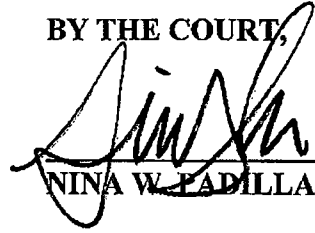


and best-known address(es) of each person meeting the definition of the Class as set forth above; and

5. Within forty-five (45) days from the date of entry of this Order, Plaintiffs shall file a Motion or Stipulation regarding the proposed form of Notice to the Class under Pa. R. Civ. P. 1712.

BY THE COURT,



NINA W. PADILLA, S. J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

CHANTEE WILLIAMS, DEIDRE ANDREWS,	:	August Term 2018
ET. AL., on behalf of themselves and all other	:	
similarly situated,	:	No. 2541
	:	
Plaintiffs,	:	
	:	
v.	:	Class Action
	:	
RCI HOSPITALITY HOLDINGS, INC. and	:	
THE END ZONE, INC. t/a CLUB ONYX,	:	
PHILADELPHIA,	:	Control Number 21070898
	:	
	:	
Defendants.	:	

Findings of Fact and Conclusions of Law

Findings of Fact

1. On August 24, 2018, Plaintiffs, Chantee Williams and Diedre Andrews (“Plaintiffs”) filed this Class Action on behalf of themselves and all others similarly situated individuals, seeking minimum wages under Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. § 333.101-333.115, the Pennsylvania Wage Payment and Collection Law (“WPCL”), 43 P.S. § 260.1 *et seq.* and for common law unjust enrichment for restitution for fines and penalties paid by Plaintiffs and the other Entertainers.
2. Plaintiffs amended the complaint and added additional Plaintiffs including Rashana Karee Mobley, Erica Jackson and Keyanna Curtis.
3. Plaintiffs seek to represent a class consisting of

All persons who worked as Entertainers at Club Onyx, Philadelphia (“the Club”) at any time from August 24, 2015 to the entry of judgment in this case. (“the Class”).

4. Defendant RCI Hospitality Holdings, Inc. (“Defendant RCI”) owned Club Onyx in Philadelphia.
5. Club Onyx closed in 2018.
6. Defendant The End Zone, Inc. (“Defendant TEZ”) traded as and operated as Club Onyx in Philadelphia.
7. Plaintiffs allege that Defendant TEZ is a subsidiary of Defendant RCI.
8. Plaintiffs allege that Defendants RCI and TEZ were the employers of Plaintiffs and the other Entertainers at Club Onyx.
9. Club Onyx was an adult strip club where Plaintiffs and the other Entertainers were responsible for performing strip and pole dances onstage, and private lap dances for individual customers and were expected to socialize with customers and create a welcoming ambience at the Club.
10. Plaintiffs allege that Defendants TEZ and RCI paid no wages or overtime to Plaintiffs or the other Entertainers at the Club, withheld tips and charged Plaintiffs and the other Entertainers for Defendants’ expenses.
11. Additionally, Plaintiffs allege that at various times Defendants TEZ and RCI exercised control over the Entertainers at the Club including but limited to the following: requiring the Entertainers to sign contracts setting forth rules and regulations for their employment at the Club, required Plaintiffs to audition in order to determine if they were qualified to perform at the Club, requiring certain make-up, clothing and bags, fixing the prices Plaintiffs could charge customers for private dances, terminating and suspending Plaintiffs to termination or suspension for not having the required look, misbehavior or employment outside the Club, restricting Plaintiffs’ access to the stage, and requiring Plaintiffs to work certain shifts.

12. On December 19, 2018, Plaintiffs filed an amended complaint. The amended complaint included allegations for class certification and requested a jury demand.

13. Plaintiffs, respectively, signed Entertainer License Agreements (“ELA”) when they began working for Defendants RCI and TEZ. Defendant TEZ signed the ELA on behalf of the Defendants.

14. The Plaintiffs and TEZ agreed to the following:

15. ARBITRATION

The parties agree that, pursuant to the Federal Arbitration Act (the “FAA”), any and all disputes between Licensee (Plaintiffs) and Licensor (Defendants), or any of its parents, subsidiaries, employees or affiliates, including, but not limited to disputes in connection with performance of services by Licensee at the Club or in connection with any future relationship of any kind between Licensee and the Club, will be subject to binding arbitration...

