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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

NAOMI BENNETT, an individual; and JANET HUGHES, an individual, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

PROVIDENCE HEALTH & SERVICES, a Washington Nonprofit Corporation,

Defendant.

CLASS ACTION

NO. 21-2-13058-1 SEA

AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiffs NAOMI BENNETT and JANET HUGHES (“Plaintiffs”), on behalf of themselves individually and others similarly situated, allege as follows for their Amended Complaint for damages and Injunctive Relief:

I. INTRODUCTION

1.1 Plaintiffs bring this class action complaint against Defendant PROVIDENCE HEALTH & SERVICES (“Providence”) to redress Providence’s policies and practices of underpaying its hourly healthcare workers. Providence systematically, through uniform policies and practices, denies statutorily required meal periods to hourly workers whose shifts exceed 10.5 hours in length and underpays workers their earned wages through an antiquated, uniform time clock rounding policy. Plaintiffs bring this action individually and on behalf of all their similarly situated co-workers to redress and remedy Providence’s willful violations of

1 Washington law and to recover unpaid regular wages, overtime wages, penalties, interest, and
2 attorneys' fees and costs.

3 **II. PARTIES**

4 2.1 Defendant Providence Health & Services is a Washington nonprofit corporation
5 headquartered in Renton, King County, Washington. Providence Health & Services is
6 Washington's largest health care provider.

7 2.2 Providence operates numerous hospitals, clinics, and other healthcare facilities in
8 Washington.

9 2.3 Plaintiff Naomi Bennett is an individual residing in Everett, Washington. She
10 worked for Providence Regional Medical Center in Everett, Washington. She was employed as
11 a Certified Nursing Assistant. Ms. Bennett was an hourly, non-exempt employee in Washington
12 within three years of the date of this Complaint. She brings this complaint on her own behalf
13 and on behalf of other hourly employees.

14 2.4 Plaintiff Janet Hughes is an individual residing in Olympia, Washington. She
15 worked for Providence St. Peter Hospital in Olympia, Washington. She was employed as an
16 Ultrasound Tech. Ms. Hughes was an hourly, non-exempt employee in Washington within three
17 years of the date of this Complaint. She brings this complaint on her own behalf and on behalf
18 of other hourly employees.

19 **III. JURISDICTION AND VENUE**

20 3.1 Providence is a Washington corporation headquartered in Renton, Washington
21 located in King County.

22 3.2 The Superior Court of Washington has jurisdiction pursuant to RCW 2.08.010.
23 Providence employs putative class members statewide, including in King County, Washington,
24 and the unlawful acts alleged herein have a direct effect on individuals who work and live in
25 Washington.

26 3.3 Venue is proper in King County pursuant to RCW 4.12.025.
27

1 **IV. FACTS**

2 4.1 Providence is one of the largest healthcare providers in America. It employs
3 thousands of hourly nonexempt healthcare workers and employees in Washington.

4 **Facts Relating to Unlawful Time Clock Rounding**

5 4.2 Under Washington law, Providence is required to (1) track the number of hours
6 its hourly employees work; (2) pay its hourly employees for the number of hours they work; and
7 (3) keep accurate records thereof. Providence tracks the number of hours its non-exempt
8 employees work (“hourly employees”), including Plaintiffs, with an electronic time-keeping
9 system.

10 4.3 Providence pays its hourly employees, including Plaintiffs, according to time-
11 keeping system data. Providence requires its hourly employees to use the time-keeping system
12 to (1) punch in at the start of their shift and (2) punch out at the end of their shift. Providence’s
13 time-keeping system records and stores the times hourly employees, including Plaintiff, actually
14 punch in and out (“actual punch times”).

15 4.4 Providence could pay its Employees for all compensable hours using those
16 actual punch times. Instead, Providence pays its hourly employees, including Plaintiffs, to the
17 nearest quarter hour in accordance with Providence’s rounding policy, which is applicable to all
18 hourly employees.

