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 SUMMARY JUDGMENT

Introduction

Forty years ago, the Interstate Commerce Commission promulgated regulations under the Truth In Leasing Act ("TLA") to protect independent owner-operators who were being abused by trucking companies. 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). The TLA permits an owner-operator (*i.e.*, a driver) to sue a motor carrier in federal court if the motor carrier violates the driver's rights under these regulations. 49 U.S.C. § 14704(a)(2).

In this case, Defendant BDJ Trucking Co., Inc. ("BDJ") ran roughshod over the TLA regulations, engaging in several illegal pay practices that collectively shorted owner-operators out of more than one-hundred thousand dollars in pay. It made unauthorized deductions from

drivers' pay for escrow deposits, did not pay drivers interest on those deposits, overcharged drivers for insurance, made unauthorized deductions for a "one-time processing fee," and paid certain drivers less than the per-mile rate promised in their lease agreements.

Because BDJ has conceded in its Answer and in deposition testimony that it violated Plaintiffs' rights under the TLA, the Court should enter summary judgment in Class Members' favor on that claim. It also should enter summary judgment on Plaintiff Yata's and Zukancic's claims under the Illinois Wage Payment and Collection Act ("IWPCA"), 820 ILCS 115/1, *et seq*.

Factual Background

Between 2013 and 2017, Plaintiffs and more than fifty other individuals worked as owner-operator semi-truck drivers for BDJ. L.R. 56.1 Stmt. ¶ 5. 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 and their work with BDJ. *Id*. ¶ 6. During relevant time periods, BDJ asked drivers to sign two versions of its equipment lease. One was called a "Lease Agreement," which BDJ had drivers sign between April 2013 and April 2017. *Id*. ¶ 7. The second lease was called a "Service Agreement," which BDJ had drivers sign between mid-2014 and April 2017. *Id*. These two standard equipment leases form the basis of Class Members' claims.

The Lease Agreement was a simple, one-page document providing that Plaintiffs leased their semi-trucks to BDJ. *Id*. ¶ 8. It made no representations about how much BDJ would pay the drivers and did not authorize BDJ to make any deductions from drivers' pay. *Id*. ¶ 9. All BDJ owner-operator drivers signed the Lease Agreement. *Id*.

The Service Agreement was a six-page document in which Plaintiffs also leased their semi-trucks to BDJ. *Id*. ¶ 10. However, it was more detailed than the Lease Agreement. 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*. ¶ 11.

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*. ¶ 12. 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*. The Service Agreement first memorialized in an equipment lease BDJ's agreement to deduct occupational accident premiums, but it was consistent with documents that BDJ previously provided drivers before it rolled out the Service Agreement. For example, Yata and other drivers signed a document created by the insurance company permitting BDJ to make deductions in the amount of BDJ's monthly premiums. *Id.*

As it turned out, BDJ charged drivers more for occupational accident insurance than BDJ paid its insurance broker for the premiums. BDJ paid its broker approximately $141.73 per month per driver for occupational accident insurance premiums. *Id*. ¶ 13. However, it charged owner-operator drivers $43 per week, or $186.33 per month, for that insurance. *Id*. 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. *Id*. ¶ 14.

BDJ also made deductions from Plaintiffs' and other owner-operators' pay that it did not disclose in the Service Agreement or the Lease Agreement. Most significantly, the company deducted $150 per month (or more) from each driver's first ten paychecks, deductions that BDJ called an "escrow" deposit. *Id*. ¶ 16. 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. *Id.* ¶ 17; Answer to Fourth Amended Complaint (hereinafter "Answer"), ECF No. 61, ¶ 34. For example, BDJ deducted a total of $5,100 in escrow from Yata's paychecks, but it only repaid him $3,605.50 of that money. L.R. 56.1 Stmt. ¶ 18. BDJ deducted $1,500 in escrow from Zukancic's paychecks, but it only repaid him $1,478.16 of that money. *Id.* ¶ 19. Nothing in the Service Agreement or Lease Agreement mentioned anything about an escrow deposit or otherwise authorized these deductions. *Id.* ¶ 20. BDJ also deducted $90 from most drivers' paychecks for a "one-time processing fee." *Id.* ¶ 22. Neither the Service Agreement nor the Lease Agreement mentioned anything about one-time processing fees. *Id.* ¶ 23.

