

August 10 2022 8:30 AM

CONSTANCE R. WHITE  
COUNTY CLERK  
NO: 22-2-06113-3

1 The Honorable Gretchen Leanderson  
2 Trial Date: October 26, 2023  
3  
4  
5  
6

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 IN AND FOR THE COUNTY OF PIERCE

9 COLE W. CHAMBERS, individually and on  
10 behalf of all those similarly situated,

11 Plaintiff,

12 vs.

13 FOUNDATION PARTNERS GROUP, LLC a  
14 foreign limited liability company,

15 Defendant.

No. 22-2-06113-3

FIRST AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES

16 Plaintiff claims against Defendant as follows:

17 **I. NATURE OF ACTION**

18 1.1. Plaintiff Cole W. Chambers, individually and on behalf of all individuals currently  
19 or formerly employed by Defendant in Washington state brings this action for money damages  
20 and statutory penalties for violations of Washington's Industrial Welfare Act ("IWA"), RCW  
21 49.12, Minimum Wage Act ("MWA"), RCW 49.46, Wage Payment Act ("WPA"), RCW 49.48  
22 and Wage Rebate Act ("WRA"), RCW 49.52.

23 **II. JURISDICTION AND VENUE**

24 2.1. The Superior Court of Washington has jurisdiction of Plaintiff's claims pursuant to  
25 RCW 2.08.010.  
26

1 2.2. Venue in Pierce County is appropriate pursuant to RCW 4.12.025.

2 2.3. Defendant transacts business in Pierce County and at least some of the acts and  
3 omissions alleged in this Complaint took place in the State of Washington and Pierce County.

4 **III. PARTIES**

5 3.1. Defendant Foundation Partners Group, LLC, hereafter “Foundation” is organized  
6 under the laws of Delaware and headquartered in Orlando, Florida. Under several different brand  
7 names, Foundation provides funeral and cremation services from a dozen or so locations in  
8 Washington state as well as several other locations in Oregon, Idaho, California, Nevada and  
9 Colorado. Foundation is an employer for the purposes of the IWA, MWA, WPA and WRA.

10 3.2. Plaintiff Cole W. Chambers is a resident of Tacoma, Washington and is currently  
11 employed by Defendant as a funeral director in training at its location in Lakewood, Washington.

12 **IV. CLASS ACTION ALLEGATIONS**

13 4.1. Pursuant to Civil Rule 23, Plaintiff brings this case as a class action against  
14 Defendant on behalf of a Class and Subclass as defined as follows:

15 4.1.1 Class: All individuals currently or formerly employed by Defendant in  
16 Washington state at any time from April 29, 2019 and thereafter excluding  
17 Defendants’ officers and members and those employed in positions  
18 excluded by RCW 51.12.020.

19 4.1.2 Subclass: All individuals are or were employed by Defendant in  
20 Washington state as funeral directors, funeral directors in training, and other  
21 positions paid on an hourly basis at any time from April 29, 2019 and  
22 thereafter.

23 4.2. This action is properly maintainable as a class action under CR 23(a) and (b)(3).

24 4.3. Plaintiff believes the number of class and subclass members exceeds forty and  
25 therefore, pursuant to CR 23(a)(1), it is impracticable to join all of the members of the class and  
26 subclass as defined herein as named plaintiffs. See *Chavez v. Our Lady of Lourdes Hosp. at Pasco*,

1 190 Wn.2d 507, 520 (2018) (“As a general rule, joinder is impracticable where a class contains at  
2 least 40 members.”)

3 4.4. Pursuant to CR 23(a)(2), there are common questions of law and fact among  
4 Plaintiff and members of the class including, but not limited to:

5 (1) whether Defendant deducted amounts from the wages of Plaintiff and  
6 members of the class for worker’s compensation premiums in amounts greater than one-half the  
7 amount Defendant was required to pay for medical benefits within each risk classification;

8 (2) whether it was unlawful for Defendant to deduct from the wages of Plaintiff  
9 and members of the class in amounts greater than one-half the amount Defendant was required to  
10 pay for medical benefits within each risk classification; and

11 (3) whether Defendant’s conduct in deducting amounts from the wages of  
12 Plaintiff and members of the class for worker’s compensation premiums in in amounts greater than  
13 one-half the amount Defendant was required to pay for medical benefits within each risk  
14 classification was wilfull;

