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NO. 17-CI-005454

JEFFERSON CIRCUIT COURT
DIVISION TWELVE (12)
JUDGE SUSAN SCHULTZ GIBSON

SCOTT O'LOUGHLIN and
STEPHAN GEARHART, Individually
and on behalf of all others similarly situated PLAINTIFFS

V.

MEMORANDUM AND ORDER

DAVE'S TOWING SERVICE DEFENDANT

* * * * *

This matter is before the Court on the Renewed Motion of Plaintiffs, Scott O'Loughlin ("O'Loughlin") and Stephan Gearhart ("Gearhart") (collectively, "Plaintiffs"), Individually, and on behalf of all others similarly situated, for Class Certification. The Court, for the following reasons, does **grant** the motion.

FACTS

On or about June 11, 2017, O'Loughlin was parked in the parking lot of his condominium complex, located at 3320 Bardstown Road, Louisville, Jefferson County, Kentucky. (Am. Compl. at ¶ 8).[1] At approximately 9:00 a.m., O'Loughlin was notified that Defendant, Dave's Towing Service ("Defendant"), was allegedly in the process of towing his vehicle. (Am. Compl. at ¶ 8; O'Loughlin Afft. at ¶ 2). O'Loughlin allegedly approached Defendant's employee while his vehicle was still in the parking lot and requested that his vehicle not be towed. (Am. Compl. at ¶ 8). Defendant's employee allegedly stated that it would cost $75 to "drop" his vehicle, but that he accepted cash only. (*Ibid.*). O'Loughlin did not have $75 cash, so Defendant's employee allegedly towed the vehicle to Defendant's impound lot at 4822 Popular Level Road, Louisville, Jefferson County,

[1] By Order, entered May 24, 2023, the Court granted Plaintiffs leave to file their "First Amended Class Action Complaint."

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Kentucky ("Defendant's impound lot"). (Am. Compl. at ¶ 8; O'Loughlin Afft. at ¶ 3). Upon information and belief, Defendant did not contact the Louisville Metro Police Department via telephone prior to towing O'Loughlin's vehicle. (Am. Compl. at ¶ 8). O'Loughlin allegedly contacted Defendant's impound lot and advised that he would retrieve his vehicle that afternoon. (*Ibid.*). At approximately 2:30 p.m., O'Loughlin arrived at Defendant's impound lot, but no one was allegedly present. (Am. Compl. at ¶ 8; O'Loughlin Afft. at ¶ 3). Before leaving Defendant's impound lot, O'Loughlin allegedly contacted Defendant via telephone and was told that he must wait until the following day to retrieve his vehicle. (Am. Compl. at ¶ 8; O'Loughlin Afft. at ¶ 4). The next day, O'Loughlin returned to the impound lot to again attempt to retrieve his vehicle but was allegedly told by the staff of Defendant that Defendant did not accept credit cards but only accepted impound fees that were paid in cash. (Am. Compl. at ¶ 8; O'Loughlin Afft. at ¶ 5). On June 13, 2017, O'Loughlin's vehicle was allegedly released after payment of $213 cash. (Am. Compl. at ¶ 8; O'Loughlin Afft. at ¶ 6).

On or about Saturday, August 19, 2017, Gearhart was parked in the parking lot at Sergio's World of Beers, located at 1605 Story Ave., Louisville, Jefferson County, Kentucky, from which the parking lot is accessed on Frankfort Avenue. (Am. Compl. at ¶ 9; Gearhart Afft. at ¶ 2). After approximately 30 minutes, Gearhart allegedly saw that his vehicle was being towed by one of Defendant's employees. (Am. Compl. at ¶ 9). Gearhart contacted Defendant and requested that the tow driver stop and bring his vehicle back and he would pay the charge. (*Ibid.*). Defendant allegedly rudely denied the request. (*Ibid.*). Gearhart contacted Defendant by telephone and was informed that he was required to pick up his vehicle from Defendant's impound lot. (Gearhart Afft. at ¶ 3). Gearhart then allegedly advised that he would need to get a ride to Defendant's impound

