UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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| WILLIAM BLAKLEY on behalf of himself and those similarly situated, HELEN BLAKLEY on behalf of herself and those similarly situated, and KIMBERLY SMITH on behalf of herself and those similarly situated, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | No. 1:16-cv-00351-SEB-TAB |
| CELADON GROUP, INC., CELADON TRUCKING SERVICES, INC., QUALITY COMPANIES, LLC, QUALITY EQUIPMENT LEASING, LLC, and JOHN DOES 1-10, | ) | |
| Defendants. | ) | |

**ORDER ON MOTION FOR CONDITIONAL AND CLASS CERTIFICATION**

Plaintiffs William Blakely ("William"), Helen Blakely ("Helen"), and Kimberly Smith ("Smith," and collectively with William and Helen, the "Named Plaintiffs") have filed this proposed collective and class action seeking damages and injunctive relief on behalf of themselves and similarly situated former and current truck drivers who worked for Defendants, Celadon Group, Inc., Celadon Trucking Services, Inc., Quality Companies, LLC, and Quality Equipment Leasing, LLC (collectively, "Celadon"). Docket No. 52. Named Plaintiffs filed a Motion requesting conditional certification of the proposed collective action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b),

and the certification of multiple classes of plaintiffs in accordance with Federal Rule of Civil Procedure 23. Docket No. 76. For the reasons explained below, we DENY the Motion.

## Factual Background

Since at least 2008, Celadon has operated a program through which it has hired commercial truck drivers to work as independent contractors. Docket No. 79-1 ("Hackett 30(b)(6) Dep.") at 71:1-9, 74:9-78:19. As part of this program, William and Smith along with as many other commercial truck drivers (the "Contracting Drivers") each entered into a written Contractor Operating Agreement.[1] *See* Docket No. 79-8 and Docket No. 79-19 (collectively, the "Operating Agreements"). While Celadon employed various versions of the Contractor Operating Agreement throughout the length of the program, Hackett 30(b)(6) Dep. at 71:1-9, 74:9-78:19, all versions of the Contractor Operating Agreement reference Celadon's intention to utilize vehicular equipment owned or leased by the Contracting Drivers to provide services in connection with its business. Operating Agreements, § 1.03. The Contractor Operating Agreements also state that each Contracting Driver is either "an owner or lessee of vehicular equipment" to be used exclusively to provide services to Celadon. Operating Agreements, § 1.02.

Many of the Contracting Drivers also executed agreements to lease a vehicle for use on Celadon's behalf. *See* Docket No. 79-7. While Contracting Drivers were permitted to

[1] Although Helen performed work for Celadon as a commercial truck driver, she did not entered into a Contractor Operating Agreement with Celadon. Docket No. 79-11, 37:6-17. Therefore, Helen is not included in the definition of Contracting Drivers.

use trucks they already owned or to lease a truck from a third-party not otherwise affiliated with Celadon, many Contracting Drivers chose to lease trucks through Defendant Quality Equipment Leasing, LLC ("Quality"), which acted as both a commercial truck lessor and a servicer of similar leases. Docket No. 97-9 ("Tarble Decl."), ¶¶ 3-5. As a commercial truck lessor, Quality offered different lease options to its lessees, based on the individual driver's preference. *Id*. at ¶¶ 11-13, 15. Quality previously held the titles of many of the trucks it leased to Contracting Drivers, but began selling the majority of its trucks to third-parties, Element Financial Corporation ("Element") and 19th Capital, in 2014. *Id*. at ¶¶ 4-9. Quality remained involved in leasing trucks to Contracting Drivers as a lease servicer for Element and 19th Capital. Docket No. 97 at 16. Element and 19th Capital each utilized its own agreement when leasing their trucks, and those lease agreements would vary over time. Tarble Decl., ¶¶ 10, 16. Therefore, Contracting Drivers who chose not to provide their own truck or to lease through any other lessor had available any of the several possible lease agreements with Quality, Element, or 19th Capital. Each Named Plaintiff executed lease agreements through Element. Docket No. 79-7.

