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SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

NANCY ZANDT, KELLI O'CONNOR,  
HEATHER HOLICK, and STACY STRONG,

NO. 15201679-7

Plaintiffs,

COLLECTIVE ACTION  
COMPLAINT AND COMPLAINT  
FOR INDIVIDUAL DAMAGES

vs.

HORIZON HOSPICE, LLC, HORIZON  
HEALTH CARE, LLC, and, LOREN GUSKE,

JURY TRIAL DEMANDED

Defendants.

NANCY ZANDT, KELLI O'CONNOR, HEATHER HOLICK, and STACY STRONG, by and through MICHAEL B. LOVE of WORKLAND & WITHERSPOON, PLLC, and MATTHEW Z. CROTTY of CROTTY AND SON LAW FIRM, PLLC, bring the following claims for liability and damages and other relief including attorney fees and costs and allege as follows:

**I. PARTIES, JURISDICTION AND VENUE**

1.1 At all times relevant, NANCY ZANDT (hereinafter "Ms. Zandt"), is a resident of Spokane County, Washington and a former employee of the Defendants.

1.2 At all times relevant, KELLI O'CONNOR (hereinafter "Ms. O'Connor"), is a resident of Spokane County, Washington and a former employee of the Defendants.

1.3 At all times relevant, STACY STRONG (hereinafter "Ms. Strong"), is a resident of Spokane County, Washington and a former employee of the Defendants.

Workland & Witherspoon

Attorneys at Law

COLLECTIVE ACTION COMPLAINT AND  
COMPLAINT FOR INDIVIDUAL DAMAGES - 1

A PROFESSIONAL LIMITED LIABILITY COMPANY  
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1 1.4 At all times relevant, HEATHER HOLICK (hereinafter “Ms. Holick”), is a  
2 resident of Spokane County, Washington and a former employee of the Defendants.

3 1.5 HORIZON HOSPICE, LLC, (“Defendant”) is a limited liability corporation that is  
4 located at 123 West Cascade Way, Suite A, Spokane, Washington, 99208 and conducts  
5 business in Spokane County and the outlying counties of Eastern Washington.

6 1.6 HORIZON HEALTH CARE, LLC, (“Defendant”) is a limited liability corporation  
7 that is located at 123 West Cascade Way, Suite A, Spokane, Washington, 99208 and conducts  
8 business in Spokane and the outlying counties of Eastern Washington.

9 1.7 LOREN GUSKE owns HORIZON HOSPICE, LLC and HORIZON HEALTH  
10 CARE, LLC and, upon information and belief, resides in Spokane County, Washington.

11 1.8 Collectively HORIZON HOSPICE, LLC and HORIZON HEALTH CARE, LLC  
12 are the “Corporate Defendants” and Loren Guske is the “Individual Defendant.” The  
13 Corporate Defendants are joint employers for purposes of coverage under the claims set forth  
14 below. The Individual Defendant is liable, along with the Corporate Defendants, under the  
15 below referenced state and federal wage claims.

16 1.9 The Defendants jointly employ 50 or more employees for purposes of coverage  
17 and employee eligibility under the Washington and federal Family Medical Leave Act, as  
18 well as other state and federal laws referenced herein.

19 1.10 At all relevant times Defendants were employers within the meaning of 29 U.S.C.  
20 § 203(d). At all relevant times Defendants were an enterprise within the meaning of 29  
21 U.S.C. § 203(r) (1) and had gross operating revenues in excess of \$500,000.00 pursuant to 29  
22 U.S.C. § 203(s) (1) (a) (ii). As such, Defendants are proper defendants pursuant to the FLSA  
23 claims pled herein.  
24

25 **II. FACTS**

26 **(Nancy Zandt)**

27 2.1 Plaintiffs re-allege the above paragraphs as if pled verbatim herein.

28 2.2 Defendants hired Ms. Zandt on March 5, 2012 as a hospice nurse.

29 2.3 Ms. Zandt is a white female who was 62 in February of 2015.

30 Workland & Witherspoon

Attorneys at Law

31 COLLECTIVE ACTION COMPLAINT AND  
32 COMPLAINT FOR INDIVIDUAL DAMAGES - 2

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1 2.4 Ms. Zandt is licensed as a registered nurse. Ms. Zandt possesses a two-year  
2 Associate of Science degree from Spokane Community College.

3 2.5 Ms. Zandt has worked as a nurse in Washington, Idaho and California. Ms. Zandt  
4 does not have four-year degree in nursing or any other education or academic instruction  
5 beyond her two years spent at a community college.

6 2.6 Ms. Zandt acquired her skills through her work experience of being a nurse for 23  
7 years.

8 2.7 Ms. Zandt worked for Defendants as a hospice nurse on night shift.

9 2.8 Ms. Zandt's paychecks show that she was paid on an hourly basis at \$31.83 per  
10 hour, until her pay was cut shortly before her termination down to \$15.45 per hour when she  
11 was forced to take a light duty job allegedly due to her physician's note relating to a  
12 temporary lifting restriction.

13 2.9 Ms. Zandt's initial shift required her to work Monday through Friday, starting at  
14 5:00 p.m. until 8:30 a.m. Ms. Zandt's responsibility was phone triage and then going to the  
15 terminally ill patient's home for care, medication and handling the situation if there was a  
16 death.

17 2.10 The phone triage was handled by Ms. Zandt using her own personal cell phone that  
18 she paid for. Ms. Zandt worked out of her home for Defendants or outside of the Defendants  
19 offices. During her 15 ½ hour shift she was responsible for answering the phone, performing  
20 her duties and responding to the homes of patients within a reasonable period of time. Ms.  
21 Zandt's territory was all of Spokane County and part of Stevens County. Later Ms. Zandt's  
22 shift was changed to Tuesday through Saturday from 5:00 p.m. to 8:30 a.m. Towards the end  
23 of her employment with Defendants her shift was changed again to 6:30 p.m. to 8:30 a.m.

24 2.11 Ms. Zandt was required to attend mandatory meetings that could occur twice a  
25 week after she got off her shift in the morning or before her shift started in the evening. Ms.  
26 Zandt was only paid at a straight time hourly rate. Ms. Zandt also had quarterly meetings she  
27 had to attend for which she was also paid only the straight time hourly rate with no payment  
28 for overtime at 150% of her hourly rate for any hours worked over forty hours in a single  
29

1 work week. On many occasions, Ms. Zandt was required to start her shift early in order to get  
2 to a patient's home by the start of her shift without any compensation being paid for doing so  
3 or having the time included in the compensable work week for the purpose of overtime  
4 calculation.

5 2.12 The owner of Defendants, Loren Guske, did not want to pay for overtime and  
6 made this clear to Ms. Zandt. Although Ms. Zandt was working over forty hours in a single  
7 work week for Defendants and therefore entitled to overtime compensation, she was only paid  
8 for eighty hours at a straight time rate every two weeks. Ms. Zandt complained about  
9 working 15 ½ hours and only receiving compensation for eight hours of work suffered or  
10 permitted by the Defendants with no compensation for waiting time spent while she was  
11 engaged to wait for the benefit of the Defendants which limited her ability to engage in  
12 personal pursuits during her shift. Deborah Johnson, Ms. Zandt's supervisor, stated that  
13 defendants were not willing to pay overtime for any hours worked over forty in a single work  
14 week or provide any compensation over eight hours even though she was on duty and  
15 assigned to her normal shift and engaged to wait by the employer for 15 ½ hours during her  
16 pre-assigned shift.

