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

MUSTAFE ISMAIL AND SULDAN
MOHAMED,

Plaintiffs,

v.

EASTSIDE FOR HIRE, INC.,

Defendant.

No. 17-2-25402-9 KNT

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
CLASS CERTIFICATION

I. INTRODUCTION

This matter comes before the Court on Plaintiffs’ Motion for Class Certification. The Court has reviewed the parties’ briefing, the evidence submitted in connection with those briefs, and has heard argument from counsel. The Court GRANTS Plaintiffs’ motion and hereby finds, concludes, and orders as follows:

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Certification of class actions is governed by Civil Rule 23. At the class certification stage, doubts are resolved in favor of class certification. *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 318-19 (2002). “Where, as here, class certification is sought at the

1 early stages of litigation, courts generally assume that the allegations in the pleadings are true
2 and will not attempt to resolve material factual disputes or make any inquiry into the merits
3 of the claim.” *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 820 (2003). “Courts may,
4 however, go beyond the pleadings and examine the parties’ evidence to the extent necessary
5 to determine whether the requirements of CR 23 have been met.” *Miller*, 115 Wn. App. at
6 820. The courts must conduct a ““rigorous analysis”” of the CR 23 requirements to determine
7 whether a class action is appropriate in a particular case. *Oda v. State*, 111 Wn. App. 79, 93
8 (2002).

9 1. Pursuant to CR 23(a) and (b)(3) of the Washington Superior Court Civil
10 Rules, the Court certifies this case as a class action, with two separate classes:

11 Contract Class: Individuals who paid per-trip, dispatch, and/or technology
12 fees to Eastside for Hire at any time since October 1, 2016, who have signed
13 contracts with the Company, but excluding the Company’s owners and
14 officers.

15 No Contract Class: Individuals who paid per-trip, dispatch, and/or
16 technology fees to Eastside for Hire at any time since October 1, 2016, but
17 excluding the Company’s owners and officers.

18 2. The Court finds that the prerequisites of CR 23(a) and (b)(3) have been
19 satisfied for the proposed classes (“Classes”). Specifically, the Court finds as follows:

20 a. CR 23(a)(1): Numerosity. A class may be certified where a plaintiff
21 demonstrates that the proposed class “is so numerous that joinder of all members is
22 impracticable.” *Miller*, 115 Wn. App. at 821. The record contains reference to “hundreds” of
23 class members who paid fees that Plaintiffs allege were unlawful. Numerosity is not squarely
24 disputed and the Court concludes that the number of potential class members easily satisfies
25 the numerosity criterion in this case.

1 b. CR 23(a)(2): Commonality. CR 23(a)(2) is met where the plaintiff's
2 claims arise out of a "common course of conduct" or "common nucleus of operative facts."
3 *Brown v. Brown*, 6 Wn. App. 249, 255 (1971). Here, the Court finds that all of the class
4 members' claims arise from the same course of conduct and a common nucleus of facts;
5 namely, Defendant's collection of weekly per-trip and dispatch fees, and a one-time
6 technology fee. Common questions for the Contract Class include, but are not limited to,
7 whether Defendant overcharged for per-trip fees; whether Defendant provided technology
8 and dispatch services in exchange for fees collected; whether Defendant's contract with class
9 members permitted it to charge per-trip fees in advance of any trips actually taken. Common
10 questions for the No Contract Class include, but are not limited to, whether Defendant
11 deprived class members of money that the Company was not entitled to keep; whether
12 Defendant is obligated to return overcharges on per-trip fees; whether Defendant used fees as
13 a profit-center to enrich itself, rather than providing the dispatch and technology services
14 promised.

15 c. CR 23(a)(3): Typicality. The proposed class representative's claims
16 must be typical of the claims of other class members. A named plaintiff's claim is typical if it
17 arises out of the same course of conduct and is based on the same legal theory as the class
18 members' claims. *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320 (2002). Here,
19 Plaintiff Ismail's claims are typical of the Contract Class because he maintained a contract
20 with Defendant, while Plaintiff Mohamed's claims are typical of the No Contract Class in
21 that he paid fees to Defendant absent a written contract.