15 4.5. Pursuant to CR 23(a)(2), there are common questions of law and fact among  
16 Plaintiff and members of the subclass including, but not limited to:

17 (1) whether Plaintiff and members of the subclass were expected to be  
18 constantly on call and to immediately respond to clients and/or co-workers after hours;

19 (2) whether Defendant was required to compensate Plaintiff and members of  
20 the subclass for time spent on call and/or responding to clients and/or co-workers after hours;

21 (3) whether Defendant failed to compensate Plaintiff and members of the  
22 subclass for time spent on call and/or responding to clients and/or co-workers after hours;

23 (4) whether Defendant was required to keep records of the occurrence, time and  
24 duration of rest periods provided to Plaintiff and members of the subclass;

25 (5) whether Defendant failed to keep records of the occurrence, time and  
26 duration of rest periods;

1           (6)     whether Defendant required Plaintiff and members of the subclass to work  
2 greater than three consecutive hours without a rest period;

3           (7)     whether Defendant failed to ensure Plaintiff and members of the subclass  
4 received a compliant rest period of at least ten minutes in length, on the employer's time, for each  
5 four hours worked;

6           (8)     whether Defendant was required to compensate Plaintiff and members of  
7 the subclass for an additional ten minutes of work for each instance it required them to work greater  
8 than three consecutive hours without a rest period or when it failed to ensure Plaintiff and members  
9 of the subclass received a compliant rest period of at least ten minutes in length, on the employer's  
10 time, for each four hours worked;

11          (9)     whether Defendant failed to compensate Plaintiff and members of the  
12 subclass for an additional ten minutes of work for each instance it required them to work greater  
13 than three consecutive hours without a rest period or when it failed to ensure Plaintiff and members  
14 of the subclass received a compliant rest period of at least ten minutes in length, on the employer's  
15 time, for each four hours worked;

16          (10)    whether Defendant failed to provide a compliant meal period of at least  
17 thirty minutes to Plaintiff and subclass for shifts greater than five hours in length;

18          (11)    whether Defendant failed to provide an additional compliant meal period of  
19 at least thirty minutes to Plaintiff and subclass for shifts greater than ten hours in length.

20          (12)    whether Plaintiff and members of the subclass, at times, worked greater than  
21 five consecutive hours without a meal period;

22          (13)    whether Defendant was required to compensate Plaintiff and members of  
23 the subclass for an additional thirty minutes of work for each instance it failed to provide a  
24 compliant meal period of at least thirty minutes for shifts greater than five hours in length, failed  
25 to provide an additional compliant meal period of at least thirty minutes for shifts greater than ten  
26

1 hours in length, or required them to work greater than five consecutive hours without a meal  
2 period;

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

8 (15) whether Defendant failed to pay Plaintiff and members of the subclass one  
9 and one-half their regular rate of pay for all hours over forty in a workweek, inclusive of the  
10 additional time to compensate for noncompliant or missed meal and rest periods; and

11 (16) whether Defendant acted willfully and with the intent of depriving Plaintiff  
12 and members of the subclass of wages or other compensation.

### 13 V. FACTUAL ALLEGATIONS

14 5.1. Plaintiff and members of the class are or were employed by Defendant in  
15 Washington state at any time from April 29, 2019 and thereafter.

16 5.2. Plaintiff and members of the subclass are or were employed by Defendant in  
17 Washington state as funeral directors, funeral directors in training, and other positions paid on an  
18 hourly basis at any time from April 29, 2019 and thereafter.

19 5.3. Defendant deducted from the wages of Plaintiff and members of the class for  
20 worker's compensation premiums in amounts greater than one-half the amount they were required  
21 to pay for medical benefits within each risk classification;

22 5.4. Defendant expected Plaintiff and members of the subclass to communicate with  
23 clients and co-workers via Microsoft Teams and ASD (after hours answering service), as well as  
24 via cellular telephone at all times on and off the clock.

25 5.5. Defendant expected Plaintiff and members of the subclass to be constantly on call  
26 and to respond immediately to any communication from clients and/or co-workers.

1           5.6. Defendant failed to compensate Plaintiff and members of the subclass for all time  
2 spent on call and/or communicating with clients and/or co-workers after hours.

3           5.7. Defendant created and maintained timekeeping systems, work schedules, staffing  
4 levels, job requirements and a working environment that discouraged Plaintiff and members of the  
5 subclass from taking rest periods and meal periods in compliance with Washington law.

