

- 1 8. Declaration of John Boesenberg In Support of Defendant’s Second Response to
- 2 Plaintiff’s Motion to Certify Class;
- 3 9. Plaintiff’s Reply; and
- 4 10. Reply Declaration of Dana Rush in Support of Class Certification.

5 Defendant requests in its Response that the Court strike portions of declarations filed by
6 Plaintiff, but fails to identify those portions in its request or proposed order. The request is
7 vague and inadequately raised and, therefore, denied.

8 **DECISION**

9 A. This action is brought by Dana Rush to obtain sick leave. He alleges that the State
10 of Washington failed to provide part-time faculty, including himself, proportionate sick leave as
11 required under RCW 28B.50.4893. Defendant State of Washington denies this.

12 B. Plaintiff seeks to certify a class consisting of all part-time faculty who did not
13 receive proportionate sick leave as required under RCW 28B.50.4893. The part-time faculty are
14 employees of the defendant State of Washington.

15 C. The Court has considered whether Plaintiff has satisfied the four prerequisites set
16 forth in CR 23(a), and finds that they are satisfied and Plaintiff may sue on behalf of all, as
17 discussed below.

18 D. **Numerosity and Impracticability of Joinder.** Under CR 23(a)(1), joinder of all
19 members of the class is impracticable because the class includes thousands of part-time faculty in
20 the State and each class member’s claim is relatively small compared to the burden of litigation.
21 Numerosity is sufficiently demonstrated. Even if some of the data included in Plaintiff’s evidence
22 may not represent the exact numbers of class members, such as the FTE data collected by the State
23 Board and published on the SBCTC website, as discussed by Defendant at Response 7:5-8:3 and
24 Second Declaration of John Boesenberg ¶ 3, which might not match up precisely with the
25 eligibility requirements of RCW 28B.50.489, Plaintiff’s evidence is not speculative. The
26 possibility that some of the 10,000 employees included in that FTE data might be excluded does
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1 not persuade the Court that numerosity is lacking. The class includes hundreds of part-time faculty
2 at Green River College alone. Moreover, upon review of the discovery responses discussed by the
3 parties, the Court notes that the plaintiff need not identify individual class members and has
4 provided sufficient evidence to conclude that the class members can be identified based on the
5 records and information required to be maintained by the colleges. Further, joinder is
6 impracticable because of the unfeasibility of pursuing individually the relatively small claims of
7 each person.

8 E. **Commonality.** Under CR 23(a)(2), questions of law exist that are common to all
9 class members, including whether the State has an obligation to pay part-time faculty proportionate
10 sick leave under RCW 28B.50.4893 and whether sick leave constitutes wages. The State's duty
11 under RCW 28B.50.4893 is uniform and its conduct with respect to the class common. The State
12 has also raised a common question whether this statute overrides collective bargaining agreements
13 under RCW 28B.52.220 or is subject to them. The commonality requirement is not defeated
14 because the questions of law apply to multiple community college districts where they are part of
15 an overall state system controlled and supervised by the State. See *Centralia Col. Education Ass.*
16 *v. Board of Trustees of Community College Dist. No. 12*, 82 Wn.2d 128, 129-33 (1973) (“[I]t is
17 clear that while community colleges may be located within specified districts, the legislature
18 intended that each community college district shall be an integral part of the State's system of
19 higher education rather than a mere local adjunct of some lesser political subdivision.”). Sufficient
20 common questions of law justify class certification. Defendant objects that the definition of “full-
21 time equivalency” relevant to specific application of RCW 28B.50.4893 might differ among
22 colleges where CBAs use different definitions of full-time equivalency as permitted by RCW
23 28B.50.489(1), or where other terms might have been negotiated differently. This does not weigh
24 against certification. First, that potential difference is accommodated in the definition of the
25 proposed class. The definition of “full-time equivalency” need not be uniform at each community
26 or technical college for the members of the class to be identified and for those individuals who did
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1 not accrue sick leave in proportion to *their* full-time equivalency to receive injunctive and
2 declaratory relief.¹ Further, the injury is common to qualified class members even with variations
3 in the applicable definition of full-time equivalency. Moreover, the legal question remains
4 common. Defendant’s objection raises only the possibility of a factual variation between part-time
5 academic employees at different colleges that may arise when applying the common legal ruling.
6 Resolution of the common legal questions will still drive resolution of the litigation.