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lot as soon as possible. (Am. Compl. at ¶ 9). Approximately two hours after his vehicle was towed, Gearhart arrived at the Defendant's impound lot, but no one was present, and he was unable to retrieve his vehicle. (Am. Compl. at ¶ 9; Gearhart Afft. at ¶ 4). Before leaving Defendant's impound lot, Gearhart allegedly called Defendant and stated that he was at the impound lot and needed his vehicle released. (Am. Compl. at ¶ 9). Gearhart was advised by an off-site operator that an employee would meet him at Defendant's impound lot to release his vehicle. (Gearhart Afft. at ¶ 5). Approximately one-half hour later, one of Defendant's employees allegedly arrived at Defendant's impound lot. (Am. Compl. at ¶ 9; Gearhart Afft. at ¶ 6). When Gearhart attempted to pay for the charges via credit card, Defendant's employee allegedly refused to accept it, stating that Defendant's policy was to accept cash only. (Am. Compl. at ¶ 9; Gearhart Afft. at ¶ 6). Ultimately, Gearhart was taken to an ATM to get cash for payment of the impound fee; and, after he tendered the cash payment, his vehicle was allegedly released by Defendant. (Am. Compl. at ¶ 9; Gearhart Afft. at ¶ 7).

The Louisville Metro Towing Ordinance ("Lou. Metro Ord.") § 115.450, *et seq.*, requires private tow operators to follow specific procedures when impounding vehicles. Prior to towing any vehicle from a private parking lot, a private tow operator *shall* (1) notify Louisville Metro Police about the vehicle, the location where the tow is to occur, the location of the private tow company storage yard where the towed vehicle will be taken, and the telephone number of the private tow operator, *id.* at § 115.455(A); and (2) obtain a contemporaneous written specific authorization for the removal of the vehicle from a private parking lot from the owner of the parking lot, or their agent, *id.* at § 115.456(A). After the vehicle has been towed, the tow operator is required to (1) notify the Jefferson County Clerk's Office of the impound ***within one hour*** of towing the vehicle, *id.* at §

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115.455(B) (emphasis added); (2) notify the vehicle's owner of the impound by registered mail, *id.* at § 115.455(C); (3) provide an attendant or telephone number "where the owner, manager, or attendant of the storage yard may be reached at any time 24 hours per day, seven days per week," so that a towed motor vehicle may be reclaimed ***"in a minimum amount of time, not to exceed one hour"*** from contacting the tow operator, *id.* at § 115.457(A) (emphasis added); and (4) release a towed vehicle to the "owner, operator, driver, or authorized designee thereof, upon the presentation of commercially reasonable tender[,]" including "without limitation, cash and credit cards" sufficient to cover the costs of towing and storage, *id.* at § 115.457(B). When a private tow operator violates ***any*** provision of the Towing Ordinance, "there shall be no charge to the owner or other person in charge of the vehicle for the cost of the tow and storage." *Id.* at § 115.453. Any impound fees paid to the tow operator for the vehicle impounded in violation of the Ordinance is entitled to a refund. (*Ibid.*).

Defendants allegedly committed multiple violations of the Louisville Metro Towing Ordinance when it impounded Plaintiffs' vehicles. Defendant did not provide an attendant at its impound lot, nor did it send an employee to release O'Loughlin's vehicle within one hour after he contacted them via telephone. (O'Loughlin Afft. at ¶ 4). Defendant also allegedly refused to take non-cash payments for the release of both Plaintiffs' vehicles. (O'Loughlin Afft. at ¶ 5; Gearhart Afft. at ¶¶ 4, 6). Defendant allegedly did not report that it had impounded Plaintiffs' vehicles to the Jefferson County Clerk's Office within one hour of towing the vehicles as required by the Towing Ordinance. (David Jones Dep. at pp. 77-78).[2]

[2] David Jones is Defendant's corporate designee, who sat for and testified during a CR 30.02 deposition, which took place on November 19, 2020.