Finally, Plaintiff Yata and another driver were paid less than the per-mile rate promised in their equipment leases. BDJ promised Yata that it would pay him $1.70 per mile for his work. *Id.* ¶ 24. However, BDJ paid him as little as $1.34 per mile during some workweeks. *Id.* ¶ 25. BDJ promised to pay Hatem Bitar no less than $1.50 per mile for his work. *Id.* ¶ 26. However, BDJ often paid Bitar $1.42 or $1.44 per mile. *Id.* ¶ 27.

Procedural Background

On July 8, 2016, Plaintiffs filed their original state-court complaint in this matter. On May 9, 2017, Defendants removed the case to federal court because Plaintiffs added a federal TLA claim. ECF No. 1. On November 30, 2017, Defendants moved to dismiss Plaintiffs' Third Amended Complaint. ECF No. 29. On July 5, 2018, after full briefing, the Court denied Defendants' motion to dismiss. ECF No. 51. On July 6, 2018, Plaintiffs filed their Fourth Amended Complaint, which is now the operative complaint. ECF No. 52. On November 8, 2018, BDJ filed its Answer. ECF No. 61.

On March 18, 2019, Plaintiffs moved for class certification. ECF No. 68. On March 5, 2020, the Court granted Plaintiffs' motion. ECF No. 78. The court subsequently entered an order defining the class as "all individuals or entities that signed equipment leases with BDJ between April 1, 2013 and April 1, 2017." ECF No. 83.[1] The order defined the common issues as follows: "(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." *Id.* Plaintiffs now move for summary judgment on their TLA claims and on Yata's and Zukancic's IWPCA claims.

Argument

I. Summary Judgment Standard

"A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought." Fed. R. Civ. P. 56(a). The Court should grant summary judgment where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Rule 56(a). The legal standard places the initial burden on the moving party to identify those portions of the record that "it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986) (internal quotations omitted).

Here, Plaintiffs move for summary judgment on all Class Members' TLA claims. They also move for summary judgment on Yata and Zukancic's individual IWPCA claims. Given the

[1] Since Plaintiffs mailed notice to the class, four Class Members have opted out. When Plaintiffs refer to "Class Members" in this brief, they refer to the individuals included in the class definition who have not opted out of the case.

evidence, in particular BDJ's Answer and its 30(b)(6) deposition testimony, there is no genuine issue of material fact regarding Class Members' TLA claims or the Named Plaintiffs' IWPCA claims. Plaintiffs and Class Members are entitled to judgment in their favor.

II. Plaintiffs Are Entitled to Summary Judgment on their TLA claims.

The TLA 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 cost of any insurance related to the operation of the equipment that will be deducted from the driver's pay. *Id.* § 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. *Id.* § 376.12(h).
- That the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement. *Id.* § 376.12(i).
- 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. *Id.* § 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. *Id.* § 376.12(k)(5).

Additionally, the TLA regulations require motor carriers to comply with the terms of their lease with an owner-operator driver. *Id.* § 376.12 (introductory section).

BDJ's standard equipment leases, the Lease Agreement and the Service Agreement, violated these regulations. The leases: (a) did not disclose that BDJ would make escrow deductions from their paychecks; (b) did not promise interest on the escrow deductions; (c) did not disclose that BDJ would deduct a one-time processing fee from the drivers' paychecks, and

(d) did not accurately disclose the cost of occupational accident insurance that BDJ deducted from drivers' pay. L.R. 56.1 Stmt. ¶ 12-14, 20, 23.

As set forth below, there is no disputing these facts. The leases are clear on their face, BDJ has admitted that it did not disclose the improper deductions, and there is no dispute that BDJ actually made the deductions. Answer, ECF No. 61 ¶ 31. As such, summary judgment on behalf of the class is appropriate.