22 d. CR 23(a)(4): Adequacy of Representation. On this element, there must
23 be no adversity of interest between the class representative and other class members, and the

1 attorneys for the class representative must be qualified to conduct the proposed litigation.
2 *DeFunis v. Odegaard*, 84 Wn.2d 617, 622 (1974); *Marquardt v. Fein*, 25 Wn. App. 651, 656
3 (1980). Here, there is no dispute that class counsel possess the requisite qualifications to
4 conduct this litigation. As for the adequacy of the named Plaintiffs, the Court finds there is no
5 current conflict or adversity of interest between them and the Classes. Any conflict that might
6 exist between class members and Company owners and officers is obviated by the definitions
7 of the Classes; and absent evidence of any other actual conflict of interest, Plaintiffs have
8 satisfied their burden to show adequacy.

9 3. The Court finds that Plaintiffs also satisfy the requirements of CR 23(b)(3),
10 which requires the Court to find that “questions of law or fact common to the members of the
11 class predominate over any questions affecting only individual members, and that a class
12 action is superior to other available methods for the fair and efficient adjudication of the
13 controversy.”

14 a. CR 23(b)(3): Predominance. Whether common issues predominate
15 over individual ones is a “pragmatic” inquiry into whether there is a “common nucleus of
16 operative facts” as to all class claims. *Smith*, 113 Wn. App. at 323. It is not a “rigid test,” but
17 contemplates “many factors,” the central one being “whether adjudication of the common
18 issues in the particular suit has important and desirable advantages of judicial economy
19 compared to all other issues, or when viewed by themselves.” *Sitton v. State Farm Mut. Auto.*
20 *Ins. Co.*, 116 Wn. App. 245, 254, 63 P.3d 198 (2003) (internal quotation and citations
21 omitted). The Court finds that predominance is satisfied here because questions of law and
22 fact common to all class members predominate over any questions affecting only individual
23 members. Such common questions of law and fact include, but are not limited to, the

1 common questions identified above, including whether Defendant used fees as a profit-center
2 to enrich itself, rather than providing the dispatch and technology services promised.

3 b. CR 23(b)(3): Superiority. “[W]here individual claims of class
4 members are small, a class action will usually be deemed superior to other forms of
5 adjudication.” *Miller v. Farmer Bros. Co.*, 115 Wn. App. 815, 828 (2003). Here, the Court
6 finds that class resolution is superior to other available methods for the fair and efficient
7 adjudication of this controversy. Moreover, the Court finds that Plaintiffs’ proposed trial plan
8 demonstrates that trial of the claims in this case as a class action is manageable.

9 4. Pursuant to CR 23, Plaintiff Mustafe Ismail is hereby appointed and
10 designated as the class representative of the Contract Class. Plaintiff Suldan Mohamed is
11 hereby appointed and designated as the class representative of the No Contract Class. Adam
12 Berger, Lindsay Halm, and Jamal Whitehead of Schroeter Goldmark & Bender are hereby
13 appointed and designated as class counsel for the Classes.

14 5. The parties shall confer and attempt to agree upon a Class Notice to class
15 members within 14 business days from the date of this Order. If agreement is reached, the
16 proposed Class Notice shall be submitted for approval by the Court. If no agreement can be
17 reached, each party shall submit to the Court its proposed Class Notice within 21 calendar
18 days from the date of this Order.

19 6. Once a Class Notice is approved, Defendant’s counsel shall provide to class
20 counsel, within ten (10) business days of the date of such approval, a complete list of the
21 class members with their last known addresses, telephone numbers, and Social Security
22 numbers (which shall only be used to identify correct addresses if necessary). The Social
23 Security numbers shall be kept strictly confidential by class counsel.

King County Superior Court
Judicial Electronic Signature Page

Case Number: 17-2-25402-9
Case Title: ISMAIL ET AL VS EASTSIDE FOR HIRE ET AL

Document Title: ORDER FF, CL AND ORDER RE CLASS CERT

Signed by: Michael Scott
Date: 7/30/2019 11:28:57 AM

A rectangular box containing a handwritten signature in blue ink that reads "Michael R. Scott".

Judge/Commissioner: Michael Scott

This document is signed in accordance with the provisions in GR 30.

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