19 4.5 Under the policy, paid time is rounded in seven-minute increments. For example,
20 were an employee to clock in at 11:53 for a shift scheduled to begin at 12:00, the time keeping
21 system would report the employee’s start time as 12:00 and pay the employee accordingly –
22 denying the employee pay for the first seven minutes the employee is clocked in. Were that
23 same employee then to clock out at 6:07, the time keeping system would report the employee’s
24 end time as 6:00 – denying the employee pay (again) for the last seven minutes that she was on
25 the clock.

26 4.6 While the time keeping system, in theory, can also round employee time in favor
27 of the employee—such as where an employee clocks in up to seven minutes after her scheduled

1 start time, or clocks out up to seven minutes before her scheduled end time—the overall effect
2 of the rounding policy, when applied in conjunction with other Providence policies and
3 practices, is to deny hourly employees pay for all compensable hours.

4 4.7 Providence’s attendance, tardy, discipline, scheduling and general time-keeping
5 policies and practices discourage hourly employees from punching in more than seven minutes
6 early for their shift, from punching in after the scheduled start of their shift, or punching out
7 more than seven minutes after the end of their shift or shortly before the end of their shift.

8 4.8 In other words, these policies and practices prevent or discourage hourly
9 employees from punching the clock in such a way that rounding generally benefits the
10 employee. As a result, the rounding policy is not neutral and, in practice and over time, it
11 consistently and systematically favors Providence and denies hourly employees’ their lawfully
12 earned pay.

13 **Facts Relating to Missed Meal Periods**

14 4.9 Hourly employees are regularly scheduled to, and in fact do, work shifts in
15 excess of 10.5 hours. Even hourly employees, including Plaintiffs, who are scheduled for a
16 regular shift of 8.5 hours often, at the conclusion of their regular shift, remain on duty and work
17 additional hours in excess of 10.5 hours.

18 4.10 Washington law requires employers such as Providence to ensure employees get
19 two 30-minute, duty-free meal periods when they work more than 10.5 hours in a shift.

20 4.11 Upon information and belief, hourly employees, including Plaintiffs, have meal
21 periods automatically deducted from their pay. They do not clock in or out for meal periods.

22 4.12 When hourly employees, including Plaintiffs, work shifts in excess of 10.5 hours
23 in length, Providence does not provide hourly employees with a second meal period for shifts of
24 more than 10.5 hours.

25 4.13 The effect of Providence’s failure to provide a second meal period for hourly
26 employees when they work shifts in excess of 10.5 hours is that hourly employees, including
27 Plaintiffs, are denied pay for all hours worked in violation of Washington law.

1 a. Numerosity: The Class is so numerous that joinder of all Class Members is
2 neither feasible nor practical. The membership of the classes is unknown to Plaintiff at
3 this time. However, based on Plaintiffs' investigation, and on information and belief, the
4 number of class members is reasonably estimated to be at least several thousand
5 individuals. The identity of Class Members is readily ascertainable from Providence's
6 employment records.

7 b. Typicality: Representative Plaintiffs' claims are typical of those of the other
8 Class Members because:

9 i. Plaintiffs are members of each class and subclass. Naomi Bennett and Janet
10 Hughes were an hourly, non-exempt employees employed by Providence in
11 the last three years, whose time-clock hours have been rounded and who
12 worked at least one shift in excess of 10.5 hours.

13 ii. Plaintiffs' claims stem from the same practices or course of conduct that
14 forms the basis of the class claims.

15 iii. All of the Class Members' claims are based on the same facts and legal
16 theories.

17 iv. There is no antagonism between Representative Plaintiffs' interests and the
18 Class Members, because their claims are for damages provided to each
19 individual employee by statute.

20 v. The injuries that Representative Plaintiffs suffered are similar to the injuries
21 that the Class Members suffered and continue to suffer, and they are
22 relatively small compared to the expenses and burden of individual
23 prosecutions of this litigation.

24 c. Adequacy: Representative Plaintiffs will fairly and adequately protect the
25 interests of the Class because:

26 i. There is no conflict between Representative Plaintiffs' claims and those of
27 the other Class Members.