17 2.13 Ms. Zandt had no ability to trade her waiting time with another employee while on  
18 duty and on shift for the benefit of the Defendants.

19 2.14 Ms. Zandt's performance evaluations in March of 2013 and 2014 as an employee  
20 for Defendants were excellent and demonstrated satisfactory performance. The evaluations  
21 do not document any issues with patient care or communication. The evaluations are scored  
22 from "1" to "3". A "1" is needs improvements; a "2" is meets expectations; and a "3" is  
23 exceeds expectations. Ms. Zandt never received a "1" on either evaluation in 2013 or 2014  
24 and also received several "3s" on her performance evaluation of 2014. Ms. Zandt's overall  
25 score on her 2014 performance evaluation reflects an 82%, which equals "exceeds  
26 performance". Ms. Zandt's performance evaluation in 2014 reflected a salary increase of 3%,  
27 which is a merit increase and clearly above a cost of living adjustment pursuant to the  
28 Consumer Price Index.  
29

1       2.15     On September 4, 2014, Ms. Zandt got injured at work. Ms Zandt did not notify  
2 her employer or file a claim with the Department of Labor & Industries because she thought  
3 the injury would take care of itself while she was out on vacation.

4       2.16     On September 29, 2014, Ms. Zandt received a note from her orthopedic physician  
5 that limited her to a 20 pound weight restriction. In response to receiving the note Ms. Zandt  
6 telephoned the Human Resource Department to let them know about the medical restriction.  
7 Ms. Zandt had been diagnosed at that time by her physician with a possible left shoulder  
8 rotator cuff tear and a subacromial impingement of her left shoulder. Ms. Zandt's physician  
9 recommended an MRI to rule out a rotator cuff tear.

10       2.17     On September 30, 2014, Ms. Zandt returned to work and gave the physician's note  
11 to Heather Rice who was an assistant to Ms. Zandt's supervisor, Debra Johnson. Ms. Zandt  
12 also gave a copy of the note to Katie McCollum who worked in the Defendants' Human  
13 Resource Department.

14       2.18     Initially, Ms. Zandt was advised by defendant-employee Heather Rice that she  
15 could continue to work with the restriction doing both telephone triage and home visits and if  
16 the physical lifting on the job required lifting in excess of her physician's restrictions, there  
17 was a male certified nursing assistant, Geoff Morgan, available to assist with any heavy  
18 lifting. Mr. Morgan had also provided lifting assistance for Ms. Zandt before she suffered her  
19 workplace injury resulting in medical restrictions with the Defendants' knowledge and/or  
20 consent.

21       2.19     On October 7, 2014, the Defendants began looking for a replacement for Ms.  
22 Zandt without her knowledge and before she was unlawfully terminated by running ads for  
23 that purpose.

24       2.20     On October 7, 2014, Loren Guske was made aware of the medical restrictions for  
25 the first time and told Debra Johnson that Ms. Zandt could not go out in the field and work in  
26 the patient's homes for fear she would potentially fall and hurt herself and file a workers'  
27 compensation claim. Debra Johnson told Ms. Zandt what Mr. Guske had told her.

28       2.21     On October 7, 2014, during a meeting with Debra Johnson, Ms. Zandt was advised  
29

1 both orally and in writing that she was being placed on light duty with her job duties limited  
2 to telephone triage only and that her hourly rate of pay was going to be substantially reduced  
3 to \$15.45 per hour, although she remained in the same position. Ms. Zandt was also advised  
4 that this arrangement was pending the results of an MRI Ms. Zandt was supposed to have the  
5 following week per her physician's instructions. Ms. Zandt opposed the reduction in her  
6 hourly wage and advised that she could not survive on this amount financially.

7 2.22 At this same meeting on October 7, 2014, Ms. Zandt, with no prior knowledge,  
8 was provided a first written warning from Debra Johnson relating to an alleged incident with a  
9 patient and family member that occurred allegedly on September 4, 2014, the same date Ms.  
10 Zandt believes she suffered a workplace injury. The document is entitled Horizon Hospice  
11 Employee Violation Warning Report. In the middle of the document it is dated and signed by  
12 Debra Johnson on September 25, 2014. On the right hand side of this document is a  
13 handwritten notation: "3 written notices will result in termination of position." Ms. Zandt  
14 prior to October 7, 2014, had never been advised of this alleged policy or practice relating to  
15 discipline and also had never received any prior written warnings. Debra Johnson's  
16 handwritten statement does not identify a particular family member or patient and provides  
17 only subjective criticism of her demeanor and communication style. There is no documented  
18 misconduct. The action plan at the bottom of the document simply contains the handwritten  
19 words: "(1) try to smile more (2) soften tone (quieter)." Ms. Zandt did not agree with the  
20 supervisor's statement.

21 2.23 On October 10, 2014, Ms. Zandt learned through another employee that  
22 Defendants had hired a replacement for her on nightshift that was nondisabled and  
23 substantially younger.

24 2.24 On October 15, 2014, Ms. Zandt had another conversation with Deb Johnson. At  
25 this meeting Ms. Zandt provided Debra Johnson with a note from her same physician  
26 releasing her to work on October 16, 2014, with a restriction of "no use of left arm." Debra  
27 Johnson told Ms. Zandt in response that she was going to have to be placed on a leave of  
28 absence without pay. Debra Johnson stated to Ms. Zandt: "Well if you have to have surgery  
29

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31 COLLECTIVE ACTION COMPLAINT AND  
32 COMPLAINT FOR INDIVIDUAL DAMAGES - 6

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1 you are going to be out on rehab and we need someone to work nights." Ms. Zandt at that  
2 time had never been advised that she needed surgery by her physician.

3 2.25 When Debra Johnson advised Ms. Zandt that she was being placed on an unpaid  
4 leave of absence, Ms. Zandt objected and opposed what the Defendants were doing and told  
5 Debra Johnson that she was aware that the Defendants had already hired a replacement for her  
6 on nights that was substantially younger than her and who was not disabled. Ms. Zandt also  
7 advised Debra Johnson that she could still work under the previous light duty restriction by  
8 using her right hand to answer the telephone to do telephone triage. In response to all of  
9 this, Debra Johnson bolted out of the room to go talk to Mr. Guske. When Debra Johnson  
10 returned she advised Ms. Zandt that Mr. Guske would allow her to remain on light duty for  
11 the time being at the hourly rate of \$15.45 per hour.

12 2.26 Mr. Guske has forced out other injured employees, such as the other plaintiffs in  
13 this case, because he does not want to have to deal with the expense of workers' compensation  
14 claims and accommodating medical problems that could also raise his insurance premiums.

