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3 THE HONORABLE JOHN P. ERLICK  
Note for Motion: September 1, 2017 at 11:00 a.m.  
4 Moving Party  
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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
9 IN AND FOR KING COUNTY

10 JEFFREY MAIN and TODD PHELPS, on behalf  
of themselves and all others similarly situated,

11 Plaintiffs,

12 v.

13 QUICK & CLEAR, INC. d/b/a/ AA WINDOW  
AND GUTTER CLEANING, a Washington  
14 corporation, and BRETT VANDENBRINK, and  
his marital community,

15 Defendants.  
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No. 16-2-29685-8 SEA

[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT FOR  
LIABILITY UNDER RCW 49.46, 49.48,  
AND 49.52 *et seq.*

ORIGINAL

1           **THIS MATTER**, has come before the Court on Plaintiffs' Motion for Partial  
2 Summary Judgment for Liability Under RCW 49.46, 49.48, and 49.52 *et seq.*

3           The Court having considered the following:

4           1.       Plaintiffs' Motion for Partial Summary Judgment for Liability Under RCW  
5 49.46, 49.48, and 49.52 *et seq.*;

6           2.       Declaration of Scott C. G. Blankenship in Support of Plaintiffs' Motion for  
7 Partial Summary Judgment for Liability Under RCW 49.46, 49.48, and 49.52 *et seq.* with the  
8 exhibits attached thereto;

9           3.       Defendants' Response in Opposition to Plaintiffs' Motion for Partial Summary  
10 Judgment for Liability.;

11           4.       Declaration of Adam G. Cuff in Support of Defendants' Response in  
12 Opposition to Plaintiffs' Motion for Partial Summary Judgment for Liability with the exhibits  
13 attached thereto;

14           5.       Declaration of Brett Vandenbrink in Support of Defendants' Response in  
15 Opposition to Plaintiffs' Motion for Partial Summary Judgment for Liability;

16           6.       Declaration of Tyler Peterson;

17           7.       Declaration of Zach Wright;

18           8.       Declaration of Thomas MacDonald;

19           9.       Declaration of Ryan Cash;

20           10.      Declaration of Matt Finley;

21           11.      Declaration of Curran Hunt;

22           12.      Declaration of Jaime Abarca;

23           13.      Reply in Support of Plaintiffs' Motion for Partial Summary Judgment for  
24 Liability Under RCW 49.46, 49.48, and 49.52 *et seq.*;

1 14. Supplemental Declaration of Scott C. G. Blankenship in Support of Plaintiffs'  
2 Motion for Partial Summary Judgment for Liability Under RCW 49.46, 49.48, and 49.52 *et*  
3 *seq.* with the exhibits attached thereto; *and*

4 15. Oral argument of the parties on September 1, 2017;

5 ~~16.~~

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7  
8 **THE COURT HEREBY FINDS THAT:**

9 1. As a matter of law, Defendants are liable under Washington's Minimum Wage  
10 Act ("MWA"), RCW 49.46 *et seq.*, for failing to pay class Plaintiffs for time they spend  
11 driving company vehicles from their homes to the first jobsite of the day and back from the  
12 last jobsite of the day ("drive time"). ~~Defendants do not dispute that they do not compensate~~  
13 ~~class Plaintiffs for drive time.~~ There are no disputes as to any material facts of this claim, and  
14 liability is established as a matter of law:

- 15 a. As a matter of law, the drive time at issue in this case constitutes "hours  
16 worked" under the MWA and the Washington Supreme Court's binding  
17 precedent, *Stevens v. Brink's Home Security, Inc.*, 162 Wn.2d 42 (2007),  
18 *as well as the L&I administrative guidelines: WAC 296-126-020.*
- 19 b. The facts considered in the light most favorable to the Defendants establish  
20 that Defendants ~~control the drive time by, amongst other things: (1)~~  
21 ~~monitoring the company vehicles through GPS tracking;~~ <sup>have</sup> (2) having policies  
22 that prevent Plaintiffs from using company vehicles for personal use or  
23 allowing anyone else to drive the vehicles; (3) ~~having policies that~~  
24 ~~Technicians be available by cell phone in company vehicles from "7:00 am~~  
25 ~~until [they] arrive home after the work day";~~ (4) rerouting Plaintiffs while  
26 they are driving to the first job site of the day and home from the last  
jobsite of the day; and, (5) requiring Technicians to spend time mapping