15. Paragraph 15 also includes a Jury Trial Waiver and a Class Action or Collective Action waiver.

16. On January 25, 2019, Defendants filed Preliminary Objections seeking to have Plaintiffs’ claims referred to binding arbitration pursuant to Paragraph 15 of the ELA.

17. On May 30, 2019, the Court sustained the Preliminary Objections and referred Plaintiffs’ claims to private, binding arbitration pursuant to the ELA’s Arbitration provision. Additionally, the Court stayed this action pursuant to 42 Pa. C. S. A. § 7304 (d), pending the outcome of the Arbitration.

18. On July 3, 2019, Plaintiffs along with Patricia Walker, Aniya Gulette, Katherine Wright, Rinital Miller, Keyona Mitchell, and Mijeeda Burch filed demands for arbitration with the American Association of Arbitration (“AAA”). An amended demand was filed on October 30, 2019 adding Keiarah Bazemore, as an additional Claimant.

19. The parties engaged in discovery and motion practice. An Arbitration hearing was scheduled for September 29, 2020.
20. On September 24, 2020, the Arbitrator suspended the proceedings as Defendants failed to make the required deposit of \$62,700 to AAA. Defendants were given thirty (30) days to make the required deposit. A second suspension order followed giving Defendants until December 3, 2020 to make a partial deposit to the AAA. The deposit was never made.
21. On December 22, 2020, the AAA closed the case as a result of Defendants' continuing failure to make the required deposits and a termination order was issued.
22. On January 21, 2021, Plaintiffs filed a motion to lift the stay after the Arbitrator closed the case.
23. Defendants did not oppose Plaintiffs' motion to lift the stay.
24. On June 4, 2021, the Court granted the unopposed motion to lift the stay.
24. On June 16, 2021, the Court held a telephonic status conference with the parties. At that time, the Court instructed the parties to file motions on whether this matter may proceed as a Class Action and as a Jury Trial.
25. On July 6, 2021, Plaintiffs filed a motion to allow Plaintiffs to proceed with a jury trial.
26. On the same date, Defendants filed a motion to compel arbitration.
27. On July 20, 2021, the Court denied Defendants' Petition to Compel Arbitration.
28. On October 27, 2021, the Court granted Plaintiffs' motion to proceed with a jury trial even though Plaintiffs waived the right to a jury trial in Paragraph 15 of the ELA.
29. On February 3, 2022, the Court granted Plaintiffs' leave to amend the amended complaint. Leave was granted and on February 11, 2022, Plaintiffs filed a second amended complaint

adding six additional named Plaintiffs, additional factual allegations regarding control and adding allegations of an integrated enterprise.

30. On May 23, 2022, the Court granted the parties additional time to complete discovery and to supplement their motions for class certification.

31. On June 8, 2022, the Court overruled Defendants' preliminary objections asserting lack of subject matter jurisdiction based on the Paragraph 15 "Arbitration" of the ELA seeking to remand the matter to binding arbitration.

32. A hearing on the Motion for Class Certification was held on October 19, 2022.

33. Plaintiffs are not bound by the "no-class-action" provision in paragraph 15 of the ELA.

CONCLUSIONS OF LAW

1. The class of approximately 100 to 400 Entertainers who performed at Club Onyx from July 2015 to the time the Club closed in 2018 is so numerous that joinder of all members is impracticable.¹

2. There are sufficient questions of law and fact common to the class under the Pennsylvania Minimum Wage Act ("PMWA"), 43 P.S. § 333.101-333.115, the Pennsylvania Wage Payment and Collection Law ("WPCL"), 43 P.S. § 260.1 *et. seq.* and for unjust enrichment.

3. Plaintiffs' claims are typical of the claims of the class with respect to the claims in the Second Amended Complaint.

4. Plaintiffs and Class Counsel will fairly and adequately assert and protect the interests of the class.

¹ Plaintiffs define the Class period as "August 24, 2015 to the entry of judgment in this case." However, the Club ceased doing business in 2018. As a result, the Class period will be defined as August 24, 2015 to the time the Club closed in 2018.

5. A Class Action is a fair and efficient method of adjudicating the counts in the second amended complaint.

DISCUSSION

I. The Class Action Waiver in the Entertainer License Agreement is not Enforceable in this action.

Before addressing whether this matter should be certified as a Class Action, this Court must first address whether the Class Action waiver which appears in Paragraph 15 of the ELA titled “Arbitration” should be enforced. After careful examination of the case law and the facts of this matter, this Court finds that the Class Action waiver is not enforceable.

