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CONSTANCE R. WHITE COUNTY CLERK
NO: 23-2-09008-5

# IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

EDWARD J. BARRY, individually and on behalf of all those similarly situated,

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No.

CLASS ACTION COMPLAINT FOR DAMAGES

VS.

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HERC RENTALS INC, a foreign corporation,

Defendant.

Plaintiff,

Plaintiff claims against Defendant as follows:

## I. NATURE OF ACTION

1.1. Plaintiff Edward J. Barry individually and on behalf of all individuals currently or formerly employed by Defendant in Washington state who executed a noncompetition agreement related to employment and were compensated at an annual rate of less than \$101,390 in 2021, less than \$107,301.04 in 2022, and/or less than \$116,593.18 in 2023, brings this class action for statutory damages for violations of RCW 49.62 and an individual action for statutory damages for violations of RCW 49.44.211.

### II. JURISDICTION AND VENUE

2.1. The Superior Court of Washington has jurisdiction of Plaintiff's claims pursuant to RCW 2.08.010.

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- 2.2. Venue in Pierce County, Washington is appropriate pursuant to RCW 4.12.025, RCW 49.62.050, and RCW 49.44.211.
- 2.3. Defendant operates equipment rental facilities in Pierce County and across the State of Washington and at least some of the acts and omissions alleged in this Complaint took place in the State of Washington and Pierce County.

## III. PARTIES

- 3.1. Defendant, Herc Rentals Inc. is an employer for the purposes of RCW 49.62, *et seg.*, and RCW 49.44.211.
- 3.2. Plaintiff Edward J. Barry is a resident of Tacoma, Washington and was formerly employed by Defendant as a Talent Advisor.

#### IV. FACTUAL ALLEGATIONS

- 4.1. Plaintiff and members of the putative class are or were employed by Defendant in Washington state at any time on or after August 16, 2020.
- 4.2. Plaintiff and members of the putative class were compensated at an annual rate of less than \$101,390 in 2021, less than \$107,301.04 in 2022, and/or less than \$116,593.18 in 2023 and executed noncompete agreements relating to their employment.
- 4.3. The noncompete agreements executed by Plaintiff and members of the putative class contained a forum selection clause requiring adjudication outside of Washington state.
  - 4.4. Plaintiff was hired by Defendant on or about April 4, 2022.
  - 4.5. Plaintiff was terminated by Defendant on or about August 4, 2023.
- 4.6. On or about August 4, 2023, Defendant requested that Plaintiff execute a Confidential Separation Agreement and General Release of All Claims that stated, "8. **Non-disparagement**. Employee will refrain from making any disparaging comments about the Company."
- 4.7. Plaintiff's interests in this matter do not conflict with the interests of the putative class.

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4.8. Plaintiff's counsel is experienced in complex class action litigation and has been appointed class counsel in dozens of class action employment cases.

#### V. CLASS ACTION ALLEGATIONS

- 5.1. Plaintiff seeks to represent all individuals employed by Defendant Washington State at any time on or after August 17, 2020; were compensated at an annual rate of less than \$101,390 in 2021, less than \$107,301.04 in 2022, and/or less than \$116,593.18 in 2023; and executed noncompete agreements relating to their employment.
  - 5.2. This action is properly maintainable as a class action under CR 23(a) and (b)(3).
  - 5.3. The number of putative class members is so numerous that joinder is impracticable.
- 5.4. Pursuant to CR 23(a)(2), there are common questions of law and fact among Plaintiff and members of the putative class including, but not limited to:
- (1) Whether the execution of noncompetition agreements with Defendant by Plaintiff and members of the putative class violated RCW 49.62.020;
- (2) Whether the provision requiring adjudication of the noncompetition agreements outside of Washington violated RCW 49.62.050;
- (3) Whether Plaintiff and members of the putative class are entitled to a statutory penalty of five thousand dollars, plus reasonable attorneys' fees, expenses, and costs incurred in this proceeding pursuant to RCW 49.62.080;
- 5.5. Pursuant to CR 23(a)(3), the named Plaintiff's claims are typical of the claims of all class members and of Defendant's anticipated defenses thereto.
- 5.6. The named Plaintiff and their counsel will fairly and adequately protect the interests of the class as required by CR 23(a)(4).
- 5.7. Pursuant to CR 23(b)(3), class certification is appropriate here because questions of law or fact common to members of the class predominate over any questions affecting only individual members, and because a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

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# VI. FIRST CAUSE OF ACTION – CLASSWIDE VIOLATION OF WASHINGTON'S PROHIBITION OF NONCOMPETE AGREEMENTS

- 6.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.
- 6.2. The noncompetition agreements executed by Plaintiff and members of the putative class are void and unenforceable pursuant to RCW 49.62.020.
- 6.3. The noncompetition agreements executed by Plaintiff and members of the putative class are unenforceable pursuant to RCW 49.62.050.
- 6.4. As a result of Defendant's acts and omissions, Plaintiff and members of the putative class have been damaged in statutory amounts as will be proven at trial or as a matter of law.

# VII. SECOND CAUSE OF ACTION – VIOLATION OF THE WASHINGTON SILENCED NO MORE ACT

- 7.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.
- 7.2. RCW 49.44.211(4) makes it a violation for an employer to require an employee to enter into any agreement that contains a nondisparagement provision in an agreement to pay compensation in exchange for the release of a legal claim.
- 7.3. Defendant violated RCW 49.44.211(4) when it requested that Plaintiff execute a Confidential Separation Agreement and General Release of All Claims that contained a nondisparagement provision.
- 7.4. As a result of Defendant's acts and omissions, Plaintiff has been damaged in statutory amounts as will be proven at trial or as a matter of law.

# VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests this Court enter an order against Defendant granting the following relief:

- A. Certification of this case as a class action pursuant to CR 23(a) and (b)(3);
- B. A declaration that the Noncompetition Agreements Executed by Plaintiff and Members of the Putative Class are Void and Unenforceable;