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

REPLY IN SUPPORT OF PLAINTIFF'S AMENDED MOTION FOR CLASS CERTIFICATION

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I. REPLY

Plaintiff Zachary Hudson challenges Oatridge's systemic course of wage and hour abuse against security officers and shift leads. Oatridge responds by asserting that it operates nine different business models and that practices vary by model. But at least 75 percent of Oatridge's employees worked under just three of the models at twelve locations. The record before the Court demonstrates that as to those employees, the issues raised are common and predominate over any individualized issues. Plaintiff thus satisfies the elements of CR 23(a) and (b)(3), and the Court should certify the Classes revised below.[1]

II. ARGUMENT AND AUTHORITY

A. The revised proposed Classes.

Mr. Hudson disputes the assertion that Oatridge operates nine different "business models" across its fifty-four Washington sites. Indeed, Mr. Hudson has put forth substantial evidence showing Oatridge has company-wide employment policies and procedures for which Defendant Cy Oatridge is ultimately responsible. And Oatridge never previously asserted that it operates different business models, including in any of Mr. Oatridge's testimony as a CR 30(b)(6) deponent. Marshall Suppl. ¶ 2.

Nonetheless, a close examination of the evidence shows that most employees included in the original proposed Class definition worked at twelve sites falling under one of three alleged business models. Accordingly, Mr. Hudson asks the Court to certify the proposed Class under this revised definition:

> All current and former employees of Oatridge Security Group, Inc. who have worked as security officers or shift leads at the following sites in the state of Washington at any time between September 20, 2014 and the date of final disposition of this action: Seattle Tunnel Partners (STP), North Portal, (STP) Terminal 106, Facebook – Venture General, Point Edmonds – Venture General, IGQ – Sabey Data Center, IGC – Sabey Data Center,

[1] Under CR 23, the Court may modify the class definitions at any time. *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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> Flatiron West, Inc. – Tacoma Trestle, Eastside Heritage Center, Centeris Data Center, Mortenson, and Esterra – Venture.[2]

The twelve sites listed here capture at least 75 percent of the employees in the original definition. Marshall Suppl. ¶ 3. Notably, more than two-thirds of the members in this revised Class worked at one or more of the four locations where Mr. Hudson worked: Seattle Tunnel Partners (STP), North Portal, (STP) Terminal 106, and Facebook. *Id*. ¶ 4. The first three sites fall under what Oatridge calls the "STP" model. Dkt. 48 at 10. The fourth site, Facebook, is under the "Commercial or Construction Sites with Multiple Officers" (CCSMO) model. Marshall Suppl. ¶ 5. Plaintiff has presented ample evidence of violations at all four locations. *Id*.

Seven other sites also fall under the CCSMO model, and there is testimony of violations at four of those locations. *Id*. The final site, Tacoma Trestle, falls under the "Commercial Sites – Single Employee" model, and Plaintiff has presented testimony from two Class members regarding violations there. *Id*. ¶ 6.

Mr. Hudson asks the Court to certify the proposed Subclass using this revised definition:

> All current and former employees of Oatridge Security Group, Inc. who have worked as security officers or shift leads at the following sites in the city of Seattle at any time between September 20, 2014 and the date of final disposition of this action: Seattle Tunnel Partners (STP), North Portal, (STP) Terminal 106, Facebook – Venture General, and Mortenson.

The five Seattle sites in the revised Subclass encompass two alleged business models, STP and CCSMO, and at least 99 percent of employees in the original proposed Subclass worked at these locations. *Id*. ¶ 7. Moreover, nearly all members in the revised Subclass worked at one or more of the same four sites as Mr. Hudson. *Id*.

[2] Site names were designated by Oatridge in Exhibit 2, attached to the Declaration of Toby J. Marshall, Dkt. 32. Unless otherwise noted, all exhibits are attached to the Marshall Declaration.

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B. Oatridge has engaged in a common course of conduct.[3]

Oatridge misapprehends the commonality requirement. The proper focus is on Oatridge's conduct, not employees' conduct. Indeed, when 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 (1971); *accord Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 825 (2003).

While even "a single issue common to all members of the class" will suffice, *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320 (2002), there are numerous questions of law and fact common to all members of the proposed Classes, including whether Oatridge failed to provide employees with rest and meal breaks and failed to properly compensate them for all hours worked. Washington courts have repeatedly found commonality satisfied in wage and hour actions raising similar common questions.

For example, in *Chavez*, the Washington Supreme Court held that a single common question of whether the hospital maintained an adequate system for ensuring breaks were taken was sufficient to satisfy commonality despite a class of more than 100 nurses performing myriad duties in multiple departments. 190 Wn.2d at 518–19; *see also Pellino v. Brink's, Inc.*, 164 Wn. App. 668, 682–84 (2011); *Hill v. Garda CL Nw., Inc.*, 198 Wn. App. 326, 339–42 (2017), *reversed on other grounds*, 191 Wn.2d 553 (2017).