Under the terms of the Contractor Operating Agreements, Contracting Drivers are allowed flexibility in setting their work schedules and in deciding which loads they choose to accept or reject. Docket No. 97-1 ("Hackett Decl."), ¶¶ 8-10; Operating Agreements, § 3.01. The vast majority of Contracting Drivers' loads are assigned directly by Celadon. Hackett Decl., ¶¶ 16-17. Once an assignment is conveyed to a Contracting Driver, that driver has discretion over whether to accept or reject the proffered load. Hackett Decl., ¶ 9; Docket No. 79-2 ("Douglas Dep."), 33:9-17; Docket No. 79-5 ("Chesterman Dep."),

32:25-33:8. Although many Contracting Drivers rely solely on Celadon to assign loads to them, Contracting Drivers may also broker loads from third parties and trip lease their trucks for authorized carriers other than Celadon in accordance with their Contractor Operating Agreements. Hackett Decl., ¶¶ 16-19; Hackett 30(b)(6) Dep., 67:17-69:7, 85:2-15; Operating Agreements, § 2.02.

Each Contracting Driver is assigned a driver manager designated by Celadon. Douglas Dep., 80:16-23. Driver managers are responsible for communicating available loads to Contracting Drivers, monitoring their Contracting Drivers' progress, disciplining their Contracting Drivers as necessary, and otherwise ensuring their Contracting Drivers' success in performing the assigned responsibilities. Hackett 30(b)(6) Dep., 18:17-19; Chesterman Dep., 19:6-22:20; Docket No. 79-15 ("Hackett Dep."), 11:15-22. A Contracting Driver's experience and profitability with Celadon vary based in part on the skills and expertise of the driver manager to whom he or she is assigned. Hackett Dep., 22:11-23:11.

Contracting Drivers are compensated based on each load they haul for Celadon (Hackett Dep., 15:21-24; Operating Agreements, § 5.01) and on either the number of miles they travel to haul a load or a percentage of the gross revenue generated by the load hauled. Hackett Dep., 15:21-23; Docket No. 79-26 ("Isaacs 30(b)(6) Dep."), 14:15-15:17. The rates upon which each of these payment methods are based has also varied over time. *Id.*; Hackett 30(b)(6) Dep., 176:15-24. In order to receive payment, Contracting Drivers must submit certain paperwork to Celadon. Isaacs 30(b)(6) Dep., 59:12-61:6; Hackett Decl., ¶ 28. Celadon is then obligated to pay the Contracting Drivers for loads hauled within fifteen

days after the submission of their necessary paperwork for those loads. Operating Agreements, § 5.03.

The Contracting Drivers acknowledge in their Contractor Operating Agreements "that [their] compensation for services … may be withheld by [Celadon] for payment of, and [Celadon] may set off against [their] compensation for" various deductions and expenses that may be incurred during the duration of each Contracting Drivers' Contractor Operating Agreement, including "[a]ll charges and deductions authorized by [the Contracting Driver]" and any "[a]dvances and other extensions of credit by [Celadon] to [the Contracting Driver]." Operating Agreements, § 5.05. Contracting Drivers are also responsible for "[p]aying all operating costs and expenses incidental to the operation of [their vehicular equipment] including but not limited to" costs related to fuel, insurance, oil, tires, repairs, licenses, plates, and tolls. Operating Agreements, § 9.02(c). Because the deductions taken from a Contracting Driver's pay must be specifically elected and authorized by that Contracting Driver, such deductions will vary for each Contracting Driver. Docket No. 97-11 ("Isaacs Decl."), ¶¶ 12-13.

## Legal Analysis

### I. Conditional Certification for FLSA Claims

In their Motion, Named Plaintiffs seek to certify a collective action on behalf of all Contracting Drivers who worked for Celadon between June 21, 2013 and the present, based on Celadon's alleged violations of the FLSA. Docket No. 85 at 7. Specifically, Named Plaintiffs assert that Celadon violated the FLSA by failing to pay its Contracting Drivers the federal minimum hourly wage. Docket No. 52, ¶¶ 84-85, 152-159.

**A. Applicable Law**

A lawsuit brought pursuant to the FLSA, 29 U.S.C § 201 *et seq*., invokes the Court's federal question jurisdiction under 28 U.S.C. § 1331. Sections 206 and 207 of Title 29, respectively, set the minimum hourly wage an employer must pay its employees, and set the maximum number of hours an employee can work per week before requiring overtime compensation. Section 216(b) authorizes a cause of action in money damages for violations of §§ 206 and 207, providing in applicable part as follows:

> An action to recover the liability prescribed [herein] may be maintained against any employer … in any Federal or State court of competent jurisdiction by any one or more employees for and in [sic] behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.