A. BDJ Deducted Escrow Fees That Were Not Authorized By the Lease Agreement or Service Agreement.

BDJ's Service Agreement and Lease Agreement did not authorize escrow deductions. BDJ admits in its Answer that it made deductions for escrow and that the Lease Agreement and Service Agreement did not disclose the escrow deductions, in violation of 49 C.F.R. § 376.12(k). Answer, ECF No. 61 ¶ 31 ("Defendants admit that they made chargebacks and escrow deductions . . . . Defendants further admit that the equipment lease agreements do not lay out the specific deductions."). Plaintiffs noticed a 30(b)(6) deposition in this matter requiring BDJ to provide testimony about "Whether the Service Agreement authorizes deductions for escrow, and if so, in what amounts." At the deposition, Mr. Mujkic testified as follows about the Service Agreement, which was marked as Exhibit 64 during his deposition:

> Q: So there's nothing in Exhibit 64 authorizing an escrow deduction, correct?
> A: What I am saying here seeing it's not in this.
> . . .
> Q: Did you see those documents in Exhibit 64?
> A: Not about escrow there.

L.R. 56.1 Stmt. ¶ 21. There is simply no evidence in the case that Class Members who signed a Lease Agreement or Service Agreement consented in writing to escrow deductions.

Given Defendants' admissions, the agreements themselves, and the testimony in the record, there is no dispute of fact, and the Court should enter summary judgment on Class

Members' TLA claim for unauthorized escrow deductions. The Court should award damages in the amount of escrow that BDJ withheld and never returned: a total of $58,864.50.[2] *Id*. ¶ 31. Several courts have held that this is the proper measure of damages for TLA claims alleging that a motor carrier held escrow without written authorization. *See Owner-Operator Indep. Drivers Ass'n., Inc.v. C.R. England, Inc.*, No. 2:02-CV-950 TS, 2008 WL 4735639, at *2 (D. Utah Oct. 24, 2008) ("[T]he class member is entitled to receive as actual damages those monies which that class member paid into any or all of the three escrow accounts, less actual obligations incurred by that class member that were authorized by the ICOA or another agreement between that class member and Defendant."); *Owner-Operator Indep. Drivers Ass'n, Inc. v. Ledar Transp., Inc.*, No. CIVA000258 CV W2FJGECF, 2008 WL 857758, at *4 (W.D. Mo. Mar. 31, 2008) ("The measure of damages is thus the unrecovered amounts remaining in the maintenance escrows at the time of termination of each class member."); *Owner-Operator Indep. Drivers Ass'n, Inc. v. Arctic Express, Inc.,* 288 F. Supp. 2d 895, 907 (S.D. Ohio 2003).

B. BDJ Did Not Pay Interest on the Escrow Deductions.

BDJ admits that it is liable to all Class Members under the TLA for not paying interest on escrow deductions, and thus summary judgment is proper. Answer ¶ 52, ECF No. 61. The TLA regulations required BDJ to make these interest payments on a quarterly basis. 49 C.F.R. 376.12(k)(5). Plaintiffs have calculated that the value of this unpaid interest, accruing at the historical rate of a 13-week Treasury bill, for Class Members is $3,317.07. L.R. 56.1 Stmt. ¶ 32.

[2] BDJ withheld and never returned a total of $60,814.50 in Class Member escrow deposits. However, $1,950 of that amount is attributable to Blue Diamond Logistics and GJ & F Trucking, which signed a different equipment lease. L.R. 56.1 Stmt. ¶ 31. That equipment lease authorized escrow deductions and listed the reasons that BDJ could retain escrow deposits. For purposes of this motion, Plaintiffs have attributed these two Class Members zero damages for unreimbursed escrow deductions.

C. BDJ Deducted One-Time Processing Fees That Were Not Authorized By the Lease Agreement or Service Agreement.

Similarly, the Court should enter summary judgment on Plaintiffs' TLA claim for unauthorized deductions for "one-time processing fees," which are fees that BDJ apparently charged drivers to process their application to work for the company. These deductions for one-time processing fees violated 49 C.F.R. § 376.12(h), which prohibits chargebacks not authorized in the lease. They also violated 49 C.F.R. § 376.12(i), "which provides that the lessor is not required to purchase or rent any . . . services from the authorized carrier as a condition of entering into the lease arrangement." *Owner-Operator Indep. Drivers Ass'n, Inc. v. Mayflower Transit, LLC*, 615 F.3d 790, 791 (7th Cir. 2010) (internal quotations omitted).

