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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

RENEE MAZA, JODI REAL, and
STEVE PRICE, individually and on
behalf of all similarly situated,

Plaintiffs,

v.

WATERFORD OPERATIONS, LLC., and
COOS BAY REHABILITATION, LLC.,

Defendants.

Case No. 14CV03147

COURT'S RULING ORDER

This matter having come before the Court on October 30, 2020 for hearing on Plaintiff's Motion For Class Certification And Motion For Partial Summary Judgment As To Liability and Plaintiffs appearing by and through their counsel, David Schuck, and Defendants appearing by and through its counsel, William Garr, and the court, having reviewed and considered the parties' written submissions and their oral arguments and having taken the matter under advisement to give further consideration to the parties' arguments, to review the court's previous rulings and to review the Court of Appeals decision in this case, and now having done so and being fully informed in the matter, rules and Orders as follows:

A. Rulings Concerning Meal Period Class

The beginning point in the court's analysis is the concluding point of Judge Tookey's opinion in Maza:

"And employers, because of their authority over the workplace, are in a unique position to enforce mandatory meal periods necessary for the preservation of the health of employees. Indeed, OAR 839-020-0040(4) recognizes the employer's unique role in monitoring

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the workplace to ensure that work is not performed when it is not requested and that breaks are taken. The rule provides:

'It is the duty of the employer to exercise control and see that the work is not performed if it does not want the work to be performed. The mere promulgation of a policy against such work is not enough.'

In other words, given the requirement for the mandatory meal period, it is not sufficient for employers to merely require in a handbook that employees not work during meal periods. It is the employer's duty to monitor employees' work and meal periods to ensure that full meal periods are taken. [emphasis added]

Id. at 479-480

It is the Defendant who chose the electronic clock-in/clock-out procedure. The Defendants had the power to monitor the time clock to ensure that no employee was clocking back in prematurely. Although the Court of Appeals in Maza made only passing reference to this court's description of Plaintiff's proposed rule as being a rule of strict liability, this court believes that, barring the application of specific limited exemptions, the rule advocated by Plaintiffs and announced by the Court is essentially one of strict liability.

Defendants insist that this class not be certified and, if certified, that partial summary judgment be denied because there still remain disputed individualized factual determinations whether in each identified instance of a short meal break the affected employee was "relieved of all duties." To this court, and with all respect to Defendants' counsel, this argument seems like a "red-herring." Again, it is the Defendant employers that chose the time-clock method of recording the mandatory meal period break. According to this electronic time recording procedure, at the moment when employees clock out, they have begun their duty-free break and at the moment when employees clock back in, their duty-free break has ended and their work has begun. And because employees are paid according to the time clock for each and every minute they are clocked in, regardless whether they clocked in 1 minute or 20 minutes early, they have necessarily not been relieved of all duties for that period of time because they are at work and are being paid for it. In other words, the court does not believe the Court of Appeals in Maza left any wiggle room for the employer to argue that, even though employees were permitted to clock back

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1 in early to return to "work", they were still "relieved of all duties."

2 Accordingly, Plaintiff's Motion To Certify, or recertify, this class and their
3 motion for partial summary judgment is granted,¹ with one qualification. The court
4 would like further briefing and argument on the length of the class period consistent
5 with Defendant's argument in II C of their Response brief.

6 **B. Certification Of PCC Class**

7 Plaintiffs' reference to the Maza opinion as being a "roadmap" for this court
8 may be an overstatement, but it does provide the court with direction. The
9 emphasized portion of the above quote taken from Judge Tookey's opinion applies
10 with equal force to the PCC class. That is, the employer is in a unique position to
11 monitor the workplace to ensure that work is not performed when it is not requested
12 and so it is their affirmative duty to ensure that this does not happen. And in this
13 case, Defendants had the clear means available to monitor PCC work to ensure it is
14 not being performed when it was not requested. The knowledge element can be
15 resolved on a class-wide basis.

16 The court grants Plaintiffs motion to certify, or recertify, this class.

17 **C. Certification of Late Pay Class**

18 This motion is denied for the reasons previously expressed.

19 SO ORDERED

20 Dated: 12/8/20

21 
22 HON. TIMOTHY C. GERKING
23 JACKSON COUNTY CIRCUIT COURT

24 Cc: David Schuck
25 Karen Moore
26 William Garr
Jillian Pollock

¹ Although the court does not necessarily agree with the Court of Appeals ruling in Maza, this court is bound to follow it.