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

HOFFMAN, et al,

Plaintiffs,

vs.

TAGLE AND PARTNERS et ano,

Defendants.

No. 24-2-15794-8 SEA

ORDER GRANTING CLASS CERTIFICATION

This case involves multiple work-related claims brought by Ms. Eilish Hoffman, on behalf of a putative class, who worked as a "bikini barista" at various coffee stands owned by Defendants. More specifically, Plaintiff alleges violations of (1) RCW 49.46, the Minimum Wage Act (MWA); (2) RCW 49.52, the Wage Rebate Act (WRA); (3) RCW 49.46.210, Washington's Paid Sick Leave law (PSL); (4) common law conversion; (5) RCW 49.62.020, regarding non-compete covenants; and (6) RCW 49.62.070, regarding moonlighting. *See* Amended Complaint. Plaintiff seeks both monetary and injunctive relief. *See id.* Although CR 23(c)(1) encourages early decisions regarding class certification, Plaintiff's counsel has, without much explanation, waited until a few months before trial to seek class certification. While this does not necessarily complicate this Court's resolution as to class certification, it

does complicate potential notice issues and other procedural matters that will likely require a resetting of the trial date based on the Court's certification of the class.

CR 23 governs certification of class actions. Class certification rules must be liberally construed and doubts as to certification are resolved in favor of class certification "because the class is always subject to the trial court's later modification or decertification." *Chavez v. Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 515, 415 P.3d 224 (2018). Despite this liberal construction, this Court must nevertheless conduct a "rigorous analysis" of the CR 23 criteria, and must engage in "appropriate consideration and articulate reference to the criteria of CR 23." *Miller v. Farm Bros. Co.*, 115 Wn. App. 815, 820-21, 64 P.3d 49 (2023) (quotations, citations, and emphasis omitted). What this means precisely is not altogether clear in the appellate decisions, but perhaps a reviewing court's review is akin to obscenity: Appellate courts will know it when they see it.

To aid in the Court's analysis, numerous cases have suggested that an evidentiary hearing is the best approach to address conflicting testimony when that testimony is required to be applied to the relevant factors. For example, *Miller* noted, that while "there is no per se requirement that a trial court hold an evidentiary hearing in making a CR 23 determination, appellate courts in this state and in other jurisdictions have repeatedly suggested that such hearings are preferred and, in some instances, may be necessary." 115 Wn. App. at 823 n.3; *see also Chavez* at 515 at n.6. Despite the suggestion by the Court at oral argument that an evidentiary hearing might be necessary in this case, counsel for *both* parties resisted this Court's inclination that a hearing may be necessary in this case given the conflicts in the evidence. Because neither party wanted an evidentiary hearing, the Court will not conduct one.

To certify a class, the prerequisites in CR 23(a) must be satisfied. They are: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. In addition to those prerequisites, the plaintiffs must also demonstrate that one of the requirements of CR 23(b) are met. Here, the parties focus on CR 23(b)(3), which requires this Court to focus on "predominance and superiority." *Chavez* at 514. But first, the Court will address CR 23(a)'s requirements.

Numerosity. A class may be certified when a plaintiff demonstrates the proposed class "is so numerous that joinder of all members is impracticable." *Miller* at 821 (citation & quotation omitted). While the evidence changed from briefing to oral argument, it appears as though the class is between 80 to 140 (or so) individuals based on accounting records. Although discussed in the context of CR 23(b)(3), our Supreme Court has endorsed the view that "joinder is impracticable where a class contains at least 40 members." *Chavez* at 520; *see also Miller* at 821. What is more, Defendants do not dispute numerosity and their concession is well-taken. This Court determines that a purported class of between 80 to approximately 140 individuals satisfies CR 23(a)(1)'s numerosity requirement.