15 2.27 Ms. Zandt also inquired about going on Family Medical Leave pursuant to the  
16 Family Medical Leave Act, which she was eligible for, but was told "no" by Defendants'  
17 Human Resource Department representative Katie McCollum. The reason given was that as  
18 long as she was on light duty she was not eligible for Family Medical Leave.

19 2.28 Defendants were aware that Ms. Zandt was going to physical therapy two to three  
20 times per week.

21 2.29 Defendants never inquired of Ms. Zandt for permission to contact her physician or  
22 made any requests for additional information.

23 2.30 Ms. Zandt's relationship with Mr. Guske was fine prior to providing her  
24 physician's note. Mr. Guske used to talk to Ms. Zandt all the time. However, after producing  
25 the notes from her physician which contained medical restrictions, Mr. Guske refused to talk  
26 to her and avoided her and would not even say "Hello" when they came into contact in the  
27 workplace.

28 2.31 On October 23, 2014, Ms. Zandt received another Horizon Hospice Employee  
29

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1 Violation Report. The warning was allegedly based upon a customer satisfaction survey  
2 relating to the death of a patient on August 17, 2014, that allegedly was reported for the first  
3 time on October 16, 2014, coincidentally one day after Ms. Zandt's conversation with Deb  
4 Johnson and the providing of additional medical restrictions from her physician. Ms. Zandt  
5 was not provided the warning until October 23, 2014. This second written warning was given  
6 to Ms. Zandt by Heather Rice who was Debra Johnson's assistant. Debra Johnson was gone  
7 on vacation at the time, and did not attend the meeting but signed the second written warning  
8 on behalf of Defendants.

9 2.32 Ms. Zandt's last day working for Defendants was November 1, 2014. Ms. Zandt  
10 was terminated from employment with Defendants on or around November 3, 2014, allegedly  
11 due to the Defendants receiving a letter from a family member complaining about service and  
12 treatment. Ms. Zandt protested that this was not an accurate account of that visit.

13 2.33 The prior warnings allegedly justified by the Defendants for Ms.  
14 Zandt's termination came within a close proximity of time to her workplace injury on  
15 September 4, 2014; her notice to the Defendants of her medical restrictions on September 29  
16 and October 15, 2014; her opposition about initially being placed on light duty with a  
17 substantial reduction in her hourly wage on October 7, 2014; her advising the Defendants that  
18 she was aware that a substantially younger employee who was not disabled had been hired to  
19 replace her on nightshift also on October 15, 2014; her opposition to being told that she would  
20 initially have to go on an unpaid leave of absence effective October 15, 2014; and her  
21 complaints about being denied Family Medical Leave on October 15, 2014.

22 2.34 Prior to her workplace injury, and advising the Defendants of her medical  
23 restrictions, she had received no discipline from Debra Johnson in the form of any written  
24 warnings or anyone else employed by Defendants.

25 2.35 Ms. Zandt was later released by her physician to return to work without  
26 restrictions on November 26, 2014.

27 2.36 Ms. Zandt, although she was a qualified beneficiary, did not receive a COBRA  
28 notice relating to her healthcare benefits within the time period that one was suppose to be  
29



1 provided and still has not received the appropriate notice to keep her health benefits in place  
2 for eighteen months.

3 **(Kelli O'Connor)**

4 2.37 Defendants hired Ms. O'Connor on June 17, 2013 timeframe to work as a  
5 Registered Nurse Case Manager ("RNCM").

6 2.38 As a RNCM Ms. O'Connor's duties included managing the care of 10-15 patients  
7 by, without limitation, traveling to each patients' address, treating the patient, liaising with the  
8 patients' physicians and other care providers, ensuring the patients' medications were  
9 properly administered, and recording the results of the above-referenced visits through the  
10 company's online "charting" system. Defendants require RNCMs to use their personal  
11 smart/cell phones for work related matters but do not reimburse Ms. O'Connor, or similarly  
12 situated employees, for such phone usage.

13 2.39 Defendants required Ms. O'Connor to work from 8:30 AM to 5:00 PM *and*, in  
14 addition, spend an additional three to four hours per evening "charting." Ms. O'Connor, and  
15 those similarly situated, were given a 30 minute lunch break but were required to be  
16 immediately accessible during the lunch period.

17 2.40 As to the 8:30 AM to 5:00 PM work schedule, Defendants compensated Ms.  
18 O'Connor through a "piece work" scheme in which Defendants paid Ms. O'Connor, and  
19 similarly situated RNCMs, \$49.00 per visit. At times, Defendants would pay Ms. O'Connor  
20 \$28.00/hour to attend mandatory workplace meetings. Ms. O'Connor was paid at the  
21 \$28.00/hour rate approximately two to three hours per week.

22 2.41 Defendants paid Ms. O'Connor, and similarly situated RNCMs, \$49.00 per visit  
23 regardless of whether the visit (i.e. the time it took to travel to the patients' location, treat the  
24 patient, and return to the workplace and/or the next patient's address) took 30 minutes or five  
25 hours.

26 2.42 Defendants paid Ms. O'Connor, and similarly situated RNCMs, \$49.00 per visit  
27 regardless of when the visit took place during the work week. Described differently, when  
28 Ms. O'Connor worked more than forty (40) hours during a seven-day workweek and  
29

1 conducted a visit after the 40 hour mark the Defendants still paid Ms. O'Connor at the \$49.00  
2 per visit rate without taking into account work Ms. O'Connor, and those similarly situated,  
3 conducted beyond 40 hours that work week.

4 2.43 Ms. O'Connor routinely worked in excess of 40 hours per week insofar as she  
5 worked the 8:30AM – 5PM schedule at the “piece rate” of \$49.00 and, following that  
6 schedule, worked three to four hours each night charting for which she received no  
7 compensation. Defendants were aware that Ms. O'Connor, and others similarly situated, were  
8 working in excess of 40 hours per week because, upon information and belief, the  
9 Defendants' online charting mechanism tracked when Ms. O'Connor, and those similarly  
10 situated, logged on and off the charting program. Further, Ms. O'Connor's co-worker, Ms.  
11 Strong, *see infra*, complained to Defendants of not being compensated for the after-hours  
12 charting yet Defendants took no action.

13 2.44 On or about March 17, 2014, Ms. O'Connor injured her knee. Ms. O'Connor's  
14 injury prevented Ms. O'Connor from working.

15 2.45 On or about March 20, 2014, Ms. O'Connor informed Defendants of her injury  
16 and supplied, to management, information validating the injury and requirement that Ms.  
17 O'Connor be excused from work. Ms. O'Connor ultimately had surgery which took place on  
18 May 19, 2014.

19 2.46 Between March 20, 2014, and July 8, 2014, Ms. O'Connor spoke with Ms.  
20 Johnson and defendant employee Katie McCollum approximately once a week to remind both  
21 individuals that Ms. O'Connor would be returning to work once released by her physician.