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In response to a request for all written contracts "between you and any private lot owner within Jefferson County, Kentucky that were in effect between June 2012 and the present[,]" Defendant provided the contracts from two businesses – Sergio's World of Beers and Brown Suburban Condos. (Defendant's Answers to Plaintiffs' First Set of Interrogatories and Request for Production of Documents at p. 7, ¶ 14). Defendant did not provide any other contracts between it and a private lot owner in Jefferson County, Kentucky, in its answers to the discovery requests. (*Ibid.*). Defendant admitted that it has no written policies with respect to the towing, storing, and/or releasing of vehicles towed from private lots in Jefferson County, Kentucky that were in effect from June 2012 to the present. (*Id.* at p. 5, ¶ 1). Defendant also admits that it has no records of telephone calls and no written contemporaneous authorizations from private parking lot owners for each vehicle towed from such private lot within Jefferson County, Kentucky from June 2012 to the present.[3] (*Id.* at pp. 5 ¶ 4; 7 ¶ 13).

During the deposition of David Jones ("Jones"), pursuant to CR 30.02, Jones admitted that Defendant refused to accept credit card payments for impound fees. (Jones Dep. at pp. 24-25). Likewise, Jones admitted that Defendant denied certain people the ability to pick up their car until the next day when the business opened. (*Id.* at pp. 27-28, 30-31). Defendant's towing contracts state plainly that impounded vehicles may be "released Monday-Friday from 9 AM to 5 PM ONLY[.]" (Sergio's Towing Contract; Brown Suburban Condos Towing Contract (capitalization in originals); Jones Dep. at pp. 27-28).

[3] In response to the Request for Production of Documents, Defendant stated, "Objection. Not relevant and overly burdensome." (Request for Production of Documents at ¶ 4). In the Supplemental Responses to Discovery, Defendant stated, with respect to the Request for Production of Documents ¶ 4, "Written authorization from private parking lot owners are not kept and none are available." (Supplemental Responses at ¶ 3).

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On or about October 16, 2017, Plaintiffs filed this action in their individual capacities and on behalf of persons whose motor vehicles were towed from a private parking lot by Defendant (or its agents) under the circumstances which Defendant either (1) failed to contact Louisville Metro Police Department prior to towing the vehicle in accordance with Metro Louisville Code § 115.445(A); or (2) failed to contact the Jefferson County Clerk's Office in accordance with Louisville Metro Code § 115.456(B) and KRS 281.928. Plaintiffs also filed this action in their individual capacities and on behalf of all persons whose motor vehicles were towed and removed from a private parking lot by Defendant (or its agents) and under circumstances in which the owner of the private parking lot did not provide written, signed, contemporaneous authorization in accordance with Louisville Metro Code § 115.455. Plaintiff's also filed this action in their individual capacities and on behalf of all persons whose motor vehicles were towed by Defendant and stored at a storage yard owned and operated by Defendant (or its agents) under circumstances which Defendant either: (1) refused to maintain an attendant, a telephone contact, or release the vehicle within the time period specified in Louisville Metro Code § 114.457(A); or (2) refused to accept commercially reasonable tender for the costs of towing and storage, including credit cards, in accordance with Louisville Metro Code § 114.457(B). The class of people included all individuals who were so treated from June 11, 2012, to the time of the filing of the Complaint. Defendant's alleged violations of the above listed Louisville Metro Code sections have regularly occurred and continue to occur and there are hundreds of members to the class to satisfy the numerosity requirement, there are allegedly questions of law and fact in this case that are common, and Plaintiffs' claims are allegedly typical of those of this respective class, and Plaintiffs allegedly will fairly and adequately protect the interests of the class. (*Id.* at ¶¶ 1-5).

