IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HAMIMI YATA and JASMIN ZUKANCIC, individually and on behalf of others similarly situated,	)	
	)	**CASE NO. 17 CV 3503**
Plaintiffs,	)	
v.	)	
BDJ TRUCKING CO. and SENAD MUJKIC,	)	**Judge Sharon Johnson Coleman**
Defendants.	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

Plaintiffs, by their attorneys, Hughes Socol Piers Resnick & Dym, Ltd., pursuant to Rule 23 of the Federal Rules of Civil Procedure, move the Court to certify Count I of their Fourth Amended Complaint as a class action, stating in support as follows.

Introduction

Forty years ago, the Interstate Commerce Commission promulgated the Truth In Leasing Act ("TLA") regulations in response to Congressional complaints alleging abuses suffered by interstate owner-operator truck drivers. The stated purpose of the regulations is as follows:

> (1) to simplify existing and new regulations and to write them in understandable English; (2) to promote truth-in-leasing – a full disclosure between the carrier and the owner-operator of the elements, obligations, and benefits of leasing contracts signed by both parties; (3) to eliminate or reduce opportunities for skimming and other illegal or inequitable practices; and (4) to promote the stability and economic welfare of the independent trucker segment of the motor carrier industry.

Lease & Interchange of Vehicles, 131 M.C.C. 141, 142 (I.C.C. 1979). Today, an owner-operator may sue a motor carrier in federal court if the motor carrier violates the driver's rights under the TLA regulations. 49 U.S.C. § 14704(a)(2).

In this case, Defendant BDJ Trucking Co., Inc. ("BDJ") engaged in precisely the kind of "skimming" that the TLA regulations were designed to eliminate. It made unauthorized deductions from drivers' pay for escrow deposits, did not pay drivers interest on those escrow deposits, overcharged drivers for occupational accident insurance, and made unauthorized deductions for a "one-time processing fee." Because BDJ violated all owner-operator drivers' rights in the same manner, the Court should grant Plaintiffs' motion and certify Plaintiffs' claims under the TLA under Rule 23(b)(3).

Facts

Between 2013 and 2017, Plaintiffs and more than fifty other individuals worked as owner-operator semi-truck drivers for BDJ. Ex. A (Goldberg Dec.) ¶2. As required by TLA regulations, 49 C.F.R. § 376.12, all of the owner-operator drivers signed an equipment lease that governed the terms of their compensation with BDJ. Ex. B (Mujkic Dep.) at 47:17-20. During relevant time periods, BDJ asked drivers to sign two versions of its equipment lease, one entitled "Lease Agreement" that BDJ had drivers sign between April 2013 and April 2017 and another one entitled "Service Agreement" that BDJ had drivers sign between October 2014 and April 2017. Ex. C (Babic Dep.) at 11:18-15:20 & Exs.1 & 2 thereto. These two standard equipment leases form the basis of putative class members' claims.[1]

Plaintiffs Yata and Zukancic worked for BDJ as owner operator drivers at various points between 2013 and 2016. Ex. E (Yata Dep.) at 8:13-18; Ex. F (Zukancic Dep.) at 12:7-8. Both Plaintiffs signed the Lease Agreement and the Service Agreement. *Id*. at 34:17-35:10, 60:21-61:20 & Exs. 2 & 3 thereto; Ex. F (Zukancic Dep.) at 27:22-31:8 & Exs. 1 & 2 thereto. The

[1] One of BDJ's employees, Aldijana Miljkovic testified that all drivers signed a third version of the equipment lease, but her testimony is demonstrably false. Ex. D (Miljkovic Dep.) at 20:4-21:20 & Ex. 3. BDJ has turned over all Lease Agreements and Service Agreements in its possession, and only three drivers ever signed the third agreement, all in early 2013.

Lease Agreement was a very simple, one-page document providing that Plaintiffs leased their semi-trucks to BDJ pursuant to the TLA. Ex. C (Babic Dep.) at Ex. 1 thereto. The Lease Agreement made no representations about how much BDJ would pay the drivers and did not authorize BDJ to make any deductions from the drivers' pay. All BDJ owner-operator drivers signed the Lease Agreement. *Id*. at 11:6-9.