6           5.8. At times, Plaintiff and members of the subclass were required to work more than  
7 three consecutive hours without a rest period.

8           5.9. With respect to Plaintiff and members of the subclass, Defendant failed to establish  
9 maintain a process to record of the occurrence, time, and duration of paid rest periods.

10          5.10. With respect to Plaintiff and members of the subclass, Defendant failed to maintain  
11 accurate records of the occurrence, time, and duration of paid rest periods.

12          5.11. With respect to Plaintiff and members of the subclass, Defendant failed to provide  
13 a process to report instances of when they were required to work over three consecutive hours  
14 without a rest period, when they did not receive a rest period in at least a ten-minute duration for  
15 each four hours worked.

16          5.12. Defendant did not ensure Plaintiff and members of the subclass received a ten-  
17 minute rest period on the employer's time for every four hours worked.

18          5.13. Defendant did not compensate Plaintiff and members of the subclass for an  
19 additional ten minutes of work for each instance it required them to work greater than three  
20 consecutive hours without a rest period, provided a rest period in a duration of less than ten  
21 minutes, or did not provide a rest period of at least ten minutes in duration for each four hours  
22 worked.

23          5.14. Plaintiff and members of the subclass worked shifts greater than five hours in length  
24 and, at times, were not provided and did not waive their rights to meal periods in compliance with  
25 Washington law.

1           5.15. At times, Plaintiff and members of the subclass worked more than five consecutive  
2 hours without a meal period.

3           5.16. Defendant did not compensate Plaintiff and members of the subclass for an  
4 additional thirty minutes of work for each time it required them to work shifts greater than five  
5 hours in length and meal periods were not provided, or when Plaintiff and members of the subclass  
6 worked more than five consecutive hours without a meal period.

7           5.17. Defendant did not compensate Plaintiff and members of the subclass for an  
8 additional thirty minutes of work for each time it required them to work shifts greater than ten  
9 hours in length and additional meal periods were not provided, or when Plaintiff and members of  
10 the subclass worked more than five consecutive hours following the first meal period.

11           5.18. Plaintiff and members of the subclass frequently worked greater than forty hours  
12 per workweek.

13           5.19. At times when total compensable time, including all time spent on call and/or  
14 communicating with clients and/or co-workers after hours and additional time to compensate for  
15 missed or otherwise noncompliant rest and meal periods, totaled over forty in a workweek,  
16 Defendant did not pay Plaintiff and members of the subclass one and one-half times their regular  
17 rate of pay for all hours over forty in a workweek.

18           5.20. Plaintiff's interests in this matter do not conflict with the interests of the class nor  
19 the subclass.

20           5.21. Plaintiff's counsel is experienced in complex class action litigation and has been  
21 appointed class counsel in many similar cases.

22           **VI. FIRST CAUSE OF ACTION – CLASSWIDE UNLAWFUL DEDUCTIONS**  
23           **FROM WAGES IN VIOLATION OF THE WASHINGTON INDUSTRIAL**  
              **WELFARE ACT AND WAGE REBATE ACT**

24           6.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

25           6.2. Employers shall deduct from their workers one-half of the amount the employer is  
26 required to pay for medical benefits within each risk classification. *RCW 51.16.140*. It is unlawful

1 for an employer to deduct from wages or earnings from employees any part of the premium or  
2 other costs required to be paid by the employer. *Id.*

3 6.3. It is unlawful for an employer to collect or receive from any employee a rebate of  
4 any part of wages theretofore paid by such employer to such employee unless required or  
5 empowered to do so by state or federal law. *RCW 49.52.050-060.*

6 6.4. Defendant violated the IWA and WRA when it deducted amounts for worker's  
7 compensation premiums greater than one-half the amount it was required to pay for medical  
8 benefits within each risk classification.

9 6.5. As a result of Defendant's acts and omissions, Plaintiff and members of the class  
10 have been damaged in amounts as will be proven at trial.