Commonality. Satisfying CR 23(a)(2)'s "commonality requirement . . . is a low threshold." *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 320, 54 P.3d 665 (2002) (citation omitted). "The commonality test is qualitative rather than quantitative, that is, there need only be a single common issue to all members of the class." *Id.* (quotation & citation omitted). Here, there are numerous relevant common questions of law and/or fact. For example, whether Defendants' have an improper policy regarding moonlighting, whether Defendants' payment "system" leads to wage theft or failure to pay minimum wage, and whether the same sick leave policy and practice governs all barista. The gravamen of Plaintiff's complaint is that

Defendants policies and practices lead to violations of various work-related laws, and determining whether such policies exists and whether they have the same causative effect is common to all class members. To be sure, assuming liability is established, assessing damages may prove difficult at trial, and may very well require individualized testimony of absent class members, but this, without more, is not a reason to deny class certification. *See, e.g.*, *Elter v. United Servs. Auto. Ass'n*, 17 Wn. App.2d 643, 659, 487 P.3d 539 (2021) ("the fact that the individual loss of use damages vary in amount does not defeat commonality.") (citing *Chavez* at 519). "That class members may eventually have to make an individual showing of damages does not preclude class certification." *Smith* at 323 (discussing CR 23(b)(3)'s predominance requirement."). Because there are common questions of law and fact, which all arise from alleged common practices, CR 23(a)(2)'s "low threshold" is satisfied.

Typicality. "[A] plaintiff's claim is typical if it 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. Where the same unlawful conduct is alleged to have affected both the named plaintiffs and the class members, varying fact patterns in the individual claims will not defeat the typicality requirement." *Smith* at 320. Here, Ms. Hoffman's claims are typical of the putative class members' claim because she worked at various coffee stands, and her claims arise out the same alleged policies and practices of Defendants. While factual differences may exist as to training, sick leave, what may have been said to her about moonlighting, etc., these differences, without more, does not mean her claim are atypical under *Smith*. The Court determines that CR 23(a)(3)'s typicality requirement has been satisfied.

Adequacy of Representation. As with numerosity, Defendants have conceded that this factor is established. Because there is no demonstrated adversity between Ms. Hoffman and

other class members and class counsel possesses the requisite qualifications to adequately represent the class, CR 23(a)(4)'s adequacy of representation requirement is satisfied.

Based on the above, the Court determines that Plaintiff has satisfied all the criteria necessary under CR 23(a) with respect to class certification. The Court now proceeds to analyze the propriety of class certification under CR 23(b)(3).[1]

Predominance. "To determine whether common issues predominate over individual ones, a trial court pragmatically examines whether there is a common nucleus of operative facts in each class member's claim." *Chavez* at 516. Our Supreme Court explained that "[t]he relevant inquiry is whether the issue shared by class members is the dominant, central, or overriding issue in the litigation." *Id.* This "requirement is not defeated merely because individual factual or legal issues exists" or even where "the suit entails numerous remaining individual questions." *Miller* at 825. This is so because trial courts have numerous tools in their toolkit "for dealing with individual issues in class litigation." *Id.* If it turns out that class certification was made in error, or that individual issues eventually predominate over other common one, the Court retains the authority to, for example, decertify the class or create subclasses, among other tools at its disposal.

CR 23(b)(3)'s predominance "requirement is somewhat more stringent than the CR 23(a) commonality requirement, but involves a similar inquiry. The difference is that CR 23(a) is satisfied by the mere existence of a common legal or factual issue, whereas CR 23(b)(3) requires the common legal and factual issues to predominate over any individual issues." *Miller* 825. Here, the common legal and factual issues predominate over individual issues. While Defendants approach this issue from several angles, the common thread is that assessing

[1] Neither party addresses CR 23(b)(1)(A) or (B), or CR 23(b)(2).

damages will be too individualized given variations in schedules, training, practices, etc. of the class members. "That class members may eventually have to make an individual showing of damages does not preclude class certification." *Smith* at 323; *see also Elter* at 660 ("the difference in the amount of loss of use damages owed to the individuals does not defeat the point that USAA did not pay its insureds loss of use damages."). Here, the dominant overriding issues common to all class members are Defendants' policies and practices, and whether the implementation of those policies violate the law. The differences Defendants point to may be "relevant to a damages calculation . . . but those factors are not relevant to determining [Defendants'] liability regarding its obligations to comply with" the laws regarding wages, moonlighting, and/or sick leave. *See, e.g., Chavez* at 519. The Court determines that common issues of fact and law dominate over individualized questions, and therefore class certification is appropriate.