7 **F. Typicality.** Under CR 23(a)(3), the claims of Dana Rush are typical of those of the
8 class because all claims arise from defendant’s failure to provide proportionate sick leave under
9 RCW 28B.50.4893 and all claims are based on the same legal theory. Typicality is satisfied. The
10 fact that different CBAs “may not have changed to reflect the statutory changes” but at different
11 times, see Response 11:17-25, does not prevent the claims of Dana Rush from being recognized as
12 “typical” of the class. Neither would variations in teaching loads between the different employees
13 prevent Mr. Rush from representing a typical claim.

14 **G. Adequate Representation.** Under CR 23(a)(4), Dana Rush adequately
15 represents the putative class because (i) his counsel have experience in litigating class actions
16 on similar matters;² (ii) Mr. Rush has no conflict of interest with the class; and (iii) the lawsuit
17 is not collusive. Mr. Rush’s recent retirement does not alter this conclusion.

18 **H.** The prerequisites of CR 23(a)(1)-(4) are met. Therefore, the Court considers
19 whether an action may be maintained as a class action pursuant to CR 23(b). The Court
20 concludes the action may be maintained as a class action pursuant to CR 23(b)(2). The State of
21 Washington has allegedly acted or refused to act on grounds generally applicable to the class
22 with respect to providing proportionate sick leave. CR 23(b)(2) allows class actions to be
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24 ¹ For example, as noted in footnote 6 of Plaintiff’s Reply, the discovery will reveal class members’ FTE
percentages based upon each college’s calculation, which accounts for any unique definitions.

25 ² See, e.g., *Mader v. State of Washington*, (class action regarding retirement benefits; Rush named
26 plaintiff; same class counsel); *Mader v. Health Care Authority and State Board for Community and Technical*
Colleges, 149 Wn.2d 458 (2003) (Mader II) (class action regarding health benefits; same class counsel); *Moore v.*
27 *HCA*, 181 Wn.2d 299 (2014) (class action regarding health benefits; same class counsel).

1 maintained when the “party opposing the class has acted or refused to act on grounds generally
2 applicable to the class, thereby making appropriate final injunctive relief or corresponding
3 declaratory relief with respect to the class as a whole....” This relief is sought and appropriate
4 if Plaintiff is successful. Incidental monetary relief can be based on a formula applied to
5 electronic payroll records to calculate the difference between the amounts of sick leave owed
6 and received. The damages are capable of computation by objective standards, and will be
7 incidental to injunctive and declaratory relief if Plaintiff is successful.

8 I. A class action is the best way that all class members may obtain one binding
9 decision. Without class certification, any decision in favor of the plaintiff will bind the State
10 only for one individual, not for others, and will have no legal effect on the State’s ability to
11 deny sick leave to others. The requirements of CR 23(b)(2) are met.

12 **ORDER**

13 Plaintiff’s motion to certify the class under CR 23(a) and (b)(2) is GRANTED. The
14 class is defined as:

15 All part-time academic employees who did not accrue sick leave in proportion to
16 their full-time equivalency, whether their accrual was not proportionate because
17 of rate of accrual, or accumulation limitations, or in another fashion. The class is
18 limited in time to employees who worked at a college district, a state agency, an
19 education service district, a school district or an institute of higher education
20 within the applicable statute of limitations.

21 The law firm of Bendich, Stobaugh & Strong, P.C., is appointed as class counsel.

22 DATED: _____, 2020.

23 _____
24 Judge Averil Rothrock
25 King County Superior Court
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King County Superior Court
Judicial Electronic Signature Page

Case Number: 20-2-03771-1
Case Title: RUSH vs STATE OF WASHINGTON

Document Title: ORDER

Signed by: Averil Rothrock
Date: 6/22/2020 9:47:15 AM

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Judge/Commissioner: Averil Rothrock

This document is signed in accordance with the provisions in GR 30.

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