In *Barnett v. Wal-Mart Stores, Inc.*, the court certified a class of more than 40,000 employees working in dozens of different positions at approximately 35 stores because common, predominating questions included "whether Defendant had actual or constructive knowledge that its hourly employees were not being paid for all hours worked, either because that work was performed off the clock, because employees were not permitted to take all or part of their meal and rest breaks, or because time records were deleted or otherwise

[3] Oatridge does not challenge numerosity or adequacy under CR 23(a). Dkt. 48 at 14 n.10.

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altered." No. 01-2-24553-8 SEA, at 14:8-12 (King Cnty. Super. Ct. Nov. 29, 2004), Marshall Suppl., Ex. 22; *see also Miller*, 115 Wn. App. at 825–26.

Oatridge cites several federal cases to support a heightened commonality standard. But in Washington, commonality "is a low threshold." *Behr Process*, 113 Wn. App. at 320; *see also King v. Riveland*, 125 Wn.2d 500, 518–20 (1994).

Oatridge also cites *Oda v. State*, 111 Wn. App. 79 (2002), but the company's reliance is misplaced. The *Oda* plaintiffs sued on behalf of university professors alleging gender discrimination in compensation. The Court of Appeals held that statistical modeling was insufficient to demonstrate a common course of conduct when faculties at 120 separate departments had "great autonomy" to decide compensation. *Id*. at 100. Here, twelve sites are at issue—one tenth the number in *Oda*—and all employment policies and practices are ultimately determined by Mr. Oatridge. Ex. 1 at 5:7, 31:3–11, 36:5–12, 41:1–5, 144:25–145:13, 233:6–11. Finally, the *Oda* plaintiffs failed to offer class member testimony, whereas Plaintiff has submitted statements from eleven other employees testifying to violations at multiple sites. Ex. 14 at 46:11–47:2, 51:12–52:3, 56:13–25, 77:20–24, 86:16–22; Benz ¶¶ 9–16; Coolidge ¶¶ 10–12; Hotchkiss ¶¶ 8–27; Kellington ¶¶ 8–14; Kier ¶¶ 9–12; McGregor ¶¶ 8–18; Peters ¶¶ 8–12; Rascon ¶¶ 11–17; Rivera ¶¶ 8–13; Sarter ¶¶ 8–16; Texidor ¶¶ 9–16. Thus, commonality is satisfied.

C. Mr. Hudson's claims are typical.

Oatridge also misconstrues the typicality requirement. Typicality does not require Mr. Hudson to have worked at all or even most of Oatridge's sites or perform the same duties as all or most Class members. In fact, whether Mr. Hudson "had different duties and performed different types of work is not particularly relevant to whether [he is] similarly situated with respect to [the class members'] claims." *Mendez v. Radec Corp.*, 232 F.R.D. 78, 92 (W.D.N.Y. 2005); *see also Ramos v. Simplex Grinnell LP*, 796 F. Supp. 2d 346, 357 (E.D.N.Y. 2011).

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Furthermore, "there is no requirement that a class representative have personal knowledge pertaining to every class member's claim." *Kirkpatrick v. Ironwood Commc'ns, Inc.*, No. C05–1428JLR, 2006 WL 2381797, *7 (W.D. Wash. Aug. 16, 2006) (rejecting assertion that typicality was lacking because representatives had not worked at all branch offices). Rather, 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. "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*.

Under the revised Class definition, Mr. Hudson worked at the same sites as most members of the proposed Classes and under two business models governing nearly all members. Marshall Suppl. ¶¶ 4, 7. The testimony of Mr. Hudson and eleven other employees shows Oatridge engaged in the same unlawful conduct resulting in the same injuries. *See* Section II.B, *supra*.

Oatridge counters with declarations from ten current employees, five of whom are managers. But "[d]iffering levels of interest among the prospective class . . . is not dispositive and will not, by itself, defeat class certification." *Rodger v. Elec. Data Sys. Corp.*, 160 F.R.D. 532, 537 (E.D.N.C. 1995). This is particularly true where the dissenters are current employees. *Trinidad v. Breakaway Courier Sys., Inc.*, 2007 WL 103073, at *4 (S.D.N.Y. Jan. 12, 2007) ("courts have noted . . . the concern for possible employer reprisal action exists"). Indeed, courts routinely "discount" such declarations "because of the risk of bias and coercion inherent in that testimony." *Morden v. T-Mobile*, 2006 WL 2620320 (W.D. Wash. Sept. 12, 2006); *see also Bublitz v. E.I. duPont de Nemours & Co.*, 196 F.R.D. 545, 548 (S.D. Iowa 2000). Ultimately, the trier of fact must determine which side's evidence is more persuasive. But that is a merits issue. *See Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 466 (2013) ("Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification

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stage."); *Miller*, 115 Wn. App. at 825 (holding competing testimony "might affect the merits of the claim, but it does not defeat commonality").