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On December 19, 2021, Plaintiffs made a motion to certify class, arguing that the class is too large to be practically joined and meets the numerosity requirements; that there are common questions of law and fact for all prospective members of the class; that Plaintiffs' claims are typical of the claims of the entire class; that Plaintiffs will adequately represent the class through qualified counsel; that certification is appropriate to avoid inconsistent rulings; that the common questions of law and fact predominate over individual questions; and that class action is the superior method of adjudication of these claims. Plaintiffs made several arguments in support of their effort to certify the class and contended that certification of this action would be consistent with both the spirit and letter of Kentucky Civil Rules of Procedure Rule ("CR") 23. On December 22, 2021, Defendant filed a response objecting to the continuation of this case, arguing that Plaintiffs are no closer to forming a class and asserting that this case should be dismissed, as Plaintiffs had, at the time, almost four years but did not have a class. The Court treated Defendant's response as a motion to dismiss. On January 20, 2022, Plaintiffs filed a reply in support of their motion for class certification and in response to Defendant's motion to dismiss. By Memorandum and Order, entered May 19, 2022, the Court denied Plaintiffs' motion for class certification, noting that, although Plaintiffs have generally described their class and their claim and issues the Court may need to address, they have not done so with such precision that the Court can confidently craft an order that complies with CR 23.03(2); and that while Plaintiffs' counsel have generally alleged they are competent to represent the class, they have not provided enough information to comply with CR 23.07. The Court also denied Defendant's motion to dismiss.

Plaintiffs now make a Renewed Motion for Class Certification, contending that the class is properly defined, as the proposed class consists of "All individuals who paid

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impound fees to Defendant for the release of vehicles that were towed and/or impounded by Defendant in Jefferson County, Kentucky from June 11, 2012 to November 16, 2021[;]" that class membership is based upon the (1) payment of impound fees to Defendant, (2) payment made for the release of the vehicle impounded in Jefferson County, Kentucky, and (3) the vehicle being impounded by Defendants between June 11, 2012 to November 16, 2021; and that the proposed class is not "fail-safe" as membership in the class does not turn on the impound fees Plaintiffs and the proposed Class Members paid to Defendant being impermissible pursuant to the Louisville Metro Towing Ordinance, which is the liability determination that the Court must make in this action. Plaintiffs argue that the evidence in the record reflects that the number in the proposed class is so large that it precludes easy joinder and would render Plaintiffs' case virtually impossible if the Court required joinder; that Defendant has conducted its impound business in a consistent manner throughout the class period, creating a common nucleus of operative facts which will be dispositive to the claims of Plaintiffs and the proposed Class Members, and Defendant has no records indicating its compliance with the Louisville Metro Towing Ordinance and has admitted to refusing to accept non-cash payments for impound fees, "a couple or three days" before reporting impounds to the Jefferson County Clerk's Office, allowing its drivers to impound vehicles without obtaining written contemporaneous authorizations, and refusing to release vehicles; that these admissions and lack of documentation provide and prove that Defendants violated the Louisville Metro Towing Ordinance throughout the class period, such that commonality is satisfied; that Plaintiffs and the proposed Class Members have suffered the same injury caused by a single course of conduct in this action, and illegally paid impounding fees arising from violation of the Louisville Metro Towing Ordinance, making their claims typical of the class; that

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counsel for Plaintiffs and the Putative Class are experienced civil litigators of which one has successfully represented consumer claims in both state and federal courts on both statutory and common law theories of liability, with the other having prosecuted class action lawsuits in state and federal courts in multiple jurisdictions, who both have and will continue to adequately represent the interests of the class; that it is clear from the circumstances of this case that the interests of all parties will be served by having common issues resolved as a class action, rather than in separate actions that could produce varying results that would only confuse the issue further and delay effective remedy; that the common issues represent a majority of the determination to be made at trial and can be resolved for all members in a single adjudication, rather than through an individual basis, as the only individual question in this matter relates to the specific dollar amounts to be refunded to each individual, which cannot defeat predominance as a matter of law, and the questions of whether a violation occurred and whether Class Members were affected completely swallow any relatively minor difference in Plaintiffs' and the Class Members' actual damages; and that there will be no added difficulty in trying the instant action as a class action as Plaintiffs' and the Class Members' claims will be subject to common proof making the class action the superior method of adjudicating the instant controversy.

