims of the Classes. Marshall ¶¶ 2–11; Hanley ¶¶ 2–9. Thus, Plaintiff's counsel are qualified.

Plaintiff's claims against Defendants are coextensive with, and not antagonistic to, the claims asserted on behalf of the proposed Classes. Indeed, Plaintiff and members of the

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936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
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proposed Classes have suffered the same injuries: they have not received their legally mandated rest and meal breaks, and they have not been paid for all hours worked. Plaintiff seeks to hold Defendants responsible for these abuses. Plaintiff is committed to prosecuting this action vigorously on behalf of the Classes, has agreed to participate fully in the litigation, and has already devoted efforts to those ends. Marshall ¶ 37. Accordingly, the adequacy requirement is satisfied.

B. Plaintiff satisfies the requirements for class certification under Rule 23(b)(3).

In addition to CR 23(a), Plaintiff must meet one of the three conditions of CR 23(b). CR 23(b); *see also Moeller*, 173 Wn.2d at 279. Plaintiff satisfies the requirements of CR 23(b)(3) because questions of law or fact common to the members of the proposed Classes predominate over any questions affecting only the individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

1. Common legal and factual questions concerning Defendants' conduct predominate over any individual 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 2 *Newberg* § 4:25). 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*. (quoting 2 *Newberg* § 4.25).

In deciding whether common issues predominate, the "trial court pragmatically examines whether there is a common nucleus of operative facts in each class member's claim." *Chavez*, 190 Wn.2d at 516. "The relevant inquiry is whether the issue shared by class members is the dominant, central, or overriding issue in the litigation." *Id*.

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This case is particularly well-suited for class certification because it involves common questions regarding the lawfulness of Defendants' uniform policies and practices. To prevail on his claims—whether under state wage and hour law, the Seattle Municipal Code, or the Consumer Protection Act—Plaintiff must demonstrate Defendants engaged in a pattern and practice of failing to provide mandatory rest and meal breaks and ensure those breaks are taken; failing to pay for all hours worked, including overtime hours; and failing to keep accurate employment records in compliance with Washington law and Seattle ordinances. Courts have found certification appropriate under very similar circumstances. *See Pellino*, 164 Wn. App. at 683; *Chavez*, 190 Wn.2d at 514–19; *Hill*, 198 Wn. App. at 339–42; *Miller*, 115 Wn. App. at 825–26; *Kirkpatrick*, No. C05-1428JLR, 2006 WL 2381797, at *13 (holding employees may pursue CPA claims based on wage and hour violations); *In re Bank of America Wage & Hour Employment Litig.*, No. 10-MD-2138-JWL, 2010 WL 4180567, at *12-13 (D. Kan. Oct. 20, 2010) (same).

At some point, the amount of damages to which the proposed Classes are entitled must be calculated. That those damages vary among employees does not preclude certification. *See Behr*, 113 Wn. App. at 323; *see also Chavez*, 190 Wn.2d at 514–19; *Hill*, 198 Wn. App. at 339–42; *Vaquero v. Ashley Furniture Indus., Inc.*, 824 F.3d 1150, 1155 (9th Cir. 2016). Indeed, "it is not necessary to prove each [class member's] damages on an *individual* basis; it is possible to assess damages on a class-wide basis using representative testimony . . . ." *Chavez*, 190 Wn.2d at 519 (emphasis in original); *see also Anfinson v. FedEx Ground Package Sys., Inc.*, 159 Wn. App. 35, 70–71, 244 P.3d 32 (2010), *aff'd*, 174 Wn.2d 851 (2012).

Because common issues predominate over any individualized issues, the predominance requirement is satisfied.

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Seattle, Washington 98103-8869
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2. Plaintiff satisfies 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. "The superiority requirement focuses on a comparison of available alternatives and a determination that a class action is superior to, not just as good as, other available methods." *Chavez*, 190 Wn.2d at 520. Factors to be considered include "conserving time, effort and expense; providing a forum for small claimants; and deterring illegal activities." *Sitton*, 116 Wn. App. at 257. 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).

a. *Class treatment allows for the fair and efficient resolution of common claims that would otherwise go without redress.*

The individual claims of low-wage workers are relatively small and are well-suited for Class-wide resolution. *See Chavez*, 190 Wn.2d at 523 (citing 2 *Newberg* § 4:88 at 370 ("[S]mall claims cases somewhat automatically meet the test that a class suit is superior to other forms of adjudication."). Moreover, members of the proposed Classes lack the resources necessary to seek legal redress against Defendants and, without class treatment, would have no effective remedy for their injuries.