Named Plaintiffs and the prospective class members cannot recover on their claims under this statute unless the evidence establishes that they are, under the facts of their case and the applicable principles of law, employees rather than independent contractors. "Only employer-employee relationships fall under the FLSA." *Solis v. Int'l Detective & Protective Serv., Ltd.*, 819 F. Supp. 2d 740, 749 (N.D. Ill. 2011). "An 'employee' is defined as 'any individual employed by an employer' … and 'employ' means to 'suffer or permit to work.'" *Id.* (quoting 29 U.S.C. §§ 203(e)(1) and 203(g)).

Named Plaintiffs contend that, rather than being independent contractors as Celadon characterizes them, they and the prospective class members are actually employees of Celadon. Docket No. 52, ¶¶ 47-70. Whether Named Plaintiffs can establish that they were employees of Celadon determines their entitlement to FLSA benefits. In making this

determination, courts apply the economic realities test, which elucidates whether and, if so, to what extent employees are actually "dependent upon the business to which they render service." *Bartels v. Birmingham*, 332 U.S. 126, 130 (1947); *see also, Sec'y of Labor, U.S. Dep't of Labor v. Lauritzen*, 835 F.2d 1529, 1534 (7th Cir. 1987). Dependence in the FLSA context equals employment status.[2]

An action for unpaid minimum wages may be brought under the FLSA "by any one or more employees for and on behalf of himself or themselves and other employees similarly situated." 29 U.S.C. § 216(b). To prevail on their request for a collective action, Named Plaintiffs must make a threshold showing that they are similarly situated to the employees on whose behalf they are seeking to pursue this claim. *Campbell v. Advantage Sales & Mktg., LLC*, No. 1:09-cv-1430-LJM-DML, 2010 WL 3326752, at *3-4 (S.D. Ind. Aug. 24, 2010). "In FLSA cases based on misclassification claims, the precise duties and tasks performed by the employees are directly at issue." *Marshall v. Amsted Indus., Inc*. No. 10-cv-0011-MJR-CJP, 2010 WL 2404340, at *7 (S.D. Ill. June 16, 2010).

In the Seventh Circuit, courts generally follow a two-step inquiry. At the first stage, commonly referred to as the "notice stage," following a preliminary, conditional

[2] In the Seventh Circuit, courts consider the following six factors in assessing the economic reality of the working relationship: (1) the nature and degree of the alleged employer's control as to the manner in which the work is to be performed; (2) the alleged employee's opportunity for profit or loss depending upon his managerial skill; (3) the alleged employee's investment in equipment or materials required for his task, or his employment of workers; (4) whether the service rendered requires a special skill; (5) the degree of permanency and duration of the working relationship; and (6) the extent to which the service rendered is an integral part of the alleged employer's business. *Lauritzen*, 835 F.2d at 1534-35.

determination by the court, based on the pleadings and any accompanying affidavits, that the members of the putative class are similarly situated, a named plaintiff is authorized to give notice to potential class members permitting them to opt-in to the class. *Hawkins v. Alorica, Inc.*, 287 F.R.D. 431, 438-39 (S.D. Ind. 2012) (citing *Campbell*, 2010 WL 3326752, at *3). After conditional certification, "[t]he action proceeds as a representative action throughout discovery, and near the end of discovery, the court makes a factual determination of whether the plaintiffs are similarly situated." *Clemens v. Stericycle, Inc.*, No. 1:15-cv-01432SEB-MJD, 2016 WL 1054605, at *2 (S.D. Ind. Feb. 17, 2016) (citing *Fravel v. Cnty. of Lake*, No. 2:07-CV-253, 2008 WL 2704744, at *2-3 (N.D. Ind. July, 2008)). At the notice stage, the named plaintiff is required to make only a "modest factual showing" that the class members were "victims of a common policy or plan that violated that law." *Fravel*, 2008 WL 2704744, at *2-3. In determining whether conditional certification is appropriate, "the court must accept as true the plaintiff's allegations and does not reach the merits of the named plaintiff's FLSA claims." *Clemens*, 2016 WL 1054605, at *2.