Defendant makes an objection to the certification of a class, contending that this is the same motion previously made before this Court, though Plaintiffs have expanded their motion and added more pages, but the bottom line is that they only have two members of the class and the Court previously denied the motion; and that the certification does not satisfy CR 23.01, as after more than four years, there is no class; that Plaintiffs have not proven that the class is so numerous that joinder of all members

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is impractical, they have not proven a class exists, they have not conducted exhaustive discovery to no avail, and they cannot get a judgment in their favor.

Plaintiffs reply that they have satisfied CR 23.01's numerosity requirement. Plaintiffs contend that, since the Court's previous order, Plaintiffs have retained additional counsel experienced in the prosecution and settlement administration of class action lawsuits and have tendered a proposed order that identifies the class, the issues and claims to be decided on a class basis throughout the remainder of this litigation, and class counsel, with supporting proposed findings of fact and conclusions of law as required by CR 23.03(2). Plaintiffs argue that Defendant's request for dismissal of Plaintiffs' claims is unsupported and procedurally improper, as the claims Plaintiffs have brought on behalf of themselves and the proposed Class have not changed, and the Court should again deny Defendant's request for dismissal.

CONCLUSIONS

Under CR 23.01, the Court can certify a class action only if all the following requirements are met:

> (a) the class is so numerous that joinder of all members is impractical, (b) there are questions of law and fact common to the classes, (c) the claims for defenses of the representative parties are typical of the claims and defenses of the class, and (d) the representative parties will fairly and adequately protect the interests of the class.

CR 23.01. For a class action to be certified by the Court, it must also fall into at least one of the categories designated in CR 23.02, which provides:

> An action may be maintained as a class action if the prerequisites of Rule 23.01 are satisfied, and in addition:
>
> (a) 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

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> members of the class which would establish incompatible standards of conduct for the party opposing the class, or, (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
>
> (b) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
>
> (c) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (i) the interests of members of the class in individually controlling the prosecution or defense of separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (iii) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (iv) the difficulties likely to be encountered in the management of a class action.

CR 23.02. In making its determination on the class certification, the Court will consider each of these factors respectively. The burden of proof to justify certifying a class is on the moving party, the Plaintiffs in this instance. *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 537 (6th Cir. 2012). See also *In re Am. Med. Sys.*, 75 F.3d 1069, 1078-79 (6th Cir. 1996), citing *General Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982) (finding that a trial court must conduct a “rigorous analysis” into whether the prerequisites of the class action rules are met before certifying a class, and that “[t]he party seeking the class certification bears the burden of proof”)..

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Even if a motion to certify class action is untimely, there is no reason to deny it in the absence of any showing that the delay has caused prejudice to the parties opposing the class or to the members of the class. 32B Am. Jur.2d Federal Courts §1662, citing the following cases: *Probe v. State Teachers' Retirement System,* 780 F.2d 776, 29 Ed. Law Rep 547 (9th Cir 1986); *Arnold v. Arizona Dept. of Public Safety*, 233 F.R.D. 537 (D. Ariz. 2005) (holding that the motion was not untimely even though the action was commenced four years earlier); *Pyke v. Cuomo*, 209 F.R.D. 33 (N.D.N.Y. 2002) (holding that the motion was not untimely though it was filed more than 10 years after the action was commenced).[4] Defendant has not alleged any prejudice. Accordingly, the Court will not deny the motion to certify the class on the basis of delay.