Even if Oatridge's declarations are given full weight, they demonstrate the issues Mr. Hudson raises are common. For example, Oatridge's handpicked declarants testify to rest and meal break and off-the-clock ("pass down") violations at multiple sites, including sites in the revised class definitions (STP and Mortenson). *See* Gano ¶ 8 (EPA); Haywood ¶ 10 (Chief Joseph Dam); Hord ¶ 4 (Mortenson); Marksberry ¶ 10 (STP); Murdzia ¶ 8 (Inchcape); Ogren-Bedford ¶ 10 (JBLM); Velez-Moya ¶ 3 (Chief Joseph Dam), ¶ 6 (Pier 23), ¶ 13 (Swedish Hospital), ¶ 14 (Mortenson), ¶ 20 (STP); Volk ¶ 18 (Frederickson).

Notably, Oatridge does not challenge Mr. Hudson or the other declarants who testify they were required to arrive before their shifts or stay after to pick up or drop off equipment and paperwork and walk to and from their posts. Nor does Oatridge challenge Mr. Hudson or the four declarants who testify Oatridge managers altered security officers' timekeeping records or were instructed by managers to do so. Mr. Hudson's claims are typical.

D. Common questions predominate.

Plaintiff's claims for unpaid wages are well-suited for class treatment. As courts have found in similar cases, including those involving security officers, common issues predominate where the employer's policies and practices are uniform as to the proposed class. *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. In *Pellino*, for example, a class of armored truck security officers alleged they were denied rest and meal breaks because they were required to remain constantly vigilant during purported breaks. Just like Oatridge, Brink's argued that certification failed because the company lacked a uniform policy on breaks, officers could decide when to take breaks, and these decisions varied by employee. 164 Wn. App. at 683. But the court rejected these arguments and certified the class because "the principal factual and legal issues are whether

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class members are entitled to compensation for . . . missed rest and meal breaks under Washington Law." *Id*.

Oatridge further argues that "liability questions can only be analyzed on a site by site and employee by employee basis." Dkt. 48 at 19. But in *Chavez,* the Washington Supreme Court held the opposite. There, a class of more than 100 nurses performed various duties across nine different departments with separate break policies and practices. 190 Wn.2d at 511–13. The trial court found common issues did not predominate because the specifics of "what happens from shift to shift, from nurse to nurse, from nurse type to nurse type, from census to census and so on" would overrun any generalities. *Id*. at 516. The Supreme Court reversed, holding "the dominant and overriding issue common to all putative class members is whether Lourdes failed to ensure nurses could take breaks and record missed breaks." *Id*. at 518. The same is true here. Common questions predominate.

E. Class treatment is superior.

Given the large number of members in the proposed Classes and common issues, a class action is the superior method of adjudication. *Chavez*, 190 Wn.2d at 514–19. Oatridge argues that certification would require mini-trials. Dkt. 48 at 20. But with the revised definitions, only three business models and twelve sites are at issue. Moreover, Oatridge's conduct is uniform across all sites. The proposed Classes are therefore manageable. *See Chavez* 190 Wn.2d at 522.

Oatridge also argues without explanation that certification would raise due process concerns, citing two inapposite cases. *See Murry v. Griffin Wheel Co*., 172 F.R.D. 459 (1997) (denying motion to add class claims because plaintiffs failed to timely move for certification and claims from five consolidated cases were unmanageable); *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156 (1974) (plaintiff's refusal to provide class members individual notice violated due process). Mr. Hudson timely moves for class certification and agrees to bear the cost of individual notice to Class members. Marshall Suppl. ¶ 8.

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Finally, Oatridge argues that certification is unwarranted because officers have different experiences with wage and hour violations. Dkt. 48 at 21. In *Chavez*, the Court soundly rejected this argument, holding representative testimony can be used to manage individualized damages issues. *Id*. at 522; *accord Pellino*, 164 Wn. App. at 683; *Moore v. Health Care Auth.,* 181 Wn.2d 299, 307–08, 332 P.3d 461 (2014); *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 876–77 (2012).

Mr. Hudson and eleven members of the proposed Classes testify they were denied rest and meal breaks and performed work off the clock. This and other representative testimony can be used to establish, by just and reasonable inference, the number of breaks missed and the amount of off-the-clock work performed. *See Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 688 (1946). Class adjudication is superior.

III. CONCLUSION

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

IV. LCR CERTIFICATION

I certify that this memorandum contains 2,491 words, pursuant to the Court's order to file an overlength reply of no more than 2,500 words.

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RESPECTFULLY SUBMITTED AND DATED this 22nd day of November, 2019.

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