The Service Agreement was a six-page document that was more detailed than the Lease Agreement. *Id*. at Ex. 2 thereto. It explained that drivers would work for BDJ as independent contractors, that drivers needed to obtain certain kinds of insurance to perform work for BDJ, that the Service Agreement could be terminated after one year, and that drivers would indemnify BDJ for any injuries or losses that the company incurred due to the drivers' conduct. *Id.*

The Service Agreement also informed drivers that they were required to purchase occupational accident insurance on their own or through BDJ's insurance provider. *Id.* If a driver purchased occupational accident insurance through BDJ, the Service Agreement provided that the drivers' out-of-pocket cost would be limited to the amount of BDJ's monthly premium. *Id.*

As it turned out, BDJ secretly charged drivers more for occupational accident insurance than BDJ paid its insurance broker for the premiums. BDJ paid its broker approximately $141 per month per driver for occupational accident insurance premiums. Ex. G (Johnston Dep.) at 19:6-20:3 & Ex. 6 thereto; Ex. B (Mujkic Dep.) at 135:20-136:2 & Ex. 67 thereto. However, it charged owner-operator drivers $43 per week or $186.33 per month for that insurance. Ex. B (Mujkic Dep.) at 129:10-132:8; Ex. H (Yata and Zukancic Settlement Statements). Nothing in the Lease Agreement or the Service Agreement allowed BDJ to upcharge drivers more than $40 per month for the cost of occupational accident insurance. Ex. C (Babic Dep.) at Exs. 1 & 2 thereto.

BDJ also made deductions from Plaintiffs' and other owner-operators' paychecks that were not disclosed in the Service Agreement or the Lease Agreement. Most significantly, the company deducted $150 per month from each driver's first ten paychecks, deductions that BDJ called an "escrow" deposit. Ex. D (Miljkovic Dep.) at 24:13-21. BDJ never paid interest on the escrow deposit and frequently did not return all of the escrow money to drivers when they stopped working for the company. Dkt. No. 61 (Answer), ¶ 34 (admitting that BDJ never paid interest on escrow); Ex. A (Goldberg Dec.) ¶3 & Ex. 1 thereto (summarizing all instances in which escrow was not repaid in full). For example, BDJ deducted $5,100 in escrow from Mr. Yata's paychecks during the time he worked for BDJ, but it only repaid him $3,605 of that money. *Id.* BDJ deducted $1,500 in escrow from Zukancic's paychecks, but it only repaid him $1478.16 of that money. *Id.* Nothing in the Service Agreement or Lease Agreement mentions anything about an escrow deposit or otherwise authorizes these deductions. Ex. C (Babic Dep.) at Exs. 1 & 2 thereto.

BDJ also deducted $90 from most drivers' paychecks for a "one-time processing fee." Ex. A (Goldberg Dec.) ¶3 & Ex. 1 thereto. Neither the Service Agreement nor the Lease Agreement mentioned anything about one-time processing fees. Ex. C (Babic Dep.) at Exs. 1 & 2 thereto.

Finally, Plaintiff Yata and a few other drivers were paid less than the per-mile rate promised in their equipment lease. BDJ promised Mr. Yata that he would be paid $1.70 per mile for his work. *Id*. at Ex. 2 thereto. However, BDJ paid him as little as $1.34 per mile during some workweeks, in blatant violation of his lease agreement. Ex. H (Yata Settlement Statements).

Argument

I. Truth In Leasing Act Regulations.

The Truth In Leasing Act regulations provide very specific rules that motor carriers must follow when leasing trucks from owner-operator drivers. In particular, motor carriers must enter equipment leases with the owner operator driver, and that lease must include the following information:

- The amount to be paid by the motor carrier for the equipment and drivers' services. 49 C.F.R. § 376.12(d).
- The amount of any escrow fund that the driver is required to pay as well as the specific items to which the escrow fund can be applied. 49 C.F.R. § 376.12(k).
- A statement that while the escrow fund is in the possession of the motor carrier, the motor carrier will pay the driver interest on the escrow. 29 C.F.R. § 376.12(k)(5).
- The cost of any insurance related to the operation of the equipment that will be deducted from the driver's pay. 29 C.F.R. § 376.12(j).
- All items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement. 29 C.F.R. § 376.12(h).