During his deposition, Jones testified about impound contracts for 34 businesses, including the Kentucky Fair and Exposition Center (the "Fairgrounds"). (Jones Dep. at pp. 33, 34-35, 62, 64, 66-74, 76, 78-79).[5] Jones's deposition testimony reflects that the towing contracts were not "contemporaneous" authorizations as required by the Towing

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[4] CR 23.03(1) provides that "[a]t an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action." The Court can locate no Kentucky cases that address the issue of timely class certification. Since the Kentucky and Federal Rules of Civil Procedure are worded identically, the Supreme Court of Kentucky has stated that the federal authority can be used as a guide for a state trial court in making a class certification decision. *Hensley v. Haynes Trucking, LLC*, 549 S.W.3d 430, 436 (Ky. 2018).

[5] Defendant claims to possess additional contracts to tow vehicles which were not produced during discovery. The deposition testimony of Jones attached to the present motion in the record does not disclose all the names of the businesses other than the Fairgrounds, Byerly Ford, Tim's Body Shop, Samuel's Body Shop, and Jim Berry's Body Shop. However, attached to the previous motion for class certification, Plaintiffs included the full CR 30.02 deposition of Jones, wherein he discloses additional businesses and entities for which Defendant does impound work, including, but not limited to, the West Buechel Police, Audubon Park Police, Glenview Police, Hurstbourne Acres Police, Pinotti, Dollar General, Derby Estates, Cooper Creek Apartments, Cash America Pawn Shop, St. Louis Bertrand Church, Fourth Central Food Market, Woodland Estates , University Park Apartments, Auburndale Shopping Center, Park Community Condominium, Heritage Green Apartments, Baxter Avenue Church, Bilbrey Automotive and Transmission, Brown Suburban Condos, Eleven Oaks, Highland Methodist Church, Liberty Green, Lowe's on Norton Healthcare Boulevard, McDonald's at East Market Street, Pl Noir, Red Carpet Inn , Sun Properties in Dupont Circle, Stop and Go Grocery, and Imperial House. In Defendant's Answers to Plaintiffs' discovery requests, Defendant provided the contracts from two businesses – Sergio's World of Beers and Brown Suburban Condos

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Ordinance, but merely contracts between Defendant and various private entities giving Defendant the exclusive authority to remove vehicles if properly notified. (*Id.* at pp. 39, 79). Jones's deposition testimony reflects that Defendant also tows for businesses without written contracts in certain situations. (*Id.* at p. 38). Jones testified that Defendant made around 100 to 125 towing runs per week and the impound work comprises of two to three percent, maybe five percent at the very highest, of Defendant's total work.[6] (*Id.* at pp. 18, 82). Jones's testimony reflects that Defendant did not keep any towing records with respect to specific vehicles that were towed whether or not it was pursuant to its contracts. (*Id.* at pp. 39-41). Defendant failed to provide a single written record supporting any tow that was made over the 28 years it was in business. (*Ibid.*). Jones admitted during his deposition that Defendant's drivers impound cars without providing the required signed statement requesting the tow. (*Id.* at pp. 44-45). Jones testified that "a lot of times [he] denied taking a credit card from a person" for certain impound jobs. (*Id.* at p. 25). Jones's testimony reflected that he did not have an attendant in his storage lot 24 hours a day. (*Id.* at pp. 27-28). He further testified that Defendant released impounded cars by appointment. (*Id.* at p. 28). He testified that Defendant's dispatcher would call the driver and tell him to go release the car if she was called for an appointment; however, his employees have the discretion on whether or not to provide the people with an appointment, depending upon whether they are "belligerent" or sound like they have "been drinking." (*Id.* at pp. 30-31).

The record reflects that Defendant is a Kentucky corporation engaged in the business of towing vehicles in Jefferson County, Kentucky; that Defendant has

[6] Jones's testimony indicated that Defendant's average of 125 tows per week went down during the COVID pandemic to an average of 100 per week.