- 1 ii. Representative Plaintiffs acknowledge that they have an obligation to make
2 known to the Court any relationship, conflicts or differences with any Class
3 Member.
4 iii. Representative Plaintiffs agree to actively participate in the case and protect
5 the interests of the putative Class Members.
6 iv. Representative Plaintiffs have retained counsel experienced in handling
7 wage-and-hour class actions who have already devoted substantial time and
8 resources to investigating the Class Members' claims and who will
9 vigorously prosecute this litigation.
10 v. Representative Plaintiffs' claims are typical of the claims of Class Members
11 in that their claims stem from the same practice and course of conduct that
12 forms the basis of the class claims.

13 d. Superiority: Class action adjudication is superior to other methods of
14 adjudication for at least the following reasons:

- 15 i. The common questions of law and fact described below predominate over
16 questions affecting only individual members, and the questions affecting
17 individuals primarily involve calculations of individual damages.
18 ii. The prosecution of separate actions by the Class Members could either result
19 in inconsistent adjudications establishing incompatible pay practices or, as a
20 practical matter, dispose of the legal claims of Class Members who are not
21 parties to such separate adjudications.
22 iii. Individual Class Members would have little interest in controlling the
23 litigation due to the relatively small size of most claims, and because
24 Representative Plaintiffs and their attorneys will vigorously pursue the claims
25 on behalf of the Class Members.
26 iv. A class action will be an efficient method of adjudicating the claims of the
27 Class Member employees.

1 e. Public Policy Considerations: Employers in Washington regularly violate wage
2 and hour and other employment laws. The value of individual and employee claims is
3 often small as compared with the relative cost of litigation. Current employees are often
4 afraid to assert their rights out of fear of retaliation. Class actions provide putative Class
5 Members who are not named in the Complaint with a type of anonymity that allows for
6 the vindication of their rights while at the same time protection their privacy.

7 f. Predominance: There are questions of law and fact common to the Class
8 Members, which predominate over any issues involving only individual class members,
9 including but not limited to:

- 10 i. Whether Providence has a uniform time clock rounding policy;
- 11 ii. Whether Providence's rounding policy is facially neutral;
- 12 iii. Whether Providence's rounding policy is neutral in practice—that is,
13 whether Class Members, over time, are actually paid for all hours worked
14 under Providence's rounding policy;
- 15 iv. Whether Providence has a policy of providing only one meal period to
16 Second Meal Period Sub-Class Members who work shifts in excess of 10.5
17 hours in length;
- 18 v. Whether Second Meal Period Sub-Class Members who missed their second
19 meal period on shifts in excess of 10.5 hours in length were compensated
20 therefore;
- 21 vi. Whether Class Members were not paid the required time and one-half the
22 regular rate of pay for all hours worked over 40 in violation of Washington
23 law;
- 24 vii. Whether Providence has a policy of paying for rounded hours instead of
25 actual punch times;
- 26
- 27

- 1 viii. Whether Providence has a policy that Class Members should not punch in
2 more than seven minutes before their scheduled start time or punch out more
3 than seven minutes after their scheduled quit time;
- 4 ix. Whether Providence’s tardy policy discourages employees from clocking in
5 after the start of their shifts;
- 6 x. Whether Providence has a policy of not paying Class Members for all hours
7 worked when it could reasonably ascertain the amount of hours;
- 8 xi. Whether Providence violated Washington wage and hour laws;
- 9 xii. Whether Providence’s conduct was willful.

10 **VI. FIRST CAUSE OF ACTION – FAILURE TO PAY WAGES OWED**
11 **IN VIOLATION OF WASHINGTON LAW**

12 **(On behalf of Representative Plaintiffs in their individual capacities and on**
13 **behalf of the Washington Employee Class)**

14 6.1 Representative Plaintiffs reallege paragraphs 1.1 through 5.5 of the Complaint
15 and hereby incorporate the same by reference.