22 2.47 Upon information and belief, in the May 2014, timeframe Mike Farmer, who  
23 worked for Defendants' Information Tech (IT) department, intentionally, and without Ms.  
24 O'Connor's knowledge and consent, accessed Ms. O'Connor's personal cell phone and  
25 deleted, without limitation, Ms. O'Connor's work related emails, contacts, and non-work  
26 related email and text messages.

27 2.48 On or about July 8, 2014, Ms. O'Connor's physician gave Ms. O'Connor a clean  
28 bill of health and authorized her to return to work on July 14, 2014, with no restrictions. Ms.  
29

1 O'Connor informed Defendants of her intent to return to work on July 8, 2014.

2 2.49 On or about July 11, 2014, Ms. O'Connor traveled to Defendants' office, met with  
3 Debra Johnson, and gave Ms. Johnson the above referenced July 8, 2014, return to work  
4 letter.

5 2.50 When Ms. O'Connor handed Ms. Johnson the July 8, 2014, letter Ms. Johnson  
6 looked at it, abruptly left the room, and, upon information and belief, presented the letter to  
7 Mr. Guske.

8 2.51 Ms. Johnson then returned to Ms. O'Connor's location and informed Ms.  
9 O'Connor that no work was available because of "lack of work."

10 2.52 Ms. Johnson's professed "lack of work" reason was false as the same week  
11 Defendants claimed no work existed it hired Jill Konek, a 35 year old, and Ann (whose last  
12 name is not known at this time and is, upon information and belief, in her early 40s) as  
13 RNCMs.

14 2.53 Ms. O'Connor is 53 years old.

15 **(Stacy Strong)**

16 2.54 Defendants hired Ms. Strong on August 6, 2012, to work as a Registered Nurse  
17 Case Manager ("RNCM").

18 2.55 As a RNCM Ms. Strong's duties included managing the care of 10-15 patients by,  
19 without limitation, traveling to each patients' address, treating the patient, liaising with the  
20 patients' physicians and other care providers, ensuring the patients' medications were  
21 properly administered, and recording the results of the above-referenced visits through the  
22 company's online "charting" system. Defendants require RNCMs to use their personal  
23 smart/cell phones for work related matters but do not reimburse Ms. Strong, or similarly  
24 situated employees, for such phone usage.

25 2.56 Defendants required Ms. Strong to work from 8:30 AM to 5:00 PM *and*, in  
26 addition, spend an additional three to four hours per evening "charting." At times, Defendants  
27 would pay Ms. Strong \$28.00/hour to attend mandatory workplace meetings. Defendants paid  
28 Ms. Strong at the \$28.00/hour rate approximately three to four hours per week.  
29

1 2.57 As to the 8:30 AM to 5:00 PM work schedule, Defendants compensated Ms.  
2 Strong through a “piece work” scheme in which Defendants paid Ms. Strong, and similarly  
3 situated RNCMs, \$49.00 per visit.

4 2.58 Defendants paid Ms. Strong, and similarly situated RNCMs, \$49.00 per visit  
5 regardless of whether the visit (i.e. the time it took to travel to the patients’ location, treat the  
6 patient, and return to the workplace and/or the next patient’s address) took 30 minutes or five  
7 hours.

8 2.59 Defendants paid Ms. Strong, and similarly situated RNCMs, \$49.00 per visit  
9 regardless of when the visit took place during the work week. Described differently, when  
10 Ms. Strong worked more than forty (40) hours during a seven-day workweek and conducted a  
11 visit after the 40 hour mark the Defendants still paid Ms. Strong at the \$49.00 per visit rate  
12 without taking into account work Ms. Strong, and those similarly situated, conducted beyond  
13 40 hours that work week.

14 2.60 Ms. Strong routinely worked in excess of 40 hours per week insofar as she worked  
15 the 8:30AM – 5PM schedule at the “piece rate” of \$49.00 and, following that schedule,  
16 worked three to four hours each night charting for which she received no compensation.

17 2.61 Defendants were aware that Ms. Strong, and others similarly situated, was working  
18 in excess of 40 hours per week because, upon information and belief, the Defendants’ online  
19 charting mechanism tracked when Ms. Strong, and those similarly situated, logged on and off  
20 the charting program.

21 2.62 Indeed, in 2013 Ms. Strong complained to Deb Johnson about the Defendants’  
22 refusal to pay employees for charting. Although on notice that Ms. Strong, and others,  
23 received no compensation for charting, Defendants both allowed the off-the-clock charting to  
24 continue and to continue without compensation.

25 2.63 From January 6, 2014, to February 2, 2014, Ms. Strong took medical leave from  
26 Defendants’ employment in order to treat a workplace caused back injury.

27 2.64 Although on medical leave for a serious health condition, Defendants did not  
28 provide Ms. Strong with the Family Medical Leave Act (FMLA) required notices, including  
29

1 the FMLA eligibility and rights and responsibilities notices - - - notices that specify, in part,  
2 the employer's responsibilities with regard to a covered employee's post medical leave  
3 employment position.

4 2.65 Ms. Strong returned to work with written work restrictions. Ms. Strong presented  
5 the restriction letter to Ms. Johnson who, in turn, did not follow the accommodations  
6 requested in the letter nor enter into a dialogue with Ms. Strong to discuss Ms. Strong's duties  
7 and other means by which Ms. Strong's disability could be accommodated.

8 2.66 Ms. Strong commenced a second iteration of medical leave from mid-February  
9 2014 to April 1, 2014. On or about April 1, 2014, Ms. Strong received permission from her  
10 healthcare provider to return to work.

11 2.67 On or about April 1, 2014, Ms. Strong requested to return to work but was told  
12 that she would be unable to report back to work until April 14, 2014.

13 2.68 On or about April 14, 2014, Ms. Strong reported back to work whereupon Ms.  
14 Johnson informed Ms. Strong that her fulltime position was "filled." Ms. Johnson did,  
15 however, offer Ms. Strong a two day shift that spanned Saturday and Sunday.

16 2.69 Ms. Strong declined the reduced schedule as it would not provide enough work to  
17 provide for her family.

18 2.70 Before departing Defendants' premises Ms. Johnson required Ms. Strong to report  
19 to the IT office where Mike Farmer took possession of Ms. Strong's personal cell phone and  
20 wiped it clean of work emails, Ms. Strong's phone contacts, and text messages. Among the  
21 work emails expunged from Ms. Strong's phone were the 2013 email complaint she made to  
22 management regarding the non-compensated charting.

23  
24 **(Heather Holick)**

25 2.71 Defendants hired Ms. Holick on or about October 25, 2012, as a "Registered  
26 Nurse Case Manager – Weekend Team Lead" (RNCM - WTL)

27 2.72 As a RNCM-WTL Ms. Holick, among other duties, visited patients, educated  
28 patients about the hospice end-of-life process, educated patient care givers regarding certain  
29 treatment, and, as required, administered treatment.

