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CONSTANCE R. WHITE
COUNTY CLERK
NO: 22-2-05001-8

1 The Honorable Gretchen Leanderson
2 Trial Date: August 30, 2023
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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF PIERCE

9 AURORA T. DAGUPION, JARQUATA
10 DELOSSANTOS, and PATRICIA ANN
11 FRAIDENBURG FKA PATRICIA ANN
12 CADOR, individually and on behalf of all those
13 similarly situated,

14 Plaintiff,

15 vs.

16 WILLAMETTE DENTAL GROUP, P.C., a
17 foreign professional services corporation

18 Defendant.

No. 22-2-05001-8

FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES

19 Plaintiffs claim against Defendant as follows:

20 I. NATURE OF ACTION

21 1.1. Plaintiffs Aurora T. Dagupion, Jarquata Delossantos, and Patricia Ann Fraidenburg
22 individually and on behalf of all individuals currently or formerly employed by Defendant in
23 Washington state in dental clinic staff positions paid on an hourly basis including but not limited
24 to: patient care advocates, patient support specialists, dental assistants, and dental hygienists,
25 brings this action for money damages and statutory penalties for violations of Washington's
26 Industrial Welfare Act ("IWA"), RCW 49.12, Minimum Wage Act ("MWA"), RCW 49.46, Wage
Payment Act ("WPA"), RCW 49.48 and Wage Rebate Act ("WRA"), RCW 49.52.

1 **II. JURISDICTION AND VENUE**

2 2.1. The Superior Court of Washington has jurisdiction of Plaintiff's claims pursuant to
3 RCW 2.08.010.

4 2.2. Venue in Pierce County is appropriate pursuant to RCW 4.12.025.

5 2.3. Defendant transacts business in Pierce County and at least some of the acts and
6 omissions alleged in this Complaint took place in the State of Washington and Pierce County.

7 **III. PARTIES**

8 3.1. Defendant Willamette Dental Group P.C., hereafter "Willamette" is organized
9 under the laws of Oregon and headquartered in Hillsboro, Oregon. Willamette operates dental
10 facilities throughout the Pacific Northwest including approximately twenty locations in
11 Washington state. Willamette is an employer for the purposes of the IWA, MWA, WPA and
12 WRA.

13 3.2. Plaintiff Aurora T. Dagupion is a resident of Puyallup, Washington and was
14 formerly employed by Defendant as a dental assistant.

15 3.3. Plaintiff Jarquata Delossantos is a resident of Graham, Washington and was
16 formerly employed by Defendant as a dental assistant.

17 3.4. Plaintiff Patricia Ann Fraidenburg is a resident of Tacoma, Washington and was
18 formerly employed by Defendant as a patient care advocate.

19 **IV. FACTUAL ALLEGATIONS**

20 4.1. Plaintiffs and members of the putative class are or were employed by Defendant in
21 in Washington state at any time from March 2, 2019 and thereafter in dental clinic staff positions
22 paid on an hourly basis including but not limited to: patient care advocates, patient support
23 specialists, dental assistants, and dental hygienists.

24 4.2. Defendant created and maintained timekeeping systems, work schedules, staffing
25 levels, job requirements and a working environment that discouraged Plaintiffs and members of
26 the putative class from taking rest periods and meal periods in compliance with Washington law.

1 4.3. At times, Plaintiffs and members of the putative class were required to work more
2 than three consecutive hours without a rest period.

3 4.4. With respect to Plaintiffs and members of the putative class, Defendant failed to
4 establish maintain a process to record of the occurrence, time, and duration of paid rest periods.

5 4.5. With respect to Plaintiffs and members of the putative class, Defendant failed to
6 maintain accurate records of the occurrence, time, and duration of paid rest periods.

7 4.6. With respect to Plaintiffs and members of the putative class, Defendant failed to
8 provide a process to report instances of when they were required to work over three consecutive
9 hours without a rest period, when they did not receive a rest period in at least a ten-minute duration
10 for each four hours worked.

11 4.7. Even when Plaintiffs and members of the putative class reported that they missed
12 rest periods and Defendant failed to compensate them with additional wages.

13 4.8. Defendant did not ensure Plaintiffs and members of the putative class received a
14 ten-minute rest period on the employer's time for every four hours worked.

15 4.9. Defendant did not compensate Plaintiffs and members of the putative class for an
16 additional ten minutes of work for each instance it required them to work greater than three
17 consecutive hours without a rest period, provided a rest period in a duration of less than ten
18 minutes, or did not provide a rest period of at least ten minutes in duration for each four hours
19 worked.