16 6.2 Providence’s rounding policy, applied in conjunction with Providence’s other
17 policies, is not facially neutral.

18 6.3 Providence’s rounding policy is not neutral in practice. As applied, it results in
19 Class Members losing more time under the policy than they gain.

20 6.4 Class Members are not paid for all compensable time under the policy.

21 6.5 As a result of the rounding policy, Representative Plaintiffs and Class Members
22 have been denied minimum wage, regular and overtime pay for all compensable hours in
23 violation of Washington law, including RCW 49.46.020, RCW 49.46.090, and RCW 49.52.050.
24 They are entitled to unpaid wages at the applicable wage rates and prejudgment interest, in
25 amounts to be proven at trial, as well as their costs and attorneys’ fees.

26 **VII. SECOND CAUSE OF ACTION – FAILURE TO PAY WAGES**
27 **OWED IN VIOLATION OF WASHINGTON LAW**

(On behalf of Representative Plaintiffs in their individual capacities and on
 behalf of the Second Meal Period Sub-Class)

1 7.1 Representative Plaintiffs reallege paragraphs 1.1 through 6.5 of the Complaint
2 and hereby incorporate the same by reference.

3 7.2 Providence’s practice of failing to provide members of the Second Meal Period
4 Sub-Class all required meal periods, and its failure to properly compensate members of the
5 Second Meal Period Sub-Class for missed meal periods, violates Washington law, including
6 RCW 49.46.020, RCW 49.46.090, and RCW 49.52.050. They are entitled to unpaid wages at
7 the applicable wage rates and prejudgment interest, in amounts to be proven at trial, as well as
8 their costs and attorneys’ fees.

9 **VIII. THIRD CAUSE OF ACTION – WILLFUL WITHHOLDING OF**
10 **WAGES IN VIOLATION OF WASHINGTON LAW**

11 **(On behalf of Representative Plaintiffs in their individual capacities and on**
12 **behalf of all Class Members)**

13 8.1 Representative Plaintiffs reallege paragraphs 1.1 through 7.2 of the Complaint
14 and hereby incorporate the same by reference.

15 8.2 Providence’s violations of Washington wage and hour law deprived
16 Representative Plaintiffs and Class Members of pay willfully and with intent to do so, in
17 violation of RCW 49.52.050 and RCW 49.52.070, entitling Representative Plaintiffs and Class
18 Members to compensatory damages, double damages, attorneys’ fees, and costs.

19 **IX. PRAYER FOR RELIEF**

20 **WHEREFORE**, Representative Plaintiffs pray for relief as follows:

- 21 A. That this action be certified as a Class Action;
- 22 B. That Naomi Bennett and Janet Hughes be appointed as representatives of the
23 Class Members, including Sub-Class Members;
- 24 C. That the undersigned counsel for Representative Plaintiffs be appointed as Class
25 Counsel;
- 26 D. A judgment awarding Representative Plaintiffs and Class Members compensatory
27 damages in an amount to be proven at trial, together with prejudgment interest at
 the maximum rate allowed by law;

- 1 E. An order requiring Defendant to immediately cease their wrongful conduct as set
2 forth above;
- 3 F. Statutory penalties as permitted by law;
- 4 G. Reasonable attorneys' fees and costs pursuant to RCW 49.12.150, RCW
5 49.46.090, RCW 49.48.030, RCW 49.52.070; and
- 6 H. Whatever further and additional relief the court shall deem just and equitable.
7

8 Respectfully submitted this 21st day of February, 2023.
9

10 /s/ Jason A. Rittereiser

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1 **CERTIFICATE OF SERVICE**

2 I, Klarisse L. Heffner, certify under penalty of perjury under the laws of the State of
3 Washington that I have caused service of a true and correct copy of the foregoing document, to
4 be effected on the following named counsel in the manner identified below:

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23 DATED this 21st day of February, 2023 at Seattle, Washington.

24 /s/ Klarisse L. Heffner

25 Klarisse L. Heffner, Paralegal

26 **HKM EMPLOYMENT ATTORNEYS LLP**