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impounded anywhere from 984 two 3,075 vehicles in Jefferson County, Kentucky from June 11, 2012 to November 16, 2021; that Defendant possesses no written authorizations for any tows it has performed since 2012; that Defendant possesses no written policies or procedures for impounding vehicles; that, prior to Defendant impounding a vehicle from a private property for the first time, the property owners sign a contract stating in part that "Cars impounded can be released Monday-Friday from 9 AM to 5 PM ONLY[;]" that Defendant notifies the Jefferson County Clerk's Office of an impounded vehicle if it is on its lot from more than one day; that Defendant does not always accept credit card payments for impound fees; that the manner in which Defendant impounds and releases vehicles was substantially the same from June 11, 2012 to November 16, 2021; that, on June 11, 2017, O'Loughlin's vehicle was impounded by Defendant; that O'Loughlin went to Defendant's impound lot to retrieve his vehicle on June 11, 2017 but Defendant refused to release his vehicle from impound until June 13, 2017; that O'Loughlin was told by Defendant's staff that it only accepted cash payments for impound fees, and in order to get his vehicle released, he tendered cash payment to secure the release of his vehicle; that, on August 19, 2017, Gearhart's vehicle was impounded by Defendant; that, upon arrival at Defendant's impound lot, Gearhart was informed by staff that impound fees must be paid in cash; that Gearhart tendered cash payment to Defendant to secure release of his vehicle; and that Plaintiffs' claim that they and the Class of similarly situated individuals suffered harm by being improperly charged impound fees by Defendant.

Plaintiffs have defined a Class in such a manner that the inclusion in the Class may be determined by the following objective criteria: (1) Payment of impound fees to Defendant; (2) said payment was made in Jefferson County, Kentucky; and (3) the vehicle was impounded by Defendants between June 11, 2012 to November 16, 2021. Inclusion

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in the Class is not based upon a determination of liability against Defendant. The number of impounds performed by Defendant from June 11, 2012 to November 16, 2021 is sufficiently large that joinder of all members is impracticable. The manner in which Defendant has conducted its impound business has created a "common nucleus of operative facts" from which a jury may determine liability of Defendant to Plaintiffs and Class members at trial. There are common issues of fact and law between the named Plaintiffs and Class members including, but not limited to: (1) whether Defendant was a Private Tow Operator subject to Louisville Metro Ordinance § 115.450, *et seq.*, from June 11, 2012 to November 16, 2021; (2) whether Defendant obtains signed authorizations from the premises owner or their agent before impounding the vehicle; (3) whether Defendant requires impound fees to be paid in cash; (4) whether Defendant reported impounds to the Jefferson County Clerk's Office within one hour of towing an impounded vehicle from June 11, 2012 to November 16, 2021; and (5) whether Defendant released vehicles from impound within one hour of being contacted by the vehicle owner or another person in charge of the vehicle.

Plaintiffs and Class Members have claimed to have suffered injuries, the improper payment of impound fees, as a result of the manner in which Defendant operated its impound business from June 11, 2012 to November 16, 2021. Plaintiffs have no interests that are adverse to those of the Class, and will vigorously prosecute their claims and the claims of their fellow Class members. Plaintiffs' counsel, Rob Astorino, Jr. and Sean A. McCarty, collectively have sufficient consumer protection, class action, and trial experience to prosecute the case on behalf of Plaintiffs and the Class Members. The Class certification of this case will eliminate the risk of inconsistent verdicts posed by Class Members litigating their claims against Defendant individually. The manner in which

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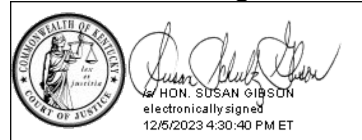
Defendant operated its impound business is a single course of conduct from which liability will be determined, such that common issues predominate over individual issues in this action. The measure of damages attributable to each impound performed by Defendant from June 11, 2012 to November 16, 2021, and the lack of other litigation concerning the manner in which Defendant impounds vehicles makes class certification the superior method of adjudication.

ORDER

WHEREFORE, IT IS HEREBY ORDERED that the Motion of Plaintiffs, Individually, and on behalf of all others similarly situated, for Class Certification is **granted.**



SUSAN SCHULTZ GIBSON, JUDGE

cc: Counsel of Record

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