In cases in which the conditional certification of a collective action is being considered, following the completion of enough discovery to make clear that a certification would not be appropriate, the court "can collapse the two stages of the analysis and deny certification outright." *Purdham v. Fairfax Cnty. Pub. Schs.*, 629 F. Supp. 2d 544, 547 (E.D. Va. 2009); *accord Blaney v. Charlotte-Mecklenburg Hosp. Auth.*, No. 3:10-CV-592-FDW-DSC, 2011 WL 4351631, at *4 (W.D.N.C. Sept. 16, 2011). Where substantial discovery has been conducted but discovery is not yet complete, an intermediate level of

scrutiny is applied. *See, e.g., Bunyan v. Spectrum Brands, Inc.*, No. 07-CV-089-MJR, 2008 WL 2959932, at *3-4 (S.D. Ill. July 31, 2008) (applying an intermediate approach in which it evaluated all of the facts available while allowing for an opportunity to decertify the class using a more stringent standard upon the completion of discovery).

In the case at bar, a significant amount of discovery has been completed, including depositions from each Named Plaintiff as well as Rule 30(b)(6) depositions of several Celadon representatives relating to certification issues. While discovery may not be complete, given the discovery that has already been conducted on the certification issues, we shall conduct an intermediate level of scrutiny. Our decision is based on the factual record currently before us.

**B. Discussion**

We hold that the conditional certification of Named Plaintiffs' proposed collective action is inappropriate here because the Named Plaintiffs have not demonstrated that they are similarly situated to all of the Contracting Drivers who were subject to a common policy that violated the FLSA. *See Williams v. Angie's List, Inc.*, No. 1:16-cv-878-WTL-MJD, 2017 WL 1546319, at *3 (S.D. Ind. Apr. 27, 2017) (concluding that a named plaintiff "need not provide conclusive support, but [it] must provide an affidavit, declaration or other support beyond allegations in order to make a minimal showing of other similarly situated employees subjected to a common policy" to support a request to conditionally certify a collective action) (internal quotations omitted). Specifically, Named Plaintiffs' proof fails for want of a showing of a common payment policy or method applicable to all Contracting

Drivers who would be members of the proposed collective action. Isaacs 30(b)(6) Dep., 14:15-15:17.

Contracting Drivers are paid based on each load they are assigned to haul and are paid either a per-mile rate or a percentage of the revenue earned for each load. Hackett Dep., 15:21-24; Isaacs 30(b)(6) Dep., 14:15-15:17. Because the Contracting Drivers did not all haul the same number of loads each pay period, and because Contracting Drivers were subject to varying payment calculations, it is unlikely that any two Contracting Drivers were entitled to precisely the same compensation rate or amount in a given pay period. While Named Plaintiffs cite anecdotal evidence to describe their own alleged underpayments, such evidence "is wholly insufficient to show that [Celadon] has a common pay policy that allegedly violated the FLSA" in light of the compensation distinctions among Contracting Drivers. *Armstrong v. Wheeels Assured Delivery Sys., Inc*., No. 1:15-cv-00354-SEB-MJD, 2016 WL 1270208, at *6 (S.D. Ind. Mar. 20, 2016) (denying certification of a collective action of truck drivers for violations of the FLSA largely because the drivers were paid per delivery, were subject to different payment calculations, did not drive the same number of miles each day, and did not work the same number of hours each day). Based on this per-load/per-mile pay structure, the Court would be required to analyze each Contracting Driver's payments for every week in which he or she worked during the collective action period and divide the total compensation each driver received by the total number of compensable hours that driver worked to in order determine whether he or she received an effective hourly rate of less than the federal minimum hourly rate of $7.25 per hour. *See* Docket No. 102 at 19. Furthermore, although

Named Plaintiffs argue that such an individualized calculation is acceptable in a collective action setting because damages need not be determined on a class-wide basis (Docket No. 102 at 16-17), such an argument does not support certification of a collective action here because the individualized calculation at issue informs the liability determination for violating the FLSA, rather than merely the damages calculation. Therefore, because the Contracting Drivers are not subject to a common pay policy, certification of the proposed collective action is inappropriate in this case.