20 4.10. Plaintiffs and members of the putative class worked shifts greater than five hours
21 in length and, at times, were not provided and did not waive their rights to meal periods in
22 compliance with Washington law.

23 4.11. At times, Plaintiffs and members of the putative class worked more than five
24 consecutive hours without a meal period.

25 4.12. Defendant did not compensate Plaintiffs and members of the putative class for an
26 additional thirty minutes of work for each time it required them to work shifts greater than five

1 hours in length and meal periods were not provided, or when Plaintiffs and members of the putative
2 class worked more than five consecutive hours without a meal period.

3 4.13. Even when the time records clearly showed meal period violations, Defendants
4 failed to pay Plaintiffs and members of the putative class wages to compensate.

5 4.14. At times when total compensable time, including additional time to compensate for
6 missed or otherwise noncompliant rest and meal periods, totaled over forty in a workweek,
7 Defendant did not pay Plaintiffs and members of the putative class one and one-half times their
8 regular rate of pay for all hours over forty in a workweek.

9 4.15. Plaintiff Patricia Ann Fraidenburg and some members of the putative class signed
10 documents purporting to release their claims for all wages owed due to missed meal and rest
11 periods in exchange for a payment of wages in amounts less than amounts owed for missed,
12 untimely, interrupted, or otherwise curtailed meal and rest periods.

13 4.16. The amounts paid to Plaintiff Patricia Ann Fraidenburg and some members of the
14 putative class were less than the amounts owed pursuant to the Washington Minimum Wage Act
15 RCW 49.46, in particular, RCW 49.46.180.

16 4.17. The amounts paid to Plaintiff Patricia Ann Fraidenburg and some members of the
17 putative class were calculated based only on *missed* meal and rest periods and nothing was
18 calculated for instances of untimely, interrupted, short, or otherwise noncompliant meal and rest
19 periods.

20 4.18. Based on their own time records, Defendant knew, or should have known that the
21 amounts paid to Plaintiff Patricia Ann Fraidenburg and some members of the putative class were
22 less than amounts owed for all missed, untimely, interrupted, short, or otherwise noncompliant
23 meal and rest periods, in particular, untimely meal periods.

24 4.19. Defendant did not explain to or otherwise notify Plaintiff Patricia Ann Fraidenburg
25 and some members of the putative class that the amounts being paid were less than the amounts
26 owed for all missed, untimely, interrupted, short, or otherwise noncompliant meal and rest periods.

1 *Chavez v. Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 520 (2018) (“As a general rule,
2 joinder is impracticable where a class contains at least 40 members.”)

3 5.4. Pursuant to CR 23(a)(2), there are common questions of law and fact among
4 Plaintiffs and members of the putative class including, but not limited to:

5 (1) whether Defendant was required to keep records of the occurrence, time and
6 duration of rest periods provided to Plaintiffs and members of the putative class;

7 (2) whether Defendant failed to keep records of the occurrence, time and
8 duration of rest periods;

9 (3) whether Defendant required Plaintiffs and members of the putative class to
10 work greater than three consecutive hours without a rest period;

11 (4) whether Defendant failed to ensure Plaintiffs and members of the putative
12 class received a compliant rest period of at least ten minutes in length, on the employer’s time, for
13 each four hours worked;

14 (5) whether Defendant was required to compensate Plaintiffs and members of
15 the putative class for an additional ten minutes of work for each instance it required them to work
16 greater than three consecutive hours without a rest period or when it failed to ensure Plaintiffs and
17 members of the putative class received a compliant rest period of at least ten minutes in length, on
18 the employer’s time, for each four hours worked;

19 (6) whether Defendant failed to compensate Plaintiffs and members of the
20 putative class for an additional ten minutes of work for each instance it required them to work
21 greater than three consecutive hours without a rest period or when it failed to ensure Plaintiffs and
22 members of the putative class received a compliant rest period of at least ten minutes in length, on
23 the employer’s time, for each four hours worked;

24 (7) whether Defendant failed to provide Plaintiffs and members of the putative
25 class a compliant meal period of at least thirty minutes for shifts greater than five hours in length;

1 (8) whether Plaintiffs and members of the putative class, at times, worked
2 greater than five consecutive hours without a meal period;