BDJ's standard equipment leases, the Lease Agreement and the Service Agreement, ignored these regulations. The leases did not disclose that BDJ would make escrow deductions from their paychecks, did not promise interest on the escrow deductions, did not accurately disclose the cost of insurance that BDJ deducted from drivers' pay, and did not disclose that BDJ would deduct a one-time processing fee from the drivers' paychecks. Ex. C (Babic Dep.) at Exs. 1 & 2 thereto.

II. Class Certification Requirements.

The Supreme Court has held that a suit may proceed as a class action if it satisfies the criteria set forth in Rule 23(a) and it fits into one of three categories described in Rule 23(b).

Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co., 559 U.S. 393, 398 (2010). When the lawsuit satisfies these two criteria, then the certification of a class is mandatory because Rule 23 "creates a categorical rule," affirmatively "entitling" any "plaintiff whose suit meets the specified criteria to pursue his claim as a class action." *Id.*

Plaintiffs must demonstrate that a proposed class satisfies the Rule 23 requirements, *see, e.g., Trotter v. Klincar,* 748 F.2d 1177, 1184 (7th Cir. 1984), but they need not make that showing to a degree of absolute certainty. "It is sufficient if each disputed requirement has been proven by a preponderance of evidence." *Messner v. Northshore Univ. HealthSystem,* 669 F.3d 802, 811 (7th Cir. 2012). If there are material factual disputes, the court must "receive evidence ... and resolve the disputes before deciding whether to certify the class." *Szabo v. Bridgeport Machines, Inc.,* 249 F.3d 672, 676 (7th Cir. 2001).

III. Plaintiffs' TLA Claims Qualify For Class Certification Under Rule 23(a).

Plaintiffs ask the Court to certify their TLA claims on behalf of a class defined as "all individuals or entities that signed equipment leases with BDJ between April 1, 2013 and April 1, 2017." These claims, brought under Count I of Plaintiffs' Fourth Amended Complaint, satisfy the four prerequisites of Rule 23(a).

a. Numerosity.

Rule 23(a)(1) requires "numerosity" although without "identify[ing] a magic threshold number required to establish numerosity." *Schmidt v. Bassett Furniture Indus.,* No. 08-C-1035, 2011 WL 67255 (E.D. Wis. Jan. 10, 2011). During the relevant class period – April 1, 2013 until April 1, 2017 – over fifty individuals worked for BDJ as owner-operator drivers and signed equipment leases with BDJ. Ex. A (Goldberg Dec.) ¶2. Fifty class members are more than sufficient to satisfy numerosity under Rule 23(a)(1). *See Chavez v. Don Stoltzner Mason*

Contractor, Inc., 272 F.R.D. 450, 454 (N.D. Ill. 2011) ("A class consisting of more than forty members generally satisfies the numerosity requirement . . . ."); *Barragan v. Evanger's Dog & Cat Food Co.*, 259 F.R.D. 330, 333 (N.D. Ill. 2009) (same).

b. Commonality.

Rule 23(a)(2) requires "commonality," which means the existence of "questions of law or fact common to the class." For this element to be satisfied, Plaintiffs must show that the truth or falsity of class members' common contentions "will resolve an issue that is central to the validity of each one of the claims in one stroke." *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). This commonality is generally manifest when claims arise from standardized conduct, similarly affecting all class members. That is patently the case here.

The common questions in this case include the following: (1) whether the Lease Agreement and Service Agreement authorized BDJ's deductions for an escrow deposit; (2) whether BDJ paid interest on the escrow deposit; (3) whether BDJ charged owner-operator drivers more for occupational accident insurance than the Lease Agreement and Service Agreement allowed; and (4) whether the Lease Agreement and Service Agreement authorized BDJ's deductions for one-time processing fees. These common questions easily satisfy Rule 23(a)(2)'s requirement. *See Foster v. CEVA Freight, LLC*, 272 F.R.D. 171, 174 (W.D.N.C. 2011) (holding that the commonality requirement was satisfied when the class members' TLA claims all "involved uniform provisions contained within their respective operating agreements."); *Owner-Operator Indep. Drivers Ass'n, Inc. v. Allied Van Lines, Inc.*, 231 F.R.D. 280, 285 (N.D. Ill. 2005) ("In this case a common threshold factual issue-whether TFC's standard lease provisions violate the applicable regulations-will determine the ability of any class members to recover.").

c. Typicality.