Superiority. This determination "is a highly discretionary" one involving "consideration of all the pros and cons of a class action as opposed to individual lawsuits." *Miller* at 828. The relevant factors favor certification. First, the Court determines that having a class action would be manageable with the benefit of a detailed class action trial plan from Plaintiffs explaining how the issues, such as damages related to certain claims, be addressed at, or after, any finding of liability.[2] In preparing a trial plan, Plaintiff's counsel should be mindful of the various mechanisms available to the Court to ensure that any bench trial before the Court is

[2] It would have been preferrable to this Court if Plaintiff had supplied, in advance, a detailed trial plan at the same time it was requesting class certification. That said, this Court does not determine that the absence of such a plan, without more, is grounds to deny class certification. *See, e.g., Elter* at 660 ("The rule does not require that a valid trial plan be filed prior to class certification.").

manageable. *Accord Chavez* at 521 ("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 lability is determined.") (citation & quotation omitted).

Second, the damages at issue are either small on an individual basis (albeit quite large on class-wide basis),[3] or the same with respect to claims requesting statutory penalties. This favors class certification. *See, e.g.*, *Chavez* at 523-24. Third, while it is true that certain claims appear to have been addressed by certain absent class members through claims made to L&I, it is likewise true that L&I's initial determination is currently on appeal and Defendants were unable to explain to the Court how long that appellate process might take to runs its course. In any event, to the extent that any of those claims overlap with ones made here, rather than deny class certification at this point, that issue can be addressed after a determination of liability has been made. While the Court has concerns with how the L&I claims will be dealt with, those concerns do not override the reality that a class action is a superior vehicle in which to address the common issues of law and fact that predominate this case. Finally, "[c]oncetrating these claims into one forum and certifying this class is likely the only way that the [barista's] rights will be vindicated because individual [barista's] may be reluctant to sue their employer[.]" *Chavez* at 524. This too favors certification.

Based on the above, this Court certifies the following class:

[3] As Chavez explained, "most courts find that class action is superior to individual litigation when class members' respective claims are for less than $100,000." *Id.* at 524, n.18.

All persons who worked as a barista at any of Defendants' coffee stands between July 15, 2021 and June 10, 2025.[4]

IT IS FURTHER ORDERED

1) Pursuant to CR 23, Plaintiff Eilish Hoffman is hereby appointed and designated as the class representative. Lindsay Halm, Andrew Boes, and Hong (Chen-Chen) Jiang of Schroeter Goldmark & Bender together with Jeremiah Miller and Janae Choquette of the Fair Work Center are hereby appointed and designated Class Counsel.

2) The parties are ordered to meet and confer within ten (10) business days of the date of this Order to address Class Notice. If an agreement is reached, the proposed Class Notice shall be filed and submitted for approval by the Court along with a list of Class Members to be noticed. If no agreement can be reached on the Class Notice, each party shall file and submit to the Court its proposed Class Notice within seven (7) days of the meet and confer. The parties are strongly encouraged to resolve this issue without Court intervention.

3) The parties are further ordered to meet and confer, consistent with the timing in paragraph (2), regarding how notice will be provided to the Class Members and how long Class Members have to return any exclusion request. Any Class Notice submitted by the parties must, at a minimum, comply with CR 23(c)(2).

4) Within twenty days (20) days of the date of this Order, Class Counsel shall provide a detailed Class Action Trial Plan to Defendants, and at that point the parties are ordered to meet and confer within five (5) days of the date of Defendants' receipt of the Class Action Trial Plan, to determine whether they can agree on a Class Action Trial Plan. If no

[4] Given the discussion at oral argument, particularly with respect to potential changes in how payment to barista's has been tracked/recorded, and because discovery is still on-going on this issue, either party may seek alteration of the proposed class language with respect to timing.

agreement can be reached on the Class Action Trial Plan, each party shall file and submit to the Court its proposed Class Action Trial Plan within seven (7) days of the meet and confer. The parties are strongly encouraged to resolve this issue without Court intervention.

5) All parties are encouraged to bring any issues regarding this matter to the Court's attention, through a request for a CR 16 conference, before filing any non-dispositive motion.

DATED this 10th day of June, 2025.

Judge Michael K. Ryan