If a motor carrier does not clearly specify deductions that come out of a driver's pay, then the motor carrier can be held liable for that amount. *See Brinker v. Namcheck*, 577 F. Supp. 2d 1052, 1063 (W.D. Wis. 2008) ("Given this background, what should happen if, as in this case, the motor carrier fails to 'specify' or 'clearly specify' who pays what? The answer is clear: the motor carrier is responsible for expenses that it has failed to 'specify' or 'clearly specify' as being the responsibility of the owner-operator."). The same is true if a motor carrier forces a driver to purchase services that it never discloses in a lease. 49 C.F.R. § 376.12(i); *Al-Anazi v. Bill Thompson Transp., Inc.*, No. 15-CV-12928, 2016 WL 3611886, at *5 (E.D. Mich. July 6, 2016) (holding that Section 376.12(i) creates a substantive obligation on motor carriers not to force owner-operators to purchase services).

As a result, the Court should enter summary judgment and award damages to Class Members in the amount of $4,050.00 for the unauthorized deductions for processing fees.

D. BDJ Breached the Service Agreement by Overcharging Drivers For Occupational Accident Insurance.

Beginning in mid-2014, BDJ required all drivers to sign the Service Agreement. L.R. 56.1 Stmt. ¶ 7. The Service Agreement provides as follows regarding occupational accident insurance, "BDJ TRUCKING may from time to time make occupational accident insurance available to OWNER-OPERATOR . . . . OWNER-OPERATOR will pay the monthly premiums for that insurance." Before 2014, BDJ also represented to drivers (in their insurance application documents) that the company's deductions for occupational accident insurance would be limited to the *cost of the premiums*. L.R. 56.1 Stmt. ¶ 12. Plaintiffs maintain that this written understanding was incorporated into the Lease Agreement that predated the Service Agreement.

BDJ's 30(b)(6) witness admitted that the company paid $141.73 per month per driver for occupational accident insurance premiums. *See* L.R. 56.1 Stmt. ¶ 13. BDJ's insurance broker confirmed this monthly rate as well. *Id*. By contrast, BDJ charged each owner-operator driver $186.33 per month for the insurance, significantly more than the Service Agreement and Lease Agreement allowed. *Id*. Accordingly, this was a clear and undisputed violation of the TLA, which requires a motor carrier to "adhere" to the terms of an owner-operator's lease. 49 C.F.R. § 376.12 (introductory paragraph); *see also Mervyn v. Nelson Westerberg, Inc.*, 76 F. Supp. 3d 715, 718 (N.D. Ill. 2014) ("That the regulation requires compliance with the lease's terms is clear from its text; there is no other conceivable way to read it.").

The occupational accident insurance overcharges also violated 49 C.F.R. § 376.12(h) which requires a motor carrier to disclose 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." Again, if a motor carrier does not clearly specify deductions from driver pay, then the motor carrier is liable for that amount. *See Brinker*, 577 F. Supp. 2d at 1063.

Plaintiffs' have calculated damages stemming from the occupational accident insurance overcharges for all Class Members, and it amounts to $29,705.59. L.R. 56.1 Stmt. ¶ 33. Once again, Blue Diamond Logistics and GJ&F Trucking are excluded from this category of damages because their unique equipment leases authorized the full deduction for this insurance.

III. BDJ Breached Two Drivers' Service Agreements by Paying Them at a Per-Mile Rate Below The Rate That BDJ Promised.

BDJ promised to pay two Class Members, Hamimi Yata and Hatem Bitar, at a certain per-mile rate for all miles they drove for BDJ. In January 2015, BDJ promised to pay Yata $1.70 per mile for all miles he drove for BDJ. *Id*. ¶ 24. In June 2015, BDJ promised to pay Bitar no less than $1.50 per mile. *Id.* ¶ 26. However, BDJ unilaterally reduced Yata's and Bitar's pay rates without their written consent. It frequently paid Yata between $1.35 and $1.50 per mile, and it paid Bitar between $1.42 and $1.44 per mile. *Id.* ¶ 25, 27. As a result, BDJ breached its contracts with Yata and Bitar and again violated TLA regulations by not adhering to their lease agreements. 49 C.F.R. § 376.12 (introductory paragraph).

Plaintiffs' have calculated damages stemming from this TLA violation, and they amount to $12,841.38 for Yata and $6,290.51 for Bitar. L.R. 56.1 Stmt. ¶ 35-36.

