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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

MICHAEL ROMNEY; FARON BAUER; and
KRISTEN CHILDRESS, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

PLAINTIFFS' CLASS ACTION
COMPLAINT

FRANCISCAN MEDICAL GROUP, a
Washington Corporation; FRANCISCAN
HEALTH SYSTEM, a Washington Corporation;
FRANCISCAN HEALTH VENTURES, a
Washington Corporation; FRANCISCAN
NORTHWEST PHYSICIANS HEALTH
NETWORK, LLC, a Washington Corporation;
and CATHOLIC HEALTH INITIATIVES, a
Colorado Corporation,

Defendants.

Plaintiffs, individually and on behalf of all others similarly situated (“the Class” or
“Class Members”), allege as follows:

I. INTRODUCTION

1. Plaintiffs Dr. Michael Romney, Dr. Faron Bauer, and Dr. Kristen Childress
 (“Plaintiffs”) bring this class action for money damages, statutory penalties, and equitable
 relief for wage violations on behalf of all Washington physicians, physician assistants,
 advanced registered nurse practitioners, and nurse-midwives employed by Franciscan Medical

1 Group, Franciscan Health System, Franciscan Health Ventures, Franciscan Northwest
2 Physicians Health Network, LLC, and Catholic Health Initiatives (“Defendants”).

3 2. Defendants failed to credit Plaintiffs and Class Members for all hours worked
4 and failed to pay Plaintiffs and Class Members contracted for and earned wages, violating
5 Washington wage statutes (RCW 49.48 *et seq.* and 49.52 *et seq.*) and Washington public
6 policy. Plaintiffs seek to correct these unlawful employment practices and seek relief
7 individually and on behalf of the Class.

8 3. Plaintiffs Romney and Bauer also bring claims for retaliation and wrongful
9 discharge in violation of Washington public policy and RCW 49.48 *et seq.* and 49.52 *et seq.*
10 Defendants violated Washington wage statutes, Washington state common law, and
11 Washington public policy by firing Dr. Romney and Dr. Bauer in retaliation for demanding
12 wages, earned and owing, objecting to Defendants’ wrongful withholding of wages, and for
13 opposing and reporting clinical practices and treatment that Plaintiffs reasonably believed
14 jeopardized public health and safety of the citizens of Washington. Plaintiffs seek monetary
15 and injunctive relief, including pecuniary, nonpecuniary, attorney’s fees and costs, exemplary
16 damages, and punitive damages, to the fullest extent allowed by law.

17 II. JURISDICTION, VENUE, AND PARTIES

18 4. Dr. Michael Romney is a resident of the State of Washington.

19 5. Dr. Faron Bauer is a resident of the State of Washington.

20 6. Dr. Kristen Childress is a resident of the State of Washington.

21 7. Defendant Franciscan Medical Group is a Washington corporation doing
22 business in King County, Washington.

23 8. Defendant Franciscan Health System is a Washington corporation doing
24 business in King County, Washington.

25 9. Defendant Franciscan Health Ventures is a Washington corporation doing
26 business in King County, Washington.

1 20. During all relevant times, Defendants failed to credit Plaintiffs and Class
2 Members for hours worked, including but not limited to failing to pay Plaintiffs and Class
3 Members for time spent on patient charts, for time spent treating patients after official clinic
4 hours, for time spent in training (including training on electronic medical records), and for
5 time spent in mandatory meetings.

6 21. During all relevant times, Plaintiffs and Class Members worked in excess of
7 the hours they contracted to work, but were not paid for this time worked.

8 22. Defendants knew that Plaintiffs and other members of the Class were working
9 in excess of the hours they contracted to work without receiving their earned wages for the
10 excess hours worked.

11 23. In failing to pay the required compensation to Plaintiffs and Class Members for
12 the excess hours, Defendants have acted willfully and with the intent of depriving Plaintiffs
13 and members of the class of earned and owed compensation.

14 **IV. FACTUAL ALLEGATIONS AS TO PLAINTIFFS**

15 24. Dr. Romney and Dr. Bauer worked for Defendants as physicians.

16 25. Dr. Childress worked for Defendants as an ARNP.

17 26. Plaintiffs are responsible for providing medical services at Defendants'
18 medical facilities.

19 27. In approximately July 2011, Dr. Romney and Dr. Bauer entered into a "FMG
20 Physician Employment Agreement" with Defendants which provided that Dr. Romney and
21 Dr. Bauer would be compensated \$100 per hour worked at any clinic location in excess of 423
22 hours on a per quarter basis. In approximately December 2011, this amount was revised by
23 Amendment to \$109.34 per hour worked at any clinic location in excess of 423 hours on a per
24 quarter basis.

25 28. Beginning in approximately January 2012, Dr. Childress entered into a "FMG
26 Professional Provider Agreement" with Defendants which provided that Dr. Childress would

1 be compensated \$75 per hour worked at any clinic location in excess of 423 hours on a per
2 quarter basis.