11 **VII. SECOND CAUSE OF ACTION – SUBCLASSWIDE FAILURE TO**  
12 **COMPENSATE FOR ALL HOURS WORKED IN VIOLATION OF THE**  
13 **WASHINGTON MINIMUM WAGE ACT AND WAGE PAYMENT ACT**

14 7.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

15 7.2. MWA requires employees to be compensated for all hours worked. *RCW*  
16 *49.46.020, .130.* Hours worked includes any time an employee is "authorized or required to be on  
17 duty on the employer's premises or at a prescribed workplace." *Wash. Dep't of Labor & Indus.,*  
*Admin. Policy ES.C. 2 at 8.*

18 7.3. An employee cannot agree to work for an employer without payment of wages at  
19 either regular or applicable overtime rates. *See RCW 49.46.090(1).*

20 7.4. Defendant violated the MWA and WPA when it failed to compensate Plaintiff and  
21 members of the subclass for time spent on call and/or responding to customers and/or co-workers  
22 after hours.

23 7.5. As a result of Defendant's acts and omissions, Plaintiff and members of the subclass  
24 have been damaged in amounts as will be proven at trial.



1                   **VIII. THIRD CAUSE OF ACTION – SUBCLASSWIDE FAILURE TO ENSURE**  
2                   **REST PERIODS IN VIOLATION OF THE WASHINGTON INDUSTRIAL**  
3                   **WELFARE ACT AND FAILURE TO COMPENSATE FOR VIOLATIONS IN**  
4                   **VIOLATION OF THE WASHINGTON MINIMUM WAGE ACT AND**  
5                   **WASHINGTON WAGE PAYMENT ACT**

6                   8.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

7                   8.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing  
8                   regulation, WAC 296-126-092, require employers to provide a rest period of not less than ten  
9                   minutes, on the employer's time, for each four hours of working time.

10                  8.3. Employees have an implied cause of action for violations of RCW 49.12 to protect  
11                  them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow*  
12                  *Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

13                  8.4. A rest period violation is a wage violation with employees entitled to ten minutes  
14                  of additional compensation for each instance they are required to work longer than three  
15                  consecutive hours without a rest break. *Id* at 849.

16                  8.5. Defendant violated the IWA and its implementing regulation by failing to ensure  
17                  Plaintiff and members of the subclass received a ten-minute paid rest period for every four hours  
18                  worked and by failing to keep records of the occurrence, time and duration of rest periods taken,  
19                  by failing to implement a process for Plaintiff and members of the subclass to report missed or  
20                  otherwise noncompliant rest periods and by creating work schedules, staffing levels and conditions  
21                  of work that discouraged paid rest periods.

22                  8.6. Defendant violated the MWA and WPA when it failed to compensate Plaintiff and  
23                  members of the subclass for an additional ten minutes of work for each instance a rest period was  
24                  not provided in compliance with IWA.

25                  8.7. As a result of Defendant's acts and omissions, Plaintiff and members of the subclass  
26                  have been damaged in amounts as will be proven at trial.

1                   **IX. FOURTH CAUSE OF ACTION – SUBCLASSWIDE FAILURE TO**  
2                   **PROVIDE MEAL PERIODS IN VIOLATION OF THE WASHINGTON**  
3                   **INDUSTRIAL WELFARE ACT AND FAILURE TO COMPENSATE**  
4                   **FOR VIOLATIONS OF THE WASHINGTON MINIMUM WAGE ACT**  
5                   **AND WASHINGTON WAGE PAYMENT ACT**

6                   9.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

7                   9.2. The Washington Industrial Welfare Act, RCW 49.12, and its implementing  
8 regulation, WAC 296-126-092, require employers to provide thirty-minute meal periods to their  
9 employees for work shifts greater than five hours in length and prohibits employees from working  
10 more than five consecutive hours without a meal period.

11                   9.3. Employees have an implied cause of action for violations of RCW 49.12 to protect  
12 them from conditions of labor that have a pernicious effect on their health. *Wingert v. Yellow*  
13 *Freight Systems, Inc.*, 146 Wn.2d 841, 850 (2002).

14                   9.4. A meal period violation is a wage violation with employees entitled to thirty  
15 minutes of additional compensation for each instance they are required to work more than five  
16 consecutive hours without a compliant meal period. *Hill v. Garda CL Nw., Inc.*, 191 Wn.2d 553,  
17 560 (2018), citing *Hill v. Garda CL Nw., Inc.*, 198 Wn.App 326, 361 (2017).

18                   9.5. Defendant has violated the IWA and its implementing regulation by failing to  
19 provide Plaintiff and members of the subclass with compliant thirty-minute meal periods and by  
20 creating work schedules, staffing levels and conditions of work that discouraged compliant meal  
21 periods.