IV. BDJ Violated Yata's and Zukancic's Rights Under the IWPCA By Making Unauthorized Deductions From Their Wages.

Plaintiffs Yata and Zukancic assert individual claims under the IWPCA against both BDJ and Mujkic for unauthorized deductions from their wages. 820 ILCS 115/9. Specifically, they seek to recover the full amounts that BDJ deducted from their pay for occupational accident insurance, unreimbursed escrow, and fines. The undisputed facts demonstrate that Yata and Zukancic are entitled to judgment in their favor against both Defendants on their IWPCA claims.

A. IWPCA Liability

The Illinois General Assembly passed the IWPCA in 1973 "to provide employees with a cause of action for the timely and complete payment of earned wages or final compensation, without retaliation from employers." *Soh v. Target Mktg. Sys., Inc.,* 353 Ill. App. 3d 126, 129 (1st Dist. 2004) (quotation marks omitted). The IWPCA prohibits employers from making deductions from employees' wages unless the deductions are "(1) required by law; (2) to the benefit of the employee; (3) in response to a valid wage assignment or wage deduction order; [or] (4) made with the express written consent of the employee, given freely at the time the deduction is made." 820 ILCS 115/9. Any officer or agent of an employer who knowingly permits the employer to violate the IWPCA can be held liable under the Act. 820 ILCS 115/13.

Yata and Zukancic worked for BDJ as owner-operators and were independent contractors for purposes of the common law's definition. However, the IWPCA's definition of "employee is incredibly broad, much broader than the common law." It includes "any individual permitted to work by an employer." 820 ILCS 115/2. Excluded from the Act's coverage is any individual:

> (A) who has been and will continue to be free from control and direction over the performance of his work, both under his contract of service with his employer and in fact; and (B) who performs work which is either outside the usual course of business or is performed outside all of the places of business of the employer unless the employer is in the business of contracting with third parties for the placement of employees; and (C) who is in an independently established trade, occupation, profession or business.

Id. To qualify for this exclusion, an individual must satisfy all three of the above conditions. *See Anderson v. First Am. Group of Companies, Inc.*, 353 Ill. App. 3d 403, 408 (1st Dist. 2004). This test, often called the A-B-C test, is the same one used to determine employee status for purposes of the Illinois Unemployment Insurance Act ("UI Act"). *Id.* at 409. As a result, cases interpreting the definition of "employee" under the UI Act are instructive when interpreting the IWPCA. *Id.*

The case law clearly holds that Yata and Zukancic were BDJ's employees for purposes of Part B of the test. *See Costello v. BeavEx Inc.*, 303 F.R.D. 295, 310-11 (N.D. Ill. 2014) (holding that drivers were employees under Part (B) for purposes of IWPCA); *In re FedEx Ground Package Sys., Inc. Emp't Practices Litig.,* 2010 WL 2243246, at *6 (N.D. Ind. May 28, 2010) (roadways, delivery routes, and customer premises constitute a delivery company's place of business); *Chi. Messenger Serv. v. Jordan*, 356 Ill. App. 3d 101, 116 (drivers were employees under Part (B) of the test because employer's place of business is the roadways). BDJ is a trucking company, and Plaintiffs performed trucking services for BDJ's clients. Additionally, Yata and Zukancic performed their work at BDJ's customer's property and on the roadways. L.R. 56.1 Stmt. ¶ 28. They also went to BDJ's office on a weekly basis to turn in paperwork. *Id*.

Plaintiffs also were employees under Part (A) of the test because BDJ required Plaintiffs to follow a number of written work rules, meaning they were not free from BDJ's control. L.R. 56.1 Stmt. ¶ 29; *AFM Messenger Serv., Inc. v. Dep't of Emp't Sec.*, 315 Ill. App. 3d 308, 315 (1st Dist. 2000), *aff'd*, 198 Ill. 2d 380 (2001) ("AFM exercised sufficient control over the working environment of its drivers to preclude it from claiming that its drivers were independent contractors."); *Hart v. Johnson*, 68 Ill. App. 3d 968, 975 (1979). The rules required Yata and Zukancic, among other things, to bring BDJ their daily logs each week, provide copies of all repairs and maintenance each month, follow the schedule for dedicated runs, and document all DOT inspections. L.R. 56.1 Stmt. ¶ 29.