Class Action lawsuits are and remain the essential vehicle by which plaintiffs may vindicate their lawful rights. The average plaintiff, having limited financial resources and time, cannot individually present minor claims in court or in an arbitration. Our justice system resolves this inherent inequality by creating the procedural device which allows plaintiffs to join together and seek redress for claims which would otherwise be impossible to pursue.² Notwithstanding the foregoing, participation in Class Actions may be waived, as long as individual employees maintain the individual capacity to vindicate their rights.³

² *Thibodeau v. Comcast Corp.*, 912 A.2d 874, 884–85 (Pa. Super. 2006).

³ *See, Quilloin v. Tenet Health Systems Phila, Inc.*, 673 F.3d 221, 230 (3d Cir. 2012) (“Pennsylvania law does not render class action waivers *per se* unconscionable. Rather, Pennsylvania finds such waivers substantively unconscionable where ‘class action litigation is the only effective remedy’ such as when ‘the high cost of arbitration compared with the minimal potential value of individual damages denie[s] every plaintiff a meaningful remedy.’”). *See also, Nelson v. Gobrandts, Inc.*, 2021 WL 4262325, at *7 (E.D.Pa., 2021)

Here, the Class Action waiver at issue appears within Paragraph 15 of the Entertainer License Agreement (ELA) titled "Arbitration". Paragraph 15 which spans approximately two pages in the ELA and provides in pertinent part as follows:

The parties agree that, pursuant to the Federal Arbitration Act (the "FAA"), any and all disputes between Licensee (Plaintiffs) and Licensor (Defendants), or any of its parents, subsidiaries, employees or affiliates, including, but not limited to disputes in connection with performance of services by Licensee at the Club or in connection with any future relationship of any kind between Licensee and the Club, will be subject to binding arbitration governed and settled by an impartial independent (sic) [arbitrator] appointed by the American Arbitration Association, Pennsylvania branch, and the determination of the arbitrator shall be final and binding (except to the extent that there exist grounds for vacation of an award under the applicable arbitration statutes)...

THE PARTIES WAIVE ANY RIGHT TO LITIGATE SUCH CONTROVERSIES, DISPUTES, OR CLAIMS IN A COURT OF LAW, AND WAIVE THE RIGHT TO TRIAL BY JURY. ALL PARTIES SHALL HAVE THE RIGHT TO BE REPRESENTED BY LEGAL COUNSEL AT ARBITRATION. THE ARBITRATOR SHALL PERMIT REASONABLE DISCOVERY. THE PARTIES SHALL HAVE THE RIGHT TO SUBPOENA WITNESSES IN ORDER TO COMPEL THEIR ATTENDANCE AT HEARING AND TO CROSS-EXAMINE WITNESSES, AND THE ARBITRATOR'S DECISION SHALL BE IN WRITING AND SHALL CONTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE ARBITRATOR'S DECISION SHALL BE FINAL, SUBJECT ONLY TO REVIEW PURSUANT TO THE FAA. THE ARBITRATOR SHALL HAVE EXCLUSIVE AUTHORITY TO RESOLVE ANY AND ALL DISPUTES OVER THE VALIDITY, ENFORCEABILITY AND/OR ALLEGED UNCONSCIONALBILITY OF ANY PART OF THIS LICENSE AND TO EXTENT ANY PROVISION(S) OF THIS AGREEMENT ARE FOUND BY THE ARBITRATOR TO BE INVALID, UNENFORCEABLE AND/OR UNCONSCIONABLE AS APPLIED TO A PARTICULAR CASE OR CONTROVERSEY, THE ARBITRATOR SHALL HAVE AUTHORITY TO MODIFY SUCH PROVISIONS TO ALLEVIATE ANY INVALIDITY, UNENFORCEABILITY AND/OR UNCONSCIONABILITY. ANY AWARD BY THE ARBITRATOR MAY BE ENTERED AS A JUDGMENT IN ANY COURT HAVING JURISDICTION. THE PARTIES CONSENT TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS WITH JURISDICTION OVER PHILADELPHIA COUNTY, PENNSYLVANIA ONLY IN CONNECTION WITH ANY APPLICATIONS BY ANY PARTY FOR EQUITABLE OR INJUNCTIVE RELIEF. ...

THE PARTIES UNDERSTAND AND ACKNOWLEDGE THAT BY SIGNING THIS AGREEMENT THEY SPECIFICALLY WAIVE ANY RIGHT TO PARTICIPATE IN ANY CLASS ACTION OR COLLECTIVE ACTION AS AGAINST THE OTHER PARTY...