Whereas the requirements of numerosity and commonality focus on attributes of the class as a whole, the requirements of "typicality" and "adequacy" in Rules 23(a)(3) and (a)(4) focus, instead, on the attributes of the class representative(s) and class counsel. 1 Newberg on Class Actions § 3:28 (5th ed.). "Typicality," required by Rule 23(a)(3), gauges whether the class representative's claim is so interrelated with absent class members' claims that by "pursuing her own interests," a class representative "will pursue the class's as well." *Id*. In the Seventh Circuit, this requirement is met when the class representatives' claims "arise[ ] 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); *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992).

Here, Yata and Zukancic's TLA claims are typical of those of other class members. All claims arise from the Lease Agreement and Service Agreement, which Yata and Zukancic both signed. The claims also arise from BDJ's standard practice of making deductions from paychecks, not paying interest on escrow deposits, and overcharging for occupational accident insurance.

d. Adequacy.

The requirement of "adequacy" in Rule 23(a)(4) "raises concerns about the competency of class counsel and [potential] conflicts of interest" between the class representative and absent class members. *Dukes*, 564 U.S. at 372 n.5; *Cf. Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076, 1080 (7th Cir. 2013) (noting that the test for adequacy of a class representative is not stringent and courts should not "be unrealistic about the role of the class representative in a class action suit. The role is nominal.").

In this case, adequacy is not an issue. Plaintiffs' attorneys are experienced and accomplished in class action litigation, as evidenced by the Declaration of Christopher J. Wilmes submitted as Ex. I ¶ 1, and there are no disabling conflicts among the members of the class. The named representatives and class counsel will adequately represent the interests of the class. Both plaintiffs attended their depositions, explained during their depositions the reasons for the lawsuit, responded to written discovery, attended a settlement conference, and regularly communicate with class counsel. Ex. E (Yata Dep.) at 27:5-11; Ex. F (Zukancic Dep.) at 57:11-58:7; Ex. I (Wilmes Dec.) ¶2. They understand their obligations as class representatives and are dedicated to obtaining a fair outcome for all class members. Ex. E (Yata Dep.) at 26:24-27:4; Ex. F (Zukancic Dep.) at 26:23-27:5.

IV. Count I Qualifies For Class Certification Under Rule 23(b)(3).

Certification is proper under Rule 23(b)(3) when the criteria under Rule 23(a) have been met and, in addition, "questions of law or fact common to members of the class predominate over any questions affecting only individual members" and "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). Both of these conditions are satisfied for Count I of Plaintiffs' Fourth Amended Complaint.

a. Predominance.

The Seventh Circuit has said that "Rule 23(b)(3)'s predominance requirement is satisfied when 'common questions represent a significant aspect of [a] case and ... can be resolved for all members of [a] class in a single adjudication.'" *Messner v. Northshore Univ. Health Sys.*, 669 F.3d 802, 815 (7th Cir. 2012) (quoting 7AA Wright & Miller, Federal Practice & Procedure § 1778 (3d ed. 2011)). "If the members of a proposed class will need to present evidence that

varies from member to member, then it is an individual question. If the same evidence will suffice for each member to make a *prima facie* showing, then it becomes a common question." *Id.*

In this case, there are no individualized questions with respect to liability. BDJ used two versions of its equipment lease, and neither of the leases disclosed that escrow deductions or one-time processing fees would be made from drivers' paychecks. Nor did the leases disclose that BDJ would charge drivers more than the cost of the premiums that BDJ paid for occupational accident insurance. Additionally, BDJ has already admitted in its Answer that it never paid interest on escrow deposits. Dkt. No. 61, ¶ 34.