BDJ's deductions for occupational accident insurance, unreimbursed escrow, one-time processing fees, and fines were not "(1) required by law; (2) to the benefit of the employee; (3) in response to a valid wage assignment or wage deduction order; [or] (4) made with the express written consent of the employee, given freely at the time the deduction [wa]s made." 820 ILCS

115/9. Mujkic was aware of the deductions and allowed them to continue and is therefore jointly liable for the IWPCA violations. L.R. 56.1 Stmt. ¶ 39

Accordingly, the Court should enter summary judgment in Yata's and Zukancic's favor and against both Defendants on this claim.

B. IWPCA Damages

The unauthorized deductions taken from Yata's and Zukancic's pay overlap with their TLA claims. Yata and Zukancic seek to recover, under both the TLA and IWPCA, the overcharges for occupational accident insurance and unreimbursed escrow. These two items amount to $2,284.76 for Yata and $1,077.78 for Zukancic. L.R. 56.1 Stmt. ¶¶ 37-38.

In addition, Yata and Zukancic seek to recover under the IWPCA the actual value of the occupational accident insurance premiums ($141.73 per month) and $250 that BDJ deducted from Zukancic's pay for a "Log Book Violation." The value of these deductions are $2,511.30 for Yata and $3,605.58 for Zukancic. ¶¶ 37-38.

Moreover, under the IWPCA, 820 ILCS 115/14(a), Yata and Zukancic are owed two-percent per month penalties on all unlawful deductions. Thus, Yata is owed $4,796.06, in IWPCA penalties because BDJ has owed him the money for at least fifty months.[3] *Id*. ¶ 37. Zukancic is owed $4,777.03 in IWPCA penalties because BDJ has owed him the money for at least fifty-one months.[4] *Id.* ¶ 38.

Finally, BDJ owes Yata $12,841.38 in IWPCA damages because it failed to pay him $1.70 per mile as agreed in his work contract. *Id*. ¶ 35; 820 ILCS 115/3 (requiring an employer to pay employee all wages earned); 820 ILCS 115/2 (defining "wages" as all compensation owed

[3] ($2,284.76 + $2,511.30) x .02 x 50 = $4,796.06

[4] ($1,077.78 + $3,605.58) x .02 x 51 = $4,777.03

an employee by an employer pursuant to an employment contract or agreement). Two-percent per-month penalties on these unpaid wages equals $12,841.38.[5] *Id*.

Accordingly, the Court should enter judgment in Yata's favor on his IWPCA claims in the amount of $32,990.12.[6] It should enter judgment in Zukancic's favor on his IWPCA claims in the amount of $8,382.61.[7]

Prejudgment Interest

Plaintiffs have calculated prejudgment interest on the TLA claims running for three years at a rate of 4.5% in the damages chart attached as Exhibit 1 hereto. This rate is reasonable because the average prime rate over the past three years is more than 4.5%. *Cement Div., Nat. Gypsum Co. v. City of Milwaukee*, 31 F.3d 581, 587 (7th Cir. 1994) (holding that the best starting point for prejudgment interest is the prime rate).

Conclusion

For the foregoing reasons, the Court should grant Plaintiffs' motion and enter summary judgment against BDJ on Class Members' TLA claims and Yata's and Zukancic's IWPCA claims, awarding damages in the amounts listed in Exhibit 1 hereto.

Dated: June 22, 2020

Respectfully submitted,

/s/ Christopher J. Wilmes
One of the Attorneys for Plaintiffs

[5] $12,841.38 x .02 x 50 = $12,841.38

[6] This number includes $2,511.30 in unlawful deductions for occupational accident insurance premiums, $4,796.06 in penalties on all combined deductions, $12,841.38 in damages due to being paid below $1.70 per mile, and $12,841.38 in penalties on the pay below $1.70 per mile.

[7] This number includes $3,605.58 in unlawful deductions for occupational accident insurance premiums and $4,777.03 in penalties on all combined deductions.

Matthew J. Piers
Christopher J. Wilmes
HUGHES, SOCOL, PIERS, RESNICK &DYM, LTD.
70 West Madison Street, Suite 4000
Chicago, Illinois 60602
312-580-0100