1           2.73     From approximately December 2012 to October 2014 Ms. Holick’s “official”  
2 work schedule included (a) eight hour shifts on Friday and Monday and (b) ten and one half  
3 hour shifts on Saturday and Sunday. Ms. Holick was paid \$26.00/hour for the Friday and  
4 Monday shifts and was paid \$300/day for the Saturday and Sunday shifts. However, in  
5 addition to the “official” 36 hour work week Ms. Holick spent approximately 24 hours  
6 (approximately six per work day) per week “charting.” Ms. Holick was not compensated for  
7 the time spent charting nor was Ms. Holick given meal and rest periods. Instead Defendants  
8 required her to work through her meal and rest periods without compensation.

9           2.74     By way of a limited example, “charting” involves a nurse reviewing admission  
10 evaluations to determine whether hospice care is appropriate, logging, among other things,  
11 vital signs or other patient data into Defendants’ database, and, in addition, documenting  
12 whether the treatment rendered to the patient was “hospice appropriate.” The “hospice  
13 appropriate” analysis is needed in order for Defendants to receive government funding for the  
14 hospice treatment.

15           2.75     In May 2014 Ms. Holick broke her foot. Ms. Holick’s foot injury rendered  
16 Ms. Holick unable to provide patient care but did, however, allow Ms. Holick to conduct  
17 administrative light duty.

18           2.76     Ms. Holick informed Defendants of her foot injury.

19           2.77     Heather Rice, Defendants’ Quality Assurance Nurse, initially agreed to allow  
20 Ms. Holick to work light duty upon Ms. Holick’s return to work.

21           2.78     But two days later (while Ms. Holick was still away from work due to her foot  
22 injury) Deborah Johnson vetoed Ms. Rice’s light duty decision and said, in a telephone call to  
23 Ms. Holick, words to the effect of “since you are on pain medications you cannot be near  
24 patients.”

25           2.79     Notwithstanding one pain pill Ms. Holick took shortly after breaking her foot,  
26 Ms. Holick was not on pain medication. Ms. Holick informed Ms. Johnson that she (Holick)  
27 was not on pain medication. In response Ms. Johnson said words to the effect of “too bad,  
28 you’re a liability and we can’t have that here.”  
29

1 2.80 Ms. Holick continued to remain off of work and, in August 2014 Ms. Holick  
2 received approval for a gastric bypass surgery procedure that was needed to address an acid  
3 reflux condition. Upon receiving approval for the surgery Ms. Holick informed Ms. Johnson  
4 that her (Holick's) return to work would be delayed beyond September 2014. Upon receiving  
5 this information Ms. Johnson paused for a lengthy period of time and abruptly ended the  
6 telephone conversation.

7 2.81 Approximately one week later Ms. Johnson called Ms. Holick. Ms. Holick  
8 informed Ms. Johnson that the bypass surgery was cancelled and Ms. Holick, again, requested  
9 to return to work. Ms. Johnson did not respond to Ms. Holick's request.

10 2.82 On or about October 14, 2014 Ms. Johnson called Ms. Holick and said she was  
11 "checking on" Ms. Holick. Ms. Holick again requested to return to work and informed Ms.  
12 Johnson that she could walk but would need a light duty schedule given Ms. Holick's acid  
13 reflux condition - - - a condition that, at times, caused gastric fluid to flood Ms. Holick's  
14 lungs which, in turn, would cause breathing difficulty.

15 2.83 Ms. Johnson responded to Ms. Holick's request and said words to the effect  
16 "if you can't come back at 100% then we don't want you." Ms. Johnson subsequently  
17 terminated Ms. Holick's employment.

18 2.84 At no time did Defendants provide Ms. Holick COBRA benefit notices nor  
19 provide Ms. Holick Family Medical Leave Act eligibility, rights and responsibilities, and  
20 designation notices.

### 21 **III. CAUSES OF ACTION**

#### 22 **A. Violation of Washington Minimum Wage Act ("WMWA") and federal Fair** 23 **Labor Standards Act ("FLSA") against Corporate and Individual Defendants.**

24 3.1 Plaintiffs re-allege the above paragraphs as if pled verbatim herein.

25 3.2 The WMWA and the FLSA require that non-exempt employees be compensated  
26 for all hours worked, including waiting time or on-call time. Waiting time while on duty is  
27 included in compensable time "where the time belongs to and is controlled by the employer."  
28 29 C.F.R. § 785.15 Ms. Zandt did not receive compensation, including overtime, for the full  
29

1 amount of the time spent engaged to wait or working while on duty and working her shift for  
2 the benefit of the Defendants.

3 3.3 The WMWA and the FLSA require that non-exempt employees be compensated  
4 for all hours worked including overtime that was suffered or permitted by the employer. Ms.  
5 Zandt was assigned to work a 15 ½ hour shift five days a week during the entire time that she  
6 worked for the Defendants but was only compensated for 8 hours. Ms. Zandt, therefore, was  
7 not compensated for the full amount of wages owed to her, including overtime compensation  
8 at 150% of her regular hourly rate.

9 3.4 In the event that Defendants plead an affirmative defense that Ms. Zandt was an  
10 exempt salaried employee, Defendants will be unable to establish that she fits into the  
11 narrowly construed exemption for learned professionals based upon the fact that she does not  
12 possess a four year academic degree and therefore does not meet the elements of the *primary*  
13 *duty test*.

14 3.5 Likewise, Defendants will not be able to meet the second test of the exemption –  
15 the *salary basis test*. In order to meet the classification of exempt learned professional Ms.  
16 Zandt must have received her full salary for any week in which she performed any work for  
17 the employer without regard to the number of days or hours worked. This “predetermined  
18 amount” of compensation may not be reduced due to “variations in the quality or quantity of  
19 the work performed.” As a result, employers may not make, unless expressly permitted under  
20 the law, any deductions from the predetermined amount paid to exempt employees.

21 3.6 Ms. Zandt’s pay records establish that she was paid on an hourly basis and not a  
22 salaried basis during her employment with Defendants and therefore the exemption from  
23 additional wages and overtime does not apply. This is evident by the payroll records and  
24 the October 7, 2014, memo from Debra Johnson to Nancy Zandt that substantially reduced  
25 her hourly rate of pay from \$31.83 to \$15.45 per hour. Furthermore, Defendants by their  
26 actions in reducing Ms. Zandt’s hourly wage in half in close proximity to her unlawful and  
27 wrongful termination and opposition to the Defendants’ conduct and practices destroyed any  
28 argument that she was paid on a salary basis by reducing her compensation due to “variations  
29

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1 in the quality or quantity of the work performed” when it forced her to go on light duty, but  
2 she remained in the same position and shift schedule.

3 3.7 As a result, Defendants are liable for unpaid wages, overtime, prejudgment interest  
4 and liquidated damages due to the fact that Defendants actions were willful and Defendants  
5 will not be able to establish either inadvertence, a bona fide dispute as to amounts owed under  
6 Washington law or a good faith basis under the FLSA for their failure to pay the amounts  
7 owed. Ms. Zandt is also entitled to recover her reasonable attorney fees and costs under  
8 Washington law and the FLSA as a prevailing Plaintiff.

9 3.8 The FLSA prohibits an employer from retaliating against an employee for  
10 communicating a wage complaint to the employer.