3 (9) whether Defendant was required to compensate Plaintiffs and members of
4 the putative class for an additional thirty minutes of work for each instance it failed to provide a
5 compliant meal period of at least thirty minutes for shifts greater than five hours in length or
6 required them to work greater than five consecutive hours without a meal period;

7 (10) whether Defendant failed to compensate Plaintiffs and members of the
8 putative class for an additional thirty minutes of work for each instance it failed to provide a
9 compliant meal period of at least thirty minutes for shifts greater than five hours in length or
10 required them to work greater than five consecutive hours without a meal period;

11 (11) whether Defendant failed to pay Plaintiffs and members of the putative class
12 one and one-half their regular rate of pay for all hours over forty in a workweek, inclusive of the
13 additional time to compensate for missed, untimely, short or otherwise noncompliant meal and rest
14 periods;

15 (12) whether the documents signed by putative subclass members are
16 unenforceable pursuant to RCW 49.46.090;

17 (13) whether the documents signed by putative subclass members are
18 unenforceable due to failure to obtain court approval of the compromise of this class action
19 pursuant to CR 23(e).

20 (14) whether the documents signed by putative subclass members are
21 unenforceable due to procedural unconscionability;

22 (15) whether the documents signed by putative subclass members are
23 unenforceable due to substantive unconscionability;

24 (16) whether the documents signed by putative subclass members are
25 unenforceable due to lack of consideration;

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1 (17) whether the documents signed by putative subclass members are
2 unenforceable due to Defendant's breach of the implied covenant of good faith and fair dealing;

3 (18) whether the documents signed by putative subclass members are
4 unenforceable due to Defendant's undue influence;

5 (19) whether the documents signed by putative subclass members are
6 unenforceable due to a material misrepresentation of facts and law by Defendant;

7 (20) whether Defendant acted willfully and with the intent of depriving Plaintiffs
8 and members of the putative class and subclass of wages or other compensation.

9 5.5. Plaintiffs were subject to the same policies and practices as the rest of the putative
10 class. Plaintiff Patricia Ann Fraidenburg signed the same agreement as other members of the
11 putative subclass. Consequently, pursuant to CR 23(a)(3), the named Plaintiffs' claims are typical
12 of the claims of all class members and of Defendant's anticipated defenses thereto.

13 5.6. The named Plaintiffs and their counsel will fairly and adequately protect the
14 interests of the class as required by CR 23(a)(4).

15 5.7. Pursuant to CR 23(b)(3), class certification is appropriate here because questions
16 of law or fact common to members of the class predominate over any questions affecting only
17 individual members, and because a class action is superior to other available methods for the fair
18 and efficient adjudication of the controversy.

19 **VI. FIRST CAUSE OF ACTION – CLASSWIDE FAILURE TO ENSURE REST**
20 **PERIODS IN VIOLATION OF THE WASHINGTON INDUSTRIAL**
21 **WELFARE ACT AND FAILURE TO COMPENSATE FOR VIOLATIONS IN**
22 **VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT AND**
23 **WASHINGTON WAGE PAYMENT ACT**

24 6.1. Plaintiffs restate and reallege the allegations set forth in all preceding paragraphs.

25 6.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing
26 regulation, WAC 296-126-092, require employers to provide a rest period of not less than ten
minutes, on the employer's time, for each four hours of working time.

1 6.3. Employees have an implied cause of action for violations of RCW 49.12 to protect
2 them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow*
3 *Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

4 6.4. A rest period violation is a wage violation with employees entitled to ten minutes
5 of additional compensation for each instance they are required to work longer than three
6 consecutive hours without a rest break. *Id* at 849.

7 6.5. Defendant violated the IWA and its implementing regulation by failing to ensure
8 Plaintiffs and members of the putative class received a ten-minute paid rest period for every four
9 hours worked and by failing to keep records of the occurrence, time and duration of rest periods
10 taken, by failing to implement a process for Plaintiffs and members of the putative class to report
11 missed or otherwise noncompliant rest periods and by creating work schedules, staffing levels and
12 conditions of work that discouraged paid rest periods.

13 6.6. Defendant violated the MWA and WPA when it failed to compensate Plaintiffs and
14 members of the putative class for an additional ten minutes of work for each instance a rest period
15 was not provided in compliance with IWA.

16 6.7. As a result of Defendant's acts and omissions, Plaintiffs and members of the
17 putative class have been damaged in amounts as will be proven at trial.