1 directions to the first jobsite after receiving an email from Defendants at  
2 the end of each workday. As such, under the Washington Supreme Court's  
3 analysis in *Brinks*, the Court finds as a matter of law that Plaintiffs are "on  
4 duty" during drive time under the MWA and WAC 296-126-002(8).

5 c. The facts considered in the light most favorable to the Defendants establish  
6 that company vehicles are a "prescribed work place" under the MWA  
7 *the Company Handbook provides that* <sup>and TCFAs</sup> because Class Plaintiffs: (1) are required to drive the company vehicles to  
8 reach customers' homes and carry the essential non-personal tools and  
9 equipment necessary for their work; (2) are expected to complete job  
10 reports in their vehicles; (3) Defendants' policy requires that class  
11 Plaintiffs keep vehicles clean and looking professional inside and out, keep  
12 the cab free of garbage of any kind, and wash company vehicles on a  
13 regular basis. As such, under the Washington Supreme Court's analysis in  
14 *Brinks*, the Court finds as a matter of law that company vehicles are a  
15 prescribed work place under the MWA and WAC 296-126-002(8).

16 2. As a matter of law, Defendants are liable under Washington's Minimum Wage  
17 Act ("MWA), RCW 49.46 *et seq.*, for failing to pay class Plaintiffs for time they spend  
18 laundering towels. Defendants do not dispute that they do not compensate class Plaintiffs for  
19 time spent laundering towels. There are no disputes as to any material facts of this claim, and  
20 liability is established as a matter of law:

21 ~~a. The facts considered in the light most favorable to Defendants establish~~  
22 ~~that towels are a tool or supply necessary for class Plaintiffs to do their job.~~

23 b. The Court finds that under the MWA, ~~preparation time, including time~~  
24 ~~spent cleaning and maintaining towels,~~ <sup>tools, and equipment</sup> is compensable.

25 3. As a matter of law, Defendants are liable under Washington's Minimum Wage  
26 Act ("MWA), RCW 49.46 *et seq.*, for failing to properly calculate overtime wages, including

and  
but not limited to failing to include non-discretionary daily bonus payments in overtime calculations and any administrative compliance penalties assessed against the class.

a. Defendants' failure to properly calculate overtime also includes its failure to include wages owed for drive time and wages owed for time spent laundering towels.

4. As a matter of law, Defendants are liable for wrongfully and willfully withholding wages due to class Plaintiffs in violation of RCW 49.52. There are no disputes as to any material facts of this claim, and Defendants are liable as a matter of law for violating RCW 49.52. *as to all the claims for unpaid wages before the Court.*

5. As a matter of law, the Court rules that Defendants' violations of the MWA and RCW 49.52 and 49.48 were willful and that class Plaintiffs are entitled to exemplary damages and an award of attorneys' fees and costs to be determined by the Court. *Issue of amount of attorneys' fees reserved. Cont.*

~~6. There is no reasonable cause for delay of appeal. Per CR 54(b), the Court certifies this order to facilitate immediate appeal. THEREFORE, THE COURT HEREBY ORDERS THAT: no just cause for delaying entry of~~

1. Plaintiffs' Motion for Partial Summary Judgment for Liability Under RCW 49.46, 49.48, and 49.52 et seq. is GRANTED. *partial judgment.*

DATED this 10<sup>th</sup> day of September 2017.

*[Signature]*  
THE HONORABLE JOHN P. ERLICK  
King County Superior Court Judge

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PRESENTED BY:

THE BLANKENSHIP LAW FIRM, P.S.

By: s/ Scott C. G. Blankenship

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