3 29. From the time Plaintiffs entered into the Agreements until their employment
4 with Defendants was severed, Plaintiffs worked in excess of 423 hours per quarter. Plaintiffs
5 were not paid for this time worked. Defendants also failed to credit Plaintiffs for all hours
6 worked, including but not limited to failing to pay Plaintiffs for time spent on patient charts,
7 for time spent treating patients after official clinic hours, for time spent in training (including
8 training on electronic medical records), and for time spent in mandatory meetings.

9 30. Defendants knew that Plaintiffs were working in excess of 423 hours per
10 quarter without receiving their earned wages for the excess hours worked. In fact, Plaintiffs
11 complained to Defendants, both orally and in writing, about not being paid wages earned and
12 owing.

13 31. At no time were Plaintiffs paid by Defendants the compensation owed for
14 working in excess of 423 hours per quarter.

15 V. CLASS ACTION ALLEGATIONS

16 32. Plaintiffs bring this lawsuit as a class action pursuant to CR 23, individually
17 and as representatives of the following persons:

18 All past and present employed by Defendants in Washington as “physicians,”
19 “physician assistants (PAs),” “advanced registered nurse practitioners
20 (ARNPs),” “nurse-midwives,” or a similar classifications, who entered into a
21 contract providing that they would receive additional compensation for any
22 time worked in excess of the hours they contracted to work, during the past
23 three years preceding the filing of this Complaint.

24 Plaintiffs reserve their right to further define or amend the Class by additional pleadings,
25 evidentiary hearings, class certification hearings, or orders of this Court.

26 33. This action may be properly maintained as a class action pursuant to CR 23 as
it satisfies the numerosity, commonality, typicality, and adequacy requirements of CR 23(a)
and other prerequisites for class action certification pursuant to CR 23(b).

1 34. The class described in paragraph 31 is sufficiently numerous such that joinder
2 of all members is impractical, as required by CR 23(a)(1). Although the precise number of
3 Class Members is unknown to Plaintiffs at this time and can be ascertained only through
4 appropriate discovery, it is estimated that there are more than 300 Class Members who reside
5 in multiple counties of Washington State, including King County and Pierce County. As a
6 result, joinder of all Class Members in a single action is impracticable.

7 35. Pursuant to CR 23(a)(2) and CR 23(b)(3), there are questions of law and fact
8 common to the class, and which predominate over questions affecting only individual
9 members, including, but not limited to the following:

10 a. Whether Defendants contracted to pay Plaintiffs and Class Members
11 wages for hours worked in excess of the hours they contracted to work;

12 b. Whether Plaintiffs and Class Members performed work in excess of the
13 hours they contracted to work;

14 c. Whether Defendants failed to pay Plaintiffs and Class Members for
15 hours worked in excess of the hours they contracted to work;

16 d. Whether Defendants violated RCW 49.48 *et seq.* and 49.52 *et seq.*;

17 e. Whether Defendants, in failing to pay wages earned and owing, have
18 acted willfully and with the intent to deprive Plaintiffs and Class Members of such
19 compensation; and

20 f. Whether Plaintiff and the Class have sustained damages, and the proper
21 measure of those damages.

22 36. Pursuant to CR 23(a)(3), the class representatives' wage and hour claims are
23 typical of the claims of all Class Members and of Defendants' anticipated affirmative
24 defenses. The harm suffered by Plaintiffs and all other Class Members arises from and was
25 caused by the same conduct of Defendants; namely, Plaintiffs and Class Members were
26 harmed by Defendants' wrongful withholding of wages earned and owing.

1 37. The Class representatives will fairly and adequately protect the interests of the
2 Class as required by CR 23(a)(4). Plaintiffs are members of the Class, and their interests do
3 not conflict with the interests of the members of the Class they seek to represent. Plaintiffs
4 have retained competent and experienced counsel, who has been certified and served as class
5 counsel in both state and federal court on numerous occasions. Plaintiffs intend to diligently
6 and vigorously prosecute the claims alleged herein.

7 38. Pursuant to CR 23(b), class certification is appropriate here because questions
8 of law or fact common to members of the Class predominate over any questions affecting only
9 individual members, and because a class action is superior with respect to considerations of
10 consistency, economy, efficiency, fairness and equity, to other available methods for the fair
11 and efficient adjudication of the state law claims.

12 39. Maintenance of this action as a class action is a fair and efficient method for
13 the adjudication of this controversy. It would be impracticable and undesirable for each
14 member of the Class who suffered harm to bring a separate action. In addition, the
15 maintenance of separate actions would place a substantial and unnecessary burden on the
16 courts and could result in inconsistent adjudications with respect to individual Class Members
17 that would substantially impair their ability to protect their interests. In contrast, a single class
18 action can determine, with judicial economy, the rights of all Class Members.

19 40. Class certification is proper because Defendants have acted or refused to act on
20 grounds generally applicable to the Class, making final injunctive relief with respect to the
21 class as a whole appropriate, and any parties who do not wish to participate can opt out.