18 **VII. SECOND CAUSE OF ACTION – CLASSWIDE FAILURE TO PROVIDE**
19 **MEAL PERIODS IN VIOLATION OF THE WASHINGTON INDUSTRIAL**
20 **WELFARE ACT AND FAILURE TO COMPENSATE FOR VIOLATIONS OF**
21 **THE WASHINGTON MINIMUM WAGE ACT AND WASHINGTON WAGE**
22 **PAYMENT ACT**

23 7.1. Plaintiffs restate and reallege the allegations set forth in all preceding paragraphs.

24 7.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing
25 regulation, WAC 296-126-092, require employers to provide thirty-minute meal periods to their
26 employees for work shifts greater than five hours in length and prohibits employees from working
more than five consecutive hours without a meal period.

1 7.3. Employees have an implied cause of action for violations of RCW 49.12 to protect
2 them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow*
3 *Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

4 7.4. A meal period violation is a wage violation with employees entitled to thirty
5 minutes of additional compensation for each instance they are required to work more than five
6 consecutive hours without a compliant meal period. *Hill v. Garda CL Nw., Inc.*, 191 Wn.2d 553,
7 560 (2018), citing *Hill v. Garda CL Nw., Inc.*, 198 Wn.App 326, 361 (2017).

8 7.5. Defendant has violated the IWA and its implementing regulation by failing to
9 provide Plaintiffs and members of the putative class with compliant thirty-minute meal periods
10 and by creating work schedules, staffing levels and conditions of work that discouraged compliant
11 meal periods.

12 7.6. Defendant violated the MWA and WPA when it failed to compensate Plaintiffs and
13 members of the putative class for thirty minutes of work for each instance a meal period was not
14 provided in compliance with the IWA.

15 7.7. As a result of Defendant's acts and omissions, Plaintiffs and members of the
16 putative class have been damaged in amounts as will be proven at trial.

17 **VIII. THIRD CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY**
18 **OVERTIME WAGES IN VIOLATION OF THE WASHINGTON MINIMUM**
19 **WAGE ACT**

20 8.1. Plaintiffs restate and reallege the allegations set forth in all preceding paragraphs.

21 8.2. In weeks where the total number of compensable hours including additional
22 compensable time for Defendant's failure to provide rest periods and meal periods exceeded forty,
23 Defendant has violated the Washington State Minimum Wage Act, RCW 49.46.130, by failing to
24 pay Plaintiffs and members of the putative one and one-half times their regular rate of pay for those
25 hours.

26 8.3. As a result of Defendant's acts and omissions, Plaintiffs and members of the
putative class have been damaged in amounts as will be proven at trial.

1 **IX. FOURTH CAUSE OF ACTION – CLASSWIDE WILLFUL WITHHOLDING OF**
2 **WAGES IN VIOLATION OF THE WASHINGTON WAGE REBATE ACT**

3 9.1. Plaintiffs restates and realleges the allegations set forth in all preceding paragraphs.

4 9.2. There is no “fairly debatable” issue of law or any objectively or subjectively
5 reasonable (“bona fide”) dispute whether additional wages are owed to compensate for meal and
6 rest periods not provided in compliance with Washington law.

7 9.3. The failure to pay additional wages to compensate for meal and rest periods not
8 provided in compliance with Washington law was not the result of administrative or clerical errors.

9 9.4. By the foregoing, Defendant’s actions in failing to pay the additional wages to
10 compensate for failing to provide meal and rest periods in compliance with Washington law
11 constitutes willful withholding of wages due in violation of RCW 49.52.050 and 070.

12 9.5. As a result of Defendant’s acts and omissions, Plaintiffs and members of the
13 putative class have been damaged in amounts as will be proven at trial.

14 **X. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs request this Court enter an order against Defendant granting the
16 following relief:

- 17 A. Certification of this case as a class action pursuant to CR 23(a) and (b)(3);
18 B. Damages for unpaid wages in amounts to be proven at trial;
19 C. Exemplary damages in amounts equal to double the wages due to Plaintiffs and
20 members of the putative class pursuant to RCW 49.52.070;
21 D. Attorney’s fees and costs pursuant to RCW 49.46.090, 49.48.030 and 49.52.070;
22 E. Prejudgment interest pursuant to RCW 19.52.010; and
23 F. Such other and further relief as the Court deems just and proper.
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1 DATED this 23rd day of September, 2022.

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3 ENTENTE LAW PLLC

4 s/ James B. Pizl

5 James B. Pizl, WSBA #28969

6 Ari Robbins Greene, WSBA #54201

7 *Attorney for Plaintiff*

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