22                   9.6. Defendant violated the MWA and WPA when it failed to compensate Plaintiff and  
23 members of the subclass for thirty minutes of work for each instance a meal period was not  
24 provided in compliance with the IWA.

25                   9.7. As a result of Defendant's acts and omissions, Plaintiff and members of the subclass  
26 have been damaged in amounts as will be proven at trial.

1                   **X. FIFTH CAUSE OF ACTION – SUBCLASSWIDE FAILURE TO PAY**  
2   **OVERTIME WAGES IN VIOLATION OF THE WASHINGTON**  
3   **MINIMUM WAGE ACT**

4                   10.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

5                   10.2. In weeks where the total number of compensable hours including compensable time  
6 spent by Plaintiff and members of the subclass on call and/or responding to clients and/or co-  
7 workers and additional compensable time for Defendant’s failure to provide rest periods and meal  
8 periods exceeded forty, Defendant has violated the Washington State Minimum Wage Act, RCW  
9 49.46.130, by failing to pay Plaintiff and members of the subclass one and one-half times their  
regular rate of pay for those hours.

10                  10.3. As a result of Defendant’s acts and omissions, Plaintiff and members of the subclass  
11 have been damaged in amounts as will be proven at trial.

12                   **XI. SIXTH CAUSE OF ACTION – CLASSWIDE WILLFUL WITHHOLDING OF**  
13   **WAGES IN VIOLATION OF THE WASHINGTON WAGE REBATE ACT**

14                  11.1. Plaintiff restates and realleges the allegations set forth in all preceding paragraphs.

15                  11.2. There is no fairly debatable issue of law or any objectively or subjectively  
16 reasonable dispute whether Defendant was prohibited from making deductions from the wages  
17 and earnings of Plaintiff and members of the class in amounts greater than one-half the amount it  
was required to pay for medical benefits.

18                  11.3. Defendant’s deductions from the wages and earnings of Plaintiff and members of  
19 the class in amounts greater than one-half the amount it was required to pay for medical benefits  
20 was not the result of administrative or clerical errors.

21                  11.4. There is no fairly debatable issue of law or any objectively or subjectively  
22 reasonable dispute whether employees must be paid wages for all hours worked.

23                  11.5. Defendant’s failure to pay wages for all hours worked by Plaintiff and members of  
24 the subclass was not the result of administrative or clerical errors.

1 11.6. There is no fairly debatable issue of law or any objectively or subjectively  
2 reasonable dispute whether additional wages are owed to compensate for meal and rest periods not  
3 provided in compliance with Washington law.

4 11.7. The failure to pay additional wages to compensate for meal and rest periods not  
5 provided in compliance with Washington law was not the result of administrative or clerical errors.

6 11.8. By the foregoing, Defendant's actions in making deductions from the wages and  
7 earnings of Plaintiff and members of the class in amounts greater than one-half the amount it was  
8 required to pay for medical benefits constitutes willful withholding of wages due in violation of  
9 RCW 49.52.050 and 070.

10 11.9. By the foregoing, Defendant's actions in failing to pay the additional wages to  
11 Plaintiff and subclass compensate for failing to provide meal and rest periods in compliance with  
12 Washington law constitutes willful withholding of wages due in violation of RCW 49.52.050 and  
13 070.

14 11.10. As a result of Defendant's acts and omissions, Plaintiff and members of the class  
15 and subclass have been damaged in amounts as will be proven at trial.

## 16 **XII. PRAYER FOR RELIEF**

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

- 19 A. Certification of this case as a class action pursuant to CR 23(a) and (b)(3);  
20 B. Damages for unpaid wages in amounts to be proven at trial;  
21 C. Exemplary damages in amounts equal to double the wages due to Plaintiff and  
22 members of the class and subclass pursuant to RCW 49.52.070;  
23 D. Attorneys' fees and costs pursuant to RCW 49.46.090, 49.48.030 and 49.52.070;  
24 E. Prejudgment interest pursuant to RCW 19.52.010; and  
25 F. Such other and further relief as the Court deems just and proper.  
26

1 DATED this 10th day of August, 2022.

2  
3 ENTENTE LAW PLLC

4 *s/ James B. Pizl*

5 James B. Pizl, WSBA #28969

6 Ari Robbins Greene

7 *Attorneys for Plaintiff and Proposed Class*  
8 *and Subclass*

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26