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7 IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
8 IN AND FOR KING COUNTY

9 GARY CARROLL and BRIAN BALL,  
10 individually and on behalf of others similarly  
11 situated,

11 Plaintiffs,

12 v.

13 NUPRECON, INC. d/b/a RENU  
14 RECYCLING SERVICES,

15 Defendant.

NO. 05-2-31113-4SEA

*Curt*  
~~PROPOSED~~ ORDER DENYING  
PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION

16 This matter came before the Court on Plaintiffs' Motion for Class Certification pursuant  
17 to CR 23. Defendant employs truck drivers who drop off empty roll off containers (dumpsters)  
18 at both demolition and new construction sites; pick them up when they are full; and haul the  
19 debris to various disposal sites. Plaintiffs ask this Court to certify a class consisting of all  
20 these truck drivers for the purpose of determining if the work they do at public works sites is  
21 covered by Washington's prevailing wage statute, RCW 39.12. This Court finds Plaintiffs have  
22 not met their burden under CR 23 and thus denies their motion for class certification.

23 **A. The Record Reviewed**

24 In reaching its decision the Court heard oral argument and reviewed the following  
25 pleadings:

- 26 1. Second Amended Class Action Complaint;

**ORIGINAL**

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2. Defendant's Answer, Affirmative Defenses, and Counterclaim to Second Amended Complaint;
3. Plaintiffs' Answer to Defendant Nuprecon's Counterclaim to Second Amended Complaint;
4. Plaintiffs' Motion for Class Certification;
5. Declaration of Martin Garfinkel in Support of Plaintiffs' Motion for Class Certification;
6. Declaration of Counsel Dmitri Iglitzin in Support of Motion for Class Certification;
7. Declaration of Brian Ball;
8. Defendant's Opposition to Motion for Class Certification;
9. Declaration of Nancy Pacharzina in Support of Defendant's Opposition to Motion for Class Certification;
10. Declaration of John Hennessy;
11. Declaration of Todd J. Smith in Support of Defendant's Opposition to Motion for Class Certification;
12. Praecepte Regarding Declaration of Todd J. Smith;
13. Praecepte Regarding Declaration of John Hennessy;
14. Defendant's Submission of Supplemental Authority in Support of Defendant's Opposition to Plaintiffs' Motion for Class Certification;
15. Plaintiffs' Reply in Support of Motion for Class Certification;
16. Second Declaration of Martin Garfinkel in Support of Plaintiffs' Motion for Class Certification;
17. Declaration of Michael Cabuco;
18. Declaration of Steven Thompson;
19. Declaration of Gary Carroll; and
20. Second Declaration of Counsel Dmitri Iglitzin in Support of Motion for Class Certification.

1 **B. Basis for the Court's Holding**

2 1. CR 23(a) Requirements

3 a. *Numerosity*

4 The Court finds Plaintiffs' proposed class comprised of 48 current and former truck  
5 drivers meets CR 23(a)'s numerosity requirement.

6 b. *Commonality*

7 Plaintiffs must establish that a class action raises "questions of law and fact common to the  
8 class." CR 23(a). Washington's prevailing wage law requires employers to pay prevailing  
9 wages to all "laborers, workers, or mechanics" who work "upon all public works and under all  
10 public building service maintenance contracts of the state or any county, municipality or  
11 political subdivision created by its laws." RCW 39.12.020. The question presented in this case  
12 is whether the work conducted by Defendant's 48 different drivers at thousands of different  
13 public works sites meets the "work upon" standard of the statute. The record before this Court  
14 shows the question of whether the statute is applicable to any given driver at any given job-site  
15 depends on many site specific factors. Here, the record shows these factors vary from site to  
16 site and from driver to driver. As such, Plaintiffs have not demonstrated the questions  
17 presented by their claims are common to those of all class members.

18 In determining the questions presented here are individualized and not common, the  
19 Court notes there is a paucity of Washington case law discussing the "work upon" standard.  
20 The Court did, however, find the analysis performed in both *Silverstreak, Inc. v. Wash. State*  
21 *Dept. of Labor & Indus.*, 125 Wn. App. 202, 104 P.3d 699 (2005), and *Superior Asphalt and*  
22 *Concrete Co. v. Dep't of Labor and Indus.*, 112 Wn. App. 291, 49 P.3d 135 (2002), while not  
23 on point, to be instructive by analogy. Those cases illustrate the highly individualized and site  
24 specific nature of the analysis conducted by Courts to determine the statute's applicability.

25 2. Typicality

26 "A plaintiff's claim is typical if it arises from the same event or practice or course of  
conduct that gives rise to the claims of other class members, and if his or her claims are based