Licensee hereby acknowledges that she has read and understands Section 15, as well as all the other Sections of this Agreement, and has been given the opportunity to ask questions and consult with an attorney.

Paragraph 15 requires that the parties arbitrate their disputes and includes two waivers, a Jury Trial waiver, and a Class Action waiver. The enforceability of the Class Action waiver is at issue here. While Courts have enforced Class Action waivers in similar agreements, here, the Class Action waiver is not enforceable because of Defendants' conduct. Defendants breached paragraph 15 of the ELA voiding the entirety of said paragraph including the Class Action waiver.

Defendants refused to participate in the Court Ordered Arbitration and consequently, the Arbitrator terminated the Arbitration proceeding.⁴ This is not the first time that an arbitration compelled and requested by Defendants involving an ELA was dismissed for nonpayment of fees. Defendants have on at least one other occasion refused to pay its share of Arbitration fees resulting in the termination of the arbitration proceedings.⁵ Now, despite Defendants' failure to participate in good faith in the Arbitration proceeding ordered by the Court here, Defendants seek to enforce the Class Action waiver which is also contained in Paragraph 15. The Class Action waiver is not enforceable because Paragraph 15 of the ELA is void and invalidated as a result of Defendants' breach.

⁴ Defendants refused to pay the costs associated with the Arbitration because the Arbitrator required Defendants to pay all the costs associated with the Arbitration. Paragraph 15 does state that the costs and expenses of the arbitration are to be equally shared by the parties. However, this is not absolute as the Arbitrator had the authority to "MODIFY SUCH PROVISIONS TO ALLEVIATE ANY INVALIDITY, UNENFORCEABILITY AND/OR UNCONSCIONABILITY." See, ELA Paragraph 15.

⁵ See, *Figueredo-Chavez v. RCI Hospitality Inc.*, 574 F.Supp. 3d 1175 (S.D. Florida 2021).

Defendants bargained for binding arbitration to resolve any and all disputed disputes between them and the Plaintiffs. Defendants pursued arbitration and their preliminary objections based on the arbitration provision were sustained by this Court on May 30, 2019. Yet, Defendants abandoned the arbitration by failing to pay the required fee. At no time did Defendants file any motions with this Court to dispute the fee structure. Defendants' conduct of abandoning the Arbitration is a breach of paragraph 15 which requires any and all disputes to be decided by an arbitrator which consequently makes paragraph 15 unenforceable. Since the Class Action waiver is within Paragraph 15, it too is unenforceable.

Every contract in Pennsylvania, including the ELA, imposes on each party a duty of good faith and fair dealing in its performance and enforcement.⁶ The duty to perform contractual obligations in good faith does not evaporate merely because the contract involves some type of employment situation.⁷ Defendants evaded the spirit of the bargain by failing to participate in good faith in the Arbitration proceeding. As such, the only way for Plaintiffs to vindicate their rights at this time is to participate in a Class Action given the nature of the claim as well and the recovery requested.

Defendants' reliance on the severability and the no waiver provisions⁸ found in Paragraph 16 of the ELA titled "Miscellaneous" is misplaced. The Class Action waiver is not an

⁶ *Donahue v. Federal Exp. Corp.*, 753 A.2d 238, 242 (Pa. Super. 2000) citing *Kaplan v. Cablevision of Pa., Inc.*, 448 Pa. Super. 306, 671 A.2d 716, 722 (1996), *appeal denied*, 546 Pa. 645, 683 A.2d 883 (1996), citing, *inter alia Somers v. Somers*, 418 Pa. Super. 131, 613 A.2d 1211, 1213 (1992), *appeal denied*, 533 Pa. 652, 624 A.2d 111 (1993).

⁷ *Somers v. Somers*, 418 Pa. Super. 131, 613 A.2d 1211, 1213 (1992), *appeal denied*, 533 Pa. 652, 624 A.2d 111 (1993).

⁸ Paragraph 16 titled "Miscellaneous Provision" in the ELA contains the severability and no waiver provisions relied upon by Defendants here which state the following:

If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to the extent, be invalid or unenforceable, the

independent provision in the ELA. It is found within Paragraph 15 titled "Arbitration" which is evidence that the Class Action waiver is part of Paragraph 15 and not a separate provision subject to severability. Moreover, the "no waiver clause" does not apply because Defendants did insist on compliance and enforcement of Paragraph 15 and abandoned their right to proceed in Arbitration. Hence, since Defendants breached Paragraph 15, the Class Action waiver and the Jury Trial waiver found within Paragraph 15 are not enforceable and this matter may proceed as a Class Action, if appropriate.