22 41. Class certification is also proper because question of law or fact common to the
23 class predominate over any questions affecting only individual Class Members, and a class
24 action is superior to other available methods for the fair and efficient adjudication of the
25 controversy between the parties in light of the fact that:
26

- 1 a. The Class Members do not have a substantial interest in individually
2 controlling the prosecution of separate actions because other than the
3 calculation of the amounts owed, the damages of each Class Member are
4 virtually identical, and the Class Members thus have no incentive to pursue
5 individual actions.
- 6 b. There is no known litigation currently pending against Defendant, individually
7 or on behalf of the class, other than the present lawsuit.
- 8 c. The individual Plaintiffs, the Defendants, a number of Class Members, and
9 Plaintiffs' counsel are located in the King and Pierce County areas, and
10 therefore it is desirable to concentrate the litigation of the claims within the
11 selected forum.
- 12 d. There are no geographical or logistical issues that would make management of
13 the class difficult.

14 **VI. FIRST CAUSE OF ACTION – CLASSWIDE FAILURE TO PAY WAGES IN**
15 **VIOLATION OF WASHINGTON WAGE STATUTES**

16 42. Plaintiffs restate and re-allege the above-mentioned allegations.

17 43. Defendants formed binding and enforceable contracts (the abovementioned
18 Employment Agreements) with Plaintiffs and Class Members, agreeing and promising to pay
19 Plaintiffs and Class Members specific compensation per hour worked in excess of the hours
20 they contracted to work in exchange for their employment services.

21 44. Plaintiffs and Class Members fully performed their obligations under the
22 Employment Agreements and in reasonable reliance on Defendants' promises to pay Plaintiff
23 specific compensation.

24 45. Defendants breached the contracts by failing to pay Plaintiffs and Class
25 Members wages earned and owing according to the terms of the Employment Agreements.
26

1 46. Defendants knowingly, intentionally, and willfully withheld and continue to
2 withhold wages due to Plaintiffs and the Class, in violation of RCW 49.48 *et seq.* and RCW
3 49.52 *et seq.*

4 47. Plaintiffs and Class Members were damaged as a result of this breach and by
5 their reasonable reliance on Defendants' enforceable promises.

6 48. Injustice can be avoided only if Defendants' promises are enforced and
7 Plaintiffs and Class Members should be entitled to compensation for their expectation,
8 consequential, and reliance damages.

9 49. As a result of Defendants' conduct discussed above, Plaintiffs and the Class
10 have suffered and continue to suffer damages, in amounts to be proven at trial, including but
11 not limited to lost wages in violation of RCW 49.52 *et seq.* and RCW 49.48 *et seq.*

12 **VII. DR. ROMNEY'S AND DR. BAUER'S INDIVIDUAL CLAIMS**

13 50. The preceding paragraphs are re-alleged and hereby incorporated by reference.

14 51. In addition to Defendants' failure to pay Dr. Romney and Dr. Bauer
15 compensation earned and owing, Dr. Romney and Dr. Bauer were subjected to additional
16 adverse employment actions by Defendants, including being retaliatorily fired and being
17 retaliatorily stripped of their hospital privileges.

18 52. Specifically, Dr. Romney and Dr. Bauer opposed activity by Defendants that
19 violated RCW 49.52 *et seq.*, RCW 49.48 *et seq.*, and established public policies of
20 Washington State, including but not limited to the following:

21 a. Opposing Defendants' failure to pay employees all wages dues, an
22 established public policy of Washington, as enumerated in RCW 49.46 *et seq.*, 49.48 *et seq.*
23 and 49.52 *et seq.*;

24 b. Opposing and reporting clinical practices and treatment by Defendants
25 that Plaintiffs reasonably believed jeopardized public health and safety, violated their ethical
26 obligations as doctors and employees, and breached governing regulations and guidelines.

1 practices described in the above paragraphs, including out-of-pocket expenses, in amounts to
2 be determined at trial;

3 G. Order Defendants to make Dr. Romney and Dr. Bauer whole by providing
4 compensation for past and future non-pecuniary losses resulting from the acts complained of
5 in the above paragraphs, including without limitation, emotional pain, suffering, humiliation,
6 distress, and loss of enjoyment of life, in amounts to be determined at trial;

7 H. Order Defendants to pay punitive damages to the fullest extent allowed by law;

8 I. Award Plaintiffs and Class Members the costs of this action, including
9 attorneys' fees, expert fees, and all other costs to the fullest extent allowed by law;

10 J. Order Defendants to pay for any and all tax ramifications arising from
11 Plaintiffs' and Class Members' recovery of damages and/or attorney's fees;

12 K. Award pre-judgment interest and post judgment interest; and

13 L. Grant any additional or further relief as provided by law, which this Court
14 finds appropriate, equitable, or just.

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17 DATED this 13th day of November, 2013.

18 THE BLANKENSHIP LAW FIRM, P.S.

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20
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