This Court should join the host of other courts holding that similar TLA claims are appropriately certified under Rule 23(b)(3). *See, e.g.*, *Stampley v. Altom Transp., Inc.*, No. 14 CV 3747, 2015 WL 5675095, at *6 (N.D. Ill. Sept. 24, 2015); *Foster v. CEVA Freight, LLC*, 272 F.R.D. 171, 176 (W.D.N.C. 2011); *Owner-Operators Indep. Drivers Ass'n, Inc. v. Mayflower Transit, Inc.*, No. IP 98-457-C-B/S, 2005 WL 6957703, at *6 (S.D. Ind. Sept. 27, 2005); *Owner-Operator Indep. Drivers Ass'n, Inc. v. C.R. England, Inc.*, No. 2:02 CV 950 TS, 2005 WL 2098919, at *7 (D. Utah Aug. 29, 2005); *Owner-Operator Indep. Drivers Ass'n, Inc. v. Allied Van Lines, Inc.*, 231 F.R.D. 280, 285 (N.D. Ill. 2005) ("In this case a common threshold factual issue-whether TFC's standard lease provisions violate the applicable regulations-will determine the ability of any class members to recover. That satisfies the 'predominance' inquiry for Rule 23(b)(3) purposes."); *Sheinhartz v. Saturn Transp. Sys., Inc.*, No. CIV. 00-2489PAM/JGL, 2002 WL 575636, at *8 (D. Minn. Mar. 26, 2002).

The Court will need to resolve class member damages on an individual basis, but those damages can be calculated mechanically by reviewing class member's paystubs. In any event,

individualized damages are not a reason to deny class certification. *See Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013) ("It would drive a stake through the heart of the class action device, in cases in which damages were sought rather than an injunction or a declaratory judgment, to require that every member of the class have identical damages"); *Stampley*, 2015 WL 5675095, at *6 ("Although damages will have to be resolved on an individual basis, that hurdle is not reason alone to deny certification."); *Allied Van Lines, Inc.*, 231 F.R.D. at 285 ("Class certification in the face of individualized damages is particularly appropriate when a common factual issue acts as a predicate to recovery by any class member.").

Alternatively, if the Court believes the damages issue to be too individualized to certify a class under Rule 23(b)(3), then the Court should at least certify the issue of liability under Rule 23(c)(4). *See Mullins v. Direct Digital, LLC*, 795 F.3d 654, 671 (7th Cir. 2015) ("It has long been recognized that the need for individual damages determinations . . . does not itself justify the denial of certification."); *Butler v. Sears, Roebuck & Co.*, 727 F.3d 796, 800 (7th Cir. 2013) ("[A] class action limited to determining liability on a class-wide basis, with separate hearings to determine—if liability is established—the damages of individual class members, or homogeneous groups of class members, is permitted by Rule 23(c)(4) and will often be the sensible way to proceed").

b. Superiority.

The benefits of class treatment of Count I are substantial. Individual adjudication of the more than fifty class members' claims would burden the Court and the class members themselves. These are small-dollar-value claims. Many of the claims are worth less than $1,000. The fixed costs of litigating the claims individually, class member by class member, would quickly exceed the dollar value of the claims themselves. *See generally Hughes v. Kore of Ind.*

Enter., Inc., 731 F.3d 672, 675 (7th Cir. 2013) ("The smaller the stakes to each victim of unlawful conduct, the greater the economies of class action treatment"); *Thorogood v. Sears, Roebuck & Co.*, 547 F.3d 742, 744 (7th Cir. 2008) ("If every small claim had to be litigated separately, the vindication of small claims would be rare. The fixed costs of litigation make it impossible to litigate a $50 claim . . . at a cost that would not exceed the value of the claim by many times"). Accordingly, the second prong of the Rule 23(b)(3) inquiry is satisfied.

Conclusion

For the foregoing reasons, the Court should grant Plaintiffs' motion for class certification and order notice be mailed to the Class.

/s/ Christopher J. Wilmes

Matthew J. Piers
Christopher J. Wilmes
Hughes Socol Piers Resnick & Dym, Ltd.
70 W. Madison St. Suite 4000
Chicago, IL 60602
312-580-0100
cwilmes@hsplegal.com
mpiers@hsplegal.com