Even if they did have the necessary resources, employees may not seek to assert their rights for fear of retaliation. *See Scott v. Aetna Servs., Inc.*, 210 F.R.D. 261, 268 (D. Conn. 2002); *see also Noble v. 93 Univ. Place Corp.*, 224 F.R.D. 330, 346 (S.D.N.Y. 2004). Indeed, Andrew Kellington feared retaliation if he complained about his inability to take breaks because he knew others had been fired for making similar complaints. Kellington ¶ 11. His concerns were validated after filing a complaint with the Washington State Department of Transportation: Mr. Oatridge called him on his personal phone, demanded he drop the complaint, and threatened to have him blacklisted from the industry if he didn't. *Id*. ¶ 15

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Given the large number of employees, the relatively small claims for each, and the absence of reasonable alternatives to prosecute their claims individually, a class action is the most appropriate means of adjudicating these claims.

b. *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). When analyzing manageability, the question courts consider "is not whether a class action is manageable in the abstract but how the problems that might occur in managing a class suit compare to the problems that would occur in managing litigation without a class suit. In other words, the manageability inquiry is a comparative one." 2 Newberg § 4:72. "[A]ny complex class action is likely to present a challenge," but there are "a variety of tools available to deal with [any] challenges" that may arise. *Sitton*, 116 Wn. App. at 256, 259–60; *see also Miller*, 115 Wn. App. at 826.

This Court will not face any difficulties managing and resolving the case because liability turns on Defendants' conduct, which is uniform with respect to all members of the proposed Classes. Indeed, Washington courts routinely find that class actions involving wage violations are manageable. *See, e.g.*, *Chavez*, 190 Wn.2d at 520–22; *Pellino*, 164 Wn. App. at 682–84; *Hill*, 198 Wn. App. at 339–42.

Plaintiff's claims can be proven with common evidence taken from or based on Defendants' own records and the testimony of similarly situated employees. "Courts commonly allow representative employees to prove violations with respect to all employees." *Reich v. Gateway Press, Inc.*, 13 F.3d 685, 701 (3d Cir. 1994) (citing cases); *see also Anfinson*, 174 Wn.2d at 874–76; *see also Hill*, 198 Wn. App. at 339–42. And because Defendants failed to maintain accurate records of hours worked, including work performed during missed rest and meal breaks, the burden-shifting test set out in *Anderson v. Mt. Clemens Pottery Co.* applies. 328 U.S. 680, 688 (1946). Plaintiff and the proposed Classes need not show the exact

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936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

damages they are owed as a result of Defendants' violations. *Id*. Instead, they need only establish the amount of work performed as a matter of "just and reasonable inference." *Id*.

Plaintiff anticipates that most if not all damages will be readily calculable based on the testimony of representative employees and Defendants' own records. If the information is available for only a portion of the Class period, Plaintiff can utilize an expert to help extrapolate damage calculations for each of the Classes. *See Pellino*, 164 Wn. App. at 683. Because class treatment of these issues is both manageable and superior to other methods of adjudicating the controversy, certification of the Class is appropriate.

3. 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(c)(2). *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174–75 (1974). Where the names and addresses of potential class members are readily ascertainable, notice by mail is usually the preferred method. *Manual for Complex Litigation (Fourth)* § 21.311 at 461 (2012).

Defendants already produced names and contact information for all members of the proposed Classes, including last known mailing address. Marshall ¶ 38. Thus, notice can be sent directly to all via First Class mail. Notice can also be published on a website maintained by Plaintiff's attorneys, where members of the proposed Classes may access the notice form and other key documents and stay apprised of important dates. Together, these approaches will provide the best practicable notice. If certification is granted, Plaintiff will submit a detailed notice plan and form to the Court.

VI. CONCLUSION

Plaintiff respectfully asks that the Court certify the proposed Classes pursuant to CR 23; appoint Plaintiff Zachary Hudson representative of the Classes; appoint the undersigned counsel for the Classes; and order that notice be provided to the Classes.

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Seattle, Washington 98103-8869
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

VII. LCR CERTIFICATION

I certify that this memorandum contains 6,191 words, pursuant to the Court's order to file an overlength brief of no more than 6,200 words.

RESPECTFULLY SUBMITTED AND DATED this 23rd day of October, 2019.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Toby J. Marshall, WSBA #32726

Toby J. Marshall, WSBA #32726
Email: tmarshall@terrellmarshall.com
Eric R. Nusser, WSBA #51513
Email: eric@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

Elizabeth A. Hanley, WSBA # 38233
Email: ehanley@reedlongyearlaw.com
Kelli A. Carson, WSBA # 49856
Email: kcarson@reedlongyearlaw.com
REED LONGYEAR MALNATI & AHRENS, PLLC
801 Second Avenue, Suite 1415
Seattle, Washington 98104
Telephone: (206) 624-6271
Facsimile: (206) 624-6672

Attorneys for Plaintiff