II. Class Certification Standard

The Court will certify an action as a class action when the following requirements are met:

- (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;
- (4) The representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in [Pa. R. Civ. P.] 1709; and
- (5) A class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in [Pa. R. Civ. P.] 1708.⁹

"[T]he trial court [should] decide whether certification is proper based on the parties' allegations in the complaint and answer, on depositions or admissions supporting these allegations, and any

remainder of this Agreement and the application of such provision to the other person or circumstance shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

Licensor's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect the validity or enforceability of this Agreement or operate or be construed as a waiver of any future enforcement of that provision or any other provision of this Agreement.

⁹ Pa. R. Civ. P. 1702.

testimony offered at the class certification hearing. The court may review the substantive elements of the case only to envision the form that a trial on those issues would take.”¹⁰

At this early stage in the proceedings, it appears that Plaintiffs have met all of the criteria for certifying this action as a class action.¹¹

A. The Numerosity Requirement Is Satisfied.

Whether the number [of potential class members] is so large as to make joinder impracticable is dependent not upon an arbitrary limit, but rather upon the circumstances surrounding each case. The class representative need not plead or prove the number of class members so long as she is able to define the class with some precision and affords the court with sufficient indicia that more members exist than it would be practicable to join.¹²

The class model serves as the most efficient and fair way to adjudicate the claims of the Class of entertainers in this case. Defendants RCI and TEZ admit that they have employed in excess of 100 Entertainers during the class period.¹³ Plaintiffs state that the number of Entertainers could approach 400 as that is the number of Entertainer files Defendant TEZ admits to having in

¹⁰ *Samuel-Bassett v. Kia Motors Am., Inc.*, 613 Pa. 371, 397, 34 A.3d 1, 15–16 (2011).

¹¹ “An order under this rule may be conditional and, before a decision on the merits, may be revoked, altered or amended by the court on its own motion or on the motion of any party...” Pa. R. Civ. P. 1710(d).

¹² *Janicik v. Prudential Insurance Co. of America*, 305 Pa. Super. 120, 131, 451 A.2d 451, 456 (1982).

¹³ Plaintiffs’ Appendix attached to Plaintiffs’ supplemental brief filed with the Court on October 5, 2022 App. 120 -Request for Admissions 1: Admit the total number of individuals who worked as Entertainers at Club Onyx, Philadelphia pursuant to a Club Onyx Philadelphia Entertainer License Agreement between during the Relevant Time Period exceeds 100. Response: Admit.

its possession.¹⁴ The joinder in excess of 100 Class Members as plaintiffs would clearly be impracticable as such the numerosity requirement is satisfied.

II. There are Questions of Law and Fact Common to the Class.

“[A] common issue of fact or law will generally exist if the class members’ legal grievances are directly traceable to the same practice or course of conduct on the part of the class opponent. The common question of fact requirement means precisely that the facts must be substantially the same so that proof as to one claimant would be proof as to all.”¹⁵ Plaintiff is “not required to prove that the claims of all class members [a]re identical; the existence of distinguishing individual facts is not fatal to certification.”¹⁶

The questions to be resolved in this matter are common to the class, that is whether class members were employees or independent contractors and whether Defendants improperly classified the Plaintiffs and members of the Class as independent contractors for purposes of Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101-333.11.¹⁷ Hence, the issue for all class members is whether the six factor test to determine whether Defendants unlawfully failed to pay class members minimum wages and overtime pay due in violation of PMWA, 43 P.S. §§ 333.101-333.115 and the Pennsylvania Wage Payment and Collection Law (“WPCL”), 43 P.S. § 260.1 et. seq. which is common to all class members. Further, there are also

¹⁴ Id. at App 120 – Interrogatory 3: What tis the total number of signed Club Onyx Philadelphia Entertainer License Agreements currently in your possession which was in effect at any time during the Relevant Time Period? Answer: ... “Additionally, there are 400 entertainer files.”

¹⁵ *Sommers v. UPMC*, 185 A.3d 1065, 1076 (Pa. Super. 2018).

¹⁶ *Samuel-Bassett v. Kia Motors Am., Inc.*, 613 Pa. 371, 409, 34 A.3d 1, 23 (2011).