11 3.9 Ms. Zandt complained to Defendants about Defendants’ failure to compensate Ms.  
12 Zandt for unpaid overtime regarding the 15 ½ hour shifts worked and for reducing her hourly  
13 wage rate.

14 3.10 On November 3, 2014, Defendants retaliated against Ms. Zandt for voicing said  
15 complaints by firing Ms. Zandt.

16 3.11 By their actions described above Defendants intentionally and willfully violated  
17 Ms. Zandt’s right to be free from wrongful and retaliatory termination under 29 U.S.C.  
18 §202(b), §215(a)(3).

19 3.12 The FLSA and WMWA mandate that employees paid under a “piece-rate” receive,  
20 at a minimum, half time compensation for hours worked in excess of forty.

21 3.13 A recent federal court decision analyzing the FLSA’s piece-rate mechanism  
22 describes it as follows:

23  
24 When an employee is employed on a piece-rate basis, the regular hourly rate of  
25 pay is computed by adding together total earnings for the workweek from piece  
26 rates and ... other hours worked, the sum of which is then divided by the number  
27 of hours worked in the week for which such compensation was paid. Stated  
28 differently, ‘[w]hen an employee works part of the week at hourly and part at  
29 piece rates, the rule has been that the employer must compute the employee’s  
30 regular rate by dividing total wages earned by total hours worked under both  
31 rates.’ Once this ‘regular rate’ is determined for the employee performing both  
32 hourly and piece-work labor, the overtime premium, again, is simply one-half the

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1 'regular rate.' *Bautista Hernandez v. Tadala's Nursery, Inc.*, --- F.Supp.2d ---- \*8  
2 - 9 (S.D. Fla. 2014); 29 C.F.R. § 778.111(a).

3 3.14 Ms. O'Connor, Ms. Strong, and other similarly situated RNCMs worked in excess  
4 of forty hours per week. Ms. O'Connor, Ms. Strong, and other similarly situated RNCMs'  
5 work consisted of \$49.00/visit piece work earned during said employees' 8:30AM to 5PM  
6 five-day-per-week schedule *and* the three to four hours each night of "charting" for which the  
7 employees were required to complete but were not compensated.

8 3.15 Defendants' violated the FLSA and WMWA's provisions by, *inter alia*, failing to  
9 pay Ms. O'Connor, Ms. Strong, Ms. Holick and other similarly situated RNCMs at the half-  
10 time overtime rate for hours worked in excess of forty each week. Put differently, Defendants  
11 paid the RNCMs a \$49.00 per-visit piece rate regardless even if the employee worked in  
12 excess of forty hours per week and did not compensate the employees for the off hours  
13 charting.

14 3.16 Defendants violated the FLSA and WMWA by failing to pay Ms. Holick, and  
15 similarly situated employees, overtime insofar as Ms. Holick worked in excess of 40 hours  
16 per week but did not receive time and one half payment for the hours worked in excess of  
17 forty. Further, Defendants failed to compensate Ms. Holick, and those similarly situated, for  
18 meal periods and rest periods even though Defendants required Ms. Holick to work through  
19 such meal and rest periods.

20 **B. FLSA Collective Action Allegations vs Individual and Corporate Defendants.**

21 3.17 Plaintiffs incorporate the above paragraphs as if pled verbatim herein.

22 3.18 Plaintiffs, in their collective action representative capacity, bring this action for  
23 violations of the FLSA on behalf of the following class:  
24

- 25 a. All RNCMs who were, are, or will be employed by Defendants during the  
26 period of three years prior to the date of the commencement of this action  
27 through the date of judgment in this action, who have neither been properly  
28 compensated for all of their hours worked nor paid overtime for hours worked  
29 in excess of 40.

1 b. All RNCM-WTLs who were, are, or will be employed by Defendants during  
2 the period of three years prior to the date of the commencement of this action  
3 through the date of judgment in this action, who have neither been properly  
4 compensated for all of their hours worked nor paid overtime for hours worked  
5 in excess of 40.

6 c. All hospice nurses who were, are, or will be employed by Defendants during  
7 the period of three years prior to the date of the commencement of this action  
8 through the date of judgment in this action, who have neither been properly  
9 compensated for all of their hours worked nor paid overtime for hours worked  
10 in excess of 40.

11 3.19 Accordingly, Defendants are liable for failure to pay the named Plaintiffs and  
12 members of the putative collective class for all hours worked in excess of 40 at their regular  
13 rate.

14 3.20 Plaintiffs and all similarly situated employees who elect to participate in this  
15 action seek unpaid compensation, an equal amount of liquidated damages, and prejudgment  
16 interest, attorneys' fees, and costs pursuant to 29 U.S.C. §216(b).

17 3.21 Defendants intentionally denied Plaintiffs compensation for missed on duty  
18 meal/rest periods and uncompensated overtime.

19 3.22 Members of the FLSA classes set out above are similarly situated.

20 3.23 Members of the FLSA classes set out above have substantially similar job  
21 requirements and pay provisions and are subject to a common practice, policy, or plan that  
22 permits them to perform uncompensated work for the benefit of Defendants in excess of 40  
23 hours per work week.

24 3.24 There are numerous similarly situated current and former employees who worked  
25 for Defendants that Defendants did not compensate in violation of the FLSA and would  
26 benefit from the issuance of a Court Supervised Notice of the present lawsuit and the  
27 opportunity to join the present lawsuit.

28 3.25 Those similarly situated employees are known to Defendants, are readily  
29

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1 identifiable, and can be located through Defendants' records.

2 3.26 Members of the proposed class and Plaintiffs should be allowed to pursue their  
3 claims collectively pursuant to 29 U.S.C. §216(b).

4 3.27 The collective action mechanism will provide the most effective mechanism for  
5 adjudicating the claims of Plaintiffs and members of the proposed class.

6 3.28 The above captioned Plaintiffs request to be allowed to serve as representatives of  
7 the above referenced classes (Zandt on behalf of hospice nurses; O'Connor & Strong on  
8 behalf of RNCMs; Holick on behalf of RNCM-WTLs) on behalf of those who consent to  
9 participate in this action.

10 **C. Violation of CHAPTER 49.60 RCW ("WLAD") Relating to Disability**  
11 **Discrimination, Failure to Accommodate, Age Discrimination, Retaliation for Opposing**  
12 **conduct in violation of WLAD against Corporate Defendants and Individual Defendant.**

13 3.29 Plaintiffs re-allege the above paragraphs as pled verbatim herein.

14 3.30 WLAD prohibits discrimination based upon disability and age and retaliation for  
15 opposing such practices or conduct in violation of the law.

16 3.31 Ms. Zandt, Ms. O'Connor, and Ms. Strong can meet the elements of a *prima facie*  
17 case of disability and age discrimination. Ms. Holick, age 39, can meet the elements of a  
18 disability discrimination claim.

19 3.32 Ms. Zandt, Ms. O'Connor, Ms. Holick and Ms. Strong have actual or record of a  
20 condition or impairment that qualified as a protected disability under the WLAD. Further, the  
21 evidence will establish that Ms. Zandt, Ms. O'Connor, Ms. Holick and Ms. Strong were  
22 perceived as being disabled by the Defendants in violation of the WLAD.