**II. Class Certification for Named Plaintiffs' Truth in Leasing Act and Indiana Wage Payment Statute Claims**

**A. Rule 23 Standard**

Federal Rule of Civil Procedure 23 sets out four threshold requirements for certification of a class action. A district court may certify a class only if:

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). These four requirements—the Rule 23(a) requirements— typically are summarized as numerosity, commonality, typicality, and adequacy of representation. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011).

In addition to the Rule 23(a) requirements, a class action is appropriate only when at least one of the following factors is present: there is a risk that prosecuting the matter in separate actions will create incompatible standards of conduct binding the defendant; adjudication of separate individual claims would prejudice the interests of potential parties

not joined to the suit; the defendant has acted or refused to act on grounds that apply generally to the putative class; or the court finds that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b). Relevant here, Named Plaintiffs invoke Rule 23(b)(3). That subsection provides:

> (3) The court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
>
> (A) The class members' interests in individually controlling the prosecution or defense of separate actions;
>
> (B) The extent and nature of any litigation concerning the controversy already begun by or against class members;
>
> (C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) The likely difficulties in managing a class action.

A class action may be certified only after a rigorous examination of whether all of the requirements under Rule 23 have been met. *Bell v. PNC Bank, N.A.*, 800 F.3d 360, 373 (7th Cir. 2015). As the parties seeking class certification, Named Plaintiffs bear the burden of demonstrating that they (the class representatives) and the class as a whole meet the requirements of Rule 23(a), and those set forth in one of the subsections of Rule 23(b). *Retired Chic. Police Ass'n. v. City of Chicago*, 7 F.3d 784 (7th Cir. 1993).

**B. Discussion**

Here, Named Plaintiffs seek to certify three class actions: (1) on behalf of all Contracting Drivers who entered into a lease with Celadon from February 12, 2012 to the

present for violations of the Truth in Leasing Act ("TILA"); (2) on behalf of all Contracting Drivers who worked for Celadon from February 12, 2014 to the present for violations of the Indiana Wage Payment Statute ("IWPS"), Indiana Wage Assignment Act, and Indiana Wage Deduction Act; and (3) on behalf of all Contracting Drivers who received "payroll advances" or "personal money" loans from Celadon in violation of the Indiana Small Loans Act and the Indiana Consumer Loans Act from February 12, 2015 to the present.[3] Docket No. 76 at 1.

The parties do not dispute that these purported classes meet the requirements for numerosity or adequacy of representation under Federal Rule of Civil Procedure 23(a). However, the parties do dispute whether Named Plaintiffs proposed classes satisfy the commonality and typicality requirements for Rule 23(a) and the predomination requirement under Rule 23(b)(3).

**Truth in Leasing Act Claim**

In their Amended Complaint, Named Plaintiffs[4] assert that Celadon "violated multiple provisions of the Truth in Leasing Act" because the Contractor Operating Agreements failed to "conform to the requirements set forth in 49 C.F.R. § 376.12." Docket No. 52, ¶¶ 87-96, 169-70. Based on these alleged violations, Named Plaintiffs now

[3] Because the Court has previously dismissed Named Plaintiffs' claims relating to the Indiana Wage Assignment Act, Indiana Wage Deduction Act, Indiana Small Loans Act, and Indiana Consumer Loans Act, the Court DENIES Named Plaintiffs' Motion as it relates to these claims, and class certification for claims under these statutes are not further addressed here.

[4] Because Helen did not execute a Contractor Operating Agreement with Celadon, we have previously dismissed Helen's TILA claim. *See* Docket No. 101. Therefore, Helen is excluded from the proposed TILA Class.

seek to certify a class action "on behalf of all [Contracting Drivers] who entered into a lease with [Celadon]" between February 12, 2012 to the present (the "TILA Class"). Docket No. 85 at 7.

Rule 23(a)'s commonality criterion requires that the issues raised by a complaint be "common to the class as a whole" and that they "turn on questions of law applicable in the same manner to each member of the class." *General Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 155 (1982) (citing *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979)). Moreover, "[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 his or her claims are based on the same legal theory.'" *Keele v. Wexler*, 149 F.3d 589, 595 (7th Cir. 1998) (quoting *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983)).