¹⁷ The question of control exercised over all the entertainers while working at the club applies to all the entertainers. The question of control will be determined in terms of the shifts worked, costumes, make up, conduct at the Club, fees for private dances and fines for violating the rules.

common questions of law and fact as to whether Defendants retained and accepted fees, charges and payments from Plaintiffs and the other Entertainers at the Club.

III. Plaintiffs' Claims are Typical of the Claims of the Class.

The purpose of the typicality requirement is to ensure that the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that their pursuit of their own interests will advance those of the proposed class members. Typicality exists if the class representative's claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class. The requirement ensures that the legal theories of the representative and the class do not conflict, and that the interests of the absentee class members will be fairly represented. But, typicality does not require that the claims of the representative and the class be identical, and the requirement may be met despite the existence of factual distinctions between the claims of the named plaintiff and the claims of the proposed class.¹⁸ Here, Plaintiffs claims are typical of the claims of the Class in that all members allege misclassification as independent contractors.

IV. Plaintiff and Class Counsel Will Fairly and Adequately Assert and Protect the Interests of the Class.

In order to determine whether named plaintiff "will fairly and adequately assert and protect the interests of the class, the court shall consider[:]"¹⁹

- 1) whether the attorney for the representative parties will adequately represent the interests of the class;
- 2) whether the representative parties have a conflict of interest in the maintenance of the class action; and

¹⁸ *Samuel-Bassett*, 613 Pa. at 421-2, 398, 34 A.3d 1 at 30-1.

¹⁹ Pa. R. Civ. P. 1709.

3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.²⁰

In this case, class counsel are experienced attorneys who will adequately represent the interests of the Class. Class Counsels' firms have adequate financial resources to continue to pursue these claims on behalf of the Class and have advanced the costs of litigation to date. There has been no evidence of a conflict of interest and if a conflict is brought to the attention of the Court, the appropriate action will be taken to substitute Counsel. Therefore, the Court approves Alice Ballard, Esquire of the Law Office of Alice W. Ballard, P.C. and Robert A. Swift, Esquire of Kohn, Swift & Graf, P.C. as representatives of the Class.

V. A Class Action is a Fair and Efficient Method by Which to Try This Case.

“In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider[:]”²¹

- 1) whether common questions of law or fact predominate over any question affecting only individual members;
- 2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
- 3) whether the prosecution of separate actions by or against individual members of the class would create a risk of
 - i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;

* * *

- 4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;
- 5) whether the particular forum is appropriate for the litigation of the claims of the entire class;
- 6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

²⁰ *Id.*

²¹ Pa. R. Civ. P. 1708.

7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.²²

* * *

(2) whether the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final equitable or declaratory relief appropriate with respect to the class.²³

The common questions as to Defendants' liability, and the defenses thereto, predominate, over any individual claims; the primary questions that need to be answered are whether the management of the class will be difficult. In this instance, management of the class will not be difficult as Defendants have in their possession the identities of each member of the class and are in control of those individuals who may testify as to the policies and practices of the Club.

Additionally, the damages are small in amount to support separate actions. Each Class Member's claims amount to approximately \$7.25 per hour for the first forty hours worked and \$10.88 per hour for the hours worked in excess of forty in any given week during the applicable period. The damages also do not appear to be large enough for individual actions to be cost-effective. Therefore, Defendants' wrongdoing, if any, is likely to go unprosecuted if the class members' claims are left to be asserted in individual actions. Furthermore, the misclassification may be tried more efficiently as a class action than in individual cases. Individual actions would run the risk of inconsistent results at the trial court level, necessitating multiple, costly appeals. A single class action will maximize the individual class members' recovery, if any and ensure that the issues are resolved, and the defenses applies consistently.

²² Pa. R. Civ. P. 1708(a).

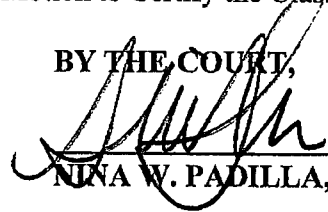
²³ *Id.* 1708(b)(2).

The Philadelphia Court of Common Pleas has experience with class actions so it is an appropriate forum in which to litigate the Class claims.²⁴ The court also has experience adjudicating class actions involving many more members than this Class, none of which encountered significant management difficulties.

CONCLUSION

For all the foregoing reasons, Plaintiff's Motion to Certify the Class is Granted.

BY THE COURT,



NINA W. PADILLA, J.

August 18, 2023

²⁴ See e.g., *McCall v. Drive Financial Service*, January Term, 2006, No. 00005; *Chipego v. Five Star Bank*, May Term, 2017, No. 02466.