23 3.33 Ms. Zandt, Ms. O'Connor and Ms. Strong are over 40 years of age and are further  
24 protected from age discrimination under the WLAD.

25 3.34 Ms. Zandt was performing satisfactory work based upon the written  
26 documentation pertaining to her performance evaluations in 2013 and 2014. Ms. O'Connor,  
27 Ms. Holick, and Ms. Strong were also performing satisfactory work based upon the fact that  
28 neither had been disciplined, negatively counseled, or the like for unsatisfactory work  
29

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1 performance.

2 3.35 Ms. Zandt, Ms. O'Connor, and Ms. Strong were replaced by other employees who  
3 were substantially younger and not disabled.

4 3.36 Defendants unlawfully terminated Ms. Zandt's, Ms. Holick's and Ms. O'Connor's  
5 employment and unlawfully demoted Ms. Strong upon her return to work following her return  
6 from disability leave. The evidence is sufficient to establish that Defendants alleged non-  
7 discriminatory reasons for terminating Ms. Zandt's, Ms. Holick's and Ms. O'Connor's  
8 employment (and demoting Ms. Strong) amount to a *pretext* and/or that impermissible reasons  
9 also exist for why all were terminated/demoted by the Defendants.

10 3.37 Ms. Zandt's, Ms. O'Connor's, and Ms. Strong's disability and age (and Ms.  
11 Holick's disability) were a substantial factor in Defendants' decision to unlawfully terminate  
12 Ms. Zandt's, Ms. Holick's, and Ms. O'Connor's employment and demote Ms. Strong upon  
13 her return to work.

14 3.38 Ms. Zandt was retaliated against and, as a result, was fired by the Defendants for  
15 opposing practices or conduct that was in violation of the law, or that she reasonably believed  
16 in good faith was a violation of the law and therefore opposed those same practices or  
17 conduct.

18 3.39 Defendants failed to engage in good faith in the interactive process relating to  
19 WLAD's reasonable accommodation requirements, and the state and federal cases  
20 interpreting the WLAD, and therefore failed to reasonably accommodate Ms. Zandt's, Ms.  
21 O'Connor's, Ms. Holick's and Ms. Strong's actual or record of a condition or impairment  
22 protected under the WLAD by refusing to consider Ms. Zandt's, Ms. O'Connor's, Ms.  
23 Holick's and Ms. Strong's reasonable accommodation requests; failing to take steps to contact  
24 their physicians to determine the nature, scope of limitations or restrictions, and prognosis of  
25 the disabilities, and by retaliating against Ms. Zandt for opposing practices or conduct that  
26 Ms. Zandt reasonably believed in good faith was illegal. Defendants alleged attempts at  
27 accommodation regarding Ms. Zandt were a sham designed to mask their illegal  
28 discriminatory practices and conduct which lead to Ms. Zandt's illegal termination under the  
29

1 law.

2 3.40 The law protects employees from the myths or stereotypes associated with  
3 disabled and nondisabled people. Defendants illegally perceived Ms. Zandt, Ms. O'Connor,  
4 Ms. Holick, and Ms. Strong as being disabled and also substantially limited in their ability to  
5 perform the essential functions of their jobs by its fears that they would fall and injure  
6 themselves and incur workers' compensation costs for the employer and also have to take  
7 protected leave on a regular and/or intermittent basis. Defendants' actions further show that it  
8 illegally perceived Ms. Zandt, Ms. O'Connor, Ms. Holick and Ms. Strong as being disabled  
9 by threatening to place Ms. Zandt on an unpaid leave of absence, placing Ms. Zandt on light  
10 duty at a substantial reduction in her hourly rate of pay, hiring a nondisabled employee to  
11 work nights to replace Ms. Zandt, Ms. Strong, and Ms. O'Connor (and, on information and  
12 belief, Ms. Holick) on a permanent basis, demoting Ms. Strong upon her return to work,  
13 assuming all would need surgery, rehabilitation and leave without any medical confirmation  
14 from their physicians that such course of treatment was medically necessary. Defendants later  
15 illegally terminated Ms. Zandt's employment for opposing this conduct. Defendants  
16 perceiving Ms. Zandt, Ms. O'Connor, Ms. Holick, and Ms. Strong as being disabled and  
17 allegedly unable to perform the essential functions of her job were a substantial factor in their  
18 terminations/demotion.

19 3.41 As a result, Ms. Zandt, Ms. O'Connor, Ms. Holick, and Ms. Strong, are entitled to  
20 recover lost wages from the time of their illegal termination/demotion to trial, prejudgment  
21 interest, front pay in lieu of reinstatement, adverse tax consequences relating to economic  
22 damages recovered, general damages for emotional distress and mental anguish, and  
23 reasonable attorney fees and costs.

24  
25 **D. Violation of Washington and federal Family Medical Leave Act ("Act") for**  
26 **Interference, Discrimination and Retaliation against Corporate Defendants.**

27 3.42 Ms. Zandt, Ms. Strong, and Ms. Holick re-allege the above paragraphs as pled  
28 verbatim herein.

29 3.43 Ms. Zandt, Ms. Strong, and Ms. Holick were eligible for leave under the Act via

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1 the fact all worked for the Defendants for one year; all worked at least 1,250 hours in the  
2 preceding year; all had available hours under the Act; all had a serious health condition which  
3 entitled them to intermittent leave without the permission of the Defendants; all requested  
4 leave under the Act; and the Defendants jointly or separately are a covered employer for  
5 purposes of the Act by having employed on a part-time or full-time basis 50 or more  
6 employees.

7 3.44 Defendants as the covered employer have the initial obligation to provide notice to  
8 and designate the leave as either Family Medical Leave or not under the Act. Defendants  
9 failed to do so.

10 3.45 Defendants interfered with, restrained, or denied the exercise of Ms. Zandt's, Ms.  
11 Holick's, and Ms. Strong's rights under the Act or their attempts to do so, by refusing to grant  
12 or consider Ms. Zandt's request to take Family Medical Leave under the Act and by demoting  
13 Ms. Strong from her full time full benefit pre-leave position to two-day-weekend shift post-  
14 leave and by failing to inform Ms. Holick of her rights under the Act.

15 3.46 Defendants' reasons for denying the leave (Zandt) and demoting post-leave  
16 (Strong) and firing (Holick) was not allowed under the Act and therefore Defendants did not  
17 have good cause in violating Ms. Zandt's, Ms. Holick's, and Ms. Strong's rights under the  
18 Act.

19 3.47 Defendants discharged or otherwise discriminated against Ms. Zandt for opposing  
20 practices made unlawful under the Act. Protection is afforded to individuals like Ms. Zandt  
21 who reasonably believe there was a violation of the Act, regardless of whether there was an  
22 actual violation.

23 3.48 As a result, Ms. Zandt, Ms. Holick, and Ms. Strong are entitled to recover lost  
24 wages from the time of her illegal termination to trial, prejudgment interest, and front pay in  
25 lieu of reinstatement, liquidated damages for willful violation of the Act and reasonable  
26 attorney fees and costs.