Named Plaintiffs' TILA claims are not typical or common to all members of the proposed TILA Class. Although Named Plaintiffs seek to certify the TILA Class as a class of Contracting Drivers that leased vehicles from Celadon, the allegations in their Amended Complaint relating to TILA center on the Contracting Drivers' Contractor Operating Agreements, rather than any specific lease agreement. *See* Docket No. 52, ¶¶ 87-96, 169-170. Nothing in the Contractor Operating Agreements required a Contracting Driver to lease a vehicle from Celadon or any other entity. The Contractor Operating Agreements instead indicated that Contracting Drivers could use vehicles that they either owned or leased. Operating Agreements, § 1.02. Additionally, while the vast majority of Contracting Drivers did lease vehicles in conjunction with their Contractor Operating

Agreements, such lease agreements were not universal among Contracting Drivers. Douglas Dep., 64:7-10.

Even where Contracting Drivers did lease their vehicles, Contracting Drivers could have executed one of many forms of lease agreement available, with one of several different entities. Contracting Drivers could have leased their vehicles from multiple entities, including Quality, Element, or 19th Capital, each of which had its own unique lease agreements that varied over time. Tarble Decl., ¶¶ 10, 16. While some of the possible lease agreements may have required the Contracting Driver to sign a Contractor Operating Agreement, a Contracting Driver could also have leased a vehicle from Quality, Element, or 19th Capital without signing a Contractor Operating Agreement that contained the terms at issue in Named Plaintiffs' TILA claim. *See* Trable Decl. Ex. 1. As such, Named Plaintiffs have not demonstrated that their TILA claims, which are based solely on the Contractor Operating Agreements, would be typical or common of claims of all Contracting Drivers who leased vehicles from Celadon. The Court, therefore, DENIES Named Plaintiffs' request to certify the TILA Class.

**Indiana Wage Payment Statute Claim**

In addition to their FLSA and TILA claims, Named Plaintiffs assert a claim under the IWPS, alleging that Celadon withheld illegal deductions from the Contracting Drivers' wages. *See* Docket No. 52, ¶¶ 72-82, 161-67. Named Plaintiffs also seek to certify a class action on behalf all Contracting Drivers who worked for Celadon between February 12, 2014 and the present for violations of the IWPS (the "IWPS Class"). Docket No. 85 at 7.

Similar to Named Plaintiffs' claims under the FLSA, Named Plaintiffs and their proposed IWPS Class must be comprised of either current or former employees of Celadon in order to recover any damages from Celadon under the IWPS. Ind. Code § 22-2-5-2.[5] The IWPS requires that payment be made to employees within ten business days from the date in which the payment was earned. Ind. Code § 22-2-5-1(b). If an employer fails to make such payments of wages to an employee, the employer "shall be liable to the employee for the amount of unpaid wages." Ind. Code § 22-2-5-2.

Because the Contracting Drivers were paid on a per-load basis, the dates on which they were considered to have earned their compensation were determined based on the dates on which they submitted their required paperwork for each job. Isaacs 30(b)(6) Dep., 59:12-61:6; Hackett Decl., ¶ 28. In order to determine whether each Contracting Driver received payment from Celadon within the time requirements of the IWPS, the Court would need to analyze each payment received by each Contracting Driver and calculate the number of days that had passed between the date of payment and the date the driver submitted his or her necessary paperwork. Additionally, the Court would need to review whether any deductions were unauthorized or otherwise improperly made to each Contracting Drivers' paychecks to determine whether they were adequately paid within the required time period. In light of this necessarily individualized analysis, we conclude that

[5] Although Celadon argues that the IWPS applies only to current employees or employees that were voluntarily terminated, this interpretation of the IWPS is not clearly discernable from the text of Indiana Code § 22-2-5-2. In any event, we need not determine whether such an interpretation applies to the IWPS at this time.

individual questions of fact predominate over any questions common to the proposed class. Therefore, the IWPS Class does not meet the requirements of Rule 23(b)(3).

**Conclusion**

For the reasons detailed above, Named Plaintiffs' Motion for Conditional Certification and for Class Certification is DENIED.

IT IS SO ORDERED.

Date: 10/18/2017

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

Distribution: To counsel of record via CM/ECF.