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WASHINGTON STATE  
SUPREME COURT

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THE HONORABLE RICHARD A. JONES

93564-5

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ATTEST: WILLIAM M. MCCOOL  
Clerk, U.S. District Court  
Western District of Washington  
By Shunda Siler  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL BRADY,  
Plaintiff,

vs.

AUTOZONE STORES, INC., and  
AUTOZONERS LLC,  
Defendants.

NO. 2:13-cv-01862-RAJ

ORDER

This matter comes before the Court on Plaintiff's Motion to Certify Two Questions of State Law to the Washington Supreme Court Pursuant to RCW 2.60. Dkt. ## 68, 71. Defendants oppose the motion. Dkt. # 69. For the reasons outlined below, the Court **GRANTS in part and DENIES in part** Plaintiff's motion. Dkt. # 68.

**I. BACKGROUND**

In September 2013, Plaintiff Michael Brady filed an Amended Class Action Complaint in state court seeking unpaid wages for meal breaks that Defendants allegedly withheld from employees. Dkt. # 1. In response, Defendants sought removal to a federal venue pursuant to 28 U.S.C. § 1332(d). *Id.* Mr. Brady later motioned this Court to certify a class. *See* Dkt. # 23. After a thorough review of Washington Administrative Code ("WAC") 296-126-092, guidance from Washington Department of

1 Labor & Industries, as well as various Washington state court and Western District of  
2 Washington decisions, the Court concluded that employers have met their obligation  
3 under the law if they ensure that employees have the opportunity for a meaningful meal  
4 break, free from coercion or any other impediment. Dkt. # 62, at p. 9. The Court  
5 expressly denied the notion that Washington has adopted a strict liability approach to  
6 the taking of meal breaks. *Id.* In doing so, the Court found that class certification  
7 would be inappropriate considering the individuality component and unique fact  
8 scenarios associated with each potential violation of the meal break statute. *Id.* at 11.  
9 Accordingly, the Court denied Mr. Brady's motion for class certification. *Id.*

10 Mr. Brady sought review of this denial in the Ninth Circuit Court of Appeals, but  
11 that court would not permit Mr. Brady to appeal the decision. Dkt. ## 63, 67. Instead  
12 of moving forward with his individual claims, Mr. Brady now motions this Court to  
13 certify two questions to the Washington Supreme Court: 1) whether monetary damages  
14 are available for violations of WAC 296-126-092, and 2) whether a plaintiff must show  
15 the reason for why he did not receive a timely meal break in order to prove a violation  
16 of WAC 296-126-092.

## 17 II. LEGAL STANDARD

18 Whether to certify a question to the state supreme court is within the sound  
19 discretion of the federal court. *See Thompson v. Paul*, 547 F.3d 1055, 1065 (9th Cir.  
20 2008). However, there is strong presumption against certifying a question after the  
21 federal district court returned an adverse ruling. *Id.* "A party should not be allowed 'a  
22 second chance at victory' through certification by the appeals court after an adverse  
23 district court ruling." *Id.* Although certifying a question may, in the long run, "save  
24 time, energy, and resources and help[ to] build a cooperative judicial federalism," the  
25 "mere difficulty in ascertaining local law is no excuse for" certifying such questions.  
26 *Lehman Bros. v. Schein*, 416 U.S. 386, 390-391 (U.S. 1974) ("We do not suggest that  
27 where there is doubt as to local law and where the certification procedure is available,  
28 resort to it is obligatory."). Nevertheless, where state law is unsettled, and the answers  
to the Court's questions are dispositive of the issues, certification to the state supreme

1 court is appropriate. *Amaker v. King County*, 540 F.3d 1012, 1013 (9th Cir. 2008);  
2 WASH. REV. CODE § 2.60.020.

3 **III. DISCUSSION**

4 **A. The Washington Supreme Court has not clearly decided whether employers**  
5 **are strictly liable under the meal break statute.**

6 The Court necessarily analyzed the law in Washington to resolve whether, as Mr.  
7 Brady contended, Defendants were strictly liable under WAC 296-126-092 for any  
8 missed meal breaks. Dkt. # 62. The Court found several Washington state cases that  
9 decidedly determined this issue. *See, e.g., Demetrio v. Sakuma Bros. Farms, Inc.*, 355  
10 P.3d 258 (Wash. 2015); *Pellino v. Brink's, Inc.*, 267 P.3d 383 (Wash. Ct. App. 2011);  
11 *Frese v. Snohomish County*, 120 P.3d 89 (Wash. Ct. App. 2005); *White v. Salvation*  
12 *Army*, 75 P.3d 990 (Wash. Ct. App. 2003); *Brown v. Golden State Foods Corp.*, 2015  
13 Wash. App. LEXIS 371 (Wash. Ct. App. 2015); *see also Eisenhauer v. Rite Aid Hdqtrs.*  
14 *Corp.*, No. C04-5783 RBL, 2006 U.S. Dist. LEXIS 32789 (W.D. Wash. 2006).