27  
28 **E. Violation of Consolidated Omnibus Budget Reconciliation Act ("COBRA")**  
29 **against Corporate Defendants.**

1 3.49 Ms. Zandt and Ms. Holick re-allege the above paragraphs as if pled verbatim  
2 herein.

3 3.50 Ms. Zandt and Ms. Holick are “qualified beneficiaries” under COBRA.

4 3.51 Ms. Zandt and Ms. Holick had health insurance coverage through Defendants.

5 3.52 Ms. Zandt and Ms. Holick were involuntarily terminated by Defendants thereby  
6 triggering their rights to timely notice under COBRA to elect whether to keep their health  
7 insurance in place and pay the premiums up to 102% for eighteen (18) months.

8 3.53 Ms. Zandt and Ms. Holick never received notice of the election under COBRA  
9 relating to her health insurance.

10 3.54 As a result, Defendants have violated Ms. Zandt’s and Ms. Holick’s rights under  
11 COBRA entitling them to fines, penalties, damages and reasonable attorney fees and costs.

12 **F. Violation of CHAPTER 49.28, 49.48 and 49.52 RCW against Corporate and**  
13 **Individual Defendants.**

14 3.55 Plaintiffs re-allege the above paragraphs as if pled verbatim herein.

15 3.56 By their actions referenced herein, and as will be further shown during the course  
16 of discovery and at trial, Defendants violated CHAPTER 49.28, 49.48 and 49.52 RCW by  
17 requiring Ms. Zandt, Ms. O’Connor, Ms. Holick and Ms. Strong to work a shift in excess of 8  
18 hours per day in violation of CHAPTER 49.28 RCW, and forced mandatory overtime without  
19 any appropriate compensation being paid for work that was suffered or permitted at the end of  
20 the regularly scheduled pay period by the Defendants in violation of CHAPTER 49.28, 49.48,  
21 and 49.52 RCW. Therefore, Ms. Zandt, Ms. O’Connor, Ms. Holick and Ms. Strong are  
22 entitled to damages for lost wages, overtime compensation at 150% of their regular hourly  
23 rates of pay, prejudgment interest, liquidated damages, declaratory and injunctive relief, and  
24 reasonable attorney fees and costs. By violating the provisions of the law stated herein,  
25 Defendants practices’ and conduct again demonstrates a willful violation of the law.  
26

27 **G. Violation of the Stored Communications Act (SCA) and Corporate**  
28 **Defendants.**

29 3.57 Ms. Zandt, Ms. Strong and Ms. O’Connor re-allege the above paragraphs as if pled  
30



1 verbatim herein.

2 3.58 The Ninth Circuit Court of appeals holds that “[l]ike the tort of trespass, the Stored  
3 Communications Act protects individuals' privacy and proprietary interests. The Act reflects  
4 Congress's judgment that users have a legitimate interest in the confidentiality of  
5 communications in electronic storage at a communications facility. Just as trespass protects  
6 those who rent space from a commercial storage facility to hold sensitive documents, *cf.*  
7 *Prosser and Keeton on the Law of Torts* § 13, at 78 (W. Page Keeton ed., 5th ed. 1984), the  
8 Act protects users whose electronic communications are in electronic storage with an ISP or  
9 other electronic communications facility.” *Theofel v. Farey-Jones*, 359 F.3d 1066, 1072 (9th  
10 Cir. 2004).

11 3.59 A party pleading a Stored Communications Act claim must establish (1) the  
12 defendant intentionally accessed a facility through which an electronic communications  
13 service is provided; (2) such access was not authorized or intentionally exceeded any  
14 authorization by the person or entity providing the electronic communications service, (3) the  
15 defendant thereby obtained, altered, or prevented authorized access to an electronic  
16 communication while it was in electronic storage in such system; and, (4) the defendant's  
17 unauthorized access or access in excess of authorization caused actual harm to the plaintiff.

18 3.60 Ms. Zandt, Ms. O'Connor and Ms. Strong possessed facilities, i.e. their personal  
19 smart phones that Defendants' IT department intentionally accessed. Ms. O'Connor did not  
20 authorize Defendants to access her smart phone. And, with regard to Ms. Strong, Defendants'  
21 exceeded their authority by removing, from her phone, information relating to Ms. Strong's  
22 wage complaint as well as phone contacts of Ms. Strong's personal acquaintances. As to Ms.  
23 Zandt, Defendants exceeded their authority by, upon information and belief, expunging, from  
24 Ms. Zandt's phone, information not related to her employment from Defendants and  
25 expunging the information under threat of not receiving payment of wages - - - an act that is  
26 tantamount to extortion and a violation of Washington's wage statutes.  
27

28 3.61 Defendants' actions caused Ms. Zandt, Ms. Strong and Ms. O'Connor actual  
29 damages in an amount that will be determined at trial.

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**IV. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief from the court as follows:

a. For special damages relating to Defendants' failure to pay wages, including overtime pay and prejudgment interest under the WMWA and the FLSA;

b. For liquidated damages under the WMWA, FLSA and Washington and federal Family Medical Leave Act for willful violations committed by the Defendants;

c. For lost wages, including prejudgment interest, from the time of termination to trial under the WLAD;

d. For general damages for emotional distress and mental anguish under WLAD;

e. For the recovery of the adverse tax consequences for economic damages recovered under the WLAD;

f. For front pay in lieu of reinstatement under the WLAD and Washington and federal Family Medical Leave Act;

g. For reasonable attorney fees and costs as the prevailing Plaintiff under CHAPTER 49.48, 49.52, provisions of the FLSA, COBRA, and SCA relating to the recovery of attorney fees and costs, and as provided under WLAD and the Washington and federal Family Medical Leave Act, as well as the private attorney general theory in employment law cases; and

h. An Order certifying this action as a collective action under the FLSA and designating the above Plaintiffs as representatives of all of those similarly situated.

i. Allow Plaintiffs, at the earliest time, to give notice of this collective action and Order delivery of such to all persons who are presently, or have at any time during the past three years immediately preceding the filing of this action, up through and including the date of this Court's issuance of a court-certified notice, been employed as a hospice nurse, RNCM, and/or RNCM-WTL. Such notice shall inform them that this civil action has been filed, of the nature of the FLSA overtime complaints action, and of their right to join this lawsuit if they believe they were subjected to FLSA overtime violations as set forth above.

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1 j. Award Plaintiffs, and all those similarly situated, actual damages for unpaid  
2 wages, and liquidated damages equal in amount to the unpaid compensation found due to  
3 Plaintiffs and the collective as provided by FLSA § 216(b).


4 k. Award Plaintiffs and all of those similarly situated pre and post judgment  
5 interest at the statutory rate as provided by the FLSA § 216(b).

6 l. Award Plaintiffs and all of those similarly situated attorneys' fees, costs, and  
7 disbursements as provided by FLSA § 216(b).


8 m. For all other relief from the court, including declaratory and injunctive relief.

9 DATED this 1st day of May, 2015.

10 WORKLAND & WITHERSPOON, PLLC

11  
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