15 However, none of those cases carried the voice of the Washington Supreme Court with  
16 regard to the specific issue in this matter. This Court is skeptical that the Washington  
17 Supreme Court will issue an order adverse to the many appellate courts below.<sup>1</sup>

18 However, on issues of state law that could carry considerable weight, a federal court  
19 sitting in diversity should defer to the state supreme court to make those decisions.

20 Mr. Brady wishes to ask the Washington Supreme Court “whether an employee  
21 must prove the reason he did not receive a timely meal break in order to prove a  
22 violation of WAC 296-126-092.” Dkt. # 68, at p. 7. This Court is not convinced that an  
23 answer to this question would resolve the issue. In its Order, the Court did not find that  
24 Mr. Brady’s only way to prove a meal break violation was to explain each of his 133  
25 missed meal breaks. Instead, the Court’s more nuanced conclusion was that Mr. Brady

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27  
28 <sup>1</sup> The Court is also doubtful that the state supreme court would issue a ruling with such impractical consequences. Specifically, as Defendants proffer in their response brief, Dkt. # 69, there are a variety of reasons why an employee might punch out “late.” The unwieldy variables associated with punch card data showing breaks missed by one or two minutes would make a strict liability theory untenable.

1 “failed to meet his burden of identifying a common method of proving AutoZone’s  
2 liability.” Dkt. # 62, at p. 11. Put another way, Mr. Brady did not present “any  
3 evidence of an unwritten policy or practice of coercion by AutoZone supervisors  
4 encouraging or incentivizing employees to skip breaks.” *Id.* Moreover, Mr. Brady did  
5 not offer punch records that were consistent with his theory of meal break violations.  
6 *Id.* The Court did not ask that Mr. Brady prove the reason that he did not receive each  
7 timely meal break, but the Court did ask that Mr. Brady proffer something more than  
8 conjecture or conclusion. Even if the Washington Supreme Court were to answer Mr.  
9 Brady’s question in the negative, this would not change the Court’s denial of class  
10 certification because Mr. Brady has not met his burden either way with the submitted  
11 evidence.

12 To dispose of this matter, this Court needs to know whether an employer is  
13 strictly liable under WAC 296-126-092. *See* WASH. REV. CODE § 2.60.020 (stating that  
14 a federal court may certify a question to the Washington Supreme Court if it is  
15 necessary to ascertain the local law in order to dispose of the proceeding.). If an  
16 employer is not strictly liable, then the Court asks the Washington Supreme Court  
17 whether an employee carries the burden to prove that his employer did not permit the  
18 employee an opportunity to take a meaningful meal break as required by WAC 296-  
19 126-092. If the answer to the former is in the negative, and the answer to the latter is  
20 positive, then this matter will be disposed of in this Court.

21 B. Mr. Brady’s remaining question is premature.

22 Mr. Brady also wishes to ask the Washington Supreme Court whether he is  
23 entitled to damages and attorney’s fees as a remedy if he is the prevailing party. Dkt. #  
24 68. This question is premature, and the Court is not convinced that it requires the  
25 assistance of the state supreme court to dispose of the issue. The Court will not certify  
26 this question to the state supreme court. Accordingly, the Court **DENIES** this request.

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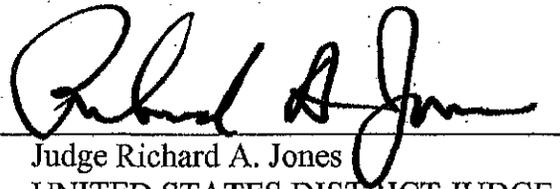
**IV. CONCLUSION**

For the foregoing reasons, the Court **GRANTS in part and DENIES in part** Mr. Brady's motion to certify two questions to the Washington Supreme Court. Dkt. #

68. The Court **CERTIFIES** the following questions to the Washington Supreme Court:

1. Is an employer strictly liable under WAC 296-126-092?
2. If an employer is not strictly liable under WAC 296-126-092, does the employee carry the burden to prove that his employer did not permit the employee an opportunity to take a meaningful break as required by WAC 296-126-092?

Dated this 6<sup>th</sup> day of September, 2016.

  
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Judge Richard A. Jones  
UNITED